

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 24th July, 2018

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

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

SUPPLEMENTARY ORDER PAPER

The Speaker (Hon. Lusaka): Hon. Senators, I wish to draw your attention to the Supplementary Order Paper which has been circulated to you. We will be using it.

BREAKFAST MEETING WITH THE CRA ON THIRD GENERATION REVENUE SHARING FORMULA

Hon. Members, I have a second communication to make. The Commission on Revenue Allocation (CRA) is an independent Commission set up under Article 215 of the Constitution of Kenya, 2010. Its core mandate is to recommend the basis for equitable sharing of revenue raised nationally, between the national and the county governments and among other governments.

The Senate leadership, in partnership with the CRA, has organized for a breakfast meeting between the two institutions for the purpose of discussing the Third Generation Revenue Sharing Formula. The meeting is scheduled to be held tomorrow, Wednesday, 25th July, 2018 at Radisson Blue Hotel, Nairobi, from 7.00 a.m. I invite and urge all hon. Senators to plan to attend this important meeting.

VISITING DELEGATION FROM KOLANYA GIRLS BOARDING SCHOOL, BUSIA COUNTY

Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kolanya Girls Boarding School, Busia County. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them.

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On behalf of the Senate and on my own behalf, I wish them a fruitful visit.
Thank you.
Let us move on to the next Order.

BILL

First Reading

THE CARE AND PROTECTION OF OLDER MEMBERS OF SOCIETY
BILL (SENATE BILLS NO.17 OF 2018)

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

Next Order.

BILLS

Second Reading

THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND
DESIGNATED STATE OFFICERS) (AMENDMENT) BILL
(SENATE BILLS NO.2 OF 2018)

The Speaker (Hon. Lusaka): Hon. Senators, I direct that the Division Bell be rang for five minutes to enable us raise the requisite numbers for a division.

(The Division Bell was rung)

Hon. Senators, it is apparent that we do not have the requisite numbers to go for a division. Therefore, we will skip Order Nos. 9, 10 and 11 to go to the next Order.

(Bill deferred)

Second Reading

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

(Bill deferred)

*Second Reading*THE SALARIES AND REMUNERATION COMMISSION
(AMENDMENT) BILL (SENATE BILLS NO. 12 OF 2018)*(Bill deferred)**Second Reading*THE IRRIGATION BILL (NATIONAL ASSEMBLY
BILLS NO.46 OF 2017)

Sen. Dullo: Mr. Speaker, Sir, I beg to move the Irrigation Bill (National Assembly Bills No.46 of 2017) be now read a Second Time. This is a Bill that was introduced to this House sometime back, but unfortunately, it did not go through. It has now come back through the National Assembly; it is the same Bill.

This Bill is very important because it is putting a legal framework in place in terms of how irrigation schemes are supposed to be managed. This is a constitutional right in terms of how we should manage irrigation schemes in this country. We have been having irrigation in this country for a very long time, but with poor management. Therefore, it is really important to have a better legal framework in place. We normally experience many problems whenever there is drought in this country. It is important for us to have irrigation schemes, so that we can supplement the rain-fed agriculture.

Mr. Speaker, Sir, having said that, irrigation schemes will allow this country to have food security. We have many problems during drought. The people in Northern Kenyan survive through famine relief, but if we put better structures in place in form of irrigation schemes and how we can increase food production, we will have food security.

Again, this will enable us reduce rural-urban migration. Most of the people leave rural areas for urban areas to look for jobs. If we have proper legislation and legal framework in place, we can create irrigation schemes that will create employment for many people in our counties.

In Isiolo County, we have several irrigation schemes but the challenge is that normally a lot of money is pumped from the national Government but we do not have proper mechanisms in place in terms of managing them. I brought a Motion to this House regarding the Malka Daka Irrigation Scheme. Year in, year out, the Government pumps in money, but unfortunately it has not picked up to date to benefit the communities. If we have proper irrigation schemes in place, especially in areas that have water problems, they will help communities. Development will also improve in areas where we will create irrigation schemes, for example, we will have better roads. Of course, we will also have extension of electricity. This will also encourage investors to invest in our country.

This is a very good move. We should have irrigation schemes. If we have proper irrigations schemes, it will help and increase the Gross Domestic Product (GDP) of this country.

Mr. Speaker, Sir, we have a lot of problems in terms of marketing but if we have proper structures in place, markets will improve and our harvest will improve too. The issues of crop failure will not affect us. In addition, we will sustain the production of our crops so that we do not rely on foreign countries to bring food to our country.

Mr. Speaker, Sir, this is a simple Bill. There are certain issues that were raised last time when we introduced the Bill in the House that require amendment. Once it goes to the Committee, we will sieve out those issues and areas that require amendment.

The Bill provides for the establishment of the National Irrigation Development Authority which is important. Once we have the Authority in place, as outlined in Clause 7, then it will take care of the issues of irrigation schemes and strengthen the Authority that we have in place.

Clause 8 of the Bill provides for the powers and functions of the Authority. This is clearly stipulated in the provisions of the Bill. It will guide the Authority on how the scheme will be managed.

Clause 9 of the Bill provides for the Board of Authority. It is important for us to have a board in place so that it can guide in terms of policy and how the Authority is supposed to function.

Clause 10 of the Bill provides for the conduct of business and the powers of the Board which will guide how it should operate. In Clause 12, there is a provision for the Chief Executive Officer who will run the day to day activities of the institution. Once we have this structure in place, we will be able to guide the institution properly if we get the right person.

Clause 14 of the Bill provides for the role of the Government where the Cabinet Secretary is supposed to take care of how the Authority should run. Also, the county government is supposed to establish a structure that should be managed properly.

Clause 15 provides where the Cabinet Secretary is supposed to guide the stakeholders on how the irrigation scheme are supposed to operate. This Bill, once passed with the relevant amendments that the Members will introduce, we will have a better strategy in place on how irrigation schemes will be managed.

Mr. Speaker, Sir, there are areas where we want to establish irrigations schemes and the issues of boundary disputes affect most of the counties that are supposed to have intercounty irrigations schemes. I believe that once Sen. Mutula Kilonzo Jnr.'s Bill goes through and we are able to fix our boundaries, then we can have intercounty irrigations schemes.

In this Bill, there is a provision where research institutions are supposed to be established so that we can understand how the seeds are growing and what requires to be changed here and there. With irrigation schemes and research institutions, we can improve our production. This will also help us to increase budget provisions in our counties and promote participation of the stakeholders. Once the Public Participation Bill that is before the House is passed, we will have proper involvement of the stakeholders in this Bill that seeks to establish proper irrigation schemes in our country.

Mr. Speaker, Sir, the land tenure system is a big problem in this country but if we can pull resources and energy towards irrigations schemes, we can solve problems here and there in terms of how land tenure system is used in this country. The Bill will help us

on how we should deal with issues of land tenure system. Some of these irrigation schemes do not have title deeds. In the Committee report of the National Assembly, members of the public were proposing if those schemes could have title deeds that can enable them to get credit facilities from institutions so that they can increase their yields. This is an important point that we need to consider in the amendments to this Bill. Once this Bill becomes an Act, we can review the policies that we already have in place and strengthen it so that it can effectively serve our country.

It is important for us to have this Bill. It is timely in us having a proper legal mechanism in place to manage our irrigation. If we do not have that, then we will still cry. There will still be issue of relief, drought and the land tenure system that has affected our country for a very long time.

One thing that was proposed in the public hearing report that I have looked at is the issue of the usage of clean water for domestic use. In an irrigation scheme, chemicals are used in spraying the crops. Unfortunately, that has to be provided in an irrigation scheme where members of those schemes can access clean water for domestic use.

The Bill also provides for dispute resolution mechanisms in case of conflict between the user associations in irrigation schemes at different levels. This will assist communities to resolve their issues instead of going to court and ensure that they are operational.

We also need to provide for a provision that will protect the farmers. They should get proper crops to plant in the irrigation schemes. Having come from a county that has several irrigation schemes as I said earlier, those schemes do not benefit the local communities. The Government is pumping in a lot of money, but unfortunately the schemes, for example, the Malka Daka Irrigation Scheme has been in operation since 1978. Up to date, money is pumped in but the scheme is not helping the community. Once this Bill is passed, we will help our communities to make sure that it has assisted them in their livelihood.

Mr. Speaker, Sir, finally we must have monitoring and evaluation mechanisms in place in the Bill to help our farmers on how the schemes will be evaluated. This is a step forward in ensuring that we monitor progress of our schemes. Once this Bill goes through, it will help our communities. It will also assist our country in improvement of the GDP. I request Members to support this Bill so that we can have it implemented, establish regulations that can govern this and amend the relevant policy that governs this Bill.

Without much ado, I request Sen. Mutula Kilonzo Jnr. to second this Bill.

I thank you, Mr. Speaker, Sir.

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

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I was waiting for you to call out my name. I rise to second this Bill. This Bill, that has come to us again, is similar to the one that was defeated on the Floor of the Senate sometime back. The issues that were raised by Senators about the National Irrigation Authority or the Bill itself remain alive, they have not gone anywhere. As we move this Bill, the Committee in charge should ensure that our recommendations are considered because this function of irrigation must by necessity remain a county function.

Mr. Speaker, Sir, the Constitution is very clear on crop and animal husbandry, county public works, storm water management, implementation of policies on natural resources and environmental conservation. This Bill speaks to those issues and the provision of water. As we transit from the National Irrigation Board (NIB) to a National Irrigation Development Authority (NIDA), the Mover has not mentioned--- One wonders what the problem with the NIB is. The only thing we know is that the NIB has been dogged with scandals about irrigation projects that have not worked.

Mr. Speaker, Sir, as we pass a new Bill, it is like what is referred in the Bible as “putting new wine in old wine skin;” the question of corruption in the irrigation sector must be addressed. Clause 15(1) struck me as a Clause that I must mention. It states that-

“The Cabinet Secretary shall, subject to water and other resource constraints, and in consultation with county governments and other stakeholders ensure the adequacy and quality of water for irrigation purposes throughout the country.”

This Clause is important for purposes of irrigation. However, even with the current crisis on the side of the Majority on the question of preservation of the Mau Forest, if we do not conserve our resources, the irrigation component that is contemplated under Clause 15 will be defeated. Therefore, I am extremely disappointed that the conservation of the Mau Forest has turned into a political circus. We have forgotten that Mau Forest is about water. If we are to deal with irrigation and if the Cabinet Secretary is to find water, we must deal with the conservation of our forests.

Mr. Speaker, Sir, the recent conditional grant for the preservation of water towers excluded a water tower like the Mau Forest, which provides the sort of water that we are talking about in Clause 15. If the Government is serious about irrigation and the provision of water, as it is signing conditional grants for preservation of our natural resources, including water services, they must consult so that the water towers like the Mau Forest, Cherengani and Chyulu Hills are not ignored. Otherwise, irrigation services will suffer because of that problem.

Mr. Speaker, Sir, I also propose that as we consider the powers of the Cabinet Secretary under Clause 34 on management of national and public irrigation schemes, there must be adequate provision for county governments to manage these water sources. While we were dealing with the Solai Dam tragedy, we asked the governor of Nakuru whether he had any role or whether he had conducted any independent assessment on the cause of the tragedy. To our surprise, the said governor said that the question of dams is not a province of county governments and that is it is a matter of the national Government. Therefore, while the Deputy Majority Leader, who is the Mover of this Bill, has proposed that this function be run in consultation with county governments; we need to educate the governors that this is their role. This is because one governor was before the Senate and he abdicated his responsibility by saying that dams are not a province of counties. If water is a province of the counties, dams are questions of counties. Therefore, irrigation is a matter that we must deal with seriously.

Mr. Speaker, Sir, it surprises me, and the Mover should have mentioned it, that over Kshs5 billion from the last three budgets has been wasted, misappropriated or misapplied to irrigation alone. We must condemn some of these actions because this Bill will solve some of these problems. There is no reason why we hire land to provide food

in Tana River while some people are buying maize in Uganda to bring to the National Cereals and Produce Board (NCPB). How will we deal with the question of food security if we have mismanaged our forests; we have mismanaged our farmers in the Rift Valley and there are scandals left, right and center? What is the purpose of this Bill if we cannot deal with small vices?

Mr. Speaker, Sir, I have just mentioned that there is already a dispute about the conservation of the Mau Forest, which is a water tower. Sen. Olekina was here the other day complaining that in the Division of Revenue Bill, we did not include Narok County in the negotiations to protect the water towers, we included Kericho County. I saw the Senator complaining about Mau Forest, but the national Government included his county in the protection of water towers in Kericho.

Mr. Speaker, Sir, as we continue to discuss some of these Bills and food security, we must tell Kenyans that in some of the utterances we have made, we have failed them. Where is the maize that came from the Galana-Kulalu Project? Why have these people not been charged? What was the yield that was supposed to come from the Galana-Kulalu Project? I wish you would have given some of that money to Makueni County and, may be, we would have done a better job. Therefore, although we are attempting to look for a new framework of law, you wonder what the problem was with the old framework, where there is the NIB. There is nothing new we are doing in this Bill. We have not changed the parameters and, just like in the proverbial forest, we have just changed the monkeys but the forest is still the same. It has corrupt people who do not think about this country and who are busy doing the wrong things. Farmers in Rift Valley are still keeping maize in their silos even now; people are selling a bag of maize at Kshs1,100.

Mr. Speaker, Sir, the Senate Majority Leader said that he will no longer plant maize and that he will plant avocados and other things. Therefore, as we speak about irrigation, it is predicated on the provision of water. We must say it loudly that we must preserve our forests. We must deal with the people who are cutting trees like murderers. Those people who are polluting the Nairobi River and putting sewer in it, we must deal with them the same way we would deal with a person who has shot a child, because they are murderers. Otherwise, we will just do the same old thing, create another authority, appoint our friends and nothing will happen. If we experience floods like we did earlier, we will send the Senator and Chairperson of the Committee on National Security, Defence and Foreign Relations to do famine relief.

As we speak, my dear colleagues, we are going to have famine in this country. We had floods three months ago, but in the next six months, we are going to have famine. Tana River, where my dear friend comes from, had the worst flooding during the last rains; but you will similarly experience the worst famine in another few days. Is it bad planning? Where is the policy on irrigation and conservation of water?

Mr. Speaker, Sir, as far as I am concerned, on this question of food security in the Big Four Agenda, we have put the cart before the horse. We must first of all, deal with the small things that are affecting the availability of clean water, rainfall and generally the management of agriculture.

It surprises me when I travel abroad and find that coffee is still the most expensive product from Kenya. However, coffee farmers are uprooting their coffee trees

because there are middlemen, brokers, ‘tenderpreneurs’ and the white collar criminals in Kenya, who have come around to mistreat the small farmer. How will we persuade this country that we should do irrigation for purposes of agriculture? Sometimes, I think that we are doing this for the sake of it; just to make sure that Wanjiku, Wambui and Otieno sleep well at night and we provide food. Meanwhile, we ship maize from Uganda and Mexico. What a tragedy.

Mr. Speaker, Sir, these things must be said because the small countries that have prospered like Israel and Egypt, which have deserts, have properly managed the little water they have. This Senate must stand up to be counted. We must exorcise the ghost of the Bill that we defeated in the Senate by interrogating this Bill. There is no need to rush it. I know that the Mover wanted this Bill done quickly, but we do not need rush it. Why are we rushing it? Let us interrogate and debate it, but ask questions. Will it be business as usual when we pass this Authority and appoint our friends or people who lost elections - you know the usual - for academic purposes?

This country has suffered. Who will save Kenya from this bad behaviour and vices? Food prices will go up so that they can get revenue. The National Treasury will raise duty and food prices inevitably, yet we had a lot of water. We have not bothered to handle the recent sugar issue. A gazette notice was issued, which brought in sugar and milk powder to deal with famine. You do not even need to persuade me that, that was a joke. Why are we doing irrigation if we cannot provide simple things like food?

Mr. Speaker, Sir, I support this framework, but it must count for something. We cannot just be making noise and spending our time. Yesterday, somebody said that the Committee that was interrogating the Cabinet Secretary wasted public resources. Did we waste public resources by asking about money, the Kshs1.5 billion that was sent to people’s pockets? Somebody thinks that the Kshs5,000 sitting allowance is a waste of funds. That is what you call a country that has leaders who think like a pinhole camera; everything appears upside down. That is what we call people who do not understand what their role is and we must tell them. That is why we must say it while discussing this matter. The Senate did not waste time by interrogating the Cabinet Secretary to ask about money that was misappropriated by Kenyans, who should be in jail today and not walking around in big cars. The people who misappropriated money for irrigation should also be in jail; the time has come.

Sen. Haji, as you deal with your peace caravan as a result of the handshake, let us not have the handshake for the sake of it. Let us change this country for the future. You are a respected man. You can say: “Jail all these people.” I am sure if you jail all of them nothing will happen; the rest of the country will move on. People will not steal from the poor and use these authorities for purposes of causing food insecurity. Instead of having food security, we have food insecurity. Instead of having an authority like the one we were interrogating, the National Construction Authority (NCA), we have the ‘National Ongoing Construction Authority.’ People do not understand what they are supposed to do. A time will come when public officers should be put to account.

When I move the Report on the Solai Dam, it will be a comedy and tragedy of public officers who waited for a disaster to happen. They caused death by not doing their job; simple.

With those few remarks, I beg to second.
Thank you.

(Question proposed)

Sen. (Eng.) Mahamud: Thank you, Mr. Speaker, Sir. I beg to support the Bill, which was a Senate Bill that was defeated in this House. It is now coming from the National Assembly.

Irrigation is important for this country. Kenya has been depending a lot on rain-fed agriculture, but we have not been serious on irrigation in terms of food security. We debated the Food Security Bill, which is still before the House, but it cannot be operational without a proper irrigation law. We know that irrigation has been domiciled at one time in the Ministry of Agriculture and Irrigation and another time in the Ministry of Water and Sanitation, as if we do not know what we are doing. It is a high time we agree that irrigation must be domiciled in the Ministry of Water. We are talking about conserving water for purposes of irrigation.

It is important that the policies on water are actually implemented when it comes to irrigation. We cannot have irrigation under the Ministry of Agriculture and then we want officers from the Ministry of Water and Sanitation to give us water rights. That is the confusion we are creating. So, we must decide as a country where we want to domicile this body that we are now forming.

Mr. Speaker, Sir, in the definitions, the Cabinet Secretary is currently responsible for irrigation matters. I would rather that the Cabinet Secretary being in charge of water and irrigation, because you cannot irrigate without water. Every other time when there is a Cabinet reshuffle, we hear that irrigation has moved from the Ministry of Agriculture to the Ministry of Water and vice versa, depending on who is making the reshuffle. So, it is a high time that we designate by law where these irrigations facilities will be.

Section 22 (c) of the Fourth Schedule of the Constitution states that water protection, securing sufficient residual water, hydraulic engineering and safety of dams are all functions of the national Government. The only water functions given to the county governments under Part 2 of the Fourth Schedule, when it comes to public works and services include storm water management systems in built-up areas and water and sanitation services. I understand that as water for human consumption. However, the protection of water, hydraulic engineering, which entails irrigation and the safety of dams, are all functions of the national Government. So, the Bill is not misplaced as far it concerns.

Mr. Speaker, Sir, I cannot quite remember the National Irrigation Board Act, but it is being replaced by this particular proposed Bill. Under the functions of the Authority that is being proposed in this Bill, Clause 2 (8) (g) states-

“The functions of the Authority shall be to-

provide technical advisory services on a commercial basis, on irrigation water management, including water harvesting and storage, and waste water recycling for agricultural use to all schemes under appropriate modalities, including agency contracts.”

I am reading this because it supports my argument that the Authority must be domiciled under the Ministry responsible for water.

Mr. Speaker, Sir, irrigation has helped a lot of countries which are water-deficit. For example, Egypt use waters of the River Nile to do its irrigation. Today, Egypt is food-sufficient compared to Kenya. It is sad that we are not able to produce enough food because of poor planning. This Bill has come at the right time. I urge the Committee concerned to critically look at this Bill and see what needs to be amended to enrich it. We must make sure the national and county governments work together, so that irrigation services are properly supported so that our country becomes food secure.

Currently, a lot of illegal irrigation takes place in this country. We have many flower farms in this country. We export a lot of flowers to Europe and other places which earns us foreign exchange. However, a lot of damage is caused when harvesting water. If go to some parts of this country, you will see haphazard water abstraction which really affects the riparian rights of the lower users without authority from the Water Resource Management Authority (WARMA). This is what needs to be controlled. There needs to be a co-ordination between this irrigation Authority and also the WARMA that manages water abstraction rights for people who want to use it for irrigation.

Mr. Speaker, Sir, the National Water Conservation and Pipeline Corporation (NWCPC) and others which deal with large infrastructure like dams and boreholes must coordinate the use of water for purposes of irrigation. This is the only way we get to boost production of food in this country. I am happy with the proposal here that composition of this Authority will consist of the Cabinet Secretary for Finance, Principal Secretaries for the Ministry of Water and Sanitation and the Ministry of Agriculture and Irrigation. We have good proposals. However, in terms of looking at the current dispensation of devolution, we devolved agriculture without reference to the county governments. Therefore, the Authority proposed here must ensure that there is proper coordination.

There is haphazard planning for water and dams which will not help this country if it is not managed properly. We all have seen what has happened with the Solai Dam. Dams are serious infrastructural projects that must be properly designed and attended to. When we put a dam upstream of settlement schemes, the danger that we expose to the people who are downstream must be understood. We must be careful because of the people who live downstream of dams. We do not want to expose them to danger.

Mr. Speaker, Sir, this is an important Bill. Let us support it with necessary amendments. Personally, it is important that we domicile irrigation matters under the Ministry of Water and Sanitation.

With those few remarks, I beg to support.

(Interruption of debate on Bill)

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM KANGEMA
PRIMARY SCHOOL, KIAMBU COUNTY

The Speaker (Hon. Lusaka): Hon. Senators, I would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting students and teachers from Kangema Primary School, Kiambu 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 my own behalf, I wish them a fruitful visit.

I thank you.

(Applause)

VISITING DELEGATION FROM THE TECHNICAL
UNIVERSITY OF KENYA, NAIROBI CITY COUNTY

I also would like to acknowledge the presence, in the Public Gallery this afternoon, of visiting teachers and students from the Technical University of Kenya, Nairobi City 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.

(Applause)

(Resumption of debate on Bill)

Proceed, Sen. Wetangula.

Sen. Wetangula: Thank you, Mr. Speaker, Sir, for giving me an opportunity to contribute to this Bill. Before I do so, I join you in welcoming the visiting students from both institutions and encourage them to learn what they can from this august House.

I was carefully listening to the distinguished Senator for Isiolo County as she moved this Bill. I was eager to hear what has changed from the Bill that this House rejected. Absolutely nothing has changed. I expected that after this Bill was declined by this House, the Government side that is promoting the Bill would even have had the courtesy to engineer a *Kamkunji* so that Members can walk through the Bill, raise their concerns, better it and then bring it to the House for legislation.

Mr. Speaker, Sir, these smirks of arrogance that: “we have the numbers, we will bring it and the voting machines will do their work” is not the way to go. We want to pass a law that helps this country. I have seen my distinguished colleague from Mandera County poorly executing the assignment of justifying why the Bill is here. Agriculture is a devolved function. Irrigation by whatever name or description you call it is agriculture. It is food production, whether you are irrigating eucalyptus trees, rice paddies, maize

fields or sugarcane plantations. It is agriculture which is a devolved function. The theatre of irrigation is the counties that we represent. The land, the water is in the counties, the farming and the activities will be in the counties.

The crunch clause that led us to reject this Bill has come back exactly the same way it was. It is Clause 9. Our quarrel last time was that agriculture being a devolved function, we cannot set up an irrigation authority whose membership of the board is ten and only two are nominees of the Council of Governors (CoG). The rest are all national Government representatives who will not care a bit about the interest of counties.

What we are trying to perpetuate is just create a situation where for whoever is in power, all the irrigation schemes must go to where he or she likes –where he or she got the highest votes. For whoever is in power, all the schemes will go to his or her area of representation. Without the CoG coming in to bring in equity for the people of Kenya, we are not changing anything.

Mr. Speaker, Sir, I have no quarrel whatsoever with boosting Mwea Irrigation Scheme. However, what justification is there in putting a Japanese financial line of Kshs1 billion in Mwea Irrigation Scheme and Ahero is now a grazing field for cows? They are all irrigation schemes producing rice for the people of Kenya. The answer can only be simple, because one is in the area of leadership and one is not. That is not the way to go for this country. We want to see the CoG taking centre stage in determining how irrigation schemes are devolved, set up, managed and how we will produce food for food security in the country.

We have the National Irrigation Board (NIB) which is now being given a new name; that is National Irrigation Development Authority (NIDA). There is nothing in this Bill to indicate that the rot and filth that we see at the NIB will change simply because we have changed the name ‘board’ and put ‘authority.’ It is same music, same dancers and same everybody. If we do not change the way things are done in this country, we are going to continue squandering resources and the people of this country will continue suffering.

Mr. Speaker, Sir, during the campaigns, I had many opportunities to fly over the celebrated Galana-Kulalu Irrigation Scheme in Tana River. It is a sorry state. Billions have been sunk in that scheme and not a single harvest can be talked about from it. It is a big, monstrous fraud. Why did you not take that money to buy free fertilizer for distribution to farmers in Uasin Gishu, Trans Nzoia, Bungoma, Kericho and everywhere we have rain-fed agriculture? That way, we would have produced enough food for the county Why did you not put that money in small irrigation schemes in Kajiado, Narok, Makueni and in the Arid and Semi-Arid Land (ASAL) areas? They had very grandiose ideas where they went and took huge chunks of land, put in money and hooked siphons to siphon out every single shilling that was put there. Nobody is being held to account now and nobody talks about Galana-Kulalu. I thought that the distinguished Senator for Isiolo County or Sen. (Eng.) Mahamud would talk about it, but they are busy running away from it and justifying why this Bill is good without telling us how good it is.

Mr. Speaker, Sir, rain has been diminishing in this country. It is, therefore, very important that we have irrigated agriculture. However, we are not going to have irrigated agriculture if those who are designing it have personal gain, profit, nepotism, tribalism,

sectionalism and all the other -isms you can recall to mind. Somebody, probably this Senate, should carry out an inquiry, which is the easiest construction you can undertake for the small dams, as long as you take care of standards. It is just about the blocking of a flowing mass of water. You now hear of a dam costing Kshs36 billion; engineers like Sen. (Eng.) Mahamud should tell us how this is possible. We are told of a dam costing Kshs18 billion, yet to build it, one just needs to create an embankment on a river. We are talking of dams costing astronomical sums of money. All these are just gravy trains for those who are in authority. This country is crying and it is hurting because of fraudsters. It is the only country where the Government can sell its own land to itself, crooks walk away with billions and Cabinet Secretaries (CSs) come before the Senate Committees and say that it was not them, yet money has been paid. I was shocked to learn that no title deed was passed to the Ministry that was paying the money for the purchase of the land, yet they spent over a billion shillings. What a shame!

Mr. Speaker, Sir, we are setting up irrigation schemes to augment food production, but nobody wants to work. Money goes to these irrigations schemes just for it to reach there then come back. That is why the irrigation authority board is being loaded with Principal Secretaries (PSs). First, they do not have time to attend board meetings at all. Who is going to see Kamau Thugge attending irrigation authority meetings every other day? They do not have time and some of them are too arrogant to descend down to attend irrigation meetings. That is why I expected the Government side to bring this Bill and ask you to give them the authority to call for a retreat of this House because this Bill is the lifeline of counties. How then can we take the lifeline of counties and domicile it in Nairobi? It is just a cluster of PSs; and we have the same story about the Equalization Fund, where PSs took Kshs600 million and hired helicopters to fly them around the country to see where poverty is!

(Laughter)

To date, nobody has been held to account. Do you need a helicopter to fly to Marsabit or to Isiolo, Mandera or wherever else to know that there is poverty there? A sum of Kshs600 million of public funds for poor people went with the PSs just like that. This is the ugly situation we have and if we do not change, this country will continue suffering.

Mr. Speaker, Sir, hon. Members rejected this Bill earlier; they better make it better this time. Clause 9 of the Bill states that the members of the board shall consist of a chairperson, who shall be appointed by the President; which is a routine. There shall be a Principal Secretary from the State Department of Irrigation; the Principal Secretary responsible for finance, the Principal Secretary responsible for Agriculture, the Principal Secretary responsible for Water and five other members who shall be appointed by the CS and approved by the President. Where are the counties? As a rider, they say that out of those five, they shall include two members nominated by the Council of Governors (CoG). These are just two out of ten members. Who will represent Marsabit, Tana River, Migori or even Kisumu, where we have the second largest irrigation scheme in the country? This irrigation scheme is now a grazing ground and there is no rice there. We must do things right and we need a thorough audit of how much money has been wasted

on moribund irrigation schemes in this country over the years before we have a new start with a new irrigation scheme. This is not money that is being picked from the Chinese and others; it is taxpayers' money. We pay taxes for this!

Mr. Speaker, Sir, during the campaigns, we went to some valley in Elgeyo Marakwet. They had beautiful streams of water rolling down from Embobut and other hills. However, for two years, we have heard of a very vicious quarrel going on there, *sijui* Aror Dam, *sijui* which dam; do we build or not? Do we compensate or not? Who is going to eat or who is not going to eat, and so on, and so forth. We have people just dancing around with people's interest as the common man suffers. Those people have to climb the hills all the way to Eldoret, Kitale and Kapenguria to look for food, yet they live in a valley that is more fertile than Uasin Gishu, Kitale or everywhere. They even have water flowing all the way because of misplaced priorities and conflict of interest. All this happens because those who are supposed to design public things keep on asking what is in it for them. How are we going to help our country?

Mr. Speaker, Sir, I was in Kitale the other day and I realized that the maize harvested by farmers there last year is still in the granaries. This year's maize has tussled and it is getting ready, yet there is a long chain of trucks from Uganda bringing in contraband maize escorted by the police from Uganda. The NCPB granaries will be filled up by the time the local farmers harvest their produce. Consequently, they will have nowhere to put maize because last year's maize is still in their granaries. They will also have nowhere to sell their maize because briefcase farmers are the ones who deliver maize and get paid. This is Kenya for you. We need change in this country. We need change to give this country a new trajectory so that everybody lives a life worth living. Even a farmer with one acre must be given an opportunity to get the benefits of his sweat. We cannot have a situation where we pump billions into irrigation schemes. How will they benefit the ordinary man and woman? Nobody is talking about it.

The Bill suggests that counties will set up irrigation schemes, yet all the money for irrigation is in Nairobi. How will the counties set up irrigation schemes? It is very expensive to set up an irrigation scheme. The amount of money we give to counties is not enough to set up an irrigation scheme in any county. If the board that will deal with irrigation is all Nairobi-based and by the national Government, who will imagine that Tana River County requires irrigation schemes if it is not represented? These are big issues.

Mr. Speaker, Sir, I urge Members that since we represent the people of this country, from the counties and their governments, let us not steamroll through legislation that is clawing back and undermining devolution. Food security, production and storage are in the counties and we have somebody in the National Treasury holding a magic pen and deciding whether or not to put any money in any irrigation. That is what we are giving to the country in this Bill. Members, it is up to us to pass a legislation that will stand the test of time and help the people who sent us here.

Mr. Speaker, Sir, with those remarks, I have a qualified support. I want to see what the Committee stage will bring on this Bill.

Sen. Cheruiyot: Thank you, Mr. Speaker, Sir, for giving me this chance to make my contribution and share my thoughts about what I think about the Irrigation Bill

(National Assembly Bills No. 46 of 2017), whose history we are quite familiar with. We know the journey it has travelled.

No matter the opposition and thoughts that Senators shared when it was first brought to the House, the drafters and those who have the interest of seeing this piece of legislation go through, have still not taken time to consider our views and what we think about it. However, all is not lost. I listened to the Mover of the Bill, the good Senator for Isiolo County, Sen. Dullo. As is the procedure for all Bills, after the Second Reading, when this Bill is committed to the Committee, what are the thoughts that we, as Senators, have shared that the Committee will accommodate and consider, so that we do not get to a state where it appears as if Parliament was made for the Executive?

I have always held the strong view that it is the Executive that was made for Parliament. Parliament is a meeting of all Kenyans. Each afternoon, the 47 million Kenyans gather in this House through their 67 representatives. Therefore, by any stretch of imagination, it cannot be the work of Parliament to do the work of the Executive. Rather, it is the opposite. It is up to the Executive to do our work and inculcate our thoughts and ideas. This is because we speak on behalf of the people of Kenya that we represent. The thoughts that I share, for example, about the Bill are not my own. I have thought through this Bill and seen how it will benefit the one million residents of the county that I represent in this House.

Mr. Speaker, Sir, there are many things I agree with in this Bill. For sure, when you see the struggle that we have continued to have in our water resource management, the whole agriculture sector and large-scale irrigation, we know that irrigation will be the only answer to the perpetual famine challenge that this country continues to face. It does not mean that because we have a legislation that is before us, we hurry it as if by passing this Bill, famine shall become history in this country. No matter how hungry a person is, we cannot serve them 97 per cent food and three per cent poison and hope that because they have been hungry, they will eat it anyway. The truth is that they will die.

There are parts of this Bill, which my conscience will not allow me to support in the context that it is. I hope the Members of the relevant Committee are taking note of the views being raised by the Senators. This is important because we may never get another opportunity to raise some of these concerns.

Mr. Speaker, Sir, moving on to Clause 6 of this Bill, on the importance of development, management and regulation of irrigation and some of the duties that the Cabinet Secretary (CS) in charge will be doing, they are supposed to send a report to Parliament annually, from time to time as may be necessary, on the state of and need for irrigation, development and management in this country. It is not for lack of legislation for this not to have happened. In the current statute, this is supposed to be happening. For the number of years that I have been in this House, I have never seen such a report submitted before us. For example, we have the infamous Galana-Kulalu Irrigation Scheme. Apart from the reports we get from the media and what we hear about the misadventure by the National Irrigation Board (NIB), there is nothing that Members of this House can use as a basis when making decisions whether or not to support such legislation.

The question at the top of our minds is: If it has not been for lack of laws and legislation that this reporting to Parliament has not been happening, why is it that somebody wants to cheat us now that if we pass this legislation, they will now be bringing us reports and telling us the state of irrigation programmes that are being done in this country?

It is upon the Committee to think creatively because it has been established that human beings respond either to the carrot or the stick. I think we have offered too many carrots and people no longer respond to them. Can we, therefore, consider in law to offer the sticks? By that I mean to consider what will be the remedial measures that will be put in this Bill, such that if the CS does not file the questions that legislators and representatives of the people continue to have about irrigation programmes that are run in this country, what will happen to them? Otherwise, if we continue to propose very good drafted legislation as this, there is nothing that we are solving. We are just becoming slowly by slowly a conveyor belt of Executive orders and not Bills as was thought about in the establishment of Parliament.

Mr. Speaker, Sir, secondly, I am worried also under reporting because the Bill speaks about collaboration with county governments to gather information and database on irrigation, development and management, including data on irrigation of water supplies, demands, project and such. What is the specificity of this collaboration? What is it that will trigger a CS, for example, to think through and say: "I have to go to Kericho and meet with the County Government of Kericho and establish what their irrigation needs are.

We are representatives of the counties. Therefore, there is an ambiguity in this Bill and I will not support it. I need to see collaboration in each specific county. I want to be assured that the Cabinet Secretary will give me a report and we will collaborate with the County Government of Kericho and identify our irrigation needs. However, by giving them a blank cheque, it might be subject to abuse as it has been the case in the past.

We have seen large water dams in counties. I do not think that there are counties that need more dams than others. Given the scarcity of the resources in this country, it would have been prudent for us to know which water project will be initiated in each county. I do not want to lose my point by saying county "X" has more water irrigation projects than they deserve. As I said, it is important for us to identify specific irrigation needs for each county.

Part III of the Bill is on the establishment of the National Irrigation Development Authority (NIDA). Anybody who has heard me make my contributions every time we are setting up an authority knows that I hate the obsession of setting up their headquarters in Nairobi. Each authority established by this House has its headquarters in Nairobi. What is this obsession with Nairobi? I love Nairobi City. I was born here and have nothing personal against it. However, when shall we develop other parts of the country? How will Turkana County ever benefit? How will my own county enjoy the services and see Kenyans of diverse walks and backgrounds if every time we establish an authority we restrict it to Nairobi City?

Before the Committee on Finance, Commerce and Budget, we have requests for funding county headquarters. There are many counties that do not have headquarters. I

think it is because of lack of foresight by this Government that some counties do not have headquarters. We are all Kenyans and we know development in this country has never been equal. There are parts that are more developed than others. Therefore, instead of setting aside Kshs500 million or Kshs600 million for Nyandarua County to build their county headquarters, it will be more prudent if we give them Kshs2 billion or Kshs3 billion to build a proper county government building that can serve as their county headquarters as well as accommodate some of these authorities. That will be prudent use of financial resources. Why do we want to fund a single project? We know the driving force of that line of thinking.

I have spoken about this issue many times on other Bills that have been brought before this House and no one appears to be listening. I want to promise that if this Bill comes back before this House with this specific challenge, I will not support it. We have to be serious. Other people are planning their countries properly. When you visit other countries, you will see how urban regeneration as a modern concept that is being adopted world over yet we want to continue to squeeze Nairobi County. A county that was meant for four million people is now housing close to 10 million people because of lack of foresight in some of the Bills.

Mr. Speaker, Sir, as we establish an authority, we need to ask ourselves what the National Irrigation Board (NIB) failed to achieve and why. Will we achieve it by renaming the NIB?

Clause 8(2) talks about the Authority which shall be responsible for development of irrigation infrastructure. This is not clear to me. How does that sit with the existing water services board, for example, the Tana Water Services Board (TWSB), the Athi Water Services Board (AWSB) or the Lake Victoria Water Services Board (LVWSB)? These are existing water services boards. Over the years, they have gathered institutional capacity to be able to carry out irrigation programmes. Now that the Bill is setting up another Authority, what will be the collaboration? What is the cost implication to the taxpayers? We have moribund parastatals and yet we are proposing to create a new Authority. If the two authorities are merged together and form one authority, it will be more effective.

The committee should report back to this House. We would like to listen to their recommendations so that when we pass this Bill and establish another authority, it will not render the existing water services boards useless. We want to see it collaborating with the existing boards to carry out irrigation development projects.

I also take great exception with this sort of thinking - I do not want to call it "stone age", but why should there be a representative in each and every authority set up by this House from the National Treasury, Irrigation Department and so on? What specific skills do these representatives bring on the table? Are there angels in the National Treasury who must sit in every Government Department for us to feel we are properly represented? They will only earn allowances and they will not add any value to us. Therefore, it is time, we, as legislators, took a radical shift in terms of how we consider Bills that are brought to this House. Otherwise, the drafters of the Bills that are brought before this House will know that there are 67 rubberstamps in the Senate that will pass them.

Let us reject this Bill and send it back to them, so that they reconsider it and think creatively. Let people earn their salary. It will be unfair to the people we represent.

I have never been more convinced to reject a Government Bill than I am if the thoughts that I have shared this afternoon will not be taken into consideration.

With those many remarks, I conditionally support the Bill.

Sen. M. Kajwang’: Thank you, Mr. Speaker, Sir. I rise to lend my voice to this Bill that is before us today. I wish to put forth some arguments that will determine the position I am taking on this particular Bill. My position is that we cannot support and enact this Bill as it is.

I start with the definition of the word “Irrigation” If you look at the Bill, the drafters attempt to define irrigation as means or any process, other than by natural precipitation, which supplies water to crops or any other cultivated plants or livestock or aquaculture and desired forest trees. The drafters of the Bill have chosen a complicated definition of irrigation. If you look at the Oxford Dictionary, it says that irrigation is the supply of water to land or crops to help growth. The reason why I linger on the definition of irrigation is to be able to ask ourselves: Why do we need to undertake irrigation? In my mind, we undertake irrigation for purposes of food production. If you look at the Fourth Schedule of the Constitution, the duties of the national Government and county governments have been laid out clearly. There is no doubt that Agriculture is a function of county governments. The national Government has got the duty of coming up with the agricultural policy.

Mr. Speaker, Sir, we do not do irrigation so that we can set up dams where children can swim or set up ponds where we can do funny things and plant grass. We do irrigation so that we can enhance food production and, consequently, food security. Therefore, any action or responsibility on irrigation must lie with the level of government that has been allocated the role of agriculture in the Constitution. That must be county governments.

Therefore, Mr. Speaker, Sir, it says here that the purpose of this Bill is to repeal Cap. 347, which establishes the National Irrigation Board (NIB). However, it does more than that because it takes the NIB and rebrands it to become the National Irrigation Authority (NIA). What it does further is to provide great power to the Cabinet Secretary (CS) responsible for matters to do with irrigation. In fact, sometimes you get the impression that this Bill has been crafted to bring or to provide a job description for someone who has been appointed to the Cabinet and has no idea of what he or she is supposed to be doing. That job description is coming from this particular Bill. I will not support a Bill or a piece of legislation that attempts to take away powers or duties – that should be rightfully exercised by county governments – back to the centre.

Mr. Speaker, Sir, past irrigation ventures have had mixed success and Sen. Wetangula has talked about the Galana-Kulalu Irrigation Project where we were promised that one million acres would be put under irrigation. However, at the end of the day and after millions or billions of shillings had been spent, only 5,000 acres had been put under irrigation and only 118,000 bags of maize coming out of this Project. It is the duty of this Parliament to investigate the amount of money and what went into the Galana-Kulalu Irrigation Project. This is because if you go to its website right now, you

are told that the current status is that it has been suspended because validation had not been concluded. How do we go into a one million-acre project with a validation exercise that has not been done? This is a scandal that happened at the excuse of providing food to the poor.

Mr. Speaker, Sir, there are other irrigation projects and I see some in my neighbouring county of Kisumu. However, in Homa Bay County, we have the Kimira-Oluch Smallholder Farm Improvement Project, which was conceived in 2006 through funding by the African Development Fund (ADF). It was meant to take six years to completion. However, 12 years down the line in 2018, this project has not been completed and it has not been handed over to the county government. In fact, this project has consumed Kshs4 billion. With the Kshs4 billion, the channels that have been constructed across Homa Bay County – from Karachuonyo to Rangwe, to Homa Bay Constituency – are now being used by livestock owners to water their cattle. They are also being used by young men and women to wash their clothes. People who are putting up construction projects are also using them to draw water for their constructions. This is what is going to happen if we are going to make irrigation a national Government thing. This is because they will come up with ideas that are conceived up in the skies but when it comes to implementation, where there is need for ownership, that will not happen.

Mr. Speaker, Sir, the Kimira-Oluch Irrigation Project is a beautiful project on paper, but in terms of changing the lives of the people of Homa Bay, it has not had that effect. You have seen some anecdotal evidence or reports coming up that some people are able to harvest vegetables even during the dry season. However, you do not spend Kshs4 billion for some peasant-kind of economy mainstreaming. You want to transform the lives of peasants so that they can move from subsistence farming to commercial farming. What the Kimira-Oluch Irrigation Project has done is to leave the peasants where they are and to make them plant little patches of vegetables which they can pluck, yet they were supposed to be commercial producers of vegetables. That is why decisions on irrigation need to be taken at the ground level.

Mr. Speaker, Sir, about a month ago, I visited West Pokot County, where the Governor who is a former Senator, Prof. Lonyangapuo, has decided to use county funds to implement irrigation projects. When we went to corners of West Pokot where they have never planted maize before, we were able to roast and eat maize grown on irrigation schemes in the county. That is the local problem and local solution approach that this Bill must be amended to reflect. There is no way the national Government would have thought about the people of West Pokot and implemented an irrigation project in those corners we visited.

Mr. Speaker, Sir, the best approach to irrigation and the way to achieve one million acres in five years has been said by speakers before me. We should allow counties, give resources and enabling legislation and give them targets. We should say that, for example, 20 counties are given a target of putting 50,000 acres under irrigation. Within one year, you would have achieved putting one million acres under irrigation. Even if you stagger that over a period of five years, you will achieve putting one million acres under irrigation faster and more efficiently than the consolidated Galana-Kulalu Irrigation Project.

Mr. Speaker, Sir, as we look at a Bill on irrigation, we must also ask ourselves, what the role of water masses like Lake Victoria, as far as irrigation is concerned, is. Those of us who come from the shores of Lake Victoria are told that we cannot use the waters of the lake to irrigate our land. Why? This is because when the white man came to Africa, he signed a treaty so that Egypt had the first preference on the use of the waters of the lake. What the people in Egypt do not know is that because of the shenanigans going on in Kenya – the destruction of water catchment towers and the politicisation of Mau Forest – very soon, there will be no Lake Victoria to talk about. This is because Lake Victoria gets its water from the water towers and the Mau Forest is one of the most significant towers. Therefore, even the treaty put in place stopping us from using the waters of the lake should not be the most important thing on the table. The most important thing should be how to safeguard, protect and conserve Lake Victoria. However, even as we conserve Lake Victoria, we must be allowed to use its waters as a matter of first priority; not Egypt using the waters of the lake as a matter of first priority. We must look into some of these colonial agreements, which have been renewed over time and ensure they are working for our people as opposed to them working for a colonial legacy that left us poorer than we ought to have been.

Therefore, Mr. Speaker, Sir, there is need to have exhaustive thinking on this particular Bill. If this Bill is going to set up an authority and define its functions, the bulk of the functions, as far as the execution is concerned, must go to county governments unless we are saying that we are approaching irrigation so that we can have big swimming pools for people to swim in, in this country. So long as irrigation underpins food production, that responsibility must be given to counties and we must have a situation where the Senate and governors sit together and come up with a piece of legislation that satisfies everybody.

Mr. Speaker, Sir, I wish the Senate had the power to look at the sectoral budgets allocated for the Ministry of Agriculture and Irrigation as well as the Ministry of Water and Sanitation. This is because billions of shillings are being allocated to a Ministry sitting in Nairobi for functions that should be devolved. We should continue pushing through the Standing Committee on Finance, Commerce and Budget, even if they are going to be conditional allocations. This is because we have a problem that started from the initiation of devolution; the issue of costing. How were the functions costed? You would find that, probably, in costing, we assumed that irrigation would be conducted by the national Government, yet the function of food production has been assigned to county governments. I agree that we have too many conditional grants. However, this is an area where we must find a way of channeling money that goes to the Ministry to go to the counties so that county governments can develop irrigation schemes and put money into the problems that they understand at the local level.

Finally, Mr. Speaker, Sir, on the issue of existing natural irrigation schemes, this Bill proposes that the Authority that has been created will continue to manage them and any other public irrigation scheme that has been created. This matter must be looked into. This is because similar to the debate on sugar, where there is an argument that county governments must now be involved in the privatization and welfare of sugar mills, we cannot say that national irrigation schemes shall be transferred as they are to these new

Authority that we are creating. There has to be some conversation to see which ones can be managed by counties and which ones can remain as national Government projects.

I wish to state that this is not a Bill that I will support in its current form. I encourage other Senators that if our duty, as captured in Article 96(1) of the Constitution is true – to defend and protect the interests of counties and their Governments – then we cannot be the Senate that sat, while the function of food production was taken away from county governments and taken back to the national Government.

Thank you, Mr. Speaker, Sir.

Sen. Halake: Thank you, Mr. Speaker, Sir, for giving me the opportunity to add my voice to the debate on this Bill. This House makes legislation and, therefore, any legislative framework is, of course, to be supported and taken forward. However, I am not sure whether this Bill is one of those that I would support.

First of all, this Bill is a misnomer. When I look at just the definition and the Authority that is to manage this Irrigation Bill--- Maybe it should have been called the Irrigation Schemes Bill. This is because irrigation is much wider than what is contained in this Bill, although I am not an irrigation expert. This Bill's scope is very narrow and does just describe irrigation in this country as some scheme as opposed to a broader function that looks at different aspects of irrigation.

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

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

For instance, one thing that is largely absent – perhaps I may have missed as I was reading through this Bill – is the management of water for informal irrigation by communities. I do not know if irrigation is just about some big schemes that Government has put in place, with an authority to manage and some money put to it, disenfranchises communities and, therefore, loads over a community with every aspect. I do not know if irrigation is much broader to include even management of water and water sources that also facilitate, support and encourage communities, even in the informal irrigation that communities engage in.

Mr. Deputy Speaker, Sir, 80 per cent of farmers in this country consists of small-holder peasant farmers, who are the women of this country. They do not belong to big schemes and we cannot talk of that as the engine and driver of food security in this country. A Bill that blacks out this aspect of informal irrigation and the facilitation of these women, peasant farmers and the formal irrigation that should be taking place and then focuses on just schemes and defines everything, through the perspective and the lanes of big farms and irrigation schemes like the Galana-Kulalu and Mwea, in my opinion, misses the point. It does not empower communities or facilitate food security at the household level. It just has in mind a different and narrower definition that I would have liked and imagined this to be.

When you look at the Authority that is being established, the word “scheme” is mentioned so many times. One of them is “public scheme.” I have highlighted it at every single clause, for instance, under Clause 8, where it gives the functions of the Authority

from “a” to “f.” Every one of them is about irrigation schemes, committees at scheme level, schemes including those that traverse and straddle more than one county, supervision of schemes, schemes in consultation--- Perhaps, if this was brought to this House as the Irrigation Schemes Bill, we may be able to discuss it. To call it the Irrigation Bill and just talk about very narrow definitions of that nature does not really augur well for this House, whose mandate, as has been mentioned by my colleagues, is to protect the lower levels or county governments and the people who live in those counties.

Mr. Deputy Speaker, Sir, with regard to counties, again, I have many problems with this Bill. It is very condescending and gives all powers to the Cabinet Secretary (CS) at the national level and only talks about counties in terms of “the Cabinet Secretary may in consultation”. This Bill, in its form and substance, as it stands, does not support counties.

For instance, Clause 14 says-

“Each county government may, within its area of jurisdiction, establish a county irrigation development unit for the better carrying out of an irrigation function delegated by the Cabinet Secretary as may be prescribed in the Regulations.”

I come from the school of thought that county governments and the national Government are not necessarily in a hierarchical relationship; they are branches. When the Bill starts talking about the CS delegating to county governments, then I have a problem with this kind of law that is assigned to the county government.

In respect of land, other than public land in the National Public Irrigation Scheme, the CS shall, in accordance with the law of the time being, relating to the compulsory acquisition---Again, land issues in this country are very emotive and a time bomb. We have seen what is happening with land issues. This Bill gives so much power to the CS at the national level with regards to land issues, where compulsory acquisitions are given to the national level and the CS. We have seen what is happening with compulsory acquisition. So far, they have been done very badly and, in fact, bordered on abuse of rights of the people with regards to both our Constitution and international humanitarian law.

We have seen what is happening in Mau Forest. While we, of course, support the conservation of our water towers, which must be absolutely conserved, the manner in which the acquisition, evictions and the compulsory acquisition of land have been conducted in this country, borders on abuses of the rights of the people, both under international law, international humanitarian standards and our own Constitution.

Under the guise of irrigation, this Bill is actually giving a lot of leeway for compulsory acquisition of land under the pretext of irrigation land. In case of community land forming part of a national or public irrigation scheme, again, the Cabinet Secretary on behalf of the department may take the land on lease and on terms to be agreed between the Cabinet Secretary and the county government. Where does that leave the communities, yet it says here “community land?” Therefore, this Bill is disenfranchising not just through not taking care of irrigation that is informal and in the hands of communities, but also in terms of the land and land use by communities. It will take away not just from county governments, but especially from communities in counties that we

come from, where land is held in trust and is communal. Therefore, this lands itself into a lot of abuses that have already been meted on communities through compulsory acquisition.

Mr. Deputy Speaker, Sir, as I said before, this House is here to make law and stands for ensuring that we support legislative frameworks within which our country can be food secure and develop. This should be what we do on a daily basis. As this stands, in its letter and substance, it has many things that are not right.

As I said, the impact of legislation on community-based management of water for informal irrigation does not seem to have been captured at all. If they changed this to mean a Bill for irrigation schemes to be managed at the national level, perhaps it could have passed our scrutiny. As it is, I do not think it is good for counties, communities and us, as a House, to pass and append our support.

I have a lot of issues with this Bill. As I said before, because of many Bills that come from the National Assembly, we may need a bit of time to scrutinise them since we are supposed to do due diligence to protect counties in terms of little gains we have made, ensure self-governance and protect the livelihoods of communities which is the mandate of this House.

In regard to how this is framed, the hierarchical approach and the fact that it should only be as delegated by the Cabinet Secretary that counties may be consulted and the fact that land issues find their way here--- Of course irrigation is done on land and we do not refute that but I have a problem supporting compulsory acquisition of land.

I suggest that we take it back for further scrutiny or change it so that it becomes a Bill for only large national schemes in this country. I am not even sure whether it is for commercial purposes or for food security because if it is about food security, with 80 per cent of people being peasant farmers, then this Bill is designed for big projects. While I support frameworks within which we should develop our agriculture, this one does not have that desired impact. So, I do not support this Bill.

I thank you.

The Deputy Speaker (Sen. (Prof.) Kindiki): Thank you Sen. Halake. Let us now have Sen. Outa who represents Kisumu County.

Sen. Outa: Mr. Deputy Speaker, Sir, first of all, I want to declare my interest that I am farmer No.351 of West Kano Irrigation Scheme. Before I came to Parliament in 2007, I was the Chairman of both Ahero and West Kano irrigation schemes. By the time I was getting in as the Chairman, the scheme had already collapsed because of the mismanagement of the National Irrigation Board (NIB).

I rise to oppose this Bill and I will not support it after going through the content. This Bill is nothing more but just a transferable concept of naming it the National Irrigation Development Authority (NIDA) from the NIB. We must do justice to the people of Kenya if we are serious to protect our people from hunger.

In 1974, the concept of the NIB was born. They had good ideas to promote food security in areas like Kano Plains. My forefathers had a huge land where they used to grow cassava, millet and maize and they would supplement with fish from Lake Victoria but there was a scheme to deny them the opportunity to control their land under the NIB.

They established the NIB under the community land which was trustee land and they agreed with the people of Ahero and West Kano that after a period of time, they would surrender the land after developing it. However, after many years of exploitation by the NIB, there was nothing good that came out of the establishment. As a result, more people became poor than before when that irrigation scheme was established. That is why I will stand firm to reject this Bill.

The NIB has done no justice to rice farmers. The Government has been pumping a lot of money but you will realise that year in year out, the NIB does not even take greater concern to improve farming methodology. They do not have agronomists yet all the irrigation schemes like Ahero and Mwea are under the NIB which was meant to ensure food security. There was not even a single agronomist in the schemes and no research was done to improve the quality of rice to enable us to compete with cheap rice that comes from other countries. There was no any other method of land preparation. So, farmers were left to defend themselves yet people who were given the responsibility to protect farmers looted the money from the coffers each year.

When I came to Parliament in 2008, I was happy that the Government would improve all our national irrigation schemes. They came up with a programme called Economic Stimulus Programme (ESP) which was meant to stir and provide new infrastructures so that food security is realised. However, billions of money never lasted even for one year. After one year, it was reported that there was no single grain or improvement of any infrastructure of all irrigation schemes, water was still lacking in Ahero and West Kano irrigation schemes and there were no seeds provided or fertilisers yet Kshs2.6 billion was squandered but nobody has bothered to ask where the money went.

When you look at Clause 4 of the Bill, it details the services that the irrigation scheme will do. This is the same thing and that is why I said this is just a transferable concept to come up with a new name but the mismanagement will be the same just like it has been under the NIB.

Mr. Deputy Speaker, Sir, if you go to my farm today in West Kano which is under the NIB, there is nothing going on. Land preparation cannot be done because the infrastructure was established in 1974 and up to date, the NIB has never revisited to levelize the farms so that during floods, the land can hold water for rice to be cultivated.

The money which will be allocated each year will disappear at the national level. There are no post-harvesting methods they introduced for the farmers. What makes it worse is that some people will import rice from other countries. The NIB has failed to buy rice grown in this country. They can even provide our schools with free rice to feed our children. However, the cartels in Government who are proposing to rename NIB to an authority in this Bill will find it more provident to import rice from other countries. Unless this Bill is keenly scrutinised so that it support the farmers in Kenya, I will not support it.

Lastly, agriculture is devolved. Therefore, there will be no need to establish an authority in Nairobi and yet the county governments can take care of all the services mentioned in this Bill. It is my prayer and trust that the Senate will not interfere with the

functions of the devolved Governments by providing a Bill that will deny them a chance to improve on food security.

With those few remarks, I suggest that this Bill be sent back to where it came from. Consequently, we think critically and not to establish a new authority. We need to come up with a Bill that will guarantee this country food security.

The Deputy Speaker (Sen. Prof. Kindiki): Thank you, Sen. Outa. The Bill came from the National Assembly, is that where you want it returned?

(Sen. Outa stood up in his place)

Order, Senator! It is good to clarify where you want the Bill to go. Yes, Sen. (Eng.) Maina.

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I wish to say a few words about this Bill. This country seems to have adopted a new method of giving services to the people. It also seems to think projects that are not talked of in terms of billions of shillings cannot work. Sen. (Eng.) Mahamud and I used to work in the Ministry of Water. Irrigation used to be done successfully during our time. It was a department within the water sector. Unless we manage water, no irrigation can be done.

Mr. Deputy Speaker, Sir, I said one time that you cannot scare poverty by pumping in a lot of money. If we think by initiating, for example, a Kshs10 billion or a Kshs20 billion project will end hunger in this country, it will never happen. South Africa has a successful irrigation system. Zimbabwe and Egypt used to have successful irrigation systems. Maybe the methods they are using today are the same methods we were using in those years. Therefore, the solution is not this board since it becomes 'top heavy' where we are managing things while consuming resources and yet we do not have the tributaries to do the work. The solution will require engineers and agriculturalists to do proper irrigation. Let us look at our history. We have Mwea Irrigation Scheme, Kano plains and so on. However, none of them is a success story.

Mr. Deputy Speaker, Sir, I was informed the other day by somebody who used to work in the Ministry of Agriculture and Irrigation that our rice in Mwea is aromatic. It is better rice than most you get in this world. People buy rice from miserable farmers and mix it up with other varieties of rice. We need to relook at the way we are outlining our policy. The other thing I want to caution is counties have not already achieved what they have been asked to. Counties that are not delivering medicines into dispensaries are they the same one we are saying we give some billions to manage water? I will not be a party to that decision.

Therefore, instead of having this board or commission, could we have a department in the Ministry of Agriculture and Irrigation as it used to be because it worked. We do not need to invent something new where things used to work. We all know the Galana-Kulalu Project collapsed. We do not know why it collapsed. The truth is it collapsed because the concept may have been wrong and the management was not right.

Mr. Deputy Speaker, Sir, what will this board or commission with big titles and salaries do to reach everybody in every corner of this country? Will they identify small streams that can be used for successful irrigation schemes?

The solution to storing rain water is not the big gigantic dams. Let us have machineries which we used to have in the former Ministry of Agriculture everywhere in this country. A farmer, for example, could hire the equipment at a reasonable price and go to his farm identify one or two sites and a dam was dug for proper irrigation.

The concept of this Bill and its formulation is not well thought. It needs to be relooked again because we have a certain amount of resources which we need to utilise in the best way possible. When we were talking about devolution in this country, we had proposed ten regions. We had said that they should be the old provinces. We had proposed that the Rift Valley and Eastern Provinces should each be divided into two provinces because of their sizes. That way, we would have ended up with ten regions. That decision was made one evening, but when we met the following day, it was thrown away because of other tribal decisions that were to be taken. We then proposed to have the old districts and maintain the six which the former President, *Mzee* Moi had created and that is how we came up with 47 counties. These counties are top-heavy, such that some of them are spending 80 per cent of their resources on overheads, maintenance and redundant personnel. This is not the way to build this country!

Therefore, Mr. Deputy Speaker, Sir, I do not think that the way this Bill is formulated is the way to go. It needs to be sent back to the drafters and those who formulated it, for them to rethink it and go back to the history of this country. We need to retrace our history. Today, in the United States of America (USA), you will hear people quoting former Presidents like George Washington, Abraham Lincoln and Franklin D. Roosevelt. Therefore, we must retrace our history because we had very clear ways in which we wanted this country to run. For heaven sake, let us retrace these footsteps because the departments which were created earlier worked very well.

I beg that passing this Bill will be nothing more than adding another load to a horse that is already too tired and is struggling to walk.

Thank you, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. (Prof.) Kindiki): Order, Senator! Do you support or oppose?

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I am sorry, but I have to say it. If you listened to me---

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

(Laughter)

Do you support or oppose?

Sen. (Eng.) Maina: Mr. Deputy Speaker, Sir, I beg to oppose.

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

Proceed, Sen. Wambua.

Sen. Wambua: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to add my voice to this Bill.

Mr. Deputy Speaker, Sir, the history of the Bill on the Floor of this House is fresh to all of us. Last year, when this Bill was brought to the Floor of the Senate, it was defeated during Division. I remember, at the time, we were told by the leadership of the hon. Senators seated on the right side of your Chair, that this Bill will be taken to the Lower House and it will be passed. Sure enough, this Bill found its way to the Lower House and it has come back to the Floor of the Senate, word for word. Last week or two weeks ago, I mentioned that I am a linguist by training. To a linguist, we call that a slap in the face because a Bill that was rejected by this honourable House has come back for debate by the same Members.

Mr. Deputy Speaker, Sir, I know the importance of food security in this country. That importance has always been there, only that it has been given impetus by the President's Big Four Agenda. I am calling it the President's Big Four Agenda on food security deliberately, because there is no clarity on whether there is consensus on this agenda.

From the outset, I state categorically that I oppose this Bill, and for good reasons. Article 96 of the Constitution gives us, as Members of the Senate, a very important role of protecting counties and their governments. In its Schedules, the Constitution has devolved functions to county governments, and agriculture is a fully devolved function. Whichever way anyone looks at irrigation, it is an agricultural function. This Bill, as currently constituted in spirit and letter, is not good for counties; and I say that for good reasons. If you look at Clause 9 of this Bill, the membership to the proposed board of the NIA is almost entirely a national membership. Where there is suggestion for inclusion of counties, the qualifications for members are clearly stipulated. However, for the Principal Secretaries (PSs), it is just supposed to be an automatic membership. Just like Senators who have spoken before me have asked, somebody is left wondering what expertise these principal secretaries will bring to this board.

Mr. Deputy Speaker, Sir, this Bill is bad for the counties. Let this be the one Bill that the Senate will stamp its authority properly on the real devolution of functions to counties. I am not sure what irrigation takes place in the capital city of Kenya. There is no justification whatsoever to set up an irrigation authority and then go ahead to state that its headquarters will be based in Nairobi. At what point will the 47 counties, excluding Nairobi County, begin to enjoy the real fruits of devolution by hosting and housing some of these authorities, especially where irrigation takes place?

Mr. Deputy Speaker, Sir, I know that there have been arguments to the effect that county governments have no capacity to undertake irrigation schemes because they are expensive. I want to remind whoever will be harbouring those kinds of arguments that devolution is not just for the sake of it. The law is very clear that funds must follow functions. Therefore, if agriculture is a devolved function, it does not make any sense to concentrate funds in the headquarters in Nairobi; yet farming is taking place outside the capital city. Therefore, on the basis of that argument, if counties have no capacity to undertake irrigation schemes because they are expensive, let us then devolve more funds for counties to undertake irrigation.

Mr. Deputy Speaker, Sir, the only good thing that this Bill does is to give an opportunity to the Senate, through the Standing Committee on Agriculture, Livestock and

Fisheries, to ask serious questions about the use or misuse of public funds in irrigation schemes. A lot has been said about the Galana-Kulalu Irrigation Scheme, which is perhaps the most recent. Before then, we had the Hola Irrigation Scheme, where billions of taxpayers' money was pumped in. However, those irrigation schemes lie as white elephants today.

Mr. Deputy Speaker, Sir, next to Hola and Galana-Kulalu, there is an irrigation scheme in Mwingi North Constituency of Kitui County called Wikithuki Irrigation Scheme. Here, billions of shillings have been sunk and farmers and the community set aside more than 10,000 acres for irrigation. However, simply because somebody did not want to pay the electricity bill for the project, that project stalled.

The only good thing that this Bill has done is to give us, as the leadership of counties, an opportunity to open up investigations into how these billions of shillings were thrown into these projects. We should take that opportunity to call things and people by their names. We should call corruption by its name and thieves and murderers by their names.

Lastly, because of the failures of the National Irrigation Board (NIB), there is absolutely nothing in the change of a name from an irrigation board to an irrigation authority that would make this Bill worth even the paper on which it is written.

With those remarks, I oppose.

Sen. Wario: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to add my voice to this Bill. I rise to oppose this Bill. I come from Tana River County which has several irrigation schemes. There is the old Hola Irrigation Scheme, which is in Galole, Bura Irrigation Scheme, Galana-Kulalu Food Security Irrigation Scheme in Garsen and Tarda Irrigation Scheme in Garsen. I am farmer No.495 in Hola Irrigation Scheme.

(Laughter)

Mr. Speaker, Sir, I may not look like a farmer, but I am a very good farmer who comes from Hola Irrigation Scheme, in Eka-Ishirini Village. I was born and brought up in Hola Irrigation Scheme and my father used to take me to these farms when I was young. When my father died, I inherited farm No.495, which is my rural home. I, therefore, know how irrigation schemes have been run because I have lived there since I was young.

There is no irrigation taking place at the Galana-Kulalu Food Security Irrigation Scheme; it is just open land. The only thing that they are doing is to prevent the pastoralist communities from accessing River Sabaki with their livestock. The people who were given those farms to produce food are no longer there. Only a few people were left there and they are busy stopping our livestock from accessing River Sabaki.

A lot of money was pumped there and we were told that a better project would be put in place. We were forced to vacate that land to allow irrigation and go to the upper parts of Kone and Asa. However, today there is no irrigation taking place there. We are busy allocating more land for irrigation when the irrigation projects that we set up earlier have failed. There is no irrigation at the Hola Irrigation Scheme; it is just a farm full of *Mathenge* trees.

We need to have health facilities around irrigation schemes because there is a lot of stagnant water. In addition, there is no safe drinking water because there are chemicals and fertilizers which are used in the irrigation schemes. As a result, so many diseases prevail in the irrigation schemes. Therefore, it is important for this Bill to factor in health facilities so that the people who live in irrigation schemes can have access to them and also clean water for domestic use.

Mr. