

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 21<sup>st</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

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM ELGEYO-MARAKWET COUNTY

**The Speaker** (Hon. Lusaka): Hon Senators, I wish to acknowledge the presence in the Speaker's Gallery this afternoon of visiting staff from Elgeyo-Marakwet County Assembly.

The staffers are visiting the Senate on a one week attachment programme. I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

- (1) Ms. Sylvia Kwambai;
- (2) Mr. Gideon Moru;
- (3) Ms. Susan Cherop;
- (4) Mr. Pius Koech;
- (5) Mr. Ronald Sang;
- (6) Ms. Mauryn Koech;
- (7) Mr. Kevin Ruto;
- (8) Mr. Peter Kiptum, and;
- (9) Ms. Betsy Cheruiyot.

On behalf of the Senate and on my own behalf, I welcome them to the Senate and wish them well for the remainder of their stay.

I thank you.

Next order.

**PAPER LAID**THE CRA RECOMMENDATION ON EQUITABLE SHARING OF  
REVENUE FOR FY 2018/2019

**Sen. Dullo:** Mr. Speaker, Sir, I beg to lay the following Paper on the Table of the Senate, today 21<sup>st</sup> February, 2018:

The Commission on Revenue Allocation on recommendation on the basis for equitable sharing of Revenue between National and County Governments for the financial year 2018/2019.

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

**NOTICES OF MOTIONS**

## APPROVAL OF SENATORS TO SERVE IN SELECT COMMITTEES

**Sen. Dullo:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, pursuant to Standing Order Nos. 181, 183 and 212, the Senate approves the following Senators nominated to serve in the Select Committees of the Senate as follows-

(a) **Standing Committee on Agriculture, Livestock and Fisheries**

Sen. Stewart Madzayo, MP to replace Sen. (Prof.) Malachy Imana Ekal, MP

(b) **Standing Committee on Roads and Transportation**

Sen. (Prof.) Malachy Imana Ekal, MP to replace Sen. Stewart Madzayo, MP

ADOPTION OF SESSIONAL PAPER NO.2 OF 2016 ON THE  
NATIONAL SLUM UPGRADING AND PREVENTION POLICY

**Sen. Dullo:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House adopts Sessional Paper No. 2 of 2016 on the National Slum Upgrading and Prevention Policy, laid on the Table of the House on Tuesday, 10th October, 2017.

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

**Sen. Poghio:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House adopts the Report of the 8th Ordinary Session of the Forum of Parliaments of Member States of the International Conference on the Great Lakes Region (FP-ICGLR), held on 5th – 7th December, 2017, in the Central African Republic, laid on the Table of the House on Tuesday, 20th February, 2018.

ADOPTION OF REPORT OF THE WOMEN POLITICAL  
LEADERS ANNUAL GLOBAL SUMMIT

**Sen. (Dr.) Milgo:** Mr. Speaker, Sir, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Senate Delegation to the Women Political Leaders Annual Global Summit, held in Reyjavik, from 28th -30th November, 2017, laid on the Table of the House on Wednesday, 14th February, 2018.

TEACHING OF KISWAHILI LANGUAGE TO  
LEARNERS WITH HEARING DISABILITY

**Sen. (Dr.) Musuruve:** Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

AWARE that Article 27 of the Constitution of Kenya guarantees equality of every person in enjoyment of all rights and fundamental freedoms and prohibits discrimination against any person on any ground including disability and language;

FURTHER AWARE that Article 24(2)(a) of the United Nations Convention on the Rights of Persons With Disabilities prohibits persons with disabilities from exclusion from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

ACKNOWLEDGING that Article 7 of the Constitution of Kenya provides for the national language of the Republic as Kiswahili and the official languages of the republic as Kiswahili and English;

APPRECIATING that the Report of the Commission of Enquiry into Education in Kenya (the Ominde Commission of 1965) proposed that Kiswahili language be taught as a compulsory subject both in primary and secondary schools in Kenya with the aim of making the language a vehicle for literacy works relevant to community work of various kinds;

COGNIZANT that Kiswahili language has been recognized as a unifying language in the East African Community, hence making it a *lingua franca* in the region;

CONCERNED that under the new curriculum of education in Kenya that is being piloted, learners with hearing disability are not offered Kiswahili language in primary schools, secondary schools and primary teachers training colleges;

NOW THEREFORE, the Senate calls upon the Ministry of Education, Science and Technology and other relevant state agencies to:

(1) Offer Kiswahili language as a core subject to learners with hearing disability in primary schools, secondary schools and primary teacher colleges;

(2) Come up with an elaborate syllabus for teaching Kiswahili as a core subject to deaf learners in primary, secondary and teacher training colleges; and

(3) Come up with an elaborate syllabus for teaching Kenya Sign Language (KSL) as an optional subject for learners who have no hearing disability and for deaf learners.

Thank you.

**The Speaker** (Hon. Lusaka): What is your point of order, Sen. Faki?

**Sen. Faki:** Asante, Bw. Spika. Nilitaka kudandia Motion ya Sen. (Dr.) Musuruve.

**The Speaker** (Hon. Lusaka): Order! There is no Motion.

*(The Chair consulted with the Clerk-at-the-Table)*

**The Speaker** (Hon. Lusaka): Hon. Senators, we will go to order No. 8 and come back to Order No. 7.

Next Order.

## BILL

### *Second Reading*

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

*(Sen. Murkomen on 15.02.2018)*

*(Resumption of Debate interrupted on 15.02.2018)*

**The Speaker** (Hon. Lusaka): Hon. Senators, I direct that the bell be rang for three minutes.

*(The Division Bell was rung)*

Order Hon. Senators! Order! Order! I now direct that the bars be drawn and the doors be locked.

*(The doors were closed and the Bar drawn)*

Order, Hon. Senators: We are now ready for voting and you may start voting now.

*(Question put and the Senators proceeded to vote)*

**The Speaker** (Hon. Lusaka): Order, hon. Members. Let the assisted voters come and vote.

**DIVISION****ELECTRONIC VOTING**

*(Question, that the Irrigation Bill (Senate Bills No.5 of 2017)  
be now read a Second Time, put and the Senate  
proceeded to vote by County Delegations)*

**AYES:** Sen. (Dr.) Ali, Wajir County; Sen. Cherargei, Nandi County; Sen. Cheruiyot, Kericho County; Sen. Dullo, Isiolo County; Sen. Haji, Garissa County; Sen. (Eng.) Hargura, Marsabit County; Sen. (Prof.) Kamar, Uasin Gishu County; Sen. Kihika, Nakuru County; Sen. Lelegwe, Samburu County; Sen. (Eng.) Maina, Nyeri County; Sen. Mpaayei, Kajiado County; Sen. Mwangi, Nyandarua County; Sen. Poghisio, West Pokot County; Sen. Sakaja, Nairobi City County and Sen. Wario, Tana River County.

**NOES:** Sen. Boy, Kwale County; Sen. (Prof.) Ekal, Turkana County; Sen. Faki, Mombasa County; Sen. (Dr.) Kabaka, Machakos County; Sen. Khaniri, Vihiga County; Sen. Madzayo, Kilifi County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwaruma, Taita-Taveta County; Sen. Olekina, Narok County; Sen. (Prof.) Ongeru, Kisii County; Sen. Outa, Kisumu County; Sen. Wambua, Kitui County and Sen. Wetangula, Bungoma County.

**The Speaker** (Hon. Lusaka): Order, Members. The results of the voting are as follows:

**AYES:** 15

**NOES:** 13

**ABSTENTIONS:** Nil

Hon. Senators, as you are aware, we need 24 Senators to support the Bill for it to go through. So, in the circumstances, the Bill is negatived.

*(Question negatived by 13 votes to 15)*

*(The doors were opened and the Bar drawn)*

Next Order!

**STATEMENTS**

**The Speaker** (Hon. Lusaka): Let us have, Sen. Mary Seneta.

**USE AND MANAGEMENT OF RIPARIAN AREAS IN KENYA**

**Sen. Seneta:** Mr. Speaker, Sir, pursuant to Standing Order 46 (2) (b), I rise to seek a statement from the Chairperson of the Standing Committee on Lands, Environment and Natural Resources regarding the use and management of riparian areas in Kenya.

In the Statement, the Chairperson should state:

(1) Whether he is aware that over the years, riparian areas in Kenya have been put under pressure due to residential developments, cottages, farm buildings, golf courses, commercial buildings, roads, sand and gravel harvesting, agriculture and industrial activities.

(2) Whether there is a proper legal policy and institutional framework canvassing the interest of Government and riparian stakeholders in the use and management of the riparian areas.

(3) Whether he is aware that the law relating to riparian zones protection is contained in several pieces of legislation thereby presenting a problem of overlapping mandates and lack of coordination in enforcement.

(4) What reforms are necessary in the legal and policy regulatory framework to foster riparian zones protection zones in Kenya.

Thank you.

**The Senate Minority Leader (Sen. Wetangula):** Thank you, Mr. Speaker Sir, for allowing me to ride on this important statement sought by the distinguished Senator. Riparian lands are also sometimes called wetlands. In his answer to the question, the Chairperson of the Committee on Lands, Environment and Natural Resources needs to tell us why, contrary to the available law and policy, the national Government and county governments continue to allow persons to own parcels of land that cover riparian and wetlands. Two, why they allow these people to plant trees that are proven to be inconsistent with the management and resuscitation of the riparian lands, namely; blue gum trees? The other day I was talking to the distinguished Senator for Kisii County, Sen. (Prof.) Ongeru, who comes from one of the most well watered areas in this country in terms of rainfall. He told me that Kisii is under severe stress because of similar trees and this is everywhere you go.

Secondly, could the Chairperson also tell us whether the Forest Conservation and Management Act, 2016, that is in force is being implemented in terms of a demand for every owner of land, including Government to plant a minimum of 10 percent of your land with trees that protect and sustain the environment, including riparian lands otherwise known as wetlands.

**Sen. (Eng.) Maina:** Thank you, Mr. Speaker, Sir. I rise to add on the Senators' concern that has been expressed, highlighting various serious issues that are facing this country. I do not think that it is just a matter of riparian land. The issue of riparian land in itself is very serious because we all remember days when you could not have planted anything along the river bank and this country was well watered.

When Sen. (Prof.) Ongeru says, "I was in Kisii County sometime and I know it is not wet." I can understand. It is not only in Kisii County, but, today, rivers are drying up everywhere in Kenya. To some of us who were brought up in places where there were rivers flowing continuously, they started by shrinking and today they are drying up. We do not need bridges anymore to cross those rivers. Besides, even areas that were not arid now they are becoming arid.

Personally, I fear with the little knowledge that I have on the subject, that Kenya could be moving towards desertification if this process continues. This involves many other things like management of water courses and management of our water towers.

In answering this question let us, first of all, know what urgently is going to be done to ensure that the river courses in this country are well guarded. Furthermore, this

must not only be about the riparian land. We all remember when there used to be terracing which was well managed. Today, you will find our rivers have turned brown. If you go to Sabaki River after a flood, you can see the brown colour has extended two kilometres into the sea. Therefore, this is subject not be looked casually but---

**The Speaker** (Hon. Lusaka): Senator, ride on the question; do not start to debate.

**Sen. (Eng.) Maina:** Mr. Speaker, Sir, I am extending because of the seriousness of the subject, I am not contributing.

In the response, let us know what is going to be done seriously and urgently to address the issue. Also, we should not be told that response will come in two weeks' time, but should be done within a couple of days.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir, I would like to ride on the statement by the distinguished Sen. Seneta. The Chairperson of the Committee on Lands, Environment and Natural Resources, when responding, to tell us what the Government is doing in terms the people who plant tomatoes along the rivers. When you go to Narok County, the Mara River is actually drying up. Let us call it dry. Sen. Seneta should know that in the riparian lands there are many different species of animals that live and depend on water on that part of land and do not survive anywhere else. So, what happens to these mammals which are no longer there? Secondly, why are people allowed to cultivate the riparian lands?

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir. I would also want to ride on the statement so that when the Chairperson of the Committee on Lands, Environment and Natural Resources is giving the response, he can also address the issue of acquisition of riparian lands. Much as preservation or conservation of the riparian land is very important, there are instances where the county governments and the national Government have acquired the riparian lands from individuals whether compulsory or otherwise, without compensating the people who own those lands. So, as much as we want to conserve, let us also know the recourse that the people who own the private land can take when their land is taken compulsorily to conserve the water catchment areas.

**Sen. (Prof.) Ongeri:** Mr. Speaker, Sir, I would like to ride on that question. Firstly, over a period of time, there has been progressive policy development on the use of riparian land such as the valley bottoms where people were encouraged to develop horticultural products. How much of that policy has eroded the policy on the conservation of the riparian land?

Secondly, is the Ministry concerned willing to revoke all the necessary laws that may have inadvertently come into force in order to reclaim the ecosystem and the reservoir system of water in this country? Thirdly, what action are we taking as a country? I am talking about the inter-county relationship. What happens in one county affects the other county. To what extent are we able to moderate this intergovernmental relationship in terms of the riparian land?

Finally, this riparian land goes beyond Kenya. There are other riparian areas that affect this country in one way or the other. Is there a way that we can jointly work together in the East African Community for the conservation of the riparian area? I have Masai Mara ecosystem in mind. I am also thinking of the dam which is being built in Ethiopia. That dam is now affecting Lake Turkana and the flow of water to other areas. It is also affecting the ecosystem of the fish.

I would like the Chairperson of the National Land Commission to be seized of the issue that we have now reached at a level where it is an emergency for water provision. I never thought that we would be lacking water in Kisii at one stage. In Nyeri, there used to be a beautiful river when you are driving down through to the Senator of Nyeri's home in Karatina and coming down. You would enjoy the ripples of that river. It is gone. Are we not self-destructive?

**Sen. Cherargei:** Thank you, Mr. Speaker, Sir. I agree that the question that the Senator has raised is very important. For the first time in this country, we are witnessing the drying up of rivers and many water sources.

