

# PARLIAMENT OF KENYA

## THE SENATE

## THE HANSARD

Wednesday, 4<sup>th</sup> July, 2018

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

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

### PRAYER

### PAPERS LAID

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. I beg to lay the following Papers on the Table of the Senate today, Wednesday 4<sup>th</sup> July, 2018

#### REPORT ON FINANCIAL STATEMENT OF SRC

Report of the Salaries and Remuneration Commission on the Financial Statements for the year 2016/2017.

#### REPORT ON FINANCIAL STATEMENT OF CAJ

Report of the Commission on Administrative Justice on the Financial Statements for the year 2016/2017.

#### REPORT OF CRA ON SECOND REVENUE SHARING CRITERIA FOR MARGINALIZED AREAS

Report of the Commission on Revenue Allocation on the Second Policy and Criteria for sharing Revenue among Marginalized areas.

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

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

**Sen. (Dr.) Mwaura:** Mr. Speaker, Sir. I beg to lay the following Paper on the Table of the Senate today, Wednesday 4<sup>th</sup> July, 2018:

## REPORT OF THE APNAC CONFERENCE, 2018

Report of the African Parliamentarians' Network Against Corruption (APNAC) Conference held in Ghana from 17th to 18th March, 2018.

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

**The Speaker** (Hon. Lusaka): I cannot see the Chairperson Standing Committee on Agriculture, Livestock and Fisheries. Let us proceed to the next Order. Is there any other Member of the Committee available?

Next Order.

## NOTICES OF MOTIONS

## NOTING OF REPORT OF THE APNAC CONFERENCE, 2018

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

THAT, this House notes the Report of the Senate Delegation to the African Parliamentarians' Network Against Corruption (APNAC) Conference held in Ghana from 17th – 18th March, 2018, laid on the Table of the House on Wednesday, 4<sup>th</sup> July, 2018.

ADOPTION OF REPORT ON WOMEN POLITICAL  
LEADERS ANNUAL GLOBAL SUMMIT

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

THAT, this Senate notes the Report of the Senate Delegation to the Women Political Leaders Annual Global Summit held in Vilnius, Lithuania from 6th - 8th June, 2018, laid on the Table of the House on Thursday, 21<sup>st</sup> June, 2018.

## STATEMENTS

## STATE OF KAPSABET - CHAVAKALI ROAD

**Sen. Khaniri:** Mr. Speaker, Sir, I thank you for this opportunity. I rise pursuant to Standing Order 46 (2) (a) to make a statement on an issue of general topical concern; the pathetic state of the Kapsabet - Chavakali Road.

Mr. Speaker, Sir, it is a fact that major transport infrastructure is normally a gateway to basic social amenities and infrastructure such as education institutions, government offices, hospitals, markets, industries, among others.

The Kapsabet - Chavakali road is no exception. It serves two counties; Vihiga and Nandi County and further as a connection to Uasin Gishu, Kakamega and Kisumu

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counties. This road is classified as C39, which is the responsibility of the National Government under the Kenya National Highways Authority (KeNHA). A proper working infrastructure will always promote the political, economic and social development of any region. When the Government deliberately ignores to develop the infrastructure of any region, it automatically leads to marginalization.

The Chavakali - Kapsabet road has numerous major basic social amenities situated along it like education institutions; ranging from universities to secondary and primary schools such as Kaimosi Friends University College, Kaimosi Teacher's Training College, Kaimosi Girls and Kaimosi Boys High Schools, Kapsabet Boys High School, Moi Girls Vokoli to mention but a few.

There are also medical facilities, for instance; Kapsabet County Referral Hospital, Sabatia Eye Hospital, Jumuia Hospital Kaimosi and a good number of market places including Cheptulu, Mudete, Chavakali, Shamakhokho and others. These social amenities were developed along the road to be more accessible to the people. However, the poor state of the road has made this very difficult.

Mr. Speaker, Sir, since 2007, the Government has made huge investments in infrastructure. Today we boast of the Thika Super Highway and, most recently, the Standard Gauge Railway from Mombasa to Syokimau. However, this specific road has over the years been neglected and various leaders from Western Kenya have made countless requests in previous parliaments to the relevant Ministry but nothing much has been done except for re-carpeting and minor repairs by shoddy contractors.

A look at the HANSARD of Parliament from 2008 and 2009 proves that this road has been discussed extensively during debate on ministerial annual budgets and question time. Residents from the two counties of Vihiga and Nandi have also protested the poor state of the road countless times.

Mr. Speaker, Sir, numerous fatal accidents that have claimed lives have occurred on this specific road. Personally, I have been affected deeply. The reason why this road has been ignored over the years despite the infrastructural boom in the country is a puzzle to me, or is it because we have not had the chance to produce a President or Deputy President in the recent past?

The bad state of this road is a hindrance to the economic development of the region. For instance, investors in the public transport sector have been discouraged from taking up this route for the longest time. No sane investor would allow his or her vehicle to operate on a road that will cause them huge losses in terms of vehicle repairs and maintenance costs when they have other better options. This has in turn denied the residents of trade opportunities and cheap transport costs. To date, major bus companies travelling to Kakamega, Bungoma, Busia and other Western Kenya counties prefer to use the longer but better maintained Kisumu – Kericho – Nakuru highway.

Mr. Speaker, farmers need good roads to get their farm inputs to the farms and their farm produce to the market. A huge percentage of the farm produce such as tea leaves, cereals, vegetables and fruits are perishable and require fast transportation. The Eldoret International Airport was envisioned to help farmers from the Rift Valley and western counties tap into the lucrative international horticulture market.

However, the poor state of this road has denied the residents the chance to enter into this market. In addition, this road services many major market places like Chepsonoi, Cheptulu, Mudete and Chavakali markets. This road also serves Mudete, George Williamson and Chebut tea factories, the major industries in these two counties.

Mr. Speaker, Sir, it should be noted that the poor state of this road has also escalated insecurity in the region as security officers find it hard to respond to distress calls by residents. I can authoritatively report to this house that this road has become a constant frustration to the residents, myself included, because it is a torturous experience to travel on it.

Lastly, I call upon the Government, in the spirit of handshake and *kutangatanga*, to launch this particular road soon so that the residents of Vihiga and Nandi counties can benefit.

I thank you.

**Sen. (Dr.) Mwaura:** Mr. Speaker, Sir, I rise to concur with the statement issued by the Senator for Vihiga County that it is important for that road to be carpeted. I assure him that the Jubilee administration is not discriminatory. The Jubilee administration gives development to each and every corner of this country. I am sure that the distinguished Senator for Vihiga County will agree with me that no other administration has been able to do the kind of projects that we have done without looking at the voting patterns.

Mr. Speaker, Sir, in the same vein, if you look at the Kakamega-Kisumu Road, which passes through the same area, it has opened up that area. It is evident that if this road was to be tarmacked, it would spur economic growth. This is an area that has got rich agricultural potential, especially Mudete. This is an area that will also spur various job opportunities. Vihiga is a very strategic county because of even the granite production. This is something that would bring a lot of money, yet there are problems there because the middlemen come in between and swindle the local miners and producers of the raw materials. Part of the reason is accessibility of roads.

Mr. Speaker, Sir, in the same vein, as I conclude, we need to look at the cost of construction of a road per kilometre. The costs continue to escalate and a good example is the Dongo Kundu Road; an 11 kilometres stretch that will cost Kshs10 billion. Is that really feasible? Does it mean that construction of one kilometre costs Kshs1 billion? We have to look at how we cost these roads.

Some of the roads are constructed today and then tomorrow, you will find potholes. We have people who are doing very substandard and shoddy jobs. I went through the Ndumbuini-Waiyaki Way Road and was surprised that the road, which was tarmacked two years ago, is now full of potholes. We are giving Kenyans a raw deal. Just recently, we saw some people contracted by the Governor of Nairobi County repairing roads. Let us not cheat Kenyans when constructing roads. Some tarmac is put to hoodwink the people and then the road is painted in yellow and white colours.

We need to build roads to last; not build to repair, so that next time you have a road maintenance contract. In this way, we will save for the future generations. However, road construction in this country has become a big time business for big cowboys and cowgirls, in the interest of gender equality, and we need to challenge that. However, I

fully support the Statement because it is important to ensure that people have access to roads and other amenities.

Thank you.

**The Speaker** (Hon. Lusaka): Proceed, Sen. Wambua.

**Sen. Wambua:** Thank you, Mr. Speaker, Sir. I also want to take this opportunity to congratulate my colleague, the Senator for Vihiga County, for bringing this Statement on the state of the Chavakali-Kapsabet Road.

The state of that road speaks volumes about the state of many other roads in this country. One of the things that this House may want to deal with is the cost of doing the roads in this country, which has been deliberately exaggerated. One kilometre of a standard road would cost more than Kshs80 million. Therefore, if we are supposed to do 10,000 kilometres of roads across the country, how much money do we need and how long will it take for us to do those works?

Mr. Speaker, Sir, apart from the cost of doing the roads, there is the issue of the quality of work once those tenders to do the roads are issued. The Chavakali-Kapsabet Road is a reflection of the state of many roads, which should be national roads. The problem is that decisions on the construction of those roads have to be made in Nairobi. The tenders are then issued and opened in Nairobi, and the contractors are supposed move to the ground to do these works.

This has got to change. The tussle between the national Government and the county governments on the classification of roads must come to an end, so that roads that serve and connect counties – the roads that are major networks and means of communication for people in the counties and inter-counties – be left under the county governments. The counties should then be properly funded to conduct road works in their areas.

Mr. Speaker, Sir, I support the Statement.

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

**Sen. Mutula Kilonzo Jnr.:** Thank you, Mr. Speaker, Sir, for this opportunity. I thank Sen. Khaniri for his usual industry. I wanted him to confirm the word “*tanga tanga*” because I am not aware that the word “*tanga tanga*” has now become a matter of public notoriety. I also heard Sen. Mwaura say that Jubilee is divided into “*tanga tanga team*” and “*Team Kieleweke*.” There is a grey area that they need to clarify.

(Laughter)

On the matter of roads – my Chairman of the Standing Committee on Finance and Budget is seated here – we had a challenge with this current budget because the counties were supposed to receive up to Kshs9 billion for county roads, which is equivalent to 20 per cent of the amount that they are supposed to be given. In fact, 33,000 kilometres are supposed to be paved by county governments. I hope that the Standing Committee on Roads and Transportation, led by Sen. Wamatangi, will interrogate this matter of roads.

Mr. Speaker, Sir, I want to disclose why I thanked Sen. Khaniri. When I was elected, I requested for a statement on the Mbooni-Tawa Road. It is after the statement was brought here that the tarmac road was completed. One of the Senators raised the

question as to whether there was some wisdom in scrapping the statements that we were seeking for on various matters like this one.

Sen. Khaniri has made a very important Statement on a matter of topical concern. Unfortunately, that Statement will go back into the library of the statements requested by Senators in this House and there will be no action taken. It has reached a point where maybe your Committee needs to interrogate this issue. We can categorise the statements to be issued, but matters roads affect counties.

There is a balance between what Sen. Wambua is saying; an expensive road costs Kshs80 million per kilometre and a cheap road done quickly, like the one by Gov. Mutua. Unless we can check the cost of doing roads and their repairs, cowboy contractors will continue making money from Kenyans for no reason. The Chinese are doing a better job and spending less money, and we are borrowing to do those roads.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Proceed, Sen. (Prof.) Ekal.

**Sen. (Prof.) Ekal:** Thank you, Mr. Speaker, Sir, for giving me this chance to also say a bit on this particular topic which is very important. As the hon. Senators have said, this is an issue that affects the entire country. The roads are in bad shape and, as you know, a number of roads in Nairobi are in bad shape and travelling is very difficult. People are always late to go to places they want to go to because the roads cannot be traversed in a short time.

This is costing Kenya billions of shillings every day because a lot of fuel is spent on the roads as vehicles are stuck in traffic. This is also bad for the environment because we are pumping all those hydrocarbons, including carbon monoxide and carbon dioxide into the atmosphere, which is not healthy for our citizens. So, something must be done about the roads in Kenya.

I would like to point out the very major highway between Kitale and Nadapal, which is in a state of disrepair. It needs repairing, especially the section between Kainuk and Lokichar. We are talking about transporting oil out of Turkana, but if the roads are bad, how will those trucks traverse from Lokichar to Kitale and on to Mombasa? The roads need to be taken care of such that these trucks can move.

The road between Lokichar and Kainuk is a sham. You wonder what is going on there. The road is being painted and we are told that it is being tarmacked. Such a road cannot last two weeks before we have big potholes, which will impede the transportation of oil from Lokichar to Mombasa.

At the same time, the bridge across the Turkwel River is in terrible shape. It needs to be fixed permanently if those trucks are going to get oil out of Turkana. So, when you look at these things, you wonder whose job it is to make sure that the roads of Kenya are able to support the vehicles and are in good shape. I am calling upon the Government to make sure that our roads are in good shape so that we smoothly transport our goods and save Kenya a lot of billions of shillings spend on repairing them. We want to live in a clean environment.

**Mr. Speaker:** Hon. Senators, I want to make a correction. The Whip did say that we scrapped Statements. The Committee on Procedure and Rules is handling the matter

this week and will bring the recommendations that will come from them. Therefore, there is no reason to worry.

CASES OF DEFILEMENT AND INSECURITY  
IN KISUMU COUNTY

**Sen. Nyamunga:** Thank you, Mr. Speaker, Sir, for giving me this opportunity. I rise pursuant to Standing Order No.46(2)(a) to make a Statement on a county issue regarding numerous cases of defilement and insecurity in Kisumu County. The security situation in Kisumu County has deteriorated so much in the recent past. There are very many incidents of robbery, burglary, homicides and assault, defilements and even killings. Most of these incidents were reported during and after the 2017 General Elections.

What is worrying regarding these spiraling incidents of insecurity is the trend it has taken of defilement of children. Incidents of defilement in Kisumu County have increased significantly over the past few years. Many parents and guardians alike feel that their children are no longer safe in any place, be it at home, school, churches where they are likely to stray from the watchful eyes of their minders. The safety of the children is so worrying because they are at any given time vulnerable to defilement by strangers and persons who may either be their own fathers, neighbours or close relatives.

Mr. Speaker, Sir, children are the building blocks of any nation, therefore, the development of future generations squarely lies with them. The issue of defilement in Kisumu County is eating at the very moral fabric of the society. Hardly a week passes without having to hear that a child has been defiled. Most of these cases go unreported because the victims' parents or guardians opt to settle the case at home, to the detriment of the child. On the other hand, cases that get reported drag on for so long in the courts of law.

Investigations into these cases always take too long to complete. In most cases, the investigations are done shoddily resulting into very few convictions. Poor response by police to distress calls, lack of confidentiality in handling cases, loss of investigation files and intimidation of witnesses have impacted negatively on the fight against the vice.

Mr. Speaker, Sir, I, therefore, bring this matter to the attention of the Senate and urge the relevant Government agencies to come up with measures that will ensure that security of the residents of Kisumu County is restored and stop the rising cases of defilement. Where such cases happen, out of court settlement happens. Out of court settlements should be discouraged with a view to having the perpetrators brought to book.

Mr. Speaker, Sir, I would like to add a few comments on the said subject. It is very unfortunate that the issue of insecurity is not just found in Kisumu County; it is prevalent all over the Nation. A week does not pass without a report being made on either rape, defilement or any form of robbery upon the citizens of this country.

We all know very well that security is not a devolved function; it is still a national function for all of us. It is the national Government which should make sure that the citizens are taken care of and protected. Once a child is defiled, that child lives in trauma for the rest of their life. It becomes a stigma. It is very difficult for young people, children or any woman to get over defilement, rape or any form of attack meted on them.

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I remember there was a time I was carjacked. That experience lingered on in my mind for more than three years. So, it is a very traumatizing situation. Therefore, it is important that we take the issue of security as very important in this country.

I, therefore, call upon the Inspector-General of Police, the Police Commander and all the security forces to take the issue of defilement and general insecurity seriously. There are many cases of defilement on children and rape on women along the lake, mostly in the lake region. The Government should have a mechanism of having police patrols along the lake, so that this issue is brought to a halt, once and for all.

Parents have the responsibility of taking care of their children. At the same time, we know that most parents are involved in fending for their families. Most women are the ones who are now fending for their families. So, if this woman is supposed to be taking care of the children, teenagers and, at the same time, fending for the family, it becomes very hard on the family. Therefore, it is the responsibility of the national Government to make sure that the security of State and the country is safeguarded at every level.

I would like to present this Statement and plead with the national Government to devolve the security function. If security cannot be purely handled by the national Government, I think some aspects of security should go to the county governments so that Kenyans can feel secure in their own country, once and for all.

Thank you, Mr. Speaker, Sir.

**Sen. Zani:** Mr. Speaker, Sir, I stand to support the Statement that has been made by Sen. Rose Nyamunga. One of the beauties of growing up, and I think this has been the case in many countries, is when you enjoy your childhood in a secured environment. You enjoy it, when you know you are valued by your country.

The issue of sexual defilement and rape has become now an issue that cuts across gender. There is no gender that is safe; both young boys and girls are at risk of being defiled. Despite the various laws that are meant to protect them from defilement and rape, we still have very high incidents, not only in Kisumu County, but in all the counties.

The other day, I read in a newspaper where studies showed we are not safe in the churches, schools or houses. A lot of studies have been done on this subject matter. There is a lot of information about defilement and rape. It is a pity that defilement in the family is committed by people who are supposed to take care of our children. How can we expect them to participate in the development of this nation when they are traumatized?

Many people now look at the youth as a lot that seems to be so disenfranchised from this particular society. Many times it is because of the situations that they have been in and the fact that they cannot come out openly and discuss what happens to them. Therefore, they have no other way of outlet. Instead, they look for social and psychological outlets that tend to be harmful. Some get into drugs and some fight with people because of these underlying problems within the society.

In more developed countries, there is profiling of people and the deoxyribonucleic acid (DNA) is taken. Therefore, at any one time somebody's DNA is there and any criminal record can quickly be traced. Pedophiles are kept away from the society. In Kenya, we open our gates to them to come as tourists. Sometimes, because there is not enough strictness, we find our young girls and boys suffering from this. We have to find a way to address it.



The security agents at the national level are not sufficient to go to the counties. This is something we have discussed over and over again. There is need to ensure that some sort of security system is put into place at the county levels so that this can be addressed.

Many girls resort to keeping quiet. I have heard in other circles that when people talk about rape, they ask who has been raped and that they should go and report. That is the most insensitive thing anybody can say. We know from history that the reporting process sometimes is a trial. Some people are insensitive even as a report is done. Some of those that the report is being done for are not concerned and they cannot be bothered.

There was a proposal to ensure that we have gender desks and women who have been trained to be in charge. We cannot have a society in this time and age that does not value its children. We are killing the society, the children and their ambitions and everything that they have that they could bring forth for us. It is time to address it and I thank the Senator for bringing it.

I support this Statement because action needs to be taken. The women of Kenya must speak out without fear of retribution in any form. We must talk and protect our sons and daughters.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Let us have Sen. Cheruiyot.

**Sen. Cheruiyot:** Mr. Speaker, Sir, I support the Statement by my good neighbour, Sen. Rose Nyamunga. This is because the people that I represent have also fallen victim to the inefficiencies and the lackluster manner that county security teams of both our counties – that is the county that she comes from and the county that I represent – have handled matters security. Border disputes and issues of cattle rustling are top on my mind as well as the issues that have been raised by our colleague. The response from the security team in terms of apprehending the suspects and making sure that they are brought to book has been wanting.

It baffles my mind as a leader. What else are the citizenry that we represent supposed to do? Any self-respecting government should prioritize security of its citizens at the top of its agenda. Young girls and children who go to school, church and market are not assured of their security. The people who commit atrocities against innocent children are known yet for some certain mystery, the security forces do not seem to be concerned about this issue.

It baffles us as leaders. Therefore I join my colleague in questioning the overall responsibility that lies perhaps with the Minister or the Head of State because that is their primary and cardinal duty. The Constitution that they swore to uphold provides that they shall always ensure that they defend the rights of their citizens.

The counties of Kericho and Kisumu share an extremely long border. In the past few days, our good neighbourly relationship has been tested to the ends of the elastic limits because of the inefficiencies of the security team. You will find cattle rustlers taking advantage of that or perhaps it may not even be a case of taking advantage. I think they collude with thugs and criminals that execute such kind of heinous behaviour. Each and every time a report is made, we receive messages on our phones as leaders that there has been a raid in such and such village at the shared boundaries. When you call the

county commissioner, they tell you that they have sent officers. They assure you that they will come back to you within a few minutes but they never seem to come back.

Therefore, I call upon the security agencies that man the security apparatus in Kisumu County as well as the County of Kericho that I hail from to either pull up their socks or find another business to do because it can no longer be business as usual. Given the political situation in our country and the kind of undertones that certain people may try to bring up where they incite communities against each other, we only rely on good working security systems to ensure that a thief is a thief and a cattle rustler is a cattle rustler. It does not matter which community they come from. I cannot defend them. If they are found to be residents of the county that I come from, let them face the full force of the law.

Unfortunately, our security system in both counties is wanting. For that reason, I support the Statement by our good neighbour Sen. Rose Nyamunga and I hope that something will be done soon.

**The Speaker** (Hon. Lusaka): Let us now hear from the Senate Majority Leader, Sen. Murkomen.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I congratulate Sen. Nyamunga for making a very important statement on defilement of our children. There is an erosion of values to the extent that most of our children are in danger from the very people that are expected to protect them. Reports of research, both by Non-Governmental Organizations (NGOs) and government bodies, indicate that the worst defilers are the people expected to protect the children. These are parents, guardians and teachers.

In the old days, children were property of the community. Everybody had a responsibility to the children. That is why there is an old adage or saying that it takes a village to bring up a child. It is because of modernization, urbanization and general individualism that has gotten into our people and country that people are pursuing other things and nobody cares to look after the most vulnerable, including the children.

There was a report aired on *Citizen Television* about how children are abducted, sold and trafficked to other countries in the world in the name of adoption. There are vultures particularly in slums like Kibera, Mukuru kwa Njenga and Mathare. There are rich people who have networks there ready to pounce on children that have been born. They steal them even when their mothers are still recovering from child birth and sell them in the name of being abandoned. There is a problem.

Sen. Nyamunga has mentioned something important about the role of the police and people who arrest. However, it should go deeper than that. The Children Act should be implemented. Children should be protected from acts of defilement and violence meted out to them by parents and teachers. We need something bigger than that.

I challenge Sen. Nyamunga, because it is something she is thinking through, to go further than that. If possible, we should use one of our standing committees or a select committee that will come up with more comprehensive ways of dealing with this matter. They can also come up with mechanisms within which our children can report such acts and spell out the punishment to be meted upon the perpetrators.

I, therefore, stand with her and I believe that her Statement is valid. In the meantime, the manner in which the Police Service and the Directorate of Criminal Investigations (DCI) are acting on matters crime is not satisfactory. They should include a special department that deals with matters of crime against children and the most vulnerable. That is something that should be done; prosecution should be fast and punishment should be heavy. I believe that punishment should even be heavier on the part of the policemen and individuals who interfere with evidence to ensure that the perpetrators go scot free.

Thank you, Mr. Speaker, Sir. I wish to support that Statement.

**Sen. M. Kajwang’:** Mr. Speaker, Sir, allow me to congratulate Sen. Nyamunga for bringing up this matter. In her opening remarks, she talked about defilement of children in Kisumu County. However, this is not a problem that is unique to Kisumu County. This is because even in Homa Bay County, when we got statistics from the Ministry of Education, we found that my county was leading in cases of defilement of pupils by teachers. That is not something that I am proud of, as a representative or leader of the delegation of Homa Bay County.

Mr. Speaker, Sir, this is a problem that afflicts the rich and the poor. However, the poor are afflicted to a greater degree because they do not have the capacity to follow up on the issues of defilement and to see to it that they are resolved properly. It is only the other day in Kisumu County, where Sen. Nyamunga comes from, where a lady was jailed for 15 years for having a liaison with an underage boy.

Mr. Speaker Sir, we have the Sexual Offences Act, which was passed by Parliament. However, when it comes to the defilement of children, it goes beyond a sexual offence. In fact, we need not to call it a sexual offence. Paedophilia must be called for what it is; it is not a sexual offence and it is tantamount to murder. This is because we are killing the future of these children; we are leaving them with trauma, scars and, in the process, we are shattering their future.

Sometimes, when men talk about these things, we speak as if we do not know who are defiling these children; particularly the young girls, who are defiled by average men. There have also been cases of boys who are defiled by average women. These are not things that are done by people from Mars or from another planet; these are done by us.

Finally, Mr. Speaker Sir, the Senator talks of involving the counties in policing and enforcement of law and order. The county policing authorities are established by law. We must ask questions why these authorities have not been given effect across the 47 counties. It is not something that we have invented as a Senate; it is something that is grounded in law. This calls for us, as the Senate, to ensure that we revive the Implementation Committee, because there are a million things that this House has talked about, but we do not seem to follow them up to their logical conclusion.

If we revive or activate the county policing authorities, even Governors will be involved in issues of law and order, and they will not just leave it to the County Commissioners, chiefs and the parallel national Government structures. I wish that Sen. Nyamunga could bring a substantive Motion on this matter so that we can save our boys and girls and ensure that we have a bright future for them.

Thank you, Mr. Speaker, Sir.

**The Speaker** (Hon. Lusaka): Hon. Senators, this statement has attracted a lot of interest. I would, therefore, limit the time to three minutes.

Proceed, Sen. Farhiya.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir. I am sad because you have reduced the time when I am just about to speak, because I had a lot to say about this issue.

Mr. Speaker, Sir, allow me to thank Sen. Nyamunga for bringing this Statement, because it is an issue that affects all counties, including my county of Wajir. Another issue that people do not treat as defilement is early marriages; where small, underage girls are being married off instead of going to school. I see that as defilement as well.

Mr. Speaker, Sir, there is also the issue of girls being defiled in schools. Recent examples include that one of Ngara Girls High School, which was happening yesterday; and the case of Moi Girls High School, Nairobi. The Government should take care of our girls so that the schools become safe havens instead of a threat for them.

Mr. Speaker, Sir, due to the trauma related to rape, the girls' lives are changed forever and for worse after a rape incident. Therefore, this is not an issue that we should take lightly. Owing to the stigma related to rape and defilement, victims do not even report these incidents because of fear of being exposed to the public. These are issues that are pertinent to women. Even in insecure areas like where I come from, where there are tribal clashes and other related incidents, the most affected victims are women. Therefore, there is need for sufficient laws to protect women.

Mr. Speaker, Sir, I think the fabric of this society is rotten. If you look back to the olden days, the security situation was even worse off, yet the cases of rape were far much less than they are today. Women are even raped in police stations, leave alone anywhere else. Where will they feel secure in this environment we live in?

**The Speaker** (Hon. Lusaka): Your time is up, Sen. Farhiya.

Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Farhiya:** Thank you, Mr. Speaker, Sir.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I want to suggest a solution because we have limited time. The police force has a special force called the Tourism Police. Similarly, there is a special police force that protects diplomats. I am proposing that every police station in Kenya sets up a special desk to deal with matters of defilement of children.

Mr. Speaker, Sir, I am persuaded that the police and the provincial administration are complicit in this crime. In Makueni County, we are dealing with a girl who was defiled by 21 men. The police were responsible for hiding part of the crime and caused 15 of the offenders to disappear. In some cases, like in Kilome, it is the police who told the girls to go and shower so as to get clean and then go back, therefore interfering with evidence.

This matter, therefore, cannot be discussed the way we are discussing it. There should be something a little more drastic. We must form a special police force trained to deal with the collection of evidence and dealing with these paedophiles. In my own village in Mbooni, this has become like a trend; it has become fashionable. In some places and schools in Makueni, teachers are competing on how many of them have

girlfriends who are in the school. This has become too much talk and nothing is done. That is what we need to do.

Thank you, Mr. Speaker, Sir.

**Sen. Kihika:** Thank you, Mr. Speaker, Sir. I also rise to support the statement by Sen. Nyamunga, which is very timely. What we see going on in the country about the defilement of children is very sad. Sometimes I even wonder whether the number of these cases is rising, or whether these cases were not being reported in the past and it is happening more now. However, there is clearly a problem.

Mr. Speaker, Sir, I support what Sen. Mutula Kilonzo Jnr. has talked about with regard to setting up a special desk. This is because most of the times, it feels as if the police officers in police stations are not well trained; or are not sensitive enough to the needs of the victims once they come in to report these crimes. I propose that we should extend this a bit so that it is not only about the defilement of children, but also sexual assault in general.

There should be special police officers who have had some sensitivity training on how to deal with these victims because stereotyping and victimization of the victims keeps on happening over and over again. We have also heard of communities where the elders sit down and talk about the offenses for the perpetrators not to be prosecuted and that should not happen in modern day Kenya. It should be outdated and no community should get away with that.

Defilement of children is evil for it destroys the life of these children from the beginning to the end of their lives. People talk about having these men castrated - on a light note - but this is probably what needs to be done because one should not be allowed to defile a child and get away with it. We need to get serious about sexual offenses and I agree that it should not just be a regular sex offense; we can have it as aggravated sexual offenses. This should not be encouraged and it must be punished.

These people must also be prosecuted, found guilty and punished for there to be deterrence of these cases. In many cases, we have seen these people being arrested and the case drags for years to a point where the victims get tired and, in the process fail to show up. Then the cases are dismissed and you have these men walking around. This should be a crime that is taken very seriously and a maximum sentence should be given for us to stop this from happening.

**The Speaker** (Hon. Lusaka): In the interest of time, I will have one speaker from both sides.

**Sen. (Prof.) Onger:** Thank you, Mr. Speaker, Sir. This is a very important Statement and I thank Sen. Nyamunga for bringing it to our attention. Clause 141 of the Children Act has given us a full array of what must happen at every single circumstance, whether it is defilement, misbehavior or sexual offense. There is a full chapter that expresses itself on the issues relating to child abuse and child defilement.

The moral standard of our nation must stand revised because previously, children were the custodian of a community or society. If we let them be defiled, we are actually building a future of people who are going to be very hostile to each other. As a nation, we have a moral duty to do something about it. Those of us who read the Bible - I am sure that this information is also there in the Quran - know that Proverbs 22:6 says that you

should train a child in the way he should grow, that he may not forget in the later days. I wonder the way in which we are training our children at this point in time. Are we training them to be caught in security webs? This is because the stories that we hear all over the country are very depressing.

As a nation, we need to apply ourselves on this topic and be able to discuss it and know how our families and children are going to be protected for their future, whether they are at home, foster homes, in the guardian's home, in school or wherever they are. We should always know that they are enjoying the maximum security that is required at any given time. That is the only way that we can ensure that we have a country that goes into the future with confidence. Otherwise, we will have destroyed the children who would have helped us on how to move around with ease and comfort in our old age.

**Sen. Halake:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to this important Statement by Sen. Nyamunga. I also want to congratulate her for highlighting this issue. This is a national shame. As we sit here and give suggestions on having special police officers, we should have in mind that there are people who do not want to go to the police because these issues are very personal. Therefore, as a House, we may want to look at other ways in which we could support our children without taking them to the police.

In 2016, there were 6,000 cases that were reported as child defilement in the courts. In 2014 or thereabout, there were 7,000 cases yet these are just the few reported cases for there are so many other cases that are not reported because of the nature of these things. As the Senators ahead of me have said, this issue is more of a crime and it should actually attract worse punishment yet the punishment does not seem to work.

There is a judge who recently revised the judgment where a school teacher by the name Khaemba was accused of defiling a child. He increased the number of years that had been given in a lower court from 30 years in jail to life imprisonment. He said that the duration given was too little. I would like to congratulate that judge though I do not know his name.

*(An hon. Senator spoke off record)*

Yes, he was Judge George Kanyi Kimondo. I think that we should applaud him for his stand on this and all the other people who have understood the gravity of this vice in our society. Right now, we cannot entrust our children in the schools or even religious institutions such as the church yet we have the punishment of 30 years in jail or life imprisonment as the judge meted upon the teacher.

Last year alone, Non-Governmental Organizations (NGO) recorded 2,000 cases of defiled children who were going through psychotherapy. This is not even the hospital or the police statistics but people who go to NGO's. Can you imagine how many more are out there and how many more need help? I would encourage Sen. Nyamunga to move a Motion that compels not just for police action because sometimes the police action happens after---

**The Speaker** (Hon. Lusaka): Order Member. You need to condense your thought process.

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We will go to the next Statement from Sen. Dullo.

INSECURITY IN ISIOLO COUNTY

**Sen. Dullo:** Thank you, Mr. Speaker, Sir. Pursuant to Standing Order No. 46(2)(a), I rise to make a Statement on the prevailing insecurity situation in Isiolo County and to state that-

(1) The County has been affected by inter-communal disputes and violence over boundaries, land and grazing rights and cattle rustling has been a major feature of that violence.

*(Hon. Senators consulted loudly)*

**The Speaker** (Hon. Lusaka): Hon. Senators, let us consult in low tones.

**Sen. Dullo:** Mr. Speaker, Sir, if I may proceed.

(2) The County also experiences violent disputes over land and grazing rights with neighboring counties of Samburu, Marsabit and Wajir.

(3) Land adjudication at the Isiolo Meru border has also led to violent clashes between communities.

(4) Several people have died as a result of inter-communal violence in Isiolo in the last six months.

(5) State security organs have responded to the violence by burning homes and through other acts of communal punishment which has resulted in more civilian casualties and the death of one police officer.

(6) As a result, learning in schools in the affected areas has been paralysed as schools have been closed for close to two weeks.

I, therefore, implore the national Government to:-

(1) Uphold the right and fundamental freedom enshrined in the Bill of Rights particularly Article 28 and 29 of the Constitution of Kenya 2010 on human dignity, security of the person in its legitimate quest to maintain security and order in affected areas.

(2) Uphold the principles of national security enshrined in Article 238 of the Constitution, especially the principle of legality and respect for the rule of law, democracy, human rights and fundamental freedoms.

(3) Resist any urge for rush retaliatory measures and communal punishment against entire communities.

(4) Ensure that persons breaking the law and threatening lives are dealt with in accordance with the law.

(5) Urgently guarantee the security of schools in affected areas in order to ensure resumption of learning ahead of national examinations at the end of the year.

(6) Explore and encourage alternative ways of dispute resolution in the affected areas such as traditional and inter-community dispute resolution mechanisms in order to open channels of inter-community dialogue.

(7) Engage the National Cohesion and Integration Commission (NCIC) and the Kenya National Commission on Human Rights (KNCHR) in seeking peaceful means of resolving the inter-community dispute in Isiolo County.

(8) Involve the County Government of Isiolo and county political, religious and community leaders in seeking peaceful solution to the violence.

(9) Undertake public consultation and awareness on the land adjudication process that is ongoing where people are fighting and losing their lives.

(10) Explore similar inter-community dispute resolution mechanisms to resolve disputes among border communities in Isiolo, Samburu, Marsabit, Garissa and Wajir.

Mr. Speaker, Sir, finally, I request you to task the relevant Committee of the House to investigate the matter and report to the House within 60 days. This is a serious matter and as I speak right now, some communities are burying their dead ones because of the conflict between the communities and the security agencies.

I thank you.

*(Interruption of Statements)*

### COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM ULILINZI HIGH SCHOOL,  
MAKUENI COUNTY

**The Speaker** (Hon. Lusaka): Hon. Members, I have a brief Communication to make.

I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Ulilinzi High School, Makueni County.

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

I thank you.

*(Applause)*

**The Senate Majority Leader** (Sen. Murkomen): Mr. Speaker, Sir, I was waiting for the Senator for Makueni to arrive.

On behalf of the Senate and the leadership of both sides of the House, I welcome the students from Makueni County. They should continue to work hard and emulate their Senator, who is eloquent and passionate about matters of Makueni County and the Republic of Kenya.

I wanted to welcome them on behalf of Sen. Mutula Kilonzo Jnr., but now that he has walked in, he can do the necessary.

Thank you.

**Sen. Mutula Kilonzo Jnr.:** Mr. Speaker, Sir, I hope you read it right. It is Ulilinzi Secondary School in Kibwezi West, which is the furthest part of Masongaleni in



Kibwezi East. I was part of the people who recommended that it becomes a boarding school.

I welcome them and hope that they will learn many things from the Senate. Makeni is still leading in terms of people who come to benchmark at the Senate. We welcome and wish them a good time in the Senate.

Thank you.

**The Speaker** (Hon. Lusaka): I will allow a few comments on Sen. Dullo's Statement. Sen. Wambua Enock and Sen. (Dr.) Langat had indicated earlier that they wanted to contribute. You look shocked.

Let us have Sen. Halake.

*(Resumption of Statements)*

**Sen. Halake:** Thank you, Mr. Speaker, Sir, for giving me the opportunity to contribute to Sen. Dullo's Statement.

We must find a lasting solution to the issue of insecurity in Isiolo County and Northern Kenya in general. We have seen communities fight each other. Again, issues of small arms within our communities and disarmament, boundaries and resource constraints that lead our people to different borders in search of pastures and water, is causing quite a lot of discontent and insecurity in Isiolo and surrounding areas. That said, there is need for leaders to genuinely and honestly look at their role in this.

I had a meeting with the Deputy County Commissioner (DCC) a few weeks ago and he said that politicians are part of the problem. I do not know whether he was trying to throw me off this issue or make sure that we are not too much on his case. However, it is time for us, as leaders, to look at the role we have played in inflaming sensitivities and arming some of the communities that have lived in peace with each other for a long time.

I was told that there is one former Member of Parliament (MP) whose animals are being guarded by illegal arms. I have asked for details and evidence on this, but I have not gotten it. However, where there is smoke, there is fire. Even as we demand for rights and freedoms and the standards that we expect of the Government, it should start with us.

Recently, we have seen an increase in the number of small arms infiltrating the different communities that have lived peacefully with each other and grazed across the different landscapes and plains, for example, the Turkana, Samburu, Borana and Somali. This is causing a major security lapse and concern. When the county administrators say that we are the ones who are arming these people, then we must look in the mirror and find out what our role is in all this and how we can help. Until such a time when we will look at our role in this, as politicians, and make sure that we do the right thing by the law, we cannot expect somebody else to come from outside and solve these issues for us.

There were issues around excessive force and use of firearms on innocent communities who were deemed to have attacked the police, but the criminals were not brought to book. It was the women and children who were left in the villages that were harassed, wounded and killed. It is unfair for the security forces to violate the rights of women, children and vulnerable people that are living peacefully in these villages. I

condole with the families of the policemen who lost their lives in the line of duty, which is the ultimate sacrifice. We applaud and stand with them.

However, that said, we urge the police force and the Government to ensure that they protect the innocent villagers, including women and children that were left behind. Let them pursue the criminal elements in our communities and not kill, maim or displace the innocent children and women. It is not right. Under the Bill of Rights, every person has a right to a safe and secure environment within which to live and pursue their livelihoods. My appeal is that, as leaders, even as we hold our other arms of Government accountable, we should also look at ourselves and see what role we have played in inflaming insecurity in our areas. We should hold ourselves with the same accountability that we demand of our policemen and county administration.

Thank you, Mr. Speaker, Sir.

**Sen. (Prof.) Ekal:** Thank you, Mr. Speaker, Sir, for giving me a chance to comment on this very timely Statement. Every time I hear our leaders say that Kenya is peaceful, but as I have said so many times, Kenya is not peaceful. Insecurity is so rampant that we wonder whether we are still in Kenya or in another country where insecurity problems are an everyday occurrence.

Mr. Speaker, Sir, I have talked about the insecurities along the borders of Turkana and Pokot counties and Turkana and Baringo counties which have brought a lot of misery to our people. Many times I have urged the Inspector General of Police and the Ministry of Interior and National Coordination to do something about insecurity in those particular parts of the country.

This morning I was at the Kenya Television Network (KTN) talking about security issues in Turkana County and the neighbouring counties. It seems that the Government is only interested in getting oil out of Turkana County. They are not interested in the security of Turkana people and their neighbours. I will keep on reminding them about security problems in that part of the country until they wake up and act.

The case in Isiolo County, for example, is totally abominable. Cattle rustling has been going on for a long time among our communities. However, it is not fair to profile and single out one community as the main aggressor. Four tanks of police are stationed in Isiolo County and their work is to crush and flatten villages of that particular community. It is not only Turkana people who raid, but other communities also raid. In fact, our people are law abiding, but they always respond to an attack from outside. This time the attack was from outside, but they were targeted. As Sen. Halake said, there is also the use of tanks to flatten their villages. Innocent people are being killed.

Further, the women and children in those villages are being terrorized by the police. That is not the way to solve problems. If they want to fight, let them fight with men who killed that particular police officer. To flatten villages and terrorize women and children is not manly at all. This is not something that is expected of the police. They are supposed to protect and not to kill. There was a time when we would say the police means "*Utumishi kwa wote.*" It is no longer the case today.

If something bad happened, then let us deal with all the communities with equal measure of punishment. If that is what it takes to pacify the situation. However, when

you single out a particular community, it seems that that is the community you are out to punish for something that was committed by two parties.

Mr. Speaker, Sir, a number of politicians in that part of the country are inciting their people to cause problems to others. Such politicians should not be called 'honourable', but 'abominable' because they are not promoting peace among our people. They are not encouraging their citizens to live peacefully in a country that belongs to all of us. Therefore, such people should drop the title of 'honourable' and become 'abominable' because all they do is to encourage strife. They encourage their people to fight others. Others are arming their people to terrorize innocent people.

Mr. Speaker, Sir, I do not know what this Senate should do for it to be heard and action taken. As Sen. Mutula Kilonzo Jnr. said, we speak a lot, but we do not do anything. All these things are painful. We have talked about rape which is a factor of insecurity. We are now talking about police killing women and children, but nothing seems to happen. What would it take to have the Government of Kenya wake up to the fact that this country is not at peace?

We are also being harassed by the Ethiopia and South Sudan governments. They have encroached on our border. Some of our people are fighting for Kenyan territories. When will this Government wake up and protect its citizens?

Mr. Speaker, Sir, there is a lot to talk about on this topic. We need to pay much attention and see what can be done because our people are suffering.

I support the Statement.

**Sen. Seneta:** Thank you, Mr. Speaker, Sir, for giving me a chance to also support this Statement by my sister from Isiolo County. It is not only in Isiolo County where we have security issues, but all over the country. Cattle rustling is rampant along our boundaries. In Kajiado County, for example, we have people stealing livestock and driving them to the neighbouring country. We have illegal businesses taking place along our boundaries. Security issues, especially along our boundaries, should be looked into seriously. It is true that the security apparatus response is very poor and needs to be looked into by the Ministry of Interior and Coordination of National Government.

I listened to my colleagues talking about rape cases, defilement of young children and cattle rustling, among other issues of security and I felt it is a high time that this House, through the Committee on National Security, Defence, and Foreign Relations, summoned the Cabinet Secretary for Interior and Coordination of National Government to inform us what he is doing about insecurity in this country. We see him talking loudly and tough about sugar issues while the country is not safe. It is a high time that he puts his house in order. He needs to relook into the administration in our counties. Some county commissioners and other officers are engaging in illegal businesses. This is the reason why we have conflict of interest whereby when you report a case of livestock theft, it goes nowhere because many officers are involved.

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

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

Mr. Deputy Speaker, Sir, the issue of monitoring what the officers are doing in our counties is important. We need to be told whether these officers are reshuffled at times or they do their own business at the expense of our people on the ground.

I support this Statement and urge my sister to go a step further and through the Committee on National Security, Defence and Foreign Relations, summon the Cabinet Secretary so that hear from him the measures he has put in place to improve the security of our people.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, you cannot fight crime by violating human rights. What is happening in Isiolo County is unacceptable. It is a situation where there is collective or communal punishment for a crime committed by individuals. This has become the norm that every time our police officers feel that they have been wronged, or someone has committed an offence like in the case of Isiolo County where a police officer was killed, then the whole community pays the price. You would see mass movement of people, burning of houses, displacement, destruction of property and killing of domestic animals. That has to come to an end.

Under our new Constitution, each one of us needs to be alive to the fact that human rights are very important. Further, presumption of innocence is an important principle in the Constitution. Sometimes, I shudder to imagine; even us who are lawyers, you see someone is accused of something, but we are the first ones to say that person should be punished or hanged or be locked in without bail.

There was a difficult time recently amongst us lawyers where persons were denied bail on account of fighting corruption. What happened to the presumption of innocence and the fact that anyone who is accused is innocent until proven guilty? This is exactly what we have imported from our actions in our communities.

In the Marakwet community, there was an old culture that still exists in a few areas. This is where if your relative back home was drinking busaa with someone else and they have a fight and maybe he kills the person, they would come and destroy all the property in my home regardless of the fact that I am busy here working in this Chamber. They would go and pursue the relatives of the person to revenge by killing them. That practice must come to an end. Our police forces cannot be perpetrators of that kind of barbaric act.

Mr. Deputy Speaker, Sir, this nation is under a new Constitution, new rules and new ways of doing things. We have an Inspector-General (IG) of police who, in my honest estimation, is a very well educated, reasonable and sober man. Together with his deputies, they should now put in place a proper curriculum that will ensure that, in law enforcement, our police at the local level will be police officers and not the police force; because that was the transformation we wanted in our new Constitution.

Mr. Deputy Speaker, Sir, there is also a presumption, particularly in pastoralist areas, that every person is a criminal unless he proves himself otherwise. The respect for human rights--- If you see the Deputy Senate Majority Leader coming here with such a serious statement, it actually points to the gravity of the situation. This is because if it was something small, there is nothing which would have stopped Sen. Dullo –who is a

member of the Senate Committee on National Security, Defence and Foreign Relations – walking to the necessary office.

However, I think it has reached a stage where it must be deliberated in this House. To show seriousness in this matter, it is important that Sen. Sakaja, as the Vice Chairperson of the Committee, working with Senator Haji, should follow up on this matter and ensure that we change course, as a nation, so that law enforcement becomes respectable.

Thank you, Mr. Deputy Speaker, Sir. I beg to support that statement.

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

Hon. Senators, as you are aware, the Standing Orders do not anticipate further comments once a Statement of this nature has been given. I will, therefore, allow only Sen. (Dr.) Musuruve two minutes and then we move on to the last statement.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to also add my voice to the Statement that Sen. Dullo has brought to the Floor of the House.

Mr. Deputy Speaker, Sir, this statement, just like the issue of security, is important. If people are insecure, we do not expect even the nation to be secure. Security is a constitutional right under Article 43, which speaks of economic and social rights. In fact, Article 43(e) states clearly that security is as social right while Article 43(f) also categorises education as a right.

Mr. Deputy Speaker, Sir, the Senator has said clearly that there is closure of schools because of insecurity. This is very serious because, one, academic performance in North Eastern region is very poor. If the schools are closed, you can imagine that performance in that region will continue being poor and the standards will also plummet. There is, therefore, need for the Government to intervene and ensure that there is security in North Eastern region.

Mr. Deputy Speaker, Sir, even though we are talking about insecurity as a result of cattle rustling and all that, we also have another form of insecurity of teachers that also affects students in schools. If students are affected and do not go to school, you can imagine them becoming idle. An idle mind is the Devils workshop. Therefore, our students should be active, especially when---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator. Your time is up.

**Sen. (Dr.) Musuruve:** Thank you, Mr. Deputy Speaker, Sir, for the opportunity.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is it, Sen. (Dr.) Langat? You are appearing and disappearing at the same time!

*(Sen. (Dr.) Langat spoke off record)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay; you have two minutes and you will be the last one.

**Sen. (Dr.) Langat:** Thank you very much, Mr. Deputy Speaker, Sir. To address the issue of insecurity affecting some counties in the Northern and North Eastern parts of this country, it is important to understand the real causes of insecurity. The people who understand this better are the leaders from those particular counties. It is also important

for us to know the motivators of insecurity in this region. The security lapse that exists within the government machinery should also be understood if these issues are to be addressed effectively.

Mr. Deputy Speaker, Sir, I encourage Sen. Dullo to carry on with this issue seriously. I propose that this issue be handled by the Senate Committee on National Security, Defence and Foreign Relations for them to do more investigation on the same and report back to us for more information.

Thank you, Mr. Deputy Speaker, Sir.

*(Sen. (Prof.) Ekal consulted the Deputy Speaker  
(Sen. (Prof.) Kindiki)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well; I direct that the Statement that was to be issued by the Senator for Turkana County, Sen. (Prof.) Ekal, be deferred until Tuesday.

*(Statement deferred)*

Next Order.

## BILL

### *First Reading*

THE ENERGY BILL (NATIONAL ASSEMBLY  
BILL NO. 50 OF 2017)

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

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Hon. Senators, I direct that for the time being, we stand down the following items of the Order Paper and we dispense with Order No. 15 as the first priority.

## COMMITTEE OF THE WHOLE

THE COUNTY BOUNDARIES BILL  
(SENATE BILLS NO. 6 OF 2017)

THE OFFICE OF THE COUNTY ATTORNEY BILL  
(SENATE BILLS NO. 3 OF 2018)

*(Committee of the Whole deferred)*

**BILLS***Second Reading*

THE PUBLIC PARTICIPATION BILL  
(SENATE BILLS NO. 4 OF 2018)

*(Bill deferred)*

*Second Reading*

THE COUNTY STATISTICS BILL  
(SENATE BILLS NO. 9 OF 2018)

*(Bill deferred)*

*Second Reading*

THE PHYSICAL PLANNING BILL  
(NATIONAL ASSEMBLY BILLS NO. 34 OF 2017)

*(Bill deferred)*

*Second Reading*

THE IRRIGATION BILL (NATIONAL ASSEMBLY  
BILLS NO. 46 OF 2017)

*(Bill deferred)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Next Order.

*Second Reading*

THE KENYA ROADS BILL (NATIONAL ASSEMBLY  
BILLS NO. 47 OF 2017)

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Speaker, Sir. I beg to move the motion that the Kenya Roads Bill (National Assembly Bills No. 47 of 2017) be read a second time.

When the new Constitution was passed, it heralded a new order of how we do things. It brought into place two levels of government; the national and county governments. Schedule Four of the Constitution divided functions between national and county governments. The Constitution also, in consequential clauses, provided that all

laws that were existing before the advent of the new Constitution should be amended so that they can be in conformity with the Constitution.

The country has been going through a process of amending these laws and realigning them to the new constitutional order. Finally, we have reached a stage where it is necessary to amend the Kenya Roads Bill so that it can be in conformity with the Constitution.

Mr. Deputy Speaker, Sir, when I was the Chair of the Devolution and Intergovernmental Relations Committee, I had an important responsibility to guide this House in so far as transfer of functions is concerned. This House did a lot of work. In that Report, we said that the Kenya Roads Bill and the roads laws must be amended so that we can have proper classification of roads. Even then, we retained Class A up to C to national Government and transferred Class D and below to county governments. However, there was lacking a clear definition of what is a Class A, B, C, D, E and F road. This Bill provides the classification of those roads.

Also, there has been debate about the resources that are meant to go with the function. Once the function has been devolved, are there necessary resources that are supposed to follow those functions? Again, this Bill provides for the manner in which, apart from Division of Revenue law, the roads levy is divided among various agencies of national and county governments. That is for the purpose of building and maintaining those roads through those resources.

Mr. Deputy Speaker, Sir, this Bill is critical. I am glad that you have agreed that we expedite this Bill. In Part Two of the Bill, there is a new established institution known as the Public Roads Standards Board (PRSB). I saw one friend of mine writing on social media and questioning why it is not possible for us to sue roads authorities when you have an accident because you hit a pothole. Many people are killed because of useless potholes on the roads that are not maintained for a long period of time.

Sometimes they are killed because there is no road signage. Sometimes it is because they put a bump on the road and they do not alert anybody. You travel in the morning through a road and by evening you realize that the road has a bump which is unmarked. It ends up causing accidents and killing people. I have in mind so many bumps that are in this country that have caused a lot of accidents including the one that is in Karai area near Naivasha town.

This is in recognition of the requirements to have standards and proper roads. In the earlier Statement in this House that was brought by Sen. Khaniri, Members ventilated on the matter of the quality and standard of roads. I heard the Senator from Kiambu County, Sen. Mwaura - I am saying this because he had been labeled another time that he is from nowhere - although he is not elected in Kiambu, he is from there representing persons with special challenges. I heard his comments saying that we have beautiful roads like Thika Road and suddenly you realize that the drainage is not working or sometimes the roads are already damaged, and we are told we used Kshs30 billion.

We have also been told that Kshs10 billion was used on Dongo Kundu Road which is 10 Kilometers or so. We used Kshs1 billion per kilometer. That is why it has become necessary to establish PRSB to ensure that as per this Bill, we have proper standards for construction of roads and those standards are going to be adhered to. The



institutions that are in charge of construction of roads will not oversight themselves; we will have institutions like this PRSB whose responsibility will be to ensure that standard roads and bridges are established in the country.

This will ensure that the standards of construction and maintenance are provided; that forms of works and consultants are given the standards they are supposed to adhere to. They will provide the sizes, types and usage of vehicles on roads including maximum vehicle and axel load limits for purposes of protecting our roads from damage. They will deal with standards for training of human resource required for development and rehabilitation of roads. That means that they will even check whether the universities which are training our civil engineers are using the required curriculum and giving them the necessary knowledge that will ensure that we construct standard roads.

Mr. Deputy Speaker, Sir, this body is critical in the sense that their work will not be construction itself. They will be the persons who will operate between the authorities that are in charge of construction plus their contractors and the citizens of the Republic of Kenya, to ensure that standards are adhered to. The standards are provided, but the supervision to ensure that those standards are achieved is not.

In the first instance, a roads board, for example, the Kenya Urban Roads Authority (KURA) or the Kenya National Highways Authority (KENHA) will use those standards to ensure that the contractors perform their work. However, the PRSB will now oversee the roads agencies to ensure that they have adhered to those standards. By the time it is coming to Parliament or going to the citizens of Kenya, we believe that the necessary standards for constructing roads in the Republic will have been achieved.

In Part Three, this Bill provides for the classification of roads and divides the responsibility to different agencies based on that classification. Roads are classified into various classes as you will see in the First Schedule. The First Schedule of the Bill provides for the various classes of roads. Class S of the roads are roads that are connecting two or more cities and are meant to carry, safely, a large volume of traffic of the highest legal speed of operation. If the highest speed will be 120 Kilometers per hour, you are allowed to drive at that speed because it is a highway. It is linking a city to a city and has a high traffic.

One would believe that even the road linking Nairobi and Thika would qualify for Class S roads. I hope that in future we should be able to build the same roads between here and Nakuru; Eldoret and Kampala. We will, therefore, have that classification for the road from Mombasa to Nairobi and Kampala, or up to whatever other country, like Congo.

Class A roads are those that form strategic routes and corridors connecting international boundaries or identified immigration entry and exit points and international terminals, such as international airports or sea ports. Therefore, roads that go to the airports, like the one that goes to Wilson Airport, are classified under Class A roads. Wilson Airport is an international Airport because people fly in from Somalia and other places.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, the Senate Majority Leader! Did you say that Wilson is an international airport?

**The Senate Majority Leader** (Sen. Murkomen): Yes, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What is the basis for that assumption?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, there are direct flights from Wilson Airport to countries like Somalia. There are daily flights from Wilson Airport to Serengeti and even Juba. So, it is truly an international airport by all means and standards.

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

**Sen. Cheruiyot**: Mr. Deputy Speaker, Sir, I am just marveling at the understanding of the Senate Majority Leader in matters to do with airports. Does it confirm to us the tag he has long held of being the chairman of the 'sky team'?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Is it connected to the sky?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I was hoping that you would reprimand him because any answer that I will give may affect the Chair of the House.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! Do not drag the Chair into your exchange with the Senator for Kericho.

What is it Sen. Mutula Kilonzo Jnr.?

**Sen. Mutula Kilonzo Jnr.**: Mr. Deputy Speaker, Sir, I had a similar concern that this House has both members and trustees of a 'sky team.'

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.! What team is that?

**Sen. Mutula Kilonzo Jnr.**: Mr. Deputy Speaker, Sir, it is called the 'sky team.' Sen. Murkomen is a member and there is somebody you know, whom I will not mention.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Mutula Kilonzo Jnr.!

Senate Majority Leader, on that note, you can proceed without veering off to the dangerous trajectory pursued by Sen. Cheruiyot and Sen. Mutula Kilonzo Jnr.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, if there is something I agree on with Sen. Cheruiyot and Sen. Mutula Kilonzo Jnr., it is that I have a great fascination about matters aviation. One of the first courses I taught in the university was Air and Space Law at the Catholic University of Eastern African. I had 13 students out of which 11 managed to go for further studies. They had close mentorship from me; they tell me so.

It fascinates me how one came up with something like a plane and so forth. So, I have no apologies to make. I have been allocated a variety of equipment in various airports in this country on social media. I trust God that it will come to pass one day.

Mr. Deputy Speaker, Sir, if you read the First Schedule, you will find that under the classification of Class A roads, we have highways that will connect to seaports, for

instance, the road that will connect to Lamu, which is the future seaport and Mombasa. They are classified as important international roads of Class A.

Class B are roads forming important national routes, linking national trading or economic hubs, county headquarters and other nationally important centres to the national capital or Class A roads. It includes roads that link our headquarters, one county to another, say, from Kajiado to Nairobi, Nairobi to Kiambu, Nairobi to Garissa and Garissa to Mandera. If such roads do not fit within Class S and Class A, they will be classified under Class B roads.

We have Class H roads that are basically urban major arterials highways meant to carry huge traffic from separate parts of the city. For example, Jogoo Road majorly links parts of the city centre to parts of the Eastlands. Ngong Road links Ngong Town and parts of Nairobi and from the Central Business District (CBD) to other parts of the town and so forth. Other examples are roads that go to places like Parklands, not to mention the highway that goes to Westlands and so forth.

We have Class J roads that are minor arterials meant to carry traffic to different zones of urban areas. They include the principal urban bus routes and roads within economic zones that are planned by the national Government and those within the State Houses and Lodges. They are required to provide mobility as opposed to access. For example, we have roads from Eldoret Town to the State Lodge in Eldoret that fall within Class J roads.

Mr. Deputy Speaker, Sir, we also have Class C roads, which form important regional routes linking county headquarters or other regional important centres, constituencies headquarters, municipal or town council centres and other towns to each other and to Class A, B, H or J roads. They are required to connect regional and local traffic and so forth.

All these classes of roads, that is, Classes S, A, B, H, J and C are national roads. We now have a clear definition, although it is not as clear as one would think, because it will require a lot of examples to compare this and that. However, national roads are falling within Classes S and C.

Then we have Part B of the First Schedule, where we have the county roads, that is, Class D roads. Then we have Classes E, F, G, K, L, M, N and P roads. So, those who say that counties have no roads to construct will now see that the classification includes roads that link farms to markets. These are very important roads. They include minor feeder roads linking markets to each other and those that link shopping centres to each other.

In this country we have small towns like Kapsowar. If you come from Embobut, where I come from, you will know that Kapsowar is a town. But by proper classification in law, Marimanti does not qualify to be called a town. Marimanti is just a shopping centre.

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

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, there is no difference between Marimanti and Kathagachini.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I thought there was a legal classification as opposed to unilateral declaration of towns and urban centres.

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, we now have the Urban Areas and Cities Act that makes Marimanti to actually become a shopping centre because of its size, just like Kapsowar and Tot which do not qualify now to be called towns. Sometimes in our villages we call them towns and cities. When we want to baptise our place as a very beautiful place we call it a city, not knowing like Sen. Sakaja said before, that there are many poor parts of this City. There is assumption that something beautiful is called a city, which is not true. Sometimes there is an ugly part of a city.

These classifications we have here are important for us because it informs the next topic, which is the issue of division of resources. However, before I come to the issue of resources, the national Government, under this law, creates three agencies that will deal with the management of these roads. We have the Kenya National Highways Authority (KeNHA) whose responsibility is to deal with Classes S, A and B roads, which I do not want to repeat myself on. There is nothing different about the management of the KeNHA. It is similar to the current one in terms of structure. The board is almost similar to the current one, except in the case where the LSK used to get represented before in the tenure of Sen. Omogeni.

I can see the Bill provides that it is the Institute of Engineers of Kenya and the Institute of Surveyors of Kenya and two other persons appointed by the Cabinet Secretary. That is similar in both the Kenya National Highways Authority (KenHA) and the Kenya National Urban Roads Authority which takes in the classification herein provided above, Class H and J of the roads are under the Kenya Urban Roads Authority.

To be frank and as a matter of idealism, there was a time I used to ask why have Kenya Urban Roads Authority (KURA) or KenHA? Over time, we with devolution, I have realized that the demands for construction of a road, even a small tarmac road of two kilometres, we have to get loans. However, it needs the support of the national Government to be able to do so.

Nairobi County government is expected to do most of the roads in Nairobi. However, Kenyans are demanding from the Government of President Uhuru Kenyatta to do most roads in this country. You will realize that KURA is doing most of the roads in Nairobi County because this city is the Capital City of the Republic of Kenya.

Mr. Deputy Speaker, Sir, I was in the task force on Devolved Governments. When we realized that Nairobi had been made a county, we had to provide the Urban Areas and Cities Act. We felt there must be an agreement between Nairobi County and the national Government on how to manage matters of infrastructure and security in the city because it is a capital city.

I have seen some people laughing at Senator---

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, the Senator for Laikipia and company!

Proceed, Majority Leader.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir, for protecting me from Sen. Kirinyaga. I know you chose the person you wanted to say, because you wanted to protect me.

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

**The Senate Majority Leader** (Sen. Murkomen): He is the one who came to cause this uproar and excitement. Every time he comes to the House, there must be some level of excitement, which is a good thing. It is natural for---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Are you satisfied that Senator Kirinyaga was part of the company?

**The Senate Majority Leader** (Sen. Murkomen): Yes, Mr. Speaker, Sir.

**Sen. (Eng.) Maina:** On a point of order, Mr. Deputy Speaker, Sir.

**The Senate Majority Leader** (Sen. Murkomen): Why is he speaking and you have not given him a chance to speak?

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

**Sen. (Dr.) Ali:** On a point of order, Mr. Deputy Speaker, Sir. Is that the Senator for Kirinyaga or is that his name?

**Mr. Deputy Speaker** (Sen. (Prof.) Kindiki): That is the Senator for Nyeri, but his name is Sen. Kirinyaga.

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, thank you for correcting my actual name. Traditionally, I am known by that name.

**Mr. Deputy Speaker** (Sen. (Prof.) Kindiki): What do you mean traditionally? Do you have a modern name? You mean you have traditional and modern names?

**Sen. (Eng.) Maina:** Mr. Deputy Speaker, Sir, I did not want to interrupt my brother. However, I am not sure that he is in order to single me out when you have already made your ruling in a very professional manner and in accordance with the orders of the House.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): You are right, Sen. Kirinyaga! Senate Majority Leader, part of your job description is not to assist the Chair to preside over the House. Otherwise, you were doing very well.

**The Senate Majority Leader** (Sen. Murkomen): Thank you, Mr. Deputy Speaker, Sir. When Sen. Kirinyaga meets the Senator of Kirinyaga something is bound to happen.

**Sen. Mutula Kilonzo Jnr.:** (Inaudible)

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I did not say that! Senator Mutula Kilonzo Jnr. said "it is a meeting of landlords". I do not know what he means.

*(Laughter)*

I was trying to make this case that the demand from the national Government to construct the roads in the urban areas of Nairobi, Mombasa, Kisumu, Nakuru, Eldoret and upcoming urban areas like Machinery. There is a small town centre called Machinery in Makueni County. One day we went there with somebody I do not want to name.

**Mr. Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! What are you hiding from the House?

**The Senate Majority Leader** (Sen. Murkomen): It is for political reasons. I remember the people were waving at us and we were very excited that our candidate was doing well. Every time we talked, they were waving, only to realize later that they were not excited with us; they were actually saying they belong to Wiper Party. That is how Sen. Mutula Kilonzo Jnr. came to this House.

Due to the railway and the economic activities in such towns, there is pressure that the roads in these towns must be constructed by the national Government. If you go to Nyeri and Othaya towns, there is pressure on the national Government that they require money for construction of roads. Meru is growing at a very high rate. There is also pressure that the national Government should assist in construction of those roads. This is all because of urbanization.

One of the fastest growing towns in East and Central Africa is Eldama Ravine because of migration. There is also pressure on the KURA to assist in construction of roads in Kapsabet, Iten and many other roads across the country. For that reason, urban roads have been classified into two.

Mr. Deputy Speaker, Sir, Class C roads has been allocated to the Kenya National Secondary Roads Authority which is currently known as Kenya Rural Roads Authority (KERRA). Now it is becoming established as the Kenya National Secondary Roads Authority. After this, it will be called KENSRA instead of KERRA. This board is in charge of Class C roads and its responsibility is to deal with the management of those roads.

I do not want to repeat myself on the classification; the chairman is here. He is eagerly waiting to give an expose from his perspective on the issues they found when the Committee listened to various parties that came before them.

Suffice it to note, appointments to the Board has been provided for; that it must meet the constitutional requirements. The Director-General must have the necessary qualifications. You have provisions of powers of those authorities which are already existing with the authorities as I speak, at the moment. There are also provisions of stiff penalties as far as violations on standards of roads or where people protest like they do in Kondele, Kisumu where Sen. Rose Nyamunga comes from.

The area is famous for exercise of constitutional rights to protest in this Republic. As they do so, like the Governor of Kisumu said, there are stiffer penalties now provided for to ensure that such persons who destroy roads by burning tires on them as it happens in Nairobi, Eldoret, Kisumu, Kericho and Mombasa are punished. It includes also those who will drive on the wrong side of the roads and pavements. There are also penalties that relate to punishment to ensure that if you destroy the road you will be held accountable.

Apart from that, there is one more important provision in this Bill that I do not want to forget. It is about division of resources. As you very well know, in our Constitution, what is important is the Division of Revenue Bill which stipulates how resources should be divided between national and county governments. Once that is done, every level of government has the responsibility to manage the functions that are

devolved to them using the resources that have been appropriated by Parliament, including this House, under the Division of Revenue Bill.

There is something unique about the roads levy. Roads levies are collected from users of both national and county roads. Therefore, the division must also provide for maintenance of those roads. If you read the Third Schedule of this Bill, you will realize that the resources have been divided into various entities and this was a negotiated process.

The Kenya National Highways Authority (KeNHA) has been given 35 per cent of the resources collected from the roads levy. It may sound a lot but it is not. In fact, as a person who is representing counties, I would have been among the first people to say that we should reduce this money further. However, you need to think about the national roads and everybody is fighting to have a highway in their county. How will they be maintained?

Every time highways are being constructed. We are going further to even have dual carriages and so forth. We want to construct one from Mombasa to Malaba. All these require more resources. We might need to revise the figure in future so that tarmac roads get more resources than this 35 per cent.

The Kenya Rural Roads Authority (KeRRA) was allocated 28 per cent. These categories of roads are found in our counties and they connect one county to another. This is important although the resources allocated are not that much. The Kenya Urban Roads Authority (KURA) was allocated 10 per cent and it must now work with county governments. Nairobi is already taking a lion's share of urban roads. Our counties are crying for an equal share to be taken to, for example, Kiambu, Nakuru, Elgeyo-Marakwet, Tana River, Tharaka Nithi, Makueni, Kitui, Kisii, Nyamira and many other places in this Republic.

Mr. Deputy Speaker, Sir, 16 per cent of the resources will be given to counties. It must be understood that it is only going to deal with the other roads and not roads under the KeRRA or the KURA. The allocation of 16 per cent seems less but it is significant because, under the division of revenue, already resources have been allocated to counties for roads.

If a classic argument was to be made on this money, we would be required to reevaluate the law. This is because the money will go to counties but under what framework? Is it conditional or unconditional grant? The thinking around the division of the road levies to the counties must be followed by another law. What will force the county governors to allocate the money to roads? It can only go to roads if we make it a conditional grant for purpose of roads.

The Chairman of the Committee needs to think through how we can later amend this law to provide the framework of the 16 per cent to go to counties as conditional grant and then it should be factored in the County Allocation of Revenue Bill, so that when we do the County Allocation of Revenue Bill, already the roads are covered.

When the money goes to Elgeyo-Marakwet County as roads levy, we can confirm that roads are being done using the money. This is where we will be helped by Sen. Kirinyaga who is an expert engineer on matters of construction. I do not think Sen. Wamatangi is an engineer but he is an expert on tanks. The expert on matters of roads is

Sen. (Eng.) Ephraim Maina Kirinyaga, who must give us his expertise on matters of roads in the counties.

In future, when we draft the law on matters related to grants and levies that go to the counties, we need to ensure that if you go to Nyeri County you can see what the money is doing. However, if it goes like a pool of money, including the other money, there will be no accountability. It will be easy for one to use it on other things or you will have double budgeting. A county could budget for a certain road but then takes the money and uses it on another road. That is why we have corruption because people will eat money that was meant for a certain road. They will get the roads levy and use it to construct a certain road yet that money is for maintaining some road.

Having mentioned some allocations that go to Kenya Wildlife Service (KWS) and the National Transport and Safety Authority (NTSA), I am glad the NTSA is being given money for purposes of road safety. They will get 1 per cent and 2 per cent will go to recurrent expenditure by the board.

I would like to mention the last two things. First, the Committee has done a good job in making sure that this law will be amended to accommodate county governments when it comes to their representation in the Public Roads Standards Board and that is commendable. When the Bill goes to the Committee of the Whole, we must amend the law to accommodate those provisions.

Secondly, for qualifications to the Public Roads Standards Board, I disagree with the amendments that have come from the National Assembly that opens the door outside qualified engineers to be the managing director. This is because there are standards requirements that must be followed. In my honest opinion, that qualification should remain and we should have engineers.

We are lawyers and we can be selfish and open it for lawyers because the Bill talks about lawyers, accountants and all the merchants. Let us focus on qualified engineers.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Murkomen! Did you say merchants?

**The Senate Majority Leader** (Sen. Murkomen): Yes. Traders are people---

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Can you qualify that because you said "lawyers and all these merchants"?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, I said that if you open it to merchants and traders, it will compromise the standards that we require from the Public Roads Standards Board. Let us keep it that way just like we require lawyers in the legal profession. In the roads profession, particularly for that board, let us leave it to the engineers as it is because we must make laws for posterity that will protect the institutions that we represent as a House.

I would have said more. This is an area that I am proud of the Jubilee administration for putting a lot of effort to ensure that we construct as many roads including Chakarika-Marimanti and Nyaru-Iten roads and a road in Kericho County called Premier-Tablotin and another one in Nyamira County whose name I have forgotten.



Mr. Deputy Speaker, Sir, I have travelled across this country just like you. What voters want are roads to be constructed in their counties.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Is that connected with your knowledge of airports?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, we have been elected to oversight, and not to “undersight.” If you want to oversight, it must be from up so that you can see.

*(Laughter)*

So, oversight and matters of airports are one and the same thing.

In my oversight duties across the country, I have seen that there is a lot of demand for good roads, including the one from Isiolo to Moyale, among others. This is an area that we must have the resources and ensure that there is maintenance of those roads. We also need to ensure that there is fair distribution. That is what Sen. Khaniri was talking about in his Statement; that every county must have at least Classes B or C roads, so that people enjoy the fruits of Independence in the great Republic of Kenya.

Mr. Speaker, Sir, with all those remarks, I beg to move and invite Sen. Wamatangi, the Chair of the Committee on Roads and Transportation, to Second.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well, Sen. Murkomen. Proceed, Sen. Wamatangi.

**Sen. Wamatangi:** Thank you, Mr. Speaker, Sir. I rise to second the Bill, as moved by the Senate Majority Leader. I acknowledge, as the Chairman of the Committee on Roads and Transportation, that my Committee sat and deliberated on this Bill. We considered the Bill and invited – through public notice and advertisements in newspapers – members of the public to come and air their views for consideration by the Committee.

In response to the invitations, we received information and submissions from the Council of Governors (CoGs) and the Ministry of Transport, Infrastructure, Housing and Urban Development. We also received submissions from all the line agencies; the Kenya Rural Roads Authority (KERRA), the Kenya Urban Roads Authority (KURA), the Kenya National Highways Authority (KeNHA) and also from individual members of the public.

Mr. Speaker, Sir, this Bill is timely because after the continued long rains, every county in this country is suffering because of the damage caused on our roads. In addressing the problems that Kenyans have been facing, it is important that we lay this out clearly. Even as we do as much as we have done, let it be clear that the bulk of Kenyan roads still remain undone. A comparison of the roads which are right now tarmacked, passable, all weather and usable to the ones which still either require to be done, opened up or are unnecessary, is heavily lopsided to the latter. Therefore, as we debate and congratulate the Senate Majority Leaders from both Houses for proposing this Bill and bringing it to the House, we also must remember that there is still a lot of work to be done.

Mr. Speaker, Sir, when we started hearings on this Bill, there were two issues that were of great contention between county and national Governments. One of the main

issues was about where Class D roads will fall. In the earlier dispensation of our roads network, Class D roads fell under county governments. There was a lot of contestation on this issue because reclassification was supposed to ensure that the roads, according to usage, can be assigned to the right entity.

This brought forth quite differing presentations from both the Ministry and the county governments. I am glad to say that, finally, consensus was hammered out during the Inter-Governmental Budget and Economic Council (IBEC) meeting that was chaired by the Deputy President and which included all the governors. After this agreement was reached, reclassification was agreed upon and Class D roads were agreed to be under county governments.

However, Mr. Speaker, Sir, let us also be clear about where this contest was leading us. The road network left under county governments is probably almost 140,000 kilometres. However, the amount of money disbursed to counties compared to all the other allocations, for example, for paying wages and to other development projects; the percentage of those funds that would be left to any governor, whether in Nairobi, Mandera or Lamu, would barely be adequate for them to satisfactorily address the need for good roads in the counties. Therefore, this is a step in the right direction. However, it is one step awaiting too many because the bulk of our country is still within those counties that we would be calling underdeveloped. We, therefore, still have a lot to do.

Mr. Deputy Speaker, Sir, the other issue that was heavily contested was on the increment of the allocation to counties via the fuel levy. This was also agreed upon. I am happy to report that after consultations with both sides, we agreed that for the time being, we will retain the percentage as it was. As the Senate Majority Leader has said, most of the work right now either in developing, re-carpeting or repairing of roads is being done by the national Government. This is due to, sometimes, the lack of capacity in counties, inadequacy of funds or by the sheer magnitude of work required to be done by any county government. Those two issues were hammered out, making the work of this Committee easy, because what we had to address then were the other issues.

Mr. Speaker, Sir, I do not want to be repetitive of what the Senate Majority Leader has said. However, let me just say a few things on that question of reclassification. If reclassification is followed through and if each agency does what it is supposed to do with efficiency and in collaboration with county governments--- One of the issues that needs to be brought out clearly in this House – because the Senate is the father, representative and advocate of counties--- As we allocate these funds and give the bulk of resources to KeNHA, with the new hat or umbrella it is wearing and the other agencies, that still being the responsibility of those agencies under the management by the national Government, there is no argument that would be made that any road – be it under the national Government agencies or county governments – does not pass through a county.

Those roads still pass through counties and they still have effect on counties. The input of how, for example, the local area or shopping centre will be done when a major highway is passing through a county or shopping centre within that county will still require the input of the county government. Therefore, for this new reclassification to be

as effective as is required, there has to be sufficient collaboration and cooperation between the two levels of government as required by our Constitution.

It is with that in mind that this Bill creates the Boards as clearly elaborated here by the Senate Majority Leader, to facilitate for those occasions when a national agency may be carrying out works in a county that would require the input at the county level. That is the level at which cooperation will become very important.

On the question of how these funds will be administered, there was a request by the three agencies; the Kenya National Highways Authority (KENHA), Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KERRA) for an increment to the percentages that they normally receive. It was the consideration of our Committee that the percentages that they have been receiving, though not adequate, can still be administered and used in a useful productive way. It was, therefore, agreed that we retain this percentages as they are for the time being, until such a time when these agencies have been established under their new mandate and that can come under review during the next Intergovernmental Budget Executive Council (IBEC) meeting.

Lastly, the Senate Majority Leader also raised the issue of the qualifications of the Chairman of the Kenya Roads Board. There was a proposal from the National Assembly to amend the requirements so as to open it a little wider to accommodate other skills. However, upon consideration by this Committee, it became apparent that the intended widening of the gap was actually becoming more restrictive than being more accommodative.

We decided, as a Committee, that just like in every other profession and just like it was in the previous Bill, it is important to retain the qualifications in the realm of the professionals in the building and construction of roads industry, which is largely made up of engineers and architects. Therefore, that amendment was not upheld by our Committee because we thought that it was going to be unnecessarily restrictive and we proposed that we retain the qualifications as they were in the earlier Bill.

Having said that, I want to thank the Members of the Committee, members of the public, KENHA, KURA, KERRA and all the other agencies that made their presentations including the Council of Governors and the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development.

I second this Bill.

*(Question proposed)*

**Sen. Omogeni:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to also make my contributions to this very important Bill; the Kenya Roads Bill, 2017.

I must begin by registering my disappointment because this Bill is meant to kill the dream of devolution. It is regrettable that we are sitting here, as a Senate, exercising our Constitutional mandate under Article 95 of this Constitution, which is to defend devolution, to debate a Bill that wants to only allocate 16 per cent of revenue to our counties. This is the saddest day ever since we passed our Constitution in 2010.

All the national roads such as the road from Mombasa- Nairobi-Busia have been getting allocation of funds for the last 50 years; that is, ever since this country got Independence. We wanted devolution to open our counties and I am talking of areas in this country that have never known what it means to have a tarmacked road such as northern Kenya. We cannot sit in this Senate to debate Bills that are meant to mutilate the Kenyan dream of realizing true devolution of resources and all the goodies that come with devolution.

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

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

The preamble to this Bill is clear, that the issue of county roads has got the remotest attention from the drafters of this Bill. If you read the preamble, it says that it is a Bill for:-

‘an Act of Parliament to provide for the classification, management, construction and maintenance of public roads; to establish the Kenyan National Highways.’

It says nothing about the county government. Secondly, it talks about the Kenya National Urban Roads and thirdly, it talks of Kenya National Secondary Roads Authority. As a Senate, we must be assertive and must truly defend devolution. The best way to defend devolution is to resist and resist firmly any Bill that wants to deny county governments resources that are meant to change the road infrastructure in our counties.

I must register my protest and I will protest even if it means protesting alone against a Government that wants to deny counties money that can help improve the road infrastructure. I will protest during the day, at night and even for 24 hours a week.

If you read through this Bill, the attention is about national roads. There is nothing on how we shall improve roads in our counties. I come from a County where the only tarmacked road is the one that passes through Kericho-Sotik-Keroka. The other tarmacked road is the one that passes through Kericho-Ikongee-Nyamira-Kisii.

If you give my County 16 per cent, when will the people of the great County of Nyamira see tarmacked roads yet we define county roads as those roads that are connecting one constituency to another. Those are the roads in our counties and they are the ones that we are fighting for in order for them to receive enough resources that can enable people in the remotest parts of our counties to have tarmacked roads.

There are people here who imagine that the roads that matter are those roads that connect people from Nairobi-Thika-Nyeri or from Nairobi-Machakos-Mombasa. Every region in this country matters and what we should be talking about such roads is maintenance. If we have been giving money to KeNHA for the last five years for them to construct national roads then why are we thinking about giving them more money? Instead, we should give them 16 per cent to maintain those roads and give more resources to the county governments, so that we open up the counties to attract investors to come and do business and create employment for people in our counties.

Madam Temporary Speaker, secondly, I do not understand the obsession with creating multiplicity of boards to merely distribute money for construction of roads. I thought the intention was to create one entity that can divide money to be used to build roads in our urban centres, rural areas and from one city to the other. What we have here is a Bill that wants to create three boards and in every one of them you will find the same representation. How will the Permanent Secretary (PS), who has been provided to be the chair, sit in three different boards all at the same time? This is retrogressive. We had moved from an era where the Government was to have full control on the management of boards to manage our roads.

Madam Temporary Speaker, when I was the Chair of the Law Society of Kenya in 2007, when the Kenya National Roads Act that created the KeNHA was passed, we pushed that the LSK should have representation, so that the Government can also have a feel from those who come from the private sector. The person who was elected by the lawyers in the Annual General Meeting (AGM) in March, 2007, Ms. Anna Mureithi; she was picked by the then President Mwai Kibaki to be the Chair of the first KeNHA Board.

It is that lady who oversaw the construction of Thika Highway. She is a woman of integrity. I saw the other day that she has now been appointed to chair the National Hospital Insurance Fund (NHIF) Board. So, it is not the case that if you want to have an effective board, you must have engineers. That is retrogressive.

Madam Temporary Speaker, I will give two examples. The Judicial Service Commission (JSC), which is a critical body that interviews and picks candidates for the position of Chief Justice, Supreme Court Judges, Court of Appeal Judges, High Court Judges and magistrates, has members who are not lawyers. Some of the people who interviewed members to be appointed as Chief Justice and Supreme Court Judges were not judges or lawyers. In fact, the public picks people who know nothing about law to sit in the JSC. So, what is the obsession in this Bill that only engineers can sit in the board? Why do we have to leave out lawyers from sitting in this board, yet they have vindicated themselves? They have effectively served in these boards before.

Madam Temporary Speaker, the United Kingdom (UK) has moved away from the culture of saying that only the Government or people who are qualified in a particular field can sit in particular boards. The person who chairs the board that interviews judges in UK is not a lawyer, yet that country has made great strides in the legal field. So, I do not see the logic, merit or justification why a key body like LSK should be removed from representation in these bloated three boards. There should only be one body.

If we want to create a progressive board, we should make provision for representation from the Kenya Private Sector Alliance (KEPSA). They are the people who use our roads day in, day out. They are widely travelled and will give us the perspective from international best practices. We cannot keep engineers only. We need to bring people from the Kenya Association of Manufacturers (KAM) to give us a perspective. They will be able to explain the pains they are going through as manufacturers.

The people who discipline lawyers in the disciplinary committee of the LSK are not lawyers themselves. The public has two slots in the Advocate's Disciplinary

Committee. Therefore, we need to ensure that the stakeholders – the people who use our roads - are represented in these boards.

On the issue of maintenances that I have talked about, we now have the peak tourism season and most tourists who come to this country access the Maasai Mara through the Nairobi-Mai Mahiu-Narok Road. I do not need to fly to my county; I go by road. Look at the state of the road that was constructed five years ago. The potholes on the road are like gullies. I have made a point to personally call the Director-General of KeNHA seeking for his intervention. It is a shame for tourists to travel on a road which has those kinds of potholes, when all that is needed is maintenances.

What does it take to repair potholes on the road? He does not need to seek for more money. If he is a diligent Director-General, he should have made provision for road maintenance. If you travel to the UK and Australia, you will find roads being repaired every day and night. However, in this country, we leave the roads to be completely dilapidated and impassable and then rush to the National Assembly for more funds. That should not be the case.

Madam Temporary Speaker, the other issue is the idea of putting up toll stations on our national roads. The people who drive cars in this county have grown tremendously in the last five years or so. We used to have a toll station on Thika Road and it used to create massive traffic jams. What will happen if we were to create one on the Nairobi-Nakuru Road, which does not have six lanes? Thika Road can be managed because there are about four lanes. The Cabinet Secretary is then given a blanket cheque to designate areas for toll stations.

Madam Temporary Speaker, the problem we have in this country is that people enter planes and go to the UK where there are eight toll stations in roads where they are six to eight lanes. In such cases there are no traffic jams. The highway that connects New York City to Manhattan has eight lanes and a toll station. If toll stations were to be introduced on the Nairobi-Nakuru Road, which has a single lane, we will have terrible traffic jams.

Over and above that, we are also increasing the burden of taxation. Already, the fuel levy constitutes much of the money that we pay for fuel. When a litre costs Kshs100 about 50 per cent goes to the fuel levy. On top of that, we want to overburden Kenyans by putting up toll stations.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Omogeni, I will add you two more minutes.

**Sen. Omogeni:** Madam Temporary Speaker, I have seen that there is a provision in Section 7 to have representation in the Board from the Inter-Governmental Relations Authority (IGRA). The people who know the state of our roads in this country is none other the governors themselves. If you read this Bill, there is a provision for agreements between the county governments and these authorities on constructions of roads in counties. Therefore, the right people to sit in any of these Boards should be the Council of Governors (CoG) and not the IGRA.

This is because the governors are the ones who are on the ground, doing the implementation of roads and can engage the national Government. So, in terms of representation, we are getting it wrong when we want to give these slots to the IGRA

because it is a technical body that deals with other issues. However, the people who are on the political seats on issues of roads are the governors. These are the people who should be given a slot.

Finally, there is a provision in Section 62 that the annual estimates should be presented to the National Assembly. If we say 16 per cent of allocation should go to the county governments, why should there not be a provision that the Cabinet Secretary for Transport, Infrastructure and Urban Development will make a presentation to the National Assembly and to the Senate, so that our input as a Senate is taken. We should not be flower girls. The issue of roads is key to county governments and even to us, as Senators.

Madam Temporary Speaker, I close by making an appeal that we should consider amending that particular provision. This is for the Senate to have important say when it comes to annual estimates on the grant that should go to these three authorities and be spent in the construction of our roads.

**Sen. (Dr.) Ali:** Thank you, Madam Temporary Speaker. I am a very disappointed man because we have these authorities and boards, but they have not been functional. Why do we need to change the name of Kenya Rural Roads Authority (KeRRA) and Kenya Urban Roads Authority (KURA)? They have been there, but they have not done anything. Now we are being told to call them Kenya national and so on. They are already “national”, but they have not performing.

Therefore, I do not know what difference it will make. Instead of giving the money to the locals where it can be used by the county government, even if some of them are dysfunctional, but at least, it would be better off. A county like Wajir County has seen a tarmac road for the first time when devolution started. We are now talking about classification. We have had classification A, B and C roads from 1963 to date and we have not seen any tarmac or any good roads. We are living on cattle trucks. A road is classified as A, but it has nothing; even bush clearing is not done.

We want now to rename these authorities and create Public Roads Standards Boards. These things are not functional. We want to create four Boards which you want to give people money; second some staff there from the national Government. Deputy Directors would be deployed from the Treasury, Transport and Roads. The same guys will be on all these boards. What are they going to perform because the Principle Secretary will never attend any of these board meetings?

I have been a board member of organizations and there are officers who come from the national Government. They only come to earn their small allowances and they do not even say anything. The people who function are those ones who come from the private sector or other organizations. However, this is no longer in existence because three quarters of the board members are national Government officials. What change will it bring?

Madam Temporary Speaker, Kenyans are good in writing papers. However, when it comes to implementation, we are zero. This is where we are going right now. We want to create four authorities. What are the other three authorities doing? They have engineers. If they cannot even set the standards, why do we want to create another board to do so? I call that wastage of the little resources we have.

Clause 9 states:-

“The Cabinet Secretary shall by regulations prescribe standards for testing, design, construction and maintenance of national trunk roads by the roads authorities and county roads by county governments.”

Why do you need these public roads to be under the standard boards again? What will the Cabinet Secretary for Transport, Infrastructure and Urban Development do? He has already failed in his performance.

Clause 4 (b) states:-

“The principle of cooperation between the national and county government as envisaged under Article 189 of the Constitution and the land state actors in the development of the road sector.”

There is something called IBEC. They sat with the Council of Governors (CoGs) and agreed that 20 per cent of the roads levy to go to the county governments, but they have reduced it. In the Finance Committee, for example, we argued against this, but nothing happened. Here, they are saying that is part of the Act because the Articles they stated are not being followed.

Clause 4 (c) states:-

“The principle of public participation in development of policies, plans, programmes and budget processes for the development and management of roads---.”

When have we ever seen a public participation process happening if they want to make a road somewhere? People sit somewhere and agree. Areas like in northern Kenya where people are congested, there no roads and people do not travel. Nowadays we have become the “sky-team” also because it is cheaper to fly to Wajir County than to go by road. Every time we are being told money would be available.

For the last 50 years, the road from Garissa to Wajir is being tarmacked every five years, but nothing is happening. Sometimes I wonder why we come here to support things which never happen. I do not even see why we should support this Bill now because it has no meaning for the people of Wajir County. We are promised projects day in day out and nothing is coming out of this.

Clause (d) states:-

“the transparency, accountability and adoption of sound financial and management principles in the development and maintenance of roads---.”

As the previous speaker said, the Senator of Nyamira County, you allocate funds to the same roads for the last 50 years, but when you go there after one year, there are potholes everywhere. After every three years, a new contract is given and this also happens after every five years. This is a den for eating; it has nothing else and is not helping the people of Kenya.

In addition, we are being taxed inside and out and people are suffering every other day. They have now increased more taxes on transactions in the banks. If you transfer Kshs500,000, you are charged 0.05 per cent. I will collect all the money I can get and put it under my pillow. How will that help the Government of Kenya or the banks? This government should think properly; they are not using their heads.

Clause 6 states:-



“There is establishment of the Public Roads Standards Board.”

Clause 7 (i) States:-

“The national agency responsible for testing and research of roads.”

What is this national agency which is in charge of this? I thought Kenya National Highways Authority (KeNHA), KURA and KeRRA must have their own. All of them are made of engineers. What testing do you have? Why do you need to have another national agency? Are they coming to another board at 61 years just to put guys there whom they prefer as Chairmen of these boards?

No, this is not right. The way things are going in this country is not well. Every other organization and board which is formed has its headquarters in Nairobi. Why do we not have some of them headquartered in Isiolo County, others in Kisumu or Nyamira counties?

Coffee and livestock farmers are suffering; even some of those we are representing are suffering. I just came through the Marsabit road on Sunday because coming through Garissa was impossible. I, therefore, had to go to Marsabit, come through Isiolo and then I met cattle rustlers on the way. It is crazy! I was stranded for two hours because the military and the police had blocked the road because some guys had stolen cattle. They were fighting to recover the cattle and they did so. That is the sort of security we have in this country. Therefore, this issue of creating boards and state departments just to enrich certain few individuals should stop.

Madam Temporary Speaker, on the other issue that the Senator stated properly, I think it is only right that stakeholders are involved in these issues. I do not know whether proper public participation was done on this Bill when it comes to the composition of the boards or the authorities. The only thing they have cited here is the Institution of Engineers of Kenya and the Institute of Surveyors of Kenya. Where are the manufacturers and all the business communities who use these roads?

Madam Temporary Speaker, there was a time when a Cabinet Secretary (CS) invited us to go with him to inspect roads in North Eastern; I do not want to mention who it was. Do you know what? They guy was to fly in a helicopter, land in Garissa and then fly on to Wajir and Mandera. I said that if he was not going by road, I would not go with him, because what will he be inspecting? These are the CSs, Principal Secretaries and engineers that we have!

*(Laughter)*

They are in the “sky team;” they want to fly and the road is down there. How do you know about the road when you have never travelled on these bad roads? You give a contract to some funny guys who have never trained as engineers or surveyors. The so-called construction companies have certificates of engineers and surveyors, yet none of these professionals work for them. Pedestrians go and do roads and then we expect something will work out? This system of doing things in this country should change. To use the words of Sen. Omogeni, I protest!

Thank you, Madam Temporary Speaker.

(Applause)

**The Temporary Speaker** (Sen. Nyamunga): Proceed, Sen. Mutula Kilonzo Jnr.

**Sen. Mutula Kilonzo Jnr.:** Thank you, Madam Temporary Speaker, for the opportunity to say the following. One, it is a milestone to have the Kenya Roads Bill on the Floor of the Senate. This matter has come a long way.

Madam Temporary Speaker, when we received petitions under the Transition to Devolved Government Act, where the Senate was supposed to consider appeals of counties in terms of functions, one of them was the management of roads, other than forests and others. However, the most fundamental one that affected counties was roads. It was a quarrel. The Transition Authority (TA) gave out a timeline as to when these functions should be granted to counties. However, the national Government totally refused to gazette this function on the basis that counties did not have the capacity to do roads.

Senators, what is “capacity to do roads?” What is the secret about doing a tarmac road? This matter finally ended up in court, where Lady Justice Mumbi Ngugi issued an order to the national Government to gazette these functions for purposes of counties. The Gazette Notice was issued, but it had no framework. As a result, it was like the proverbial saying of giving with the right hand and taking away with the left.

Madam Temporary Speaker and hon. Senators, the roads that are under our function are 35,000 kilometres. The purpose of a Bill like this is to ensure that we can do roads in our counties. If there is an issue with capacity; we can build capacity. If the national Government can procure two Cuban doctors for your counties; why should we not hire capacity and buy trucks? I was pleasantly surprised to see Governor Waiguru with so many vehicles and earth movers. This is the infrastructure needed.

Madam Temporary Speaker, during debate on the Division of Revenue Bill, we turned a blind eye to something we should not have. We were supposed to get 20 per cent of the revenue to go to counties for the purpose of maintaining roads. However, there were other considerations – maybe political or the “handshake” – and, as a result, counties are still getting fewer funds to maintain these roads.

Madam Temporary Speaker, classification of roads is important. As far as I am concerned, classification has, in the past, been done in a skewed manner so that these functionaries sitting in Nairobi can make these roads look like miracles. Let me tell you; the only miracle I see in roads is what the Chinese have done on bridges and overpasses. For the rest, there is no reason why a road in Makueni; the Emali-Ukia Road, which is 52 kilometres, is under KeNHA. There is no reason on earth why the Machakos-Wote Road between Machakos to Ukia, is under KeRRA; and the road between Ukia to Makindu in the same road is under KeNHA.

This is the same road, in the same county, where there is no hill or bridge. This classification is just some amorphous thing that does not make sense. We have just created work for these national Government functionaries. I will say that again; we have just created work for these national Government functionaries when we should not have done so.

Madam Temporary Speaker, when you see what these agencies do to maintain the roads just before the end of the financial year, it is ridiculous, to say the least. These are just cowboy contractors. The only person I saw trying to deal with these cowboy contractors – and some of them are our friends – was the Rt. Hon. Raila Odinga, when he put down the cost of roads when he was the Minister. However, when he left, as Senators have said, the cheapest a kilometre of road in Kenya costs is about Kshs76 million.

How do you explain that? The bridge becomes even more expensive. Roads are Kshs3 billion or Kshs 4 billion; how will this country develop if 35,000 kilometres are multiplied by Kshs76 million? I can assure you, Sen. Mwangi that we will not be on earth when these roads are tarmacked! We will have gone to meet our maker, to spend time with Saint Peter in heaven.

Therefore, Madam Temporary Speaker, this framework is important. However, I would like the Senate to interrogate it in such a way that the absolute final role in terms of counties goes there. I have seen the classifications and I heard the Senate Majority Leader mentioning so many things about all those authorities. These authorities do not do much; what has KeRRA done to this country that is so monumental and so big that nobody else could have done it?

Madam Temporary Speaker, as I support this Bill, I know that Sen. Murkomen was here when we were dealing with the appeals from the counties. We have gone through this journey for too long.

I get the impression from the Senate Majority Leader that we want to do this in a hurry. Let us not do this in a hurry. Let us spend some time and look at this Bill clause by clause, delay it if we need to, call a *Kamukunji*, play some politics, and delay this Bill. However, let us make sure that the functions of the 35,000 kilometers I am talking about goes to counties.

We have a road in Mbooni. It is 29 kilometers done by a company called Victory. It cost Kshs4.2 billion. The road is incomplete. He left a cliff where it is downing like the Tharaka Nithi's side. Two weeks ago, a bus went over. Six months ago, a bus went over that road. When it loses control, you will not save a soul. There is no signage and there is nothing. If this Bill cannot address such discrepancies, I am going to move an amendment like the one I moved on the Public Procurement and Disposal Asset Bill. That the blacklisting of contactors must be real.

If somebody cannot perform and we have given him work, let us blacklist them by law so that they never touch a road, whether it is a marrum road or a village road, let them go and construct something above ground, but not a road. If we are going to develop, this matter must be dealt with.

If you look at Clause 41, it says:-

“Where the authority requires land for its purposes, the Cabinet Secretary shall submit a request for the acquisition to the National Land Commission ---”

My antenna went up when I thought of NLC. I almost remembered Ruaraka. These are the people who have caused us problems. The NLC shall provide roads. I will read this clause again, but I am persuaded that if this is a matter concerning counties and others, perhaps we may reconsider this clause. This is because the idea of having NLC is

where it is public land. What if it was private land? What if it is a land that is ideally under trust like we have community land which is under counties? There will be commas there. When I get the opportunity, I am going to propose amendments.

The Senate Majority Leader, we cannot leave Clause 47 like that. I will tell you why. When they were doing the Muwa Road, they went into our property. Along Muwa Road there is a river. They used that water which is the same that we sue for animals. Sen. Mary Seneta from Kajiado County knows how important it is to have our water resources not interfered with when people are collecting diesel and water to do the roads.

Clause 47 cannot remain this way because they are going to enter into our private properties and water pans and collect water without consulting the community. At the same time, they are going to pollute that water like the Chinese did with the Standard Gauge Railway (SGR). It should not be not allowed. It must be either at a cost or on agreement with the community or the county. This is so that it does not look as if the authority shall enter any natural resource. Do you know what that means for purposes of Kajiado? They will go to Nolturesh, and they will pick the water from Kilimanjaro. This does not give any caveat. That is something that I would be totally against.

The classification of roads under Clause 54 is also of concern to me. I do not know whether Sen. Murkomen mentioned, but I am happy that he mentioned the Intergovernmental Relations Technical Committee (IRTC). Sen. Murkomen, are we satisfied about this Committee led by Prof. Karega Mutahi to mediate on a matter between national and county governments on an issue on roads? They have been unable to mediate on many issues.

Why can we not have another better consultative forum or expand the mandate and membership of IRTC? As far as I am concerned, it is absolutely executive. The chairman works at the behest of the President. He cannot say "no". How can he be an arbitrator? I would prefer to have a different arbitrator for purposes of ensuring Clauses 69, 70, 71 and others.

Somebody wants to acquire the national park to do a road. The national Government wants to do an expressway from Mombasa all the way to Nairobi, they have decided to use largely part of Kajiado Constituency in Kajiado County. Sen. Murkomen mentioned a place called Machinery. It is famous because it was part of the old Mombasa Road. However, when they did the new Mombasa Road, they had moved the road five kilometers from the old road. So, Machinery is dead. When they do the next expressway that they have proposed and I have seen the design, Makindu, Emali, Sultan will be dead wood. There will be no town. If you want to go to Mombasa, what will you be doing going to Makindu? There will be no reason.

It will be much better if they were to join the old road and existing road by providing a way to get off. Makindu becomes our point where we go to Wote. Emali becomes our point to go to Wote if you are coming from Loitokitok. We must provide a good framework for those consultations. When we were doing the SGR, Sen. Mary Seneta raised this issue. There was environmental impact caused by the SGR.

There is a school in Emali where the SGR passes in between. They were not paid nor compensated. The school is affected and that is it. I have not seen that framework of consultation even where you do not pay the school. Some of these things that are here

will affect schools and public institutions. There must be a way in the law to ensure that these schools are rebuilt and renovated. The fact that that you want to do a road should not necessitate people suffering.

On those issues, I will be proposing those amendments so that it becomes mandatory for the Cabinet Secretary not only to consult. Public participation is not what they do. When we say “consultation”, it is not calling for a meeting for one hour and taking off. We are going to make sure that there is proper public participation and proper compensation, where necessary. If you are going to acquire a road, we do not want the NLC to do what they have done in Makueni. For the sisal farm, they have paid different rates in Voi and in Makueni, Kibwezi East.

Therefore, for purposes of ensuring that when we have those nice trunk roads that they are talking about; and envision a provision where we will have one along Uhuru highway, we must make sure that NLC and State functionaries do proper public participation and compensation. By the way, Senators, there is nothing wrong with telling them to pay commercial rates for private land. What is the purpose?

Sen. Mwangi and I were discussing the way President Moi brought titles to Nyandarua, his county when he was famous for opposing Moi and his regime. There should be a purpose for those titles. The Government should pay commercial rates. However, it is not only commercial rates; I am proposing that for purposes of *mama mboga*, *mama* Mutheu, *mama* Mwikali, and Jerotich, they should be provided with a valuer who can guide them on how to prepare these inquiries.

The inquiries the NLC is doing is a sham, a joke, an anathema, and an atrocity visited on Kenyans by a Commission whose interest is satisfying pockets and words that I do not want to use.

With those few remarks I support, but urge you Senators, not to rush this Bill. There is no hurry in the Senate, if I can use that word. Let us go clause by clause. Let us tooth comb these issues. However, we need to make sure that counties get the funding we are looking for. We want to bargain with this Bill. Senators, I am going to say so. We lost on our fund, let us not lose on this one. This is the thing. We are going to throw the dice and let us see how it works.

Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Very good. Proceed, Sen. Cherargei Samson Kiprotich.

**Sen. Cherargei:** Madam Temporary Speaker, I rise to support the Kenya Roads Bill, 2017. I have gone through the Bill for some time now and agree that there are amendments that will be of necessity. The issue of roads is very sensitive. You are my neighbour and you know that roads are important for you to go to any public function, birthday party, engagement party, funeral or even church service. The priests cannot move with ease to pray for us as we prepare to take the kingdom of God. It is a very sad state of affairs.

There is a lot of confusion in the counties. You will find the governor saying that a particular road is not his responsibility. The Member of Parliament, through the Kenya Rural Roads Authority (KeRRA), will also say that they have nothing to do with that road. I agree with what Sen. Mutula Kilonzo Jnr. said.

With regard to the Kapsabet- Nandi Hills- Kopere- Kisumu Road, there is a problem between Kopere and Kimwani. When we wanted to discuss the issue with KeNHA, it said that it is no longer within its domain. When we went to KeRRA, it said that it is a cross-county road that is under the purview of KeNHA.

Madam Temporary Speaker, we need to harmonize some of these issues. Now that we have this classification, costing and funds should go in a similar manner. I agree with what Sen. (Dr.) Ali said, that in law, we should focus more on how to be efficient. I do not think that efficiency will come when we have so many boards. These are the same boards that will create inefficiency in terms of discharge of the mandate of some of these bodies. When the time comes, I will also look at some of the amendments, so that we have a synchronized board where all these issues that have been discussed in terms of functions and its mandates can be done within a board. This will ensure that we do not have so many boards that can be an impediment.

We are looking for a way that the county governments can be in charge of most of the roads. We have feeder and access roads and there is a lot of confusion. Nowadays, when a road is opened, you will see the KeRRA sign post in partnership with the National Government Constituency Development Fund (NG-CDF). The county government then claims that the road has not been registered with KeNHA. It is very important to register the roads, so that when there is a problem with any specific standardization of the roads, it can be solved.

Madam Temporary Speaker, this Bill proposes the establishment of an authority called the Public Roads Standards Board, which will incorporate public participation. Clause 8 (2) of the Bill states:-

“In the execution of the functions under subsection (1), the Board shall take into account —

- a) best international practices;
- b) input from the general public and experts; and,
- c) the capacity of the relevant entities to comply with the standards.”

How do they intend to take into account the input from the general public and experts? Article 10 of the Constitution addresses the issue of public participation. I agree with the proposal, but how should it be done once the authority is in place? One of the proposed board mandate stated in Clause 8(1) is monitoring system to ensure adherence to the standards. That is okay because it can come in terms of enforcement.

Madam Temporary Speaker, we have issues with contractors even in my county. We have about five tarmac roads under construction. I, therefore, agree with them on the standard contract forms of works and consultancy services. I hope that this is not an avenue of breeding corruption within the tendering and contracting process of the many roads. We do not know the standardization of many roads. A road that is meant to be ready in three years takes five years.

You find people protesting on the ground because they want to know the contents of the Bills of Materials (BOM) and yet, the contractor has a different BOM. I hope that this standardization will cure all these issues, such that by the time a contractor is on site, he can ensure that targets are met.

I do not sit in the Committee on Finance and Budget, but Sen. Mutula Kilonzo Jnr. does. He can tell us that a lot of money has been spent on consultancy services in this country. I do not know what the consultancy services are, but they take up a quarter or a third of the total cost. I hope that with this standardisation, we will have an opportunity to regulate some of these things, so that we do not use a lot of money for road design and consultancy services on which we spend a lot of money before the start of the actual works.

Madam Temporary Speaker, on the issue of the boards of these authorities, I agree that some of these issues can overlap and they can be done in one board. Regarding the usage and access of roads; we have weighbridges in this country because we need to regulate usage and access to most of our roads. A good example is on the standardisation of roads. I will give the example of the road that connects Kopere, Maraba and Timboroa in my country. The standard that this road was made of is not the standard for transporting cane. Therefore, even as the contractor finishes work, the repairs have already started.

This means that by the time we award a contract for construction of a road from point A to B, we should specify the standard, considering the usage of that road. Subsequently, we will not be using a lot of money to repair and maintain a road barely six months or one year after the contractor has left the site. Therefore, I hope that this authority will bring in some sanity so that when we are constructing a road from point B to C, we should then know its classification and standard.

Madam Temporary Speaker, I think that public participation has just been mentioned simply because it is provided for in the Constitution and just because they know that Kenyans are now very keen on public interest litigation. That is why they have just mentioned it in passing, because they know that if they do not include it here, they risk being taken to court. Now that everybody has an opportunity and Kenyans are now litigious, they have now become aware and conscious of their rights.

Madam Temporary Speaker, I have seen the issue of toll stations or revenue collection centres. We need to look at this issue properly so that it becomes a good thing in terms of road maintenance. We also have the fuel levy fund, where every litre of petrol consumed is taxed a lot of money and, which goes into road maintenance. Therefore, how will these proposed toll stations operate?

This is because, at the moment, we have illegal "toll stations" in the name of police officers along many roads. That is why you will pass the road in the morning and, in the evening, you will encounter around three roadblocks within a span of 20 kilometres. I hope we will be able to factor in and sort out some of these issues once and for all.

Madam Temporary Speaker, we hope that when this road classification is implemented, we will want to see these roads that interconnect counties so that KeNHA can take a more proactive role in ensuring that some of those roads are maintained. This is because we have a regional manager of KeRRA at the lowest level in the county, who cannot go beyond the county because sometimes some of maintenance---

Madam Temporary Speaker, I have seen in a part of the Bill that we are going to have a Private-Public Partnership (PPP) arrangement. Consequently, we need to instil confidence in investors so that going forward, this arrangement can work.

Madam Temporary Speaker, looking at Clause 43, this issue of the National Land Commission (NLC) is a dangerous monster. We saw in the issue of the Standard Gauge Railway (SGR), where there was a case between the NLC and some people, including some environmental activists. The NLC is a creature of the Constitution, but it has now become a dangerous dragon. Its tentacles are expanding at a supersonic speed, which is very disturbing. We, therefore, need to relook at the role of NLC in terms of compulsory land acquisitions anywhere in the country.

I know that a bypass has been proposed to be constructed in Uasin Gishu from a place called Cheplasaki all the way to Turbo. The money is there, but the NLC wants to decide how much they will pay for your land. So, you will find that people with land in the same area are being paid different rates despite the fact that most of them have title deeds. It is the same monster that we are feeding. We are enriching the NLC. It is like a child who has grown up to be a rogue.

The NLC is now a rogue child we have in this country. That is why we have so many litigations against SGR compulsory acquisition of land. Let us re-look at the role of the NLC so that our people will not be exploited because our people are poor. If you tell them you will pay Kshs1 million for one acre somewhere where the road bypass will pass, and then somebody else is paid Kshs5 million per acre. Due to the poverty that we have in this country we are opening opportunities for cartels and other people to take advantage of our people.

Madam Temporary Speaker, Sen. Mutula Kilonzo Jnr. only looked at Clause 47. There is a danger lurking in Clause 48 that we need to re-look at. As I speak, the issues we have in mining; like the rights of mining, titanium, mining rights in Migori and even in my county in Chemase, are brought about by exploitation of people whose land has been taken. We need to protect these people. If the law will not protect them, who else will do so? The same NLC is fleecing and taking advantage of the people's ignorance.

With regard to the Turkana oil issue, people are now protesting and blocking the roads. They want the issue of health, the value of natural resource and the environment to be addressed. So, even as we allow some of these things to happen, we must look at the environmental hazards. We must read the article in the Constitution on Environmental Rights. It is said to be between the owner and failure to agree. You are just exposing the owner. You can imagine someone who is illiterate and the bypassing is passing by his land. You then tell that person to agree with KeNHA or KURA.

That is why you will find that when you go there as a leader, people will still complain because they did it out of ignorance. Somebody will tell them your land is worth Kshs100,000 and yet they have never handled more than Kshs10,000 in all their lives. They will take that Kshs100,000, but in the real sense, the value of their land is more than that.

Going forward, let us protect our people from exploitation. I wanted to touch on what Sen. Mutula Kilonzo Jnr. said because water resources is very important for people



who come from his region and also for Sen. Mary Senata, Sen. Pareno and even Sen. Kabaka. Water is life.

We are struggling with water borne diseases in this country as a result of pollution. It threatens the livelihood of many people. Therefore, it is very important that we look at the issue of environment. If we pass this Bill the way it is, we will risk a court case in terms of abuse of environmental rights.

Madam Temporary Speaker, Clause 2 states:-

“An authority exercising its power shall not be liable to payment of any levies and charges not imposed by the national Government---”

But we have county governments. They are distinct and inter-dependent. That is where we will have a lot of problems with the county governments because they have also been given an opportunity by the law to impose taxes and levies.

I can see my time is over and I know Senators are very passionate about this issue of borrowing. I have looked at it; it states that the authorities have been given opportunity to borrow. We should be very careful. They can decide to open blank cheques and ensure to borrow left, right and centre. So, borrowing must be regulated.

As I support this Bill, I want to call upon my colleagues, let us re-look at this law. Kenyans will judge us harshly. The roads issue is a very sensitive one. You cannot move unless you have an advantage of having a helicopter in this country. The only advantage is that you do not need to go high up in the sky, you can just fly around.

I thank Sen. Pareno for smiling because the future is bright. We must relook into that because all of us use roads since they are key.

Sen. Cheruiyot and I come from an agricultural area but the biggest challenge we have is roads. When he goes to his home in Kericho County, the problem he faces is about roads. Tea cannot be taken to tea-buying centres and factories because when it rains, by the time a lorry reaches a tea-buying centre, it is around midnight and by the time milk comes all the way from Chepterwai to where it is sold before it is taken to Kisumu County, it is usually around 11.00 a.m. and the milk has already gone bad.

I know that even tourism is not doing well but we need Mombasa County. We need to ensure that the roads in Mombasa are in good condition in order to spur growth.

Madam Temporary Speaker, I support.

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, this Bill has attracted a lot of interest. I will reduce debate time to 10 minutes and I think that is in order.

**Sen. Cheruiyot:** Madam Temporary Speaker, I will try and use less than 10 minutes. I almost complained about the time it took for me to be reached but I have realised it was a blessing in disguise because I have had the opportunity to listen to my colleagues and hear their thoughts about this Bill.

The vogue term this afternoon is “I protest”. These words were used by Sen. Omogeni and Sen. (Dr.) Ali because of the many provisions in this Bill that they do not agree with.

I served as a Member of the Committee on Roads and Transportation in the previous Senate. I sat and listened to all stakeholders who gave us memoranda and presentations about this Bill that is before us. Therefore I know this Bill in and out

perhaps better than any other Bill that has been tabled before this House because then as an ordinary Member, I had more time to do legislative work than I have nowadays.

**Sen. Mutula Kilonzo Jnr.:** On a point of order, Madam Temporary Speaker. Did you hear the good Senator say that when he was an ordinary Member and now he is not an ordinary Member? Is he suggesting that we gave a category of Members in this House? Could he clarify that?

**Sen. Cheruiyot:** Not to demean anyone, I meant my responsibilities have grown immensely of late. Therefore I find myself straining in terms of time to do legislative work.

I listened to almost each and every organisation that has been mentioned and all the stakeholders that came before us to give memoranda and presentations. Therefore, I do not want to take a lot of time delving into issues about the many boards that have been created, their duties and their constitution.

I agree with many of the sentiments that have been raised by colleague Senators. However, the English have a saying that he who pays the piper calls the tune. The crux of the matter in this Bill is in the First Schedule. Concerning distribution of resources, who will manage what percentage and the amounts of money to be sent to the various Government departments and county governments? That is where all this debate should lie.

As a House, we are being called upon to make an extremely important decision that at the end of the day can be used to judge whether we are truly the custodians and defenders of devolution or whether we are just rubberstamps and an appendage of the Executive.

Madam Temporary Speaker, there are three important points I want to raise. Allow me, because I am in the Third Schedule to do it downwards as I rise upwards. The seventh part of the Third Schedule speaks about the percentage of the fuel levy that shall be sent to the National Transport and Safety Authority (NTSA). One per cent is what is being proposed. The National Transport and Safety Authority appeared before us, then showed us the budget and the amount of money that is being sent to them.

Basically, apart from salaries, there is nothing else that the NTSA shall do if we grant them only one per cent of fuel levy yet the world standard is 3percent. Countries that are better organised and know how to run the business of roads, taking care of the roads give three per cent to the authorities charged with managing safety on the roads.

Madam Temporary Speaker, each December, Easter holiday and during the peak travel season in our country, we witness huge amounts of road accidents that continue to take the lives of innocent Kenyans. Yet I remember that a few months ago when we had all the hue and cry about the number of accidents we were seeing on the roads; the Government thought of an extremely simplistic situation and said that NTSA has been defeated in terms of managing and providing safety on our roads and therefore kicked out of the roads. What a shame!

If you do not provide for them the funds to do their job, like run road safety campaigns like they used to do back in the day---. When I was a primary school student you would have the officials from the Ministry of Transport visit schools and remind you how to cross roads or drive. Nowadays, we do not have that kind of sensitization yet the

number of people that own and drive cars has increased. Therefore, when we say that we want to give NTSA only one per cent of the fuel levy and expect that, miraculously, there shall be safety on the roads we are building, we are fooling ourselves. This cannot be allowed.

At the right time, I shall be proposing and moving an amendment and convincing my colleagues not to allow this. If you want safety on the roads which you drive on every day, your family members, your constituents use, you must give NTSA at least three per cent which is the global standard and what countries that know what they are doing give to road safety institutions.

Secondly, the 1percent Kenya Wildlife Service (KWS) is being given to maintain roads inside the national parks and Sen. Omogeni alluded to it very keenly and I agree with him. Maasai Mara, for example, a world renowned, the best voted world over on many times to be the best national park in the whole world. Look at the roads to Maasai mara, all the way from Jomo Kenyatta International Airport (JKIA). The minute you get to Mai Mahiu tourist are getting stuck for more than three to six hours because of the poor state of the road.

Then you get to Narok town between Narok and Sekenani gate, the most famous gate; that cannot be classified as a road. This is because we have taken the money that is meant to sustain our tourism sector and it is being held by the mandarins in the Ministry. Yet we want to say that because KWS only manages inside the parks, we want to give them only one percent. That cannot be the case; we must expand and see that institutions and roads that generate revenue and income for this country get good value for money.

Therefore, one percent cannot be enough. If one percent is being given to KWS then what percentage shall be invested to ensure that roads leading to our national parks in Tsavo, Samburu, and Maasai Mara are properly carpeted? Subsequently, tourists who bring us a lot of income on foreign exchange get to enjoy good roads. Otherwise we can kiss tourism goodbye because Tanzania is doing better roads than us. The roads that lead to Serengeti cannot be compared to the roads that lead to Maasai Mara. We are joking and before we know it, we shall lose the glam and the stature of Maasai Mara.

The Senate should not pass this Bill as it is, because it seeks to only send 16 per cent to our county governments. The Government, at an Intergovernmental Budget Executive Council (IBEC) meeting chaired by none other than the Deputy President, promised our county governments at least 20 per cent. If we pass it as it is, we shall be shooting ourselves in the foot. At no other time shall we say that we are custodians and defenders of devolution. In fact, if we pass it, we would rather close the Senate and report to work at the Office of the President, because we shall cease to be Senators. We would probably have become rubberstamps of the Executive. I cannot support the 16 per cent. We must stick to the agreed 20 per cent for our counties to construct their roads.

A lot of human hours are being wasted on roads because we have the model of holding a lot of money at the center. Why can we not distribute it to the counties and let them construct the roads? I travel to Kericho almost every weekend and, in the process, waste not less than 10 hours on the road. I spend two hours in Nakuru because the national Government has never constructed a bypass. Then I spend one hour at Gilgil and another hour between Soko Mjinga and Limuru.

This happens because people at the center do not see it as a priority, yet Kenyans continue to suffer weekend in, weekend out. The best way to solve this is by devolving the money. It should be sent to the counties, so that they can identify the priority areas. They know where people get stuck and that is how we will solve this menace.

With those very many remarks, I protest just like the rest of my colleagues.

**Sen. Faki:** Asante sana Bi. Spika wa Muda kwa kunipa fursa hii kuchangia Mswada wa Barabara, 2017. Mswada huu umekuja katika wakati mwafaka ambapo swala la barabara linazidi kuangaziwa katika Jamhuri yetu ya Kenya na pia kaunti zetu zote 47.

Nitazungumza kuhusu Mombasa. Kwa muda mrefu sana Tumekuwa na barabara mbovu, hasa zile zinazounganisha Bandari ya Mombasa na nchi ya Kenya kwa ujumla. Mizigo nyingi inayotolewa Bandari ya Mombasa inasafirishwa kwa barabara ikielekea sehemu za bara ambapo inahitajika. Kwa muda mrefu sana barabara ya kuingia katika Bandari ya Mombasa ilikuwa mbovu na nyembamba sana kiasi ambacho magari miwili yenye mizingo hayangeweza kupishana. Lakini, nifuraha kuona kwamba barabara zote zinatengenezwa ikiwepo ile ya kutoka ndani ya bandari na kuingia barabara kuu ya Mombasa-Nairobi. Kuna barabara nyingine pia ambayo ilifunguliwa hivi majuzi na Mheshimiwa Rais ambayo inapitia Port Reitz na kuelekea mpaka Bonje. Hizi barabara zimetoa afueni kubwa kwa wakaazi wa Mombasa ambao wangetumia masaa matatu au manne kusafiri kutoka Mombasa Mjini hadi Mariakani.

Barabara katika kivukio cha *Causeway* ambacho kinaunganisha Changamwe na Mji wa Mombasa pia kimepewa mwanakandarasi na kinarekebishwa hivi sasa. Hata hivyo, tunasikitika ya kwamba magari mikubwa bado yanatumia barabara hiyo na kusababisha msongamano na ajali nyingi katika sehemu hiyo.

Ningependa kuzungumzia mambo matatu. Hivi majuzi tuliona taarifa katika vyombo vya habari iliyosema kwamba Mheshimiwa Waziri wa Barabara na Usafiri, Bw. Macharia, alisema kwamba wamefaulu kuyaondoa magari mikubwa, hasa malori 500, barabarani kwa muda wa miezi sita ambayo *Standard Gauge Railway (SGR)* imeweza kuchukua makasha ya bidhaa kutoka Bandari ya Mombasa na kuyaleta Nairobi. Hilo ni jambo la kusikitisha kwa sababu wenye biashara ambao wanamiliki magari hayo hivi sasa wamepoteza biashara. Vile vile, wale watu ambao walikuwa wameajiriwa kufanya kazi kwenye hayo magari wamepoteza ajira. Vile vile, biashara katika baadhi ya miji kama Mariakani, Mazeras, Maungu, Voi na hata Mlolongo imepungua kwa sababu madereva walikuwa wakisimama katika vituo vile na kununua bidhaa tofauti tofauti.

Waziri ameahidi kwamba kufikia mwisho wa mwaka, ataondoa magari elfu tatu hususan katika barabara ya Mombasa-Nairobi. Hili ni jambo la kusikitisha kwa sababu biashara ambayo inanpatikana kwa magari yale kutumia barabara ile itakwisha yote na miji mingi midogo midogo itakufa. Tumepewa mfano wa Mji wa *Machinery*, uliokuwa mji mkubwa wakati wa hapo nyuma, lakini sasa umekufa kabisa. Miji mingine mingi itakufa kwa sababu biashara itapungua kutokana na kulazimishwa kusafirisha makasha yanayo toka Bandari ya Mombasa kwa njia ya *Standard Gauge Railway (SGR)*. Katika mpangilio huo, wananchi hawapewi fursa ya kuamua iwapo watasafirisha mizigo yao kwa magari au kwa SGR. Hili ni jambo la kusikitisha.

Bi. Spika wa Muda, sasa tumeambiwa kwamba kutajengwa *Express Highway*, ambayo itakuwa na barabara sita; tatu kila upande. Kama itakuwa hivyo, inamaanisha kwamba tutapoteza pesa kujenga barabara hiyo ilhali magari mengi hayataitumia.

Jambo la pili la kusikitisha ni kwamba hivi majuzi katika Mji wa Mombasa mpaka Kilifi na upande wa Kwale, *Kenya National Highways Authority* (KeNHA) waliingia barabarani na kuvunja biashara na majumba ya watu. Mengi ya majumba yale hayakuwa kwenye barabara ama *road reserves*. Hizi ni sehemu ambazo walidhani ni *road reserves*, lakini wakachukulia kwamba ni sehemu ya barabara. Waliingilia watu alfajiri na kuwavunja manyumba yao. Hili ni jambo la kusikitisha, kwa sababu wananchi wa Kenya wanataabika kwa mambo mengi.

Kwa hivyo, wanapoweza kuimarisha biashara zao au kujenga makao yao, halafu yaje yavunjwe bila ya kulipwa ridhaa, jambo hilo linaweregesha nyuma. Ukienda huko, mpaka sasa utaona majumba mengi yamevunjwa katika barabara ya kuelekea Kilifi naupande wa Diani, katika Kaunti ya Kwale. Sio sawa kwa shirika la Kiserikali kama KeNHA, amabalo lina takikana kufuata sheria katika kufanya jambo kama hili. Iwapo wanataka kuvunja watu majumba, wanafaa kutoa arifa ya kutosha. Pia wanafaa kuwatayari kulipa ridhaa iwapo ile sehemu wanayoichukuwa ni ya mtu binafsi.

Bi. Spika wa Muda, jambo linguine nililo liona katika Mswada huu ni kwamba mashirika matatu yanatarajiwa kuanzishwa kusimamia mambo ya barabara. Hayo ni KeNHA, *Kenya National Urban Roads Authority* (KNURA) na *Kenya National Secondary Roads Authority* (KNSRA). Kwa vile sasa Serikali ni mbili; Serikali Kuu na serikali za ugatuzi, hakuna haja ya kuwa na mashirika matatu ya kusimamia barabara. Hii KNSRA haitakuwa na faida yoyote ikiwa kazi za barabara zitapewa serikali za kaunti. Hii itakuwa ni kulumbika mashirika wakati kazi zinazofanyika hazijulikani. Kwa hivyo, nakubaliana na mapendekezo ya wezangu ya kubadilisha jambo hili ilituwe na mashirika mawili tu; moja ya kusimamia barabara kuu, yaani KeNHA, na nyingine itakayo simamia barabara za kaunti katika Jamhuri yetu ya Kenya.

Bi. Spikawa Muda, jambo la mwishoni kwamba, mara nyingi barabara za miji, yaani *urban roads*, zinaharibika haraka kwa sababu wanaopewa kandarasi za kuzitengeza hawana uzoefu. Mara nyingi, wanaopewa kandarasi zile ni kampuni zilizo andikishwa kuuza vitabu. Hatimaye, barabara zile zikijengwa, zinafukuka baada ya siku tatu au nne. Kwa mfano, hivi sasa Mombasa kunanyesha. Kuliponyesha juzi halafu kukakauka, barabara zilitengezwa.

Hivi sasa kumenyesha tena na barabara zote zimefukuka, na imekuwa shida kwa magari kupita. Kwa hivyo, ni lazima kampuni zinazo pewa kandarasi za kutengeza barabara ziwe na uzoefu na ujuzi wa kufanya hizo kazi za kujeng barabara. La sivyo, barabara moja itakuwa inajengwa mara nne kwa mwaka, na tutakuwa tunapoteza raslimali chache za umma ambazo zinge tumika kwa masuala mengine.

Kwa hayo mengi, Bi. Spika wa Muda, nashukuru kwa kunipa fursa hii.

Asante.

**Sen. Pareno:** Thank you, Madam Temporary Speaker, for giving me this opportunity to contribute to the Kenya Roads Bill (National Assembly Bills No.47 of 2017). Mine is not a protest, but I will be asking for support for the improvement of this Bill that we have submitted this afternoon.

Our roads are in a pathetic state, especially where I come from. As we all know, right from Independence, there are areas which are more developed than others. Even in developed areas, some roads are not in good conditions. Sometimes there is so much confusion as far as road construction is concerned. When you ask why a particular road is not done, you are told this is a national authority road or a county authority road. So, the citizens are left in between the national and county and neither is able to perform their duties.

I believe this Bill will help because it proposes to dissolve the KeNHA, the KeRRA and the KURA, so that we have one system under which we can manage our roads. On that aspect, I want to say that this is the way to go. We cannot afford to have roads that are said to be national roads, but the county cannot intervene in a national road because we are waiting for the national Government to come and handle it. Additionally, the national Government does not intervene in a county road because they are waiting for the county. Yet, the county is starved of money by the national Government and is not able to do all roads. So, I support this Bill to the extent that it comes up with a one system of managing our roads.

Madam Temporary Speaker, in one of the clauses, this Bill also introduces an Annual Roads Works Programme. If we had an annual programme of construction and managing our roads in the country, we would not be complaining about the poor state of our roads. What we lack in this country is that we do not even manage those that we have constructed to an extent that a road becomes nonexistent. Therefore, the aspect of introduction of an Annual Roads Works Programme is good if it is maintained annually.

We should keep to the “annual maintenance,” “annual construction of new roads” and “annual management of roads.” By so doing, we would do well as far as infrastructure of the roads is concerned. So, I hope it would be implemented annually and that we will have the funds as per the programme.

I will not say much about funding because many Senators have already talked about how much funds need to be devolved. I do not know why it is proposed that even when you want to classify a road you have to write to the Cabinet Secretary for approval. Surely, we are talking about devolution. We should devolve the services. These authorities will have the power to look for money, manage and construct roads. Why should they seek authority from the Cabinet Secretary in the national Government to implement their programmes or classify roads?

I oppose this because we should empower the counties to be self-sustaining. They should be able to classify the roads. Let us give them the necessary personnel for classification. Let them implement the proper construction of roads programmes without hindrance. Otherwise, if we tie this to the national Government, then we will not be doing what is intended in devolution.

Madam Temporary Speaker, I will talk passionately about the compulsory acquisition of land because of what happened when the SGR passed through Masailand. At that time, I remember a delegation of citizens from Kajiado County coming all the way to State House to ask for a renegotiation of the percentage of compensation that was given to them.

Madam Temporary Speaker, this was very discriminatory on the people of Kajiado County. I am now talking about the Standard Gauge Railway (SGR) from Mombasa to Nairobi along the Kajiado and Makueni boundaries. On the left side is Kajiado and they are paid 35 per cent; on the right side on the same route is Makueni and you pay 85 per cent? What an injustice? I remember a delegation coming all the way to come and ask why they were being discriminated upon; why the 35 per cent while the other side is getting 85 per cent? This was not even resolved. There were protests all over.

Madam Temporary Speaker, when it comes to compensation, we should have clear standards as to how we are going to compensate our people. We cannot afford to have discriminatory standards when it comes to land compensation.

Madam Temporary Speaker, on Clause 41, as we look into the issues of acquisition of land, we agree that there should be compulsory acquisition because of national interest and development, but people must be treated in the same manner. You can imagine; the same land, rail, citizens but different compensation, just because one side is Makueni and the other is Kajiado. That was an injustice that we would not want repeated. It should be corrected by this Bill so that when they refer any issue to the National Land Commission (NLC), there must be some provision that the standards of compensation should not be discriminatory.

On the issue of consultation with the people, yesterday we debated the Public Participation Bill (Senate Bills No. 4 of 2018). We need to consult with our people as we do these projects that are to be done where they live. I say this because many people were displaced by the SGR. Up to now there are no proper exits and underpasses to an extent that many people are blocked from accessing facilities on the other side of the SGR. We have also have had so much floods because even the waterways were blocked.

If one wanted to use the peoples' water in road construction there must be some consultation for them to understand why you are using that water. I do not even agree that we should use the wells, boreholes and dams of the people without compensation. I think this will motivate the people for us to be able to have these projects owned by them.

Madam Temporary Speaker, there is one very important aspect. When the SGR was being constructed, a total of 88 boreholes were dug along the route. This is because water is used when you are doing the SGR and the roads. Out of those 88 boreholes, they took away the equipment when they finished the construction. That was so malicious to the communities. It is my prayer that in this Bill, there should be a component of Corporate Social Responsibility (CSR), so that when we do boreholes and the dams that we are using to construct the roads, please leave them for the benefit of mwananchi. Do not destroy them, leave them shapeless and take away the equipment. If those 88 boreholes were left, they would have today helped people along the routes of construction.

*(Sen. Pareno's microphone went off)*

**The Temporary Speaker** (Sen. Nyamunga): You can utilise the last one minute.

**Sen. Pareno:** Madam Temporary Speaker, just one minute. We need CSR as a component in this Bill so that as you do the construction and the boreholes that will help to do the roads or the rail----. Since they scoop a lot of gravel as they do the wells, they should leave those dams to the people as a form of CSR.

Thank you.

### ADJOURNMENT

**The Temporary Speaker** (Sen. Nyamunga): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The House, therefore, stands adjourned until tomorrow, Thursday 5<sup>th</sup> July, 2018 at 2.30 p.m.

The Senate rose at 6.30 p.m.