We are having a lot of infrastructural expansion and sprawling urban centres and many developments that might affect the riparian areas. I would want the Chairperson to tell us what the Government is doing to ensure that we do not continue losing these riparian areas at the expense of bringing up new infrastructural developments and urban centres. These developments might have very dangerous effects to our generation and the future generation.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. From my understanding of what riparian land is; it is supposed to be like a road reserve. For purposes of the river, it will be a water reserve to accommodate floods. Therefore, in Nairobi itself, riparian land has been grabbed to the extent that even the house that was collapsing in Mathare was on the river itself. There is one on Mbagathi Way where the river passes under the building. There are others on Argwings Kodhek and Brookside where the river passes under the buildings.

We would like to know who is in charge in terms of authority of riparian land in Kenya. What is the legislative or policy framework of riparian land in Kenya? What is the size of riparian land for us to determine whether there is encroachment in those premises? If you are going to make any recovery, up to what extent will you make that recovery? If that does not exist, they should propose a legislative framework where we can recover riparian land. That is the problem we have in Naivasha where flower farmers have planted all the way into Lake Naivasha.

**Sen. Mwangi:** Mr. Speaker, Sir, this will have to be a loaded Statement. I undertake that I am going to respond to all the questions asked by all the Senators. I will bring an answer to this House in two weeks' time, if it is acceptable.

**The Speaker (Hon. Lusaka):** Are you okay with the period that you have been given, Senator?

**Sen. Seneta:** Mr. Speaker, Sir, I am okay with the two weeks.

#### RAMPANT FIRE OUTBREAKS IN INFORMAL SETTLEMENTS OF NAIROBI CITY COUNTY

**Sen. Kwamboka:** Mr. Speaker, Sir, I rise pursuant to Standing Order No.46(2)(b) to seek a Statement from the Chairperson of the National Security, Defence and Foreign Relations Committee regarding the rampant fire outbreaks in the informal settlements of Nairobi City County. In the Statement, the Chairperson should:-

(1) Table a list of all areas in Nairobi City County that have had a fire outbreak in the last five years.



(2) Provide statistics of persons affected either directly or indirectly by the fire outbreaks in the last five years.

(3) Quantify in Kenya shillings, the losses incurred as a result of the fire outbreaks.

(4) Explain why, in several instances the Nairobi City County Government Fire Response Team arrives at the scene of fire without the requisite firefighting equipment, tools and materials.

(5) Outline the measures that the national Government, working together with Nairobi City County government, has put in place to resettle and compensate the victims.

(6) Explain the measures that the national Government, working together with Nairobi City County Government, have put in place to avert fire outbreaks and to adequately and expeditiously respond in case an outbreak occurs.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I would like to ride on the question. The issue of fire outbreak is so rampant all over. With regard to what Sen. Kwamboka has said, it is important to also investigate what happens to children and people with disability in the slums in the event of fire. There are some who are not mobile. What has the Government put in place to ensure that they are safe?

The issue of fire is also rampant in schools. Remember there was fire at Moi Girls, Nairobi High School. What measures has the Government put in place to ensure that children who are in schools for the disabled are safe in the event of fire?

**Sen. (Prof.) Onger:** Mr. Speaker, Sir, I would like to ride on this question. Fire outbreaks are not peculiar only to Nairobi City County. We have these fire outbreaks in many of our county headquarters. One of the things that we want to know is with regard to the disaster management teams, whether in Nairobi City County or any other county is: What is the level of preparedness in terms of reaching at the site and what level of access do they have to any site? This is because it hinges directly on the quality of planning. Direct access to the fire site is important for one to prevent fire occurrence.

When I was the Minister for Local Government, we had encouraged the municipal councils to acquire the fire equipment including vehicles. We even made provisions at that time to get these vehicles from France. To what extent are counties equipped with firefighting equipment for them to respond effectively when an emergency that threatens the life of people arises?

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

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I would like to ride on that Statement sought by the distinguished Senator. When the Chairperson will be responding to that question, I would like to get a definite explanation as to whether the City of Nairobi has a policy on how to acquire firefighting equipment and also where they are placed. Given that Nairobi is such a large city, I would like to know whether all that equipment is just placed at the City Hall or it is spread out in the suburbs of Nairobi.

It will also be important for us to understand whether the disaster management system which is national and the fire fighting systems which are for counties have in their budget, provisions to buy firefighting equipment and what they do. Are they only for water or do they have any chemicals, in the event that they run out of water?

Thank you.

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

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. In answer to the distinguished Senator's question, I would wish that the Chairperson also addresses this House and the nation on:-

(a) To what extent does the National Disaster Management Centre in Nairobi cooperate and collaborate with counties and do they have any offices and operations in counties especially in big towns such as Mombasa, Kisumu, Nakuru, Kisii, Bungoma and others?

(b) To what extent are these rampant fires in the so called informal settlements in towns and cities, in fact, acts of arson, committed by unscrupulous landlords who would want to evict poor people living in those areas so that they can turn the lands into real estate?

(c) How many people have been found culpable through prosecutions for criminal offences, where those cases have been proven?

**The Speaker** (Hon. Lusaka): Yes, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir. While the Chairperson is going to present his response, we have proposed, together with the Vice Chairperson of the Standing Committee on National Security, Defence and Foreign Relations, the Disaster Management Bill which will, of course, address this concern.

However, for the purposes of the question, I am aware that the National Disaster Management Policy that was drafted in 2013 is still stuck somewhere on a shelf. The Chairperson should let us know, in his response, when that policy will be implemented or passed because it will then dictate or give life to the proposed legislation on disaster management.

Thank you.

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

**Sen. Mwaruma:** Thank you, Mr. Speaker, Sir, for this opportunity. I would also like to ride on Sen. Kwamboka's question and ask if we have any standard for firefighting or disaster preparedness. Whatever gets measured gets done. So, in my job as a Senator, to protect the counties and county governments, if I go to, for example, Nairobi or Taita Taveta, I can be able to say that they are prepared to fight fire.

In some counties, you will discover that we are not prepared at all to fight fire. You will find in a county, whatever they have for fire-fighting is a small Land Rover vehicle and a water boozier. Is that really a standard for fighting fire?

On what Sen. Wetangula asked, to what extent can we hold the officials who are given that chance to fight disaster culpable individually so that when a disaster occurs, we can identify the individuals who are criminally culpable?

In answering that question, let us be told some standards where if you go to the counties, you can say that this is the standard for fighting fire.

Thank you.

**The Speaker** (Hon. Lusaka): Let us hear from the Chairperson of the Standing Committee on National Security, Defence and Foreign Relations.

**Sen. Sakaja:** Thank you, Mr. Speaker, Sir. For the Senator who is part of the Nairobi County Delegation, Sen. Kwamboka, thank you for bringing this issue to the Floor. This is a matter that is of great concern to the whole country just as much as Nairobi.

I am glad the other Senators have chipped in with the additional questions which I have noted. This is a matter that ideally - given the experience and what is happening especially in Nairobi - we will need, even as we get the responses, to deal with, together with the Standing Committees on Energy and Lands, Environment and Natural Resources.

In what we have seen as a practice in the situations we have been in, there are two major causes of these fires. The first one is the illegal electric power connections in a lot of informal settlements. Already we have been in discussion with the Kenya Power and Lighting Company (KPLC) on how we can properly provide electric power to people in the slums.

For the record of this House, we will now need to mainstream that discussion together with the Standing Committee on Energy. I know there was the Last Mile Project; we will talk as it is. So, we will come together. That is one of the major causes.

Secondly, we will need to liaise with the Standing Committee on Lands, Environment and Natural Resources.

As the Senate Minority Leader has properly posited before this House, a lot of these fires are caused by land grabbers. Let us call them what they really are. By way of causing a fire in a slum, these land grabbers want to evict people so that they can fence the place and go on with their developments. You will find that a lot of the fires are on disputed lands. So, ideally, it is a matter that we will need to get proper responses not just from the Standing Committee on National Security, Defence and Foreign Relations, but in working together with the Standing Committees on Lands, Environment and Natural Resources and Energy.

If I go to the additional questions, I do not know what to call them; the riders, there are many who have ridden on this question.

Mr. Speaker, Sir, on the issue of the Persons living with Disabilities (PWDS), I would just like to mention that the PWDs in this country have a champion in this House. They must know that they have---

**The Senate Minority Leader** (Sen. Wetangula): Mr. Speaker, Sir, I like what the distinguished Senator of Nairobi County is doing. But is he responding to the questions so that we can interrogate what he is saying or is he preparing to give us a date when he will bring the answer?

This is because when an answer is brought to any Statement, the House is obligated to interrogate the veracity, content and facts in it. So, if he is giving the answer, then we will be allowed to interrogate what he is saying. What he is doing is good, but it is un-procedural.

**Sen. Sakaja:** Mr. Speaker, Sir, I am first giving the context that will determine how long it will take to give us an answer so that Members can understand when I say it will take three or four weeks. The first area that I have touched on is the reason why we will also need to interact in looking at this matter with other Committees, that is, the Standing Committees on Energy and Lands, Environment and Natural Resources.

So, I am doing the context to that. Allow me to proceed. I am not giving the answer; I am just giving that context to that.

There is a question on where the equipment is being placed by Sen. Olekina. That is important to understand, but he is specific to Nairobi County. That means that we are forwarding a question not just to the Ministry that deals with the disaster response, but

also to Nairobi County government. We are also forwarding the question to the Standing Committees on Energy and Lands, Environment and Natural Resources. There is also the issue of the National Disaster Management liaising with the county; are they present in other counties? Another issue is on arson from Sen. Wetangula.

So, Mr. Speaker, Sir, all in all, we need some bit of time to deal with the issue comprehensively. We will give a response based on the questions asked which I am sure will be unsatisfactory if it comes in a short time. This is because Sen. Kwamboka has asked for five years of records.

In Nairobi, in five weeks, we will have a hard time to talk about the number of fires that we have every fortnight. I am sure that we will not get a response on a record of five years in terms of victims, compensation and the number of fires in this county. It might take more than a month to get that response. But I will try to persuade the good Senator to reduce the period under review from five years to since this county government took over; that is from August. We should look at that and get a response in the next three or so weeks. After that, we will sit down with the other Committees involved so that we can bring an end to the issue of fires in the county.

So, Mr. Speaker, Sir, I ask for three weeks and a review of the period in question from five years to about five or six months.

**Sen. Kwamboka:** Mr. Speaker, Sir, the period under review should be for the last one year. The three weeks is okay.

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

## MOTION

### APPROVAL OF SENATORS TO SERVE IN SELECT COMMITTEES

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

THAT, pursuant to Standing Orders No. 181, 183 and 212, the Senate approves the following Senators nominated to serve in the Select Committees of the Senate as follows-

**(a) Standing Committee on Agriculture, Livestock and Fisheries**

Sen. Stewart Madzayo, MP to replace Sen. (Prof.) Malachy Imana Ekai, MP

**(b) Standing Committee on Roads and Transportation**

Sen. (Prof.) Malachy Imana Ekai, MP to replace Sen. Stewart Madzayo, MP

Mr. Speaker, Sir, I believe that this matter has been canvassed at the--

**Sen. Wambua:** On a point of information, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): What is your point of information Sen. Wambua?

**Sen. Wambua:** Mr. Speaker, Sir, I just want to correct the Senate Deputy Majority Leader that the Senator that we have in the House is the Sen. (Prof.) Malachy Imana Ekai and not Ekai.

**Sen. Dullo:** Thank you, Senator for that information. Let me correct it once again so that it is corrected on the HANSARD.

**(a) Standing Committee on Agriculture, Livestock and Fisheries**

Sen. Stewart Madzayo, MP to replace Sen. (Prof.) Malachy Imana Ekai, MP

**(b) Standing Committee on Roads and Transportation**

Sen. (Prof.) Malachy Imana Ekai, MP to replace Sen. Stewart Madzayo, MP

Mr. Speaker, Sir, this matter has been canvassed at the political party level and with the Leadership. So, I believe it is a matter that is straight-forward. So, I would request the Senate Minority Leader to Second.

Thank you, Mr. Speaker, Sir.

**The Senate Minority Leader** (Sen. Wetangula) seconded.

*(Question proposed)*

*(Question put and agreed to)*

Next Order.

*(The Speaker (Hon. Lusaka) consulted with  
the Clerks-at-the-Table)*

## **BILL**

### *Second Reading*

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

*(Sen. Murkomen on 20.02.2018)*

*(Resumption of Debate interrupted on 20.02.2018)*

**The Speaker** (Hon. Lusaka): Hon. Senators, Sen. Judith Pareno was on the Floor and she completed her time. So any other Senator can contribute to the Bill.

Proceed, Sen. Cheruiyot Aaron.

**Sen. Cheruiyot:** Thank you, Mr. Speaker, Sir. I want to make my remarks very briefly. The tone and the mood which was set yesterday by the Mover and Seconder of this Bill set a cloud of anxiety and uncertainty about the drafters of this Bill and the thoughts therein. However, there are many good things that have been well thought-out in this Bill that I agree with and the very premise upon which they want to do this law. It is for that reason that this afternoon, I rise to support The Urban Areas and Cities (Amendment) Bill, 2017.

Mr. Speaker, Sir, since the onset of devolution, it has become quite clear that, as a country, we need to have good legislation and laws that will govern how we manage our cities, towns and centres. I am certain that given an opportunity, each of these Senators here this afternoon can share their experiences to a great length of the struggles that they see in their individual counties. In all our counties, it is only what used to be the main towns of the county that have been properly developed. But they still do not qualify or meet the demands of a growing urban population.

It is evidently clear that many of the urban centres and towns have an influx of population. This can be attributed to the challenges of life in the rural homes and villages which forces many people out of the rural homes and from the villages to come to towns

to fend for themselves. We still do not have plans, either by the national Government or county governments, on how to respond to this growing demand.

I can think of so many towns and centres within my own county where, even in a town with a population of more than 10,000 people, there is no working sewerage system and pit latrines are the order of the day. Therefore, the very premise that the drafters of this Bill do set out henceforth, is that we need to rethink and look back; we need to plan from the experiences that we gained from the time that we were setting up many cities like Nairobi. This is a thought that we must agree with.

Mr. Speaker, Sir, I will start with the thoughts that I agree with in this Bill before sharing my thoughts on, perhaps, what I think should be amended. One of them is the thought of a cap on the population that is needed when declaring an urban centre, city or town. That is a good thought. Different counties are unique and they have unique challenges. I do not want to name specific counties because I may run into headwinds, but there are counties where people have not jelled and do not speak a homogenous language. Many times there are battles within the administration and leadership of county governments, where certain quarters of the population feel that they are left out.

When you set such ground rules from the onset, it becomes easy because one will only need to look at the results of the population census before determining what is a town or urban centre. If you meet the numbers that have been set out in this Bill, you will qualify to be a town or an urban centre. It is, therefore, a good thought not to leave it to the whims of politics or the determination of a county government. This is because there are certain counties that have unique challenges.

It is also important and imperative that, as leaders, we learn from our past experiences of the kind of unique challenges and the mistakes that have been made by counties like Nairobi City County, for example. It is quite unfortunate that many county governments today still do not learn from the difficulties and challenges that are being faced by a city like Nairobi. You will find the same mistakes that were made being replicated by counties when setting up either cities or urban centres. A few years down the line, the very challenges that we thought we were solving by setting up county governments will find root within counties.

Mr. Speaker, Sir, it is important that the drafters of this piece of legislation tighten every nut, as we give our thoughts. They should ensure that at the end of this wonderful piece of legislation, we have a good guiding system. We should know what is incumbent on a county governor of a particular county, so that as they do the urban planning of every town and centre within their county, they follow certain parameters. There should be certain things that a county government cannot run away from.

I have also seen a proposal in this piece of legislation - and this is something that must be lauded - to set minimum educational requirements on people that are being given various offices. I have seen different qualifications, the standard being that they have to be graduates from recognised institutions and have served a certain number of years in either public or private institutions. This way, we will not end up with a situation like we had in the past where many of the people who were running our municipalities in the name of mayors were councilors.

There was no academic qualification requirement for one to be elected a councillor. As a result even a Class Two drop-out could be elected as a mayor of a municipality and be in charge of a huge population. They may not have gotten a chance

to get proper education, but there are certain levels that they should not rise to, for example, urban planning. This is a complex duty. World over, this is a problem that even the most developed democracies struggle with.

I remember that in certain countries, like China, that have made mistakes in the desire to rapidly develop and catch up with the West, they have ended up clogging up their systems and affecting their environment. There is a province in China called Guiyang that they have developed to be their dream city. This is the city that the rest of the provinces are supposed to visit and borrow a leaf from on how to manage the environment, because that is their desire and dream.

It is my sincere hope that upon the passing of this legislation, many of our county governments, and up to and including the national Governments, will be able as well to set good precedence that we can borrow from each other. If you listened keenly to the many of the contributions that have been made in this House, it is becoming clear that environmental degradation is becoming a matter of great national concern to all the Senators. Hardly does an afternoon pass without somebody rising to ask a question about the need to vary boundaries of a forest or how to protect our riparian lands and so on. When we have a proper city and center managers, as has been proposed in this Bill, these will be things of the past.

Mr. Speaker, Sir, as I draw to a conclusion, Section 9 (13) of the 2011 Act that is being amended by this Bill states that:

“A town is eligible for conferment of municipal status under this Act if the town satisfies the following criteria.”

This follows a very good debate that we have had within our country. We know that we have three cities; Mombasa, Kisumu and Nairobi. Many times certain people do not agree with the criteria of upgrading a municipality to a city. From now henceforth, that will be a thing of the past.

At the county level, as the governor budgets and sets up departmental budgets, say the Department of Housing and Urban Upgrading, there is a set criteria. For example, if a certain center meets certain requirements, including a working water system and good sewage system that is functional, then it can be upgraded from a center to a town. That will motivate many people to develop their center to meet these requirements. There should be a motivation. For example, if you qualify to move from a centre to a town, it should improve your allocation from the county government of urban planning and management kitty. That will encourage many county governments to take into consideration this matter of great national importance.

Mr. Speaker, Sir, it is not proper to set the criteria of how county towns can qualify to be upgraded to municipalities and the very office that is supposed to do oversight in counties - either the office of the Member of County Assembly (MCA) or that of the Senator - is not represented in those boards. It would be ideal if either the MCAs or representation from the office of the Senator sits in some of the boards.

If this is not done, we will end up with a team of people who are nominated by the county governor determining who gets to be upgraded or downgraded. I urge the drafters of this Bill to involve other leaders who understand the operations and the work of county governments in these boards. This will give the boards a better meaning and understanding of the work they are supposed to do.

With those few remarks, I support.

**Sen. Olekina:** Thank you, Mr. Speaker, Sir. I rise to oppose this Bill. I do so for the following reasons. First, when we talk about a small country like Kenya having several cities based on population, I think we miss the point. This is because we are forgetting the problems that are brought about by rural-urban migration. We have witnessed a lot of people settling in the urban areas in this country. As a result, we have seen mushrooming of slums in those areas.

Secondly, I am opposing this Bill because of the issue of land ownership. I come from Narok; I know a lot of people who own land right next to Narok Town. The moment we say Narok Town has over 250,000 people, which I am sure it does, it ceases to be a town and becomes a municipality. This will affect the ownership of land in Narok County. For example, if I own a freehold land, the moment this town turns into a municipality, that land will become a leasehold land. That will bring in a lot of problems to our people.

In my view, what this Bill ought to have looked into is maintaining small cities in this country. We are still grappling with issues of devolution. Many people are spending a lot of time arguing whether we should have 47 counties or not. Here we are saying a town with a population of 250,000 be converted into a municipality. The moment it has 500,000 people then it becomes a city. How many cities are we going to have in Nairobi County?

The problems we are now experiencing in this city are enormous. When you go to Kileleshwa, for instance, there are a number of highrise apartments coming up. We are not talking about provision of services to them. Karen, for example, was zoned for one residence per hectare. There will be a lot of pressure such that those zoning laws will be disregarded. People will be putting up apartments on one hectare.

The drafters of this Bill ought to have looked at the provision of services and how devolution would work effectively. Earlier on, a statement was sought here by the distinguished Senator with regard to firefighting machines. There are a lot of problems we are facing with them. Why do we not address ourselves to basic needs?

In this Bill, there are so many good things. They look very good here on paper. That so long as a town has 500,000 people, it can become a city. I am sure Kisii Town has more than 500, 000 people. So, it will become the City of Kisii. I am sure the distinguished Senator from Kisii County will be very happy to have a city. What about essential services?

I am concerned about land ownership. I want to encourage more services to go to the rural areas rather than trying to push and have more cities in this country. I would rather even encourage the reverse. Instead of rural-urban migration, there should be migration from urban to rural areas because devolution is supposed to really help us.

I do not want to deliberate on these issues, I oppose it based on the issue of the ownership of land. Talking about converting Narok Town into a municipality, I am very concerned just like other residents there. I own land next to the town. Now I will be told that my freehold land will be converted into a leasehold land. Those are the things that I am worried about. Until the time we can adequately manage the provision of basic services like water in a city like Nairobi, there is no point for me to stand here and talk about creating more cities in this country.

Around the world, cities have millions of people. In fact, I know a city that has about 20 million people. There are millions of people in some cities in Japan and Brazil.



This Bill is completely ill-advised. We need to consider getting certain things right first. I would have been happy to support this Bill if we were talking about creating suburbs. If we say that Karen is a suburb of Nairobi City, I would support it. When we talk about a population of 10,000 people, that should be a suburb or a town. My only worry is that when you talk about a city having 500,000 people, Narok Town will never become a city because we are sparsely distributed.

Mr. Speaker, Sir, with those few remarks, I oppose this Bill.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Speaker, Sir. This is a very strange Bill. I do not know why it is here. I do not know who brought it. It is a total misplacement of priorities. What is a city? What is a municipality? What is a town? The Oxford English dictionary describes a city as a large town—a big human settlement. Period! A municipality is a component of one that I have described. A town is a human settlement with a big cluster.

There is no evidence brought here in the Bill or elsewhere, that the cities, towns and municipalities we are talking about, which are based in counties; that there is any contribution from the Council of Governors (CoG) or country representation to define what they want. Whether you are talking of Nairobi or not, it is not in the hands of the national Government. Mombasa and Meru are not in the hands of the national Government. They are all in the hands of county governments that should be the engineers for such a Bill.

A Bill like this would be more helpful to this country if it is focused on planning, bringing sanity and order, and provision of services that either can be provided by the private sector or mandatorily provided for by the management of the cities. The Bill is just giving us a litany of issues that they say will qualify a town to be a city. They do not make sense. A population of 500,000 people do not really matter.

If you go to the United Kingdom, Cambridge is a city. It is just a university town. At any one time, the population of Cambridge City never goes beyond 50,000 people. It is just students, their teachers and service providers, yet it is a city. If you look at Norwich; it is a city. It does not have even a population of 500,000 people. It is what you want to be called and want to be. As far as I am concerned, Ongata Rongai and Ruiru are cities on the outskirts of Nairobi City. You do not need any legal definition to call it a city. It is what it has grown to be.

What we should be doing is to define and obligate the national Government, in collaboration with the county governments; more particularly, given the fact that the bulk of state resources are at the national Government, to support each other in planning and provision of services.

Today, if you go in all our counties, the mushrooming urban centres are just growing as slums because there is no planning or industrial area. The planners of this city were great men and women. Today, you go to Industrial Area; an asbestos factory has a residential estate next to it. You go to a factory emitting dangerous fumes and smoke; they have licensed the construction of apartments.

Mr. Speaker, Sir, as we were growing up, it was very clear. There was Industrial Area in Nairobi and residential areas. Each residential area had a shopping component and so on so forth. This is what planning is all about. Now you go to some places in Nairobi—there is a place we used to go with some friends called Shauri Moyo that has 23 shops. Sixteen are bars while the remaining are butcheries to service the bars. The place

has therefore become a den of iniquity. Nothing else goes on there. Why would anybody license 23 bars in a square kilometre for heaven's sake? This is what we should be addressing.

The ridiculous thing about the Bill is that it says that for you to be called a city or municipality, you must have "water and sanitation." That is available even in our private homes. It does not create a city. You then go on and find things like a "national school, a polytechnic, a stadium, and an airport." How can you say that an airport is a criterion for having a city? If you go to Germany, Bonn which is the former capital city of the Federal Republic of Germany has no airport! Why? This is because Frankfurt is next door. For you to go to Bonn you land in Frankfurt and you go to Bonn. If you go to the former Czechoslovakia and want to go to Bratislava in Slovakia, they have no airport. They use Vienna because it is next door. For example, there is a new airport in Nanyuki, does Meru need another airport? They can use Nanyuki.

Why would we obligate cities to now go through mega projects to be conferred the status of a city? It says that we either have an airport/airstrip, theatre, a library service and an administration seat. All these are driven by the private sector. You cannot force anybody to come and put a financial hub in Bungoma or any part of the country if the market does not demand and support it. Yet, you can be a city because of your unique circumstances.

Mr. Speaker, Sir, we have other qualifications such as; "vocational institutions and a primary or high school." Surely, how can a primary or high school help you to be called a city? These institutions are everywhere and the Government is no longer building serious schools in urban centres. They have left it to the private sector and it is profit and demand driven.

Whoever has brought this Bill, I want to advise my colleagues across the floor. I saw the distinguished Senator for Nakuru looking very frightened and agitated when the last Bill met the fate it did. However, it is because of lack of consultations and proper coordination. These Bills are good for the country and for everybody. It does no harm at all for the side across the Floor to ask you as the Leader of this House to call a *Kamukunji* and we look through these Bills and see that one, our primary duty under Article 96 of the Constitution is to defend and protect counties and their governments.

How do these Bills impact on counties and their governments? We sit together, talk and agree if that enhances or claws back devolution. Then we are able to move as a Senate team. I would hate to see this Senate divided on everything because we are a House of reason, reference, appeal; where reason overrides emotion.

We want to see that the Government side does not embrace the arrogant attitude of saying that they will bring and railroad it through. Sometimes you may not manage to do it while at other times you may railroad and go and meet resistance in your own counties because people will ask questions on how you passed such a law.

I want to urge this House and the Government side that instead of us haggling over a Bill that does not look like one anyway, to withdraw it and take it back to the drawing board. Give it the Committee and let us go through it thoroughly and bring a reasoned report telling us what it wants to achieve. If it is the county governments that are to appoint the managers of Kajjado, Kitengela, Ngong or Kiambu town, why would the criteria be set by the national Government without consulting those who will do it?

Mr. Speaker, Sir, these are the big questions. As Senators representing the interests of counties and their governments, we have a duty not just to our narrow partisan interests but to the broader common good of what we came here to do: to strengthen devolution, make it work, benefit the people of Kenya and make it possible for us in the laws we pass to arrest rural urban migration particularly the stream of people coming into Nairobi, Mombasa with the hope that there is better life.

However, when you come to Nairobi, in fact there are more poor people than in any county in this country. This is because we have piled up people in slums with no facilities or services; and now we want to create board to put Principal Secretaries, Deputy Principal Secretaries and other people who just go there every day, sit, yawn and go home with allowances when the poor are growing poorer and poorer.

Mr. Speaker, Sir, this is not a good Bill and I want to urge the Government side to rethink the philosophy in it and to see whether it is helping this country or just creating eating chiefs in terms of board and organisations where they start putting their wives, girlfriends, brothers, cousins and yet people are still languishing in poverty.

I oppose.

*(Applause)*

**Sen. Poghiso:** Mr. Speaker, Sir, this is a majority sponsored amendment Bill. There is already in existence a law that governs urban areas and cities. This bill seeks to amend that law and it is our opportunity to amend it. We are coming up to the Committee stage where we can amend. It is an opportunity for us to change the criteria and the categorization of our towns, cities and urban areas and plan them better.

I do not see the controversy in the Government side bringing a Bill that can cover and allow people to get back to orderly and well serviced towns, urban areas and cities. I therefore have no hesitation in supporting this amendment and I ask that we use this opportunity. If we do not like the figures or population numbers, we can change and amend. If you do not like the titles or the management levels or styles, this is the opportunity. I thought we should be congratulated, as a side for even bringing this to the public so that we can amend the Act.

I know that it is a bit controversial. My thinking is that cities do not have to be limited in numbers or defined by the number of people who live there. Some cities have people permanently living there while others have a higher population during the day than the night and do not necessarily need to be defined by the number of people who live there. They are about management, and getting the very basic services.

If Kapenguria had a sewerage system and a water supply, people would move there, buy land and build better houses. Cities will develop if we set the right criteria. We are going back to a situation where we have centres called municipalities. In those days, when Sen. (Prof.) Ongeru was Minister for Local Government, there were many municipalities and people would go and ask the Minister if their area would become a municipality and many times the answer would say; 'okay, you can be a municipality'. However, there were no services that were in tandem with the name municipality. Then there was the municipality council that created more politicians.

Mr. Speaker, Sir, this Bill amends all that and deals with the management. How do you call those people who manage the town and the city or the urban areas? Give them opportunities to change and serve in the capacities. Qualifications are being provided for

now. You can be in a town council or committee if you have a certain level of education. If it is an urban area, your qualifications are higher and for a city your academic qualifications are even higher. I do believe that this Bill is trying to bring the sense that we manage and plan our cities well.

I look forward to the Third Reading, Committee of the Whole and amending some of the clauses. I would like to support the Motion and hope that we can get to an orderly way in which we run our cities.

Mr. Speaker, Sir, in the United States of America and maybe the European towns, they are called cities. I lived in a city in the State of Illinois called Lincoln Illinois. It was a city of 16,000 people. That is a complete city which had everything including universities and libraries. In our situation, if we leave the cities to our counties for them to develop, they might never develop because of the allocation of the resources that we have.

One of the biggest requirements of a city should be clean water, the sewerage systems and proper disposal of sewage. In Nairobi City, there is the big exhausters business, because there is no regular or central sewage system since everybody has a little place where they have their own sewage system and a septic tank. That is not good enough. We must then organise our towns which are coming up. Let us get the new cities, towns and urban areas correctly planned, have a proper centralised sewerage system so that people can move in there and we will have a city. A city which is well planned will have suburbs, which will be automatic. However, once you plan them, you know where the suburbs are going to be.

Consequently, I do wish that we take this into account and begin to think how we are going to amend so that we can produce better cities. Nevertheless, I would like to hear more about the cities that are going to our rural areas. For every city, suburb, there will be a slum coming up. Why do slums come up? They come up because you need people to service your suburbs, you need people to work for you.

Next to every nice area you will have a slum and, therefore, unless we plan them properly and allow for a dignified residence for people who work for us, we are going to have a slum. Slums are not planned hence they are going to cause fires and bring about a lot of difficult areas like in criminology. We need to find a solution if we do not want to amend this Bill. Now we can amend it when we are ready. I like it because there is already an existing law, and if we do not amend it, people will continue to run our cities the way they have been running them and it will not be good for us. So, I suggest that we support this Bill and make the necessary amendments at the Committee Stage.

I wish to support.

**The Speaker** (Hon. Lusaka): Sen. Sakaja.

**Sen. Sakaja:** Thank you Mr. Speaker, Sir, for the opportunity to speak on The Urban Areas and Cities (Amendment) Bill (Senate Bills No. 4 of 2017) that has been brought to this House.

From the onset, I concur with a lot of the sentiments by Members from both sides. It is difficult to understand the real rationale behind this legislation, given the fact that the Urban Areas and Cities Act as it exists today is not being implemented. The priority at this point and, of course, we will support the Bill because I do not believe in throwing out the baby with the bath water as it has been done on the Irrigation Bill, which now even if we agree cannot come back until six months are done.

We will need to be convinced as to why we need to make these amendments yet for the past few years that we have had the Urban Areas and Cities Act in operation, a lot of the provisions therein have not been implemented.

Mr. Speaker, Sir, if you look at the Urban Areas and Cities Act as it exists, we have provisions within the Act that provide for the better management of Nairobi, Kisumu, Eldoret or Nakuru? Which is the third city? Mombasa City is also a city county. Devolution is based on a principal called subsidiarity where a service is best offered in the lowest area that is compatible with the benefit area of that service.

With that in mind, by now we would have expected a City like Nairobi to have city managers or a division of boroughs from which members or residents can access services. You would have Nairobi south, north, east and west with the same number of services as provided for in the Urban Areas and Cities Act. This is now the sixth year of devolution and we have not seen any implementation.

This is a Bill that was passed before the first governors came on board. We would have expected at this point that if you are in the rural parts of Kisumu you will access the same level of services as somebody at the centre of the city because the subsidiarity principle would have been followed and the services would have been offered where they are required.

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

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

Mr. Deputy Speaker, Sir, today in Nairobi, Kisumu, Mombasa, somebody in, for example, in Kisauni, Nyando, Ruai has to go all the way to the city centre to access services. The focus of this House and especially the Committee that is concerned with this should be; to what extent are we implementing the provisions that already exist within the Acts that we seek to amend, before introducing other amendments? That does not hold any water.

Look at the qualifications for a town to become a city. This Bill only defines area. It means that in the entire country every county apart from three or four can become a city. Therefore, we will have 44 cities in Kenya if the threshold is that you have a population of half a million, a water and sewerage system somewhere within the county, either an airport or a national school which we have in all the counties. It is only three counties that do not qualify.

However, what does calling an area a city change for that place? By now in the sixth year of devolution we should have demonstrated the value and the different treatment you give to an area by virtue of it being a city. The best place that could have been done is in the capital City of Nairobi. As it is, we treat Nairobi just like any other county when it comes to allocation of revenue, debt management and yet it is providing close to 50 per cent or more of the Gross Domestic Product of this country. That means that if Nairobi works, the rest of the country is able to work.

Mr. Deputy Speaker, Sir, if you look at the definitions in this Bill, for instance, that a Town should have street lights and a population of ten thousand, then each and every ward in my county is a town. We will now have Kilimani Town, Starehe Town and Ruai Town because all of them meet this criteria; I am sure many hon. Senators will

attest to this. The Bill says that Municipalities should have a population of 50,000. There is one constituency in Nairobi where I garnered 94,000 votes; is that now a municipality? Will that change anything?

So, I think we need to put more focus and better use of the time of this House to actually implement the existing laws when it comes to devolution and improve the current status as we seek to make such amendments. I will support this Bill so that at the Committee Stage, we can bring meaningful amendments that can give life to the Urban Areas and Cities Act that currently exists.

When you talk about provision of water in Nairobi today, it is still a county function just as it is in Kisii County; yet we are saying there is something special about being a city. We should see – and the Constitution provides for that in Article 186(2) – the concurrent functions between the National and county governments, especially when you are dealing with the capital city, where the entire responsibility then does not just lie with the county government. This is because the county Government of Nairobi will not be able to deliver on such services.

For instance, I was at pains trying to answer questions asked about why a fire can break out in Nairobi – a county with more than 34 fire engines – and it sends the engines to the site without water. You then wonder what the engines were going there to do; were they also going there to look at the fire with you?

Mr. Deputy Speaker, Sir, there are many challenges that exist in this city like sanitation, garbage collection and high levels of unemployment. The biggest threat in Nairobi County today is not *Al Shabaab*; it is the millions of disillusioned and disengaged young people, yet we are now trying to create more urban areas like Nairobi across the country by calling them cities. So, I will give the benefit of doubt to the sponsor of the Bill because I know he is a leader within the Jubilee Coalition and there are probably certain elements within the Bill that will help. But I think this House needs to be persuaded as to the urgency, impact and the real need for this legislation at this time before we end up having 44 cities in this country.

Mr. Deputy Speaker, Sir, if you look at towns, the process of declaring a place a town within this legislation ends with the Governor. Governors will then have a free hand to just create towns left, right and center. For instance, we will have Bomachoge Town created in your county, but for what? We must remember the object of why we are in this Senate. If this Bill will improve the lives of people within those areas we are calling ‘towns’ or if it will provide better services to those people in places you are calling ‘cities,’ then let us do it by all means. But I will ask the mover who is represented here by the Majority Whip, to kindly convince us.

What has been the bottleneck in implementing the Urban Areas and Cities Act as it exists today? That question should be answered before we add more bureaucracy in the name of appointing certain boards like a town board, a municipality board or a city board; after which we then hire people and give them money. I have concerns on this one and, to some extent, I agree with the Leader of Minority. But there are some points that we must not just ignore when we come to this piece of legislation.

So, Deputy Speaker, Sir, I will support this Bill to move to the next stage so that we can have deeper public participation when it goes to the relevant Senate Committee for us to discuss it. I want to urge Hon. Senators that what happened in the previous discussion should not be our immediate response to something we do not agree with. Let

us give a chance to further discussion within our committees; let us give a chance to persuasion from both sides. It will not hurt us to do that. I would have loved it if the sponsor of this Bill would have explained to us what the real mischief this bill is trying to cure is.

When you throw out the baby with the water, for instance, we will have an irrigation challenge and this house will not be able to touch an irrigation Bill for six months. If you think that you are removing powers from the county, now you have maintained the status quo by voting against that Bill for six months. So, in as much as I do not agree with its rationale here, I understand the Bill to this level. So, I will support it to give space for discussion, interrogation and public participation. If you will not agree with it after that, *tunaangusha kwa* Committee.

Thank you, Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well.

Sen. Naomi Waqo, have you withdrawn your request?

Proceed, Sen. (Dr.) Milgo.

**Sen. (Dr.) Milgo:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill. If amended to factor in all the proposals that a number of my colleagues have talked about, it will be a very good Bill. You realize that we have already devolved over 47 centres that are going to be urban centres and the Governors have to be guided on how to implement this. Light should be shed on the policy in terms of managing, organizing and even planning for those particular cities. In any case, I love it because of the fact that the Bill is giving a guide on the type of people who will manage those centres. In my view, there is no better Bill that is going to guide the counties like this Bill.

Mr. Deputy Speaker, Sir, we have been complaining about congestion and non-collection of garbage in Nairobi City. The facilities in Nairobi are already overstretched. There is rural-urban migration of people in search of jobs who, upon arriving in the city, find no places to stay. That is the reason why we have very big slums surrounding Nairobi. In addition, we have a lot of congestion not only in housing, but also in traffic, which causes pollution. A lot of basic facilities are being overstretched. For instance, we stay in houses where there is water shortage, sometimes there are power blackouts and so many basic and necessary services like medical facilities are also overstretched.

Mr. Deputy Speaker, Sir, our country has been independent for over 50 years and we have areas that have been marginalized because they have never been considered in terms of proper infrastructure. For example, they do not have electricity. If this Bill is passed, it will give guidance to those areas to receive the necessary infrastructure, proper schools, recreational centres and medical facilities. This way, we will be assisting to decongest the big cities and people will be looking for jobs around those centres. This Bill is worth supporting.

Thank you, Mr. Deputy Speaker, Sir.

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

Proceed, Sen. Moses Kajwang’.

**Sen. M. Kajwang’:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. First of all, I want to congratulate you because this is the first time I have caught your eye since your elevation to the very lofty position of Deputy Speaker of this august House. Allow me to congratulate you and to wish you all the best in your current

endeavours, in your future endeavours of building schools, supporting education and in your future ---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order, Senator! Proceed with the Motion.

**Sen. M. Kajwang’**: Thank you, Mr. Deputy Speaker, Sir. I am well guided. Mr. Deputy Speaker, Sir, this amendment Bill---

Mr. Deputy Speaker, Sir, you should have allowed me to laud you for your support of education.

Article 184 of the Constitution requires Parliament to legislate on the matters that we are talking about today. So, from the word go, it is not an idle undertaking today, when we are discussing The Urban Areas and Cities (Amendment) Bill (Senate Bills No.10 of 2017), because it is a constitutional requirement under Article 184.

Mr. Deputy Speaker, Sir, as has been noted by my colleagues, the Cities and Urban Areas Act already exists. The Cities and Urban Areas Act is indeed a strange piece of legislation. There are three structures that are currently emerging. For those of us who are devolution purists, we know that the levels and structures of devolution and development consist of the national Government and county government, which then goes to the ward and village. To those who are still holding on to the Provincial Administration mentality, we will have the national Government, Provincial Level, because we still have the Regional Coordinators; county, sub-county, division – we are still creating divisions in this country in this time and age – then location; sub-location and the village. So, those are the two distinct layers and structures that we have been used to.

When you read the Cities and Urban Areas Act, you find the third strange dichotomy where you are moving from the national Government, the county governments and then, there are cities, municipalities and towns in there. It is for that reason I say that the original Act that we intend to amend is quite a strange and confusing Bill because it brings about nomenclature that is different from the devolution purists and provincial administration oriented kind of people.

The Memorandum of Objects and Reasons of this Bill goes to confirm the comments that have been brought by other Senators before this House. Allow me to quote just one paragraph of the Statement of Objects and Reasons. It says:

“The review of the Act was necessary since the criteria provided in the Act are not achievable by the county governments under prevailing circumstances unless the law is amended.”

I have a problem with this. We came up with an Act of Parliament in response to a constitutional requirement. However, four years down the line we are saying that, that Act is not achievable unless the law is amended. Why are we lowering standards instead of raising them? Is four years sufficient time for us to say that the Urban Areas and Cities Act is not achievable? On what basis are we making this recommendation?

Has the Senate come up with a Motion, report or study that has looked at the implication of this Act, for us now to spend valuable man hours trying to amend the Act?



I have a problem with the rationale and justification that has been put in the Memorandum of Objects and Reasons for this particular Bill.

Mr. Deputy Speaker, Sir, the effect of this Bill, as has been reported even in the media--- In fact, when you discuss this Bill there could be citizens sitting in Eldoret Town or Nakuru Town who expect that this amendment will lead to conferment of city status on those two great towns. You know Eldoret Town very well and when I talked about your passion for education, I meant that we were together at a university somewhere in Eldoret. Given the kind of facilities and investments that have gone into Eldoret Town, probably it deserves to be a city. Nakuru Town was once the cleanest town in East Africa. It probably deserves to be a city.

When you change the population requirements for determination of a city from 500,000 to 250,000, you might find that there are certain areas like Kakuma that might claim to be cities by that definition. Thankfully, the Bill attempts to introduce other criteria for consideration. Further, when you change the threshold for municipalities from 250,000 to 50,000, then we should expect to end up with a lot of municipal councils in this country.

One of the problems that I have encountered in my home county of Homa Bay is that Homa Bay County was cobbled up from about seven or eight municipalities and town councils. As a result, you will find eight people doing the same job because they used to do different jobs in eight different municipalities. But when it was merged you find eight people doing the same job. Therefore, you have got redundancy to the power of eight. If we go ahead and implement this lower threshold we will end up with a lot of municipalities. I pray that, that will not increase the redundancies that currently exist at the county level.

The biggest question that this Senate should ask on behalf of the people that we represent is: How will this Bill and change of the threshold and proposals that have been put in here benefit the common person out there? My colleague, Sen. Olekina, has already educated us on what the implication will be on issues of land; from freehold to leasehold. The people out there must be educated, so that the benefits of this amendment will not only go to the people who will sit on the boards.

In this country we are very good at coming up with legislations that create positions for “the boys” to be appointed. In fact, it is usually the best way for politicians to solve problems. Instead of bringing tangible development we want to create bodies and boards. We are now talking of city boards, municipal boards, city managers, municipal managers and town managers. The Mover of this Bill must tell us what is in it for the people who sit out there in the counties rather than jobs for boys and girls who perhaps supported us in the last elections.

This Bill touches on the question of Nairobi. I am glad that Clause 6 of this amendment Bill attempts to address the issue of Nairobi. It affords or accords Nairobi an interesting status; Nairobi is called a county city.

**An hon. Senator:** It is a city county.

**Sen. M. Kajwang:** Thank you, Sen. Sakaja. We also went to the same school, as the Deputy Speaker and that is why you are very good in the arrangement of English words.

Mr. Deputy Speaker, Sir, I want to share with the distinguished Senators. Recently, we visited Washington DC with the Deputy Majority Leader. Washington DC is the

capital of the United States of America (USA) and it is interesting that it does not have a Senator with voting power. It does not even have a congresswoman or congressman with voting power. Yes, it has a Senator, a congressman and congresswoman, but when they go to Congress they do not vote because they want Washington DC to retain its distinct identity as the capital of the nation.

So, they do not want it to be called a Democratic or a Republican State, and that is how it has worked for them. The other example is our next door neighbour, Uganda. The City of Kampala used to have a Lord Mayor. In their wisdom, they decided to create Kampala City Authority because they felt that Kampala City was such an important place that could not be left to be run by politicians.

In Kenya, we have gone for limited sovereignty for the capital city, in the sense that it is controlled by a county assembly and has representatives that have got rights to vote in both the National Assembly and the Senate. It was for this reason that even in the last Parliament we saw a proposal by one of the Senators, which I believe still lies alive somewhere. The proposal was that Nairobi status be converted, so that it is not a county in the strict sense, but it is accorded some special privileges and obligations.

Mr. Deputy Speaker, Sir, if my fellow Senators look at Clause 6 of the proposed amendment, you will find that this Bill attempts to force Nairobi to do something, which in my view, is unconstitutional. This Bill says that:

“Nairobi County shall enter into an agreement with the national Government.”

The word cannot be “*shall*.” We already have the Intergovernmental Relations Act that provides ways through which governments at the two levels can go into agreements. You cannot come up with a Bill that forces Nairobi County to enter into an agreement with the national Government because that is the first step towards bastardization of the status of Nairobi County. For that reason this is dangerous. I want to call upon the Senator for Nairobi County and all of us to look at that particular provision. If it is an obligation, it is dangerous. Perhaps, the right word should be ‘*may*’ because that reflects the spirit in the Intergovernmental Relations Act.

I would also like to propose that we have some national conversation on relocation of the capital of Kenya from Nairobi to Isiolo where Sen. Dullo comes from. We can even take it to Machakos where we want to have Konza City. This has been done in other countries. The other day, we went to Tanzania and visited Dodoma Town. Shifting the capital from Dar es Salaam, which was far from the centre, to Dodoma was a personal project of Mwalimu Julius Nyerere. Tanzania is still facing challenges of how to make it a habitable and effective place. However, their Parliament operates from Dodoma. Government ministries also operate from Dodoma. The Prime Minister moved to Dodoma and the President is bound to move to Dodoma.

What this does is that it opens up the country for us to move away from the rail road, highways and arteries that were defined by colonialists. It will be a good legacy if this Parliament, particularly the Senate, was to come up with legislation or constitutional amendments that shall say that the capital city of Kenya shall be in Isiolo so as to help us open up that northern frontier. We can shift things and let the people of Isiolo and Marsabit counties also benefit from the increase in land prices.

If I inherit an acre of land from my father, the teacher, David Ajwang Nyakwamba, I would sell it for Ksh70,000. In contrast, if my brother Sen. Wamatangi - I wish he was here - inherited one acre in Kiambu from his father, Wamatangi senior, he

would sell it for something close to Ksh200 million. There is a huge imbalance. Let us shift this capital so that everyone can benefit. If Isiolo becomes the capital, I am sure the people of Tharaka Nithi will benefit much more than they do currently when it is Nairobi. We could even consider Machakos. Konza City; the Silicon Savannah, could form a very good site for a capital, technopolis or technology capital of this country.

I want to conclude by bringing the attention of Members to the fact that the requirement for declaration of city status is not just on the number of inhabitants. If we are to look at numbers only, then some refugee camps can claim to be cities. The other thing that caught my attention is the criteria to be considered for an area to be called a city. In there, you will find some interesting things. One of them is demonstrable capacity to generate sufficient revenue to sustain its operation.

From the Office of the Controller of Budget reports, none of the counties and none of the units that we have in this country have demonstrated capacity to generate sufficient revenue to sustain their operations. Counties are running budget deficits and yet counties are supposed to run balanced budgets.

Another requirement is that it should have demonstrable good system and records of prudent management. One of the roles of the Commission on Revenue Allocation (CRA) is to encourage fiscal responsibility. We need to ask the CRA to issue to the Senate and the nation a fiscal responsibility statement for us to know if our counties have got good systems and records of prudent management. From the reports that we have seen in some Committees such as the County Public Accounts and Investment Committee, Finance and National Planning Committee and the Budget and Appropriation Committee, none of the counties would qualify to be a city if this was a requirement.

The other requirement is that for an area to be classified as a city, it must have capacity for functional and effective waste disposal. None of our cities, urban areas or counties can claim to have capacity that is effective for waste disposal. We are going into Easter and many of our colleagues would decide to avoid meat and only eat vegetables. However, it is a very dangerous undertaking in Nairobi City because we do not know the source of those vegetables. Those vegetables are sometimes grown in waste disposal plants or they are irrigated using sewage. Things are happening that you do not want to imagine would be happening to people.

Even though the effect of this Bill would be to elevate Eldoret and Nakuru into city status alongside other numerous municipalities, let us support the respective counties to ensure that Clause 5 which is proposed to be amended is achieved. These cities should have good waste disposal systems, capacity to generate revenue to run their operations and have capacity to deliver the services that are laid in the First Schedule of the mother Act.

I will not declare whether I support or not support this Bill. As I had said, it is strange, it is---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Kajwang! You have no option. You either support or you oppose it.

**Sen. M. Kajwang'**: Thank you, Mr. Deputy Speaker, Sir. When it is hot, we eat a lot of watermelon. I will support this Bill subject to amendments that will come to the Committee stage and at the Third Reading.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Does that mean that you support?

**Sen. M. Kajwang'**: I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. There being no other interest, I now call upon the Mover to reply.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. Before I respond, I must say one or two words on what happened to the Irrigation Bill this afternoon.

We cannot be crying as a Senate and requesting for Bills to be introduced first in this House before they go to the National Assembly. I believe this is an initiative by one side of the Government. You cannot say that let us be nonpartisan as the House of the Senate when you have one card on the table and the other one under the table. I regret what happened this afternoon.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Are you on a point of order or are you replying on this Order? We have two things. If you want to reply, you should address yourself to the Bill. In the context of that reply, you can now see how you can comment on other things. This is because your debate around a Bill can be generalized, but you cannot start by addressing us to an Order which is already closed. Reply to the debate on this Motion.

In the context, if you want to comment about other things, of course within the constraints of the Rules of Relevance, you can still do what you are doing. However, you should first address yourself to the reply on this Motion.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. I wish to respond. I thank all the Members who have contributed to and against this Bill. That is within their mandate. From my personal view, I believe that this is a useful document. As some of the Senators have said, this is just an improvement of an already existing Bill.

I know very well that cities and municipalities were earlier created through political interest or influence. However, if we now have a criteria established, I believe that it is the right way. I believe that this Bill will be useful in that area. This is because it clearly shows the delineation of the urban cities and areas. I believe that is a criterion that is useful. It also sets out the standards for eligibility of an area to acquire conferment of cities and town status. Again, a standard for eligibility of an area to acquire conferment of municipal status is also quite useful.

Mr. Deputy Speaker, Sir, all is not lost because we can clearly amend what has been contested in this particular Bill at the Committee stage. So, I believe clearly pointing out what happened this afternoon that the Bill that was actually voted against or thrown out through the window hurts the Senate. I believe this particular one should not undergo that particular course because---

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

**Sen. Olekina:** On a point of order, Mr. Deputy Speaker, Sir.

I rise pursuant to Standing Order No. 90 (2) which states as follows:

“It shall be out of order to introduce an argument or any specific question upon which the Senate has taken a decision during the same Session, except upon a Motion to rescind that decision made with the permission of the Speaker.”

Is it in order for the hon. Senator to discuss a matter that has already been disposed of?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! I have already guided Sen. Dullo on the constraints of how much she can talk about what happened this afternoon. So, we should just allow her to conclude. If I sense in any way that she is going out of the constraints, I will be the first one to stop her.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. I believe I am just responding to this particular Bill in reference to what happened this afternoon. So, Sen. Olekina, kindly bear with me because what happened this afternoon is really hurting, not to the Government but to the Senate.

It is not really right for some Members to say that this is trash because it is not a useful Bill. I believe there is a way, at the Committee level, that we can amend or, maybe, improve on the Bill as it is. However, all is not lost. So, I support this particular Bill and I wish Members should take that particular direction to make sure that we, as the Senate, can generate Bills from our level and push it to conclusion, instead of us just allowing Bills to come through the National Assembly to our end.

For our side, we will introduce as many Bills as possible. We need to get serious as a House to see that the Bills introduced in the House go through for the benefit of everybody. This is because we have a committee level where we can bring on board also the members of the public to strengthen these particular Bills. We cannot just say that we have lost it; we have all opportunities to make sure that we strengthen this particular initiative.

So, I request our brothers and sisters on the other side that it is not really good to hurt this particular Senate. It is not for anybody's interest. Let us contribute to the business of this particular House and make sure that the Senate stands together whenever issues happen.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Please, move the Motion. Order, Sen. Dullo! Move the Motion.

**Sen. Dullo:** Mr. Deputy Speaker, Sir, I beg to move.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you. Sen. Olekina, Sen. Dullo was making was a general point on Bills for the good of the House. I remember, in the last Parliament – you were not with us here – but for those of us who were here, I was the Senate Majority Leader and we really struggled to convince the Executive that Bills should come to us. So, the point she is generally sending without, of course, trying to impinge on the legislative powers and discretion of the House, is that if there are things in the Bill that can be tackled through our Committee and without losing a Bill, that could be a better way than to just throw away Bills and then we go back to where we have come from. We really suffered.

However, we have made tremendous progress and I think that now almost all Bills that should be coming here are coming as a matter of right without having to struggle. So, it was just a general comment but you are also right that if the Senate has made a decision, it must be respected. Debate cannot be opened unless through a Motion which is specifically approved by the Speaker.

*(Loud consultations)*

Order, Senators! Sen. Dullo, you should get used to these setbacks. That is why you are in that office, my friend. You will get more of these. You know that you are the sponsor of the Motion. So, in future, you should do your homework a little better with your Senate Majority Whip a night before the debate, the morning of the debate, over lunch time and during the debate because it is in your interest to push through your

business. Nevertheless, did you want to make another application or can I put the question?

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Kajwang’? I hope it is not about building schools.

*(Laughter)*

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, I just want your guidance because the Senate Deputy Majority Leader has gone on record when she was moving the Motion and the record will indicate that, perhaps, there was a decision that was made in a very partisan manner that a section of the House could have acted in a manner that was not proper for the good of this House.

I would like to go on record that as a Senator elected through the Orange Democratic Movement (ODM) Party and being part of the National Super Alliance (NASA), when I come to this House, my first and primary responsibility is to devolution and to the people who elected me. When the records are being examined, it should come out from the sentiments and the comments of the leadership of this House that this House attempts to put devolution first rather than political parties.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): So, what is out of order Sen. Kajwang’?

**Sen. M. Kajwang’:** Mr. Deputy Speaker, Sir, is the Senate Deputy Majority Leader in order to impute improper motives on a section of the House that made a decision?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You cannot bring a point of order when the Senator has already concluded.

**Sen. M. Kajwang’:** Thank you, Mr. Deputy Speaker, Sir. I am guided and thankfully on record.

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

*(Sen. Dullo spoke off-record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Dullo, do you want to contribute on the same subject matter?

**Sen. Dullo:** Mr. Deputy Speaker, Sir, it is on another subject matter.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): On another subject matter? Very well, proceed.

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. Pursuant to Standing Order No. 55 (3), I request you to defer putting of the question to another date.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Right. I direct that the putting of the question be deferred to Wednesday, 28<sup>th</sup> February, 2018.

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

Next order!

**BILL***Second Reading*THE WAREHOUSE RECEIPTS SYSTEM BILL  
(SENATE BILLS NO.10 OF 2017)

**Sen. Dullo:** Thank you, Mr. Deputy Speaker, Sir. I wish to move this Bill. I would like to start with the background.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Dullo. This is your second term in this House. Please, resume your seat for a minute. We need to up our game a bit. Perhaps, the first timers are still learning. You have not moved the Bill. You cannot start to talk about it if you have not moved it. In other words, you are supposed to say that this particular Bill be read a Second Time and proceed. This is a House of record.

**Sen. Dullo.** I am Sorry, Mr. Deputy Speaker, Sir. I must have had a long day today. I beg to move:-

THAT, the Warehouse Receipts System Bill (Senate Bills No.10 of 2017) be now read a Second Time.

To start with the background, we have warehouse receipts systems in place in this country. Unfortunately, we do not have a legal framework that guides and implements the procedures and ways of how this particular warehouse can be utilised.

The Bill clearly creates a legal framework for utilizing the warehouses properly. In part 1, the Bill establishes the Council which comprises of nine persons from independent entities including the Chief Executive Officer (CEO) who is appointed by the Council and is responsible for the day to day activities of the Council warehouse, whereas the Council members are appointed by the Cabinet Secretary. I believe this will be able to put structures in place.

As clearly indicated, the Council shall be responsible for oversight and the functioning of the warehouse receipts systems which establishes a central registry system for the management of warehouses and receipts transaction.

Mr. Deputy Speaker, Sir, this also promotes the establishment of warehouses to develop commodity weighing and grading system and to issue licenses proposed under the Bill which was not there in the first place.

Part III of the Bill sets out the prices of licensing warehouse operators by the Council. It also sets out the circumstances under the process of revocation of such licenses by the Council. This will assist if things are not done properly.

Further, it provides for the appointment of an independent warehouse manager to operate the warehouse pending the resolution of the matter. Whenever there is a matter that is pending before the Council, there should be a way of dealing with issues pending resolution.

Mr. Speaker, Sir, the Bill also provides for an appeal process through the establishment of the warehouse where the committees can hear and determine appeals relating to decision by the Council refusing to grant licenses, revoking, suspension or varying licenses or conditions for licensing. Clearly, we must have mechanisms in place.

Whenever there is a revocation, there must be an appeal mechanism to make sure that things are moving and people have an appellate system in place.

Again, there must be an Appeals Committee that consists of the chairperson to the Council and two other persons appointed by the Cabinet Secretary with experience in dispute resolution. All these mechanisms will assist the Council to run. This part also provides for the inspection of the stored produce by authorized officers of the Council in order to guarantee that the stored commodities meet the standards set by the Kenya Bureau of Standards (KBS). If we do not introduce those standards, we will have a big problem where sub-standard commodities might end up in the warehouses.

This Bill will ensure that commodities are weighed using equipment certified in accordance with Weights and Measures Act and graded by the certified commodities graders. The Bill requires the publication of the outcome of the inspection from time to time which is a better way of dealing with this particular matter.

Mr. Deputy Speaker, Sir, Part IV of the Bill imposes obligation on the warehouse operator to issue warehouse receipts either in hard or electronic form with respect to any agricultural commodities deposited in the respective warehouse and provide for the form of receipts and information that should be contained in that particular receipt. This is a better way of keeping records so that things are shown clearly that procedures are followed and accepted in a particular manner and somebody can claim accountability in future.

This part also provides for the establishment of warehouse registry to be managed by the Council. We must have a specific registry in place to help the warehouse run properly. Again, this part provides for the establishment of warehouse registry to be managed by the Council. It also designates the CEO of the Council as the registrar, whose role is to register any transaction with respect to warehouse receipt issued under the Act. All these provisions assist in keeping the records so that people can claim what is rightfully owed to them in case of any problem.

Mr. Speaker, Sir, Part V outlines the manner in which a warehouse operator should undertake functions with respect to the warehouse receipt system. This provision is also important for us to put in place certain structures to enable accountability. In particular, it requires an operator to deliver goods to the depositor of goods upon presentation of a receipt and prohibits the wrongful release of goods to a person who is not a holder of receipts. This also provides for accountability because there will be a record to show that someone deposited goods and he or she is the rightful owner to claim them. There is also a provision in this part which provides attachment in case of garnishee, so that goods are taken care of.

Mr. Deputy Speaker, Sir, Part V also addresses the commercial or transaction concerns of negotiation and transfers of receipts as a negotiable instrument. If we do not have this kind of a system in place, then you cannot negotiate. This part also allows for the transfer of ownership of agricultural commodities in the warehouse without having to deliver the physical agricultural commodity.

So, clearly, this is some kind of collateral instrument that we are providing for. Again, the receipt can be used as a negotiable instrument for one to get a loan. So, I believe that this will empower our farmers who have been facing many challenges without warehouses, especially the small scale farmers in our country.



Mr. Deputy Speaker, Sir, Part IV contains the penal and miscellaneous provisions of the Bill. This part sets out offences with respect to warehouse receipts, including the issuance of fraudulent receipts, receipts with fraudulent information or unlawfully issuing duplicate receipts. If we do not provide for this, it means we have not taken care of the interests of farmers. This part also imposes a fine not exceeding Kshs1 million or imprisonment for a term of five years or both.

There is also a provision for a general penalty of Kshs100,000 or imprisonment for a term not exceeding six months for other offences under this Act. Clearly, these are provisions found in various legislations in this country. Part VIII of the Bill provides for the making of regulations by the Cabinet Secretary (CS). This will enable operationalisation of the Bill in consultation with the Council. So, this is clearly a very straight forward piece of legislation. At the end of the day, if it is passed, we will have a legal framework where we can have a fallback plan to enable implementation of this particular legislation.

I believe that with this legal framework, we can assist our farmers to have better production and better grains which they can rely on in future to improve their personal and group development. They will thus be in a position to assist each other and develop the country.

I beg to move.

Mr. Deputy Speaker, Sir, I call upon Sen. Were to second this Bill.

**Sen. Were:** Thank you, Mr. Deputy Speaker, Sir. I rise to second the Warehouse Receipts System Bill that will help to streamline and structure the warehouse industry for agricultural commodities.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You should finish by saying: "I second."

**Sen. Were:** I second.

*(Question proposed)*

**Sen. M. Kajwang:** Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill unequivocally. This is because I was in the Committee on Agriculture, Fisheries and Livestock in the last Parliament and we did a lot of work coming up with a Warehouse Receipts Bill. I recall that the Bill went through the National Assembly, it came to the Senate and when we were about to finalise its processing, we came to the end of the life of the House. So, I do understand that this is a Bill in which a lot of work had already been put, in the last Parliament. It is to the interest of not just the Senate, but the farmers of this Nation if we fast-tracked the implementation of the warehouse receipting system.

Mr. Deputy Speaker, Sir, about three weeks ago, I attended a stakeholders forum with Sen. Waqo; that is Waqo with a "q". This forum was to talk about the establishment of a commodities exchange in Kenya. The stakeholders included players in the agricultural industry, the finance sector, and the international and local traders. They said that we cannot have a commodities exchange in Kenya if we do not have a clean legislative framework for warehouse receipts. There was a facilitator who had come in from India who shared with us experiences from India. They shared that they established a commodities exchange which went a long way in helping to stabilize prices. A commodities exchange helps in price discovery and fixing prices for various products.

Mr. Deputy Speaker, Sir, if you move around some of the counties where potatoes are produced, and I do recall the former Sen. for Nyandarua County, Sen. (Eng.) Muriuki, came up with a very nice Bill – the Potato Produce and Marketing Bill. I also recall that some dark forces somewhere decided that the Senate was so idle that it was only discussing potatoes, forgetting that the potatoes we were discussing were directly relevant to the needs of hundreds and thousands of farmers.

However, the potatoes in Nyandarua County would fetch a different price from the potatoes in Nakuru County. We realised that in Nakuru County, especially going towards the Kuresoi side– I do not know whether that is the upper or the lower side – produces a lot of potatoes but there is a price difference. The potatoes from Nakuru County have something they call “*chomelea*”, which is an extra carriage that sometimes even has more than the actual gunny bag. Different prices, same product, same market. A commodities exchange helps in stabilizing prices for similar products in the same environment.

Mr. Deputy Speaker, Sir, for us to achieve that noble objective of price discovery and price setting for our farmers, we need to have a warehouse receipting system in place. My understanding of warehouse receipting system is that it takes care of the interest of farmers. We have seen in the past that when farmers make a bumper harvest – and I will give the example of maize farmers in places like Narok or Homa Bay counties – the prices of maize and other agricultural products go down. Farmers are then forced to sell off their produce at very poor prices so that they can meet some very immediate needs.

If we had a very well established warehouse receipting system, things would change for farmers with access to that ecosystem. This is because once the farmer gets his bumper harvest, he will take his time to dry, sort, process, cure and add value to that agricultural commodity. He will then take that commodity to a licensed warehouse; and we are not talking of National Cereals and Produce Board (NCPB). We have seen farmers queue at the gate of NCPB looking very desperate.

We will have more players licensed to establish warehouses and so, a farmer will take his maize to a licensed warehouse. When the maize is received, the farmer will be issued with a warehouse receipt. That warehouse receipt is as good as cash if we have the relevant legislation established. In fact, what we are doing is collateralisation of agricultural produce. So, the farmer moves from thinking that he is a pauper or a peasant.

Mr. Deputy Speaker, Sir, we will need to look at the definition of ‘agricultural commodity.’ I do not think this definition has been expanded to include things like cattle. However, you will agree with me that some of the richest persons in this country are pastoralists, particularly the nomadic ones. You will see them walking after hundreds of cattle; and when you look at that person, you will still think that he is a poor person. However, when you do quick calculations, if someone has 100 heads of cattle and sold one cow at Nyamakima for Kshs20,000 per head, he is a millionaire.

Our farmers have got the pauper mentality because they think that you are only rich when you have cash. A warehouse receipting system will help our farmers to convert the agricultural commodities and holdings into the equivalent of cash. When the farmer goes to the registered warehouse, he gets a warehouse receipt and now has collateral. He can go to a bank and borrow. The farmer can borrow and buy a tractor that will ensure that he gets a better yield in the coming season.

He can borrow to buy land, so that he can increase his productivity. He can borrow to take his children to school. The farmer is being given the power of choice. If Parliament passes this legislation, it will be good news to our farmers. Once we pass this legislation, we need to go back and explain to our farmers and constituents some of the good things that the Senate is doing.

Mr. Deputy Speaker, Sir, we have had conversations in the past where people ask what is it that we do in the Senate. They say that it is a House of old men; it is a House that does not have quorum and business. What we are discussing today is the real business that the Senate should be talking about because it directly benefits our people. We will make our farmers to start thinking that they are rich and start seeing themselves in a different way.

There will be risks with this kind of system. We are talking of a warehouse receipts that have been issued on, say, 1,000 tonnes of maize that you have deposited in the warehouse. We live in strange times indeed. What if a farmer came with a warehouse receipt that is 27 years old and says that he deposited maize worth Kshs633 million 27 years ago and demands to be paid? How do you mitigate such risks?

This is maize and not Treasury Bills or bonds. We are seeing people coming with claims worth Kshs600 million, which are 27 years old. How do we protect the Kenyan farmer from crafty fellows and people who are clever enough to manufacture papers? While protecting the farmers against those manufacturing papers, how do we protect the rights of those who have legitimate claims?

Mr. Deputy Speaker, Sir, I raise this because there is a live issue, which I will not talk about much because it is in court, around issuance of negotiable instruments. However, this is a real possibility within the warehouse receipting and the agricultural space. We need to shield our farmers against that.

Agriculture is devolved and policy remains at the center. I believe that the role of the Ministry and the national Government is to help craft policy that will enable county governments to execute and deliver agriculture as a service to the people that they represent. When I look at the council that has been proposed in this Bill, there is one nominee of the CoG. I have always had a problem. We always equate nomination of a person by the CoG to representation of the interests of counties. I do not know why we think that when CoG has got someone on a board, the interest of devolution has been taken care of. That is the reason Article 96 of the Constitution says that the Senate represents and defends the interests of counties and their governments. Sometimes the governors and counties have got different interests.

We need to think through this because there will be a lot of boards, councils and committees that we will form. We will go for the lazy approach of saying that once the CoG has representation, the interests of the people in the counties have been taken care of. I do not have an answer to this, but there has to be a way of looking at it. The interests of governors are not necessarily the interests of the people in counties. There is more than one example that we can give where the interests of governors have been at variance with the interests of the people that they lead. I hope that as we process this Bill, we shall give some thinking to that.

I also hope that we will allow counties that think they can come up with a much more efficient and advanced warehouse receipting systems within their respective jurisdictions to do so. We have seen it in the past on matters like distribution of fertiliser

and animal feed. When it is done at the center, farmers get seed that is already spoilt or fertilizer that does not correspond to the soil requirements of that area. In the last Parliament, we saw the county government of Trans-Nzoia County say “no” to fertilizer and seed that came from the national Government.

There was a standoff because the people on the ground were saying that they are the ones who understand the soil requirements. They were indicating what they wanted and the national Government was not providing that. We must have a provision that allows a county government to improve and develop a much more efficient warehouse receipting system, and to develop incentives for those who establish them and farmers.

Mr. Deputy Speaker, Sir, a lot of losses happen at the farm gate. When we pass this Bill, and I believe it is ‘when’ and not ‘if---’ When the interest of the Kenyan farmer cannot come first, then the other interests that come first really do not matter. When we pass this Bill, we will save our farmers from losses and exploitation. We will give our farmers the feeling that they are rich and capable.

There has been a suggestion coming from the Ministry of Trade and Industrialization that the definition of ‘commodities’ in this Bill is too restrictive and this needs to be expanded. A warehouse receipting system should not just refer to agricultural commodity. This is a matter that the Committee shall interrogate, and there will be linkages with the Committee on Tourism, Trade, and Industrialization. This is not just an agricultural issue. This is a financial system issue; a trade issue and financial inclusion issue.

Probably, this is one area where the Committee on Agriculture, Livestock and Fisheries would consider sitting jointly with the Committee on Tourism, Trade, and Industrialization, so that we do not only look at this from an agricultural lens, but also from a financial inclusion lens. I know there will be stakeholders, some of whom have already sent feelers to us, saying that we need to clearly define the word “commodity” and carry it properly in the Act.

That makes a lot of sense because in the past, we came up with the Fisheries Management and Development Act, but failed to do one very important thing: We failed to distinguish between fishing and fishery. We have a situation where fishing is a national Government function and fishery is a county government function. So, it is very difficult to know where fishing ends and where fishery starts; whether fishing is the head and fishery is the tail of the fish. If we do not get definitions right, it can cause a lot of confusion for the sector.

Mr. Deputy Speaker, Sir, I support the Bill.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): That is how it should be, Sen. Kajwang. Proceed, Sen. Kihika.

**Sen. Kihika:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity to also add a few remarks in support of the Warehouse Receipts System Bill (Senate Bills No. 10 of 2017). It is a Bill that is very timely because of the issues that we have seen the farmers of this country face. It aims at helping farmers to manage the post-harvest losses and make profits. It will also help stabilize the food supply as well as ensure sustainability in food security in the country.

It will ensure that the farmers in Kenya make money from harvests as opposed to losing them. I have come across a study that shows that about 30 per cent of food is lost post-harvest. That is a very high percentage. Many of these farmers are generally small-

scale farmers who probably do not have too much to rely on, other than the hard work they have put in through the year, so that they can sell their harvests and make ends meet.

As the Senator who spoke before me said, there is a lot of potato farming in Nakuru County, especially Molo and Kuresoi areas. Farmers work hard day in, day out, and they harvest a lot of potatoes. However, by the time they take their potatoes to the market, a lot of them get spoiled because of bad road systems in these rural areas.

As the Speaker in the County Assembly of Nakuru, we passed a law that required the weight of a potato bag to be no more than 50 kilogrammes. However, immediately we passed it, a person went to court to stop its implementation. We now have farmers sorting out their harvest, but instead of putting them in one bag of 50 kilogrammes, the bag is sewn into two so that you have a bag double my size. Sometimes, its size is more than 11 feet and it is sold at the cost of a 50 kilogramme bag. I believe this Warehouse Receipts System will help farmers to store their harvest, sell it at the right time and make more money.

This Bill will go a long way in developing an institutional framework that will also help in the improvement of food security as well as access to regional markets for Kenyan stakeholders. We are aware that Kenya is a member of the East African Grain Council, The Alliance of a Green Revolution in Africa (AGRA), Food and Agricultural Organisation (FAO), the World Bank food security sector, among other bodies.

With the enactment of this Bill, we shall be able to tap more into other markets outside of our country. These markets will help our farmers reap more profits from their produce. Once our farmers deliver their produce, they will get receipts. They can use those receipts as their collateral and access credit facilities to improve their farming activities. This will be very helpful to small scale farmers who at the moment cannot access credit facility. What has been happening in our areas is cash-based activities. With the enactment of this Bill, farmers will access these facilities using their warehouse receipt as collateral.

The Bill will also help in making sure that when produce is stored in warehouse, its quality will always be maintained. At the time of sale, farmers will be able to get more from their produce than it is at the moment. When we talk about grain, we come across farmers who, for example, sell their produce maybe at ten or fifteen per cent below market value. This may be due to the moisture content in the grain because of poor storage facilities. However, with this system, we shall be able to avoid a lot of that and add value to the produce of the farmers of this Republic.

Mr. Deputy Speaker, Sir, the Bill will also eliminate the challenge of uneven distribution; from food oversupply during the bumper harvest to food scarce and insecure areas. With the system the Bill will create, it would be easier to maintain good quality as well as quantity of the stored commodity. This can be traded across the areas so that those that have overproduction can also supply to those that have scarcity of food. This should lead to a lot elimination of food insecurity that we have been facing as a country.

I support this Bill and look forward to a time when we, as a Senate, will put the interests of our farmers before party interests. We, as legislators, know very well that when we debate this Bill during the Third Reading or Committee stage, opportunities will be availed to us to bring any changes or amendments that will enrich this Bill. We should

stand with the counties and support Bills that will help our people improve their livelihoods.

I support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Let us have Sen. Pareno.

**Sen. Pareno:** Mr. Deputy Speaker, Sir, I rise to support this Bill because it provides a legal formula outside the framework that we already have with the National Cereals and Produce Board (NCPB). To me, this is some sort of liberalisation of the services of warehousing, especially when it comes to produce. A legal framework will ensure that we have an organised sector and that the farmers keep their produce in good shape.

The introduction of the Warehouse Receipts System gives the farmer a sense of ownership of his produce. It is more trusting to talk to a farmer who has a receipt from a warehouse than one who has stored maize somewhere in the field. The receipt acts as proof of ownership of some commodity. It gives the farmer mileage in terms of negotiations. If you, probably, want some money you will be able to show this receipt. This is another level of upgrading the farmer when it comes to ownership. This receipt is proof of ownership that can be used to trade and improve the livelihood of all farmers.

Mr. Deputy Speaker, Sir, sometimes the NCPBs warehouses are so much apart that it is not easily accessible by farmers. If we open up this sector through this Bill, private individuals will be licensed to open warehouses for farmers' produce. This is because through this framework, there will be checks and balances.

The Bill provides for storage system. Currently, each and every farmer stores his produce in his own way. However, with an organised system of storage, there will be a proper record, inspection and even grading of the produce. This assures us in quality. We will trust more the produce that is in a warehouse, receipted, inspected and graded than produce that is delivered from the farm. This is organising further the farming methods of our farmers. We are providing them with a legal framework. It also guarantees quality. This quality will be maintained all the time in the warehouse.

Mr. Deputy Speaker, Sir, it also guarantees that the quality would improve with better warehousing than the quality used by our farmers today. It would be better handling of our produce. Therefore, the warehousing system is definitely going to be better for us. We have had very poor handling of our produce in the farms to an extent that some reports indicate that a lot of the food gets contaminated with aflatoxin right from the farm. We therefore end up having a lot of contamination and poor storage. We have witnessed a lot of deaths in this country occasioned by the poor handling of our produce.

I attended a conference sometime back where it was disclosed that most of the aflatoxin related diseases are so rampant to an extent that it is being suspected that a lot of cancer cases are arising out of the contamination of food. It goes a long way to have a proper system, ensure quality and help the farmers in handling of their foods. This Bill will address some of the problems such as the aflatoxin incidents that we have had. It also addresses the diseases that arise out of poor handling of food. According to me, this is a Bill that should have been there all along.

Mr. Deputy Speaker, Sir, I beg to support.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I see no further requests.

*(Sen. (Prof.) Ongeru stood up in his place)*

For the avoidance of doubt, I have just seen Sen. (Prof.) Onger's request on my screen. Please proceed.

**Sen. (Prof.) Onger:** Mr. Deputy Speaker, Sir, initially, when Sen. Dullo asked me to second this Bill, I was not quite clear on the nature and direction that the Bill would take. However, now that I feel more educated and informed, it is quite clear that one of the most untidy business today is the produce coming from the farmhouse. The prices being offered at the farm gate houses or delivery centres including the ones at the National Cereals and Produce Board (NCPB) are appalling.

For instance, I have in mind one of the most precious commodities coming from my county, Kisii County, as well as Nyamira County; the production of avocado. Every time I have visited the small markets, it is very distressful that the avocado which is so cherished in hotels in Nairobi and export markets is being wasted away for Ksh5. When I am in a hotel in Dubai, the price of the avocado is about US\$5. A poor farmer is being coerced because of the glut in the market of avocado fruit.

Mr. Deputy Speaker, Sir, I hope that this Warehouse Receipt System Bill will go a long way in addressing this important transient means of marketing some of these products that the farmers waste away. They put in so much energy and pressure in trying to grow these items yet they get wasted away.

The other commodity that I see is wasted away is the banana unless you have a value addition. I hope that these warehousing systems will also mutate or transform the farmer to go a step further so that the warehousing of these products will be semi-processed where they are processed partially for local consumption as well as export. It will be a stimulus for everyone to buy these commodities and items.

Mr. Deputy Speaker, Sir, during the contribution, I heard Sen. Poghishio or Sen. Kajwang say that this can act as a barter trade on commodities based on the expert advice that they got from India. Barter trade was at one time considered a very primitive way of dealing with trade. However, a time came when countries were stressed on the issue of foreign exchange reserves that they had no choice except to resort to barter trade. The trade had the element of defrauding the farmers and those who supply the commodities. I hope this warehousing receipt system will innovate on the crude barter trade system so that whatever is stored and the grading and the categorisation of the product will help to fetch a better price.

I am also wary about some of the warehouses; farmers in this country have lost products like coffee in the private warehouses. We must be very careful when we want to promote this kind of system without recourse to what has happened within this country. For instance, the cotton ginneries were one such example where farmers were lured into.

*(Sen. Cheruiyot walked into the Chamber without bowing to the Chair)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order! Order! Sen. (Prof.) Onger, Senator for Kericho County, you know what you have not done. You cannot walk into the Senate as if you are entering Konoin or Sotik market, for that matter. Have a seat Sen. Cheruiyot.

Sen. (Prof.) Onger Proceed.

**Sen. (Prof.) Onger:** Mr. Deputy Speaker, Sir, the Senator is my neighbour and I am sure he heard that I was speaking about some of the problems that we have in warehousing. Will this extend to items like tea? One of the problems we have discussed with my friend is that the tea industry is very tight because of the auctioning system in Mombasa. The only option a poor tea farmer in Kisii, Kericho, Nandi and other places has is to get their tea all the way to Mombasa through their Kenya Tea Development Agency factories.

If we are going to this level of liberalisation, how does the tea farmer also benefit from this Warehousing Receipt System so that he is not told by the tea directors that the poor price was occasioned by transport costs from one level to another?

I believe this Warehousing Receipts System will help to bring the services closer to the people. At the moment, county governments are spending a lot of money in creating storage facilities in markets for grading their products. Will this council support this market system within every county and ward, to help the farmers to get their products closer and closer to the warehousing?

My experience in the past is when this kind of legal framework is put in place, the warehousing will be done in Mombasa, Nairobi and there will be nobody interested in warehousing in Kisii town or Keroka town. The poor farmer will depend upon the good will of the so called middle men who come and say; 'look, I have a warehouse in Mombasa but this is what it will cost you'.

Let us hope that the Committee Stage will examine the processes and the distances that farmers have got to travel to deposit their products in these warehousing systems. It is a very important system that has got good intentions, but how well does it serve the farmer? Is it in close proximity to where the farmer grows his product or will somebody come and say, "there is a better warehousing system but it will cost you so much?" When you look at the end benefits, it erodes all the benefits that the farmer would have expected to accrue from his products. We need to examine all these little points which matter in how a farmer is being treated in this system.

Another area I want to get into is the fee structure. What will the fee structure of this warehousing system be? We may send people to this system and then they have the lee way to impose a fee that is out of reach for the people it intends to serve. As law makers, we must examine the process it goes through and the costs involved. Obviously, there will be a cost to it, but to what extent is this cost being mitigated against the interest of the farmer? This is an important point that we must look at. Yes, we can pass this as a good Bill that benefits the farmer as the Senate, but at what cost? This is an area that we need to get in to.

On the issue of inspectors, there are inspectors who go there for different purposes, especially to distort the market prices. They will tell you that your product is of low quality and hence they cannot accept it in the market. At this level, let us avoid frustrating the farmer. A farmer will come with his produce, excited that a warehousing and legal system is in place. But when they get there they will be told, "Sorry, your product is of low quality and, therefore, we cannot accept it in this warehouse."

So, farmers will be at the mercy of this warehousing system and we should be very careful when we will be dealing with this Bill at the Committee Stage. All these areas should be carefully examined so that farmers will be happy with the product that we



are trying to give them; that is the legal mechanism through which they are going to operate.

Otherwise, I am excited about this Bill because I am a farmer. I have seen what farmers go through and the problems they have. We have talked of potatoes, tea, bananas, cashew nuts, avocados, sweet potatoes and many other products, including Miraa – I do not know if we are allowed to talk about this product in this House. But these are the issues that should concern us, as the Senate and the county governments that we serve. They are important because we can give them a better product. That will be important for us to do.

Sen. Dullo, you have my vote on this so long as you tie up those loose ends. Do not be disappointed about other votes because sometimes, it is important to clarify issues in a different way and you must accept it. This is because the only reason – and I do not want to go into a debate which is already closed – is that we want to examine these things in detail so that we are sure that the issues we have raised now in this debate will be replied to. We hope that when you come to reply, you will assuage the concerns and doubts that the legislators have raised on those matters in this Bill. Then you will have no difficulty getting the Bill through the Second Reading.

But if you will come and say that it is a give and take situation, then people will raise concerns. I raised a concern on a particular issue that has already been sorted out and those concerns were not replied to. So, my conscience has to bother me whether to vote for or against the Bill. I am now suggesting to the Mover of this Bill that when the time to reply comes, kindly scan through the concerns that have been raised and assure us that everything is in good order.

With those few remarks, I beg to support.

Thank you.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you, Sen. (Prof.) Onger. For your information, *miraa* is a crop under the Crops Act, courtesy of the hard work by Sen. Kiraitu Murungi, other colleagues and I in the last Parliament. So, you can comfortably categorize *miraa* with tea, coffee, bananas, cashew nuts, sweet potatoes and other potatoes that are not sweet.

Finally, the Senator for Kericho County.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, I have noticed something. When I walked in you looked a bit tired, but when it came to addressing Sen. (Prof.) Onger on matters *miraa*, your face brightened. I know that this is a topic you are extremely passionate about.

(Laughter)

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. Proceed.

**Sen. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir. This Bill is very important. Forgive me for rushing into the House. I was watching the proceedings from the lounge and feared that my good neighbour, Sen. (Prof.) Onger, was about to finish. I heard you say that there was not so much interest in the Bill and felt that there is need for me to add my voice because this is a brilliant piece of legislation.

Many a times, I get home and, among other things, ask myself what it is that I have done for my constituents that has made their lives better as their representative. It is only in putting our minds and thoughts into such a Bill that is before us today that we can

justify the huge amount of taxes Kenyans pay to send us to this House and keep Parliament alive. By passing this kind of legislation we will be securing the interest of the farmers and ensuring that they get value for their hard work and their investment in matters agriculture is secured.

I support this Bill from the outset. There are many things that are quite illuminating as you read the Bill and wonder how we have survived as a country. It reminds me of a Bill that we discussed and debated last week. You wonder how it is that for the over 50 years that this country has been in existence, certain laws have not been in place. You cannot help but continue to wonder. I now understand why our farmers continue to be poor. As legislators, there are so many things that we can do to make their lives better.

In this Bill we are assuring the farmers of Kenya that once they are through with the hard work and the crop is ready for harvesting and storage, it will be kept in good condition. There will be no instances of coffee disappearing in the coffee mills and farmers losing their money or tea disappearing, as we may have read in many newspaper articles. This Bill assures them that their sweat is guaranteed. At end of month, they will be able to educate their children and feel proud to be farmers.

Mr. Deputy Speaker, Sir, in many developed nations, farmers are very respected people. In such countries you cannot claim to be a serious candidate if you do not get the nod of farmers. Unfortunately, in a country like Kenya, many farmers have been impoverished by the potato brokers, coffee brokers, tea brokers and sugar barons. They enjoy the sweat of our farmers. We have not put our minds so much into legislations, such as the one that is before us today.

Therefore, I laud the creation of this Bill. It assures our farmers that from now henceforth, when they deliver their crops, say, the potato farmers of Nyandarua or the kind of farmers that Sen. (Prof.) Ongeru was talking about, they are guaranteed that their produce will be stored well and they will get good value for their money. At the end of the day, they will feel proud about it.

There are certain issues that I want to pick out. I do appreciate that we have a legislative drafting desk that does many of the Bills that come before this House. If you keenly read through the Bills, you will realize that there is a generic way in which certain phrases are written in many of the Bills that are brought before this House. There are some that I have pointed each time that I have stood to either support or oppose a Bill. There are some that I still want to pick out today and question the thinking behind it. This is because I do not agree with the way in which they are drafted.

When listing the qualifications of the Chairperson of this Council that is known as the Warehouse Receipts Council, they say that the chairperson and vice-Chairperson shall be of the opposite gender. The intention which we all know, thanks to the history of our country, is that we are trying to protect the girl child. This is because we have had male dominated boards and heads of institutions in many occasions A few years back, or is it a decade ago; we began having this gender consciousness where we said that if it is our cabinet, it should not have more than two thirds from either gender.

The truth of the matter is that the gender that we are trying to protect is the women. I do not see why we should disenfranchise this council if we get to a point where we have two extremely brilliant women who both qualify to be chairperson and vice-chairperson. Why should we deny them an opportunity yet for the last 40 years, we were

so comfortable having boards that were chaired by men alone. It is extremely wrong for us to say that the chairperson and vice-chairperson should always be from the opposite gender. We should say that they can come from either gender. However, if both are women, there is no problem about it. That is my thinking.

With regard to the Bills that will come before this House, I will continue to raise that point until a time when it will be accepted. In fact, if any of the Bills that I am working on should have a council or a board, as a drafter, I will put that provision. That will help us see those who will oppose it then we can know the enemies of women in this House.

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. Kajwang'?

**Sen. M. Kajwang'**: Mr. Deputy Speaker, Sir, I would like to know on what authority and mandate does the Senator for Kericho purport to speak exclusively for the girl child and for the women? I thought that as the leader of Kericho delegation, he represents everybody, including the boy child.

**Sen. Cheruiyot**: Mr. Deputy Speaker, Sir, I do not think Sen. Kajwang' understood what I said. I tend to believe that he chose to misunderstand me. It is not that he does not get what I am saying. He is being cheeky. I do not think that I need to labour the point further because I have made my point.

I was speaking about the issue of generic repetition of phrases that we keep on finding in many of our Bills that I feel our legislative drafting department need to take a keen interest on and perhaps, notice. Last week when contributing to another Bill, I did point out that many of our young people are jobless. I do not believe, as a legislature, that when given an opportunity to serve somewhere, you should seek to stay beyond the time mandated, either constitutionally or even do more than two or three terms. I do not like the phrasing that is used in many of our Bills where they say that:-

“The Chief Executive Officer (CEO) shall serve a term of three years and shall, subject to satisfactory performance, be eligible for reappointment for a further term of three years.”

It is never put in black and white. Kenya is increasingly becoming a litigant nation and when things are not so clear and black and white, we have seen courts grant leave of thought to many of these things. That phrase as it is scribbled in this Bill does not qualify to tighten the noose such that as a CEO, once you have been appointed for a further term of three years after doing the first term; that it is clear that it is your final term. You can still be appointed for a further three year term.

I have actually seen, but I do not remember the court case number, somebody going to court to challenge this. Therefore, as we continue to draft some of these things, it should be clear. Why do we not expressly provide for it that the CEO can serve for a maximum of two terms; one term of three years and if his or her services are found to be satisfactory, then he or she is given a further three year term?

Mr. Deputy Speaker, Sir, it is at least clear this time; just by listing some of the recommendations about what the council can do, it says that:-

“The council may suspend the operations of warehouse operators, inspectors, wares or graders operating under the Act---”

*(Sen. Wetangula entered the Chamber)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it Sen. Dullo?

**Sen. Dullo:** Mr. Deputy Speaker, Sir, have you noticed that the Senate Minority Leader, Sen. Wetangula, walked into the Chamber without bowing? Is it really in order?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Actually, I did not notice because I noticed that he bowed. So, I did notice that he did not bow.

*(Sen. Wetangula spoke off the record)*

Sen. Dullo, I know that you have unresolved issues but as the Swahili say “*Mgala muue haki yake mpe.*”

Proceed, Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Deputy Speaker, Sir, maybe we need to define bowing because what I noted is that he nodded his head which is totally different from bowing. Anyway, let me go back to my contribution.

I was speaking about things that the council can do and something really pricked my thought and I was excited about it, that this council that is being proposed can actually suspend the operations of a warehouse operator, an inspector, weigher or grader operating under this Act for failure to comply with any of the provisions of this Act. This is really encouraging. Many of the people who, perhaps, are in this House and are not farmers may not understand why this is a big point. But let me shock you by telling you that today farmers in this country do not have direct access to the market despite the fact that we pride ourselves as being a free market economy.

It does not matter whether you are a sugarcane or a potato farmer, the minute you have your sugarcane or potatoes ready for the market, what I know and I have seen people doing is that you will get them to a lorry and transport to the market. But the minute you get to the market, you are not allowed to sell despite the fact that you may be the one who planted these potatoes. What people are normally told to do is that you sit aside and wait for people known as market brokers to get a price for you and they will be sold at the price that they feel is right.

If you go to Wakulima Market tomorrow morning and observe the farmers that are delivering their farm produce, from fresh kales to oranges and onions, you will realize that the farmers - who come at the back of the trucks because they cannot afford to have vehicles of their own - will be told to sit aside and wait for a farm broker who will sell the produce for them. The provision of the Council begins the important process in our agricultural sector where we are de-linking farmers and brokers and separating them.

Mr. Deputy Speaker, Sir, I am the Senator for Kericho County. It pains me that tea farmers in my county at the end of day sell a kilogramme of may be tea for Ksh300. Sen. (Prof.) Ongeru and every other Senator who is here and represents tea planting counties knows this. What ends up in the pockets of the farmer is only about Kshs70 or Kshs80 at best. Kshs220 or Kshs230 ends in the pockets of these brokers that we are trying to get rid of through such a Bill and such thoughts.

I support this kind of thinking. It is my sincere hope that this is the beginning of better days for our farmers. If we begin to have this kind of thinking where as legislators we pay attention and listen to the keen demands of the people that elect us into office and generate such Bills, then this Parliament can redeem its glory. People will feel that we are

not just grumbling about the attacks but we are rightfully doing what we are elected to do.

Mr. Deputy Speaker, Sir, another provision that I am happy that the drafter of this Bill included is the penalty provisions. For example, Section 39 of this legislation states that:

“A warehouse operator, any officer, agent or employee who issues or aids in issuing of a receipt knowing the goods for which the receipt is issued have not been received by the warehouse operator or are not under his actual control at the time of issuing the receipts commits an offence and is liable, on conviction to a term of imprisonment not exceeding five years and a fine not exceeding Kshs1 million”

I want to suggest to you, Sen. Fatuma Dullo, that in my view, this is too lenient. This is a slap on the wrist. We are talking about warehouses that are storing goods worth hundreds of millions. When a person who has forged systems and aided the deception of systems is being fined Kshs1 million, they will comfortably participate in this crime because there is no proper mechanism for punishing them.

Mr. Deputy Speaker, Sir, I want to suggest that when you later retreat and as you rise to respond to us, you give us an assurance that you will keenly look into this and may be, propose imprisonment of ten years and a fine of Kshs5 million, then, you will win more of my support. Among other penal provisions that you have provided for, that is the kind of thinking that I feel should guide you when you respond.

In conclusion, as I was reading the final notes about the things that this Council may do, I also noticed that the Council that shall be set up has provided a forum for public participation. It states that the Council may invite any person to attend any of its meetings to participate in its deliberations but such persons shall not have a vote in any decision of the Council.

If you remember the history about how farming corporations went down in this country, the buildings that are on the end of Haile Selassie Avenue are a constant reminder of how we mismanaged agriculture in this country. These include the Coffee Plaza and the Kenya Planter's Cooperative Union (KPCU), which are shells of concrete. But back in the days, they used to be thriving businesses. But the reason they failed is because we allowed people who we sent into office to represent farmers in those institutions to stay in Nairobi throughout and forget the tribulations of the farmers who sent them there; and we insulated them.

I was reading the legislation that was available at that time in the 1960s and 1970s; I have discovered that a Coffee and a Tea Director were very senior people who could not even be touched by the District Commissioner (DC). They were even given security of tenure, but they sat in these offices and forgot about the plight of the farmers.

Mr. Deputy Speaker, Sir, when you include in such a Council that, from time to time, you shall invite members who have interest in this Council. These members will then come and give their views – it is not even a must that they vote – but just by speaking to these Council members and reminding them why they are in office every now and then, then we can redeem our agricultural sector that has been ailing for far too long.

With those many thoughts, I beg to support this Bill. I propose to the Mover and the Drafter as well to bear in mind the various contributions that have been made by different Senators as they retreat to draft. The reason we go through this phase of a

legislative process is so that we can also share our thoughts and enrich your proposal. Like they say, a good idea must always give way to a better idea. This Bill is a good idea, but the proposals that have come from colleague Senators are even far much better ideas. It is my sincere hope and wish that the Mover of this Bill will encompass and include these deliberations in the Bill.

Thank you, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well.

Proceed, Sen. Wetangula.

**The Senate Minority Leader** (Sen. Wetangula): Thank you, Mr. Deputy Speaker, Sir, for an opportunity to contribute to this Bill. Warehousing is one of the most critical components in commodity handling. In this country, we have statistics that show that post-harvest management of cereals and other products occasions farmers losses of up to 60 or 70 per cent. So, this Bill comes at a time when the country is devolving activities and where value addition is now the trend in the agricultural sector. So, it is important that order and sanity is brought to the management of warehouse products.

Mr. Deputy Speaker, Sir, a Bill is important to the extent that it will streamline, keep management records and produce statistics that can be of use and help even for the future. If you want to look at the records of production of food products in this country today; for example, if you go to your area of Meru, Mitungu and those areas, there are no tomatoes in this country better than what comes from that area. But, if you look at statistics on how to leverage on this, help the farmer, warehouse them, keep records and market them, we in the west do not have to grow tomatoes because we can depend on you. You also do not have to grow maize, because you can depend on us. This is how a country can coexist and live with each other in a better way. This can only be done when there is a legal regime that brings order and sanity to these kind of products.

In fact, Mr. Deputy Speaker, Sir, I have been seeing a mushrooming of what they call 'cold storage' warehouses, but they are being done in a very haphazard manner. I have seen in one place where they have sunk in about Kshs10 million to put up a warehouse for storage of tomatoes where no tomatoes are grown.

This is the same madness that came to this country when people jumped on to something called fish farming. You would find somebody going to Manderu to put up a fish pond, where evaporation of water is 95 per cent. By the time you put in the fish, there is no water, yet nobody is bothering with areas where evaporation is at less than six per cent. Everybody is now in a mad rush. They know that if they set up a fish pond in Isiolo regardless of the weather, they will get their quick cut and leave.

Mr. Deputy Speaker, Sir, if you fly over Narok--- You were part of the 'sky team' and I am sure you have seen all these empty---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wetangula! Which team is that?

*(Laughter)*

Proceed without any further reference to that team.

**The Senate Minority Leader** (Sen. Wetangula): Mr. Deputy Speaker, Sir, in the last Parliament, there was a team that acquired some common notoriety called the 'sky team' that was all over with helicopters.

When you fly over Narok you see a lot of empty ponds, with black polythene everywhere. In each one of those ponds, we have sunk Kshs3million or Kshs4 million of public funds. Why is that so? It is because somebody sits somewhere and says that since fish farming is good, they can make money. If they do 500,000 ponds and make Kshs1 million on each, that is a couple of billions. That is Kenya for you.

When we bring this Bill that will help the farmer and businessman, it is very important for record keeping. When you visit a dairy farmer in a country like the United Kingdom or Germany, he will give you the history of an animal for the last 50 years. He will tell you: "This animal was the offspring of this and that." Recently, I visited some farmer in Trans Nzoia and I was shocked that we have people like that in Kenya.

This gentleman from Central Kenya, who settled in Trans Nzoia, has livestock. In the first lactation of a heifer, he is draining 36 litres of milk. He has put them on very high standards. He keeps records that are fully computerized. When he is in his office in Nairobi, at milking time, he can see what a particular cow has given. For example, if the distinguished Senator for Tharaka-Nithi goes to him to buy a cow, he will give him a full record. When I eventually buy from him, I will also inherit a full record. That is what record keeping is all about. But in many cases people would just say: "*Wewe angalia tu vile anatoa maziwa halafu chukua ng'ombe.*" That kind of thinking does not help this county. I hope that when we pass this Bill into law, it will change the manner in which we do things.

Again, for the first time in the recent days, I have seen that the structures being set appear to be reasonably consultative with the country governments. I heard the distinguished Senator for Kericho speaking and I am told that he has been nominated to serve in the Parliamentary Service Commission (PSC). I hope that he will not pursue a narrow personal agenda there, but support the Members of this House and the other House.

*(Laughter)*

For every law that comes to this House, we must be keen to ask what is in it for counties. That is what we represent. What will be done at the national level that will impact on counties? How will it impact on counties? I do not believe that we can sit in Nairobi and somebody at the Ministry of Land, Housing and Urban Development---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Wetangula! You will have a balance of 52 minutes when the debate on this Bill continues.

### ADJOURNMENT

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, it is now 6.30 p.m. and time to adjourn the House. The Senate, therefore, stands adjourned until tomorrow, Thursday, 22<sup>nd</sup> February, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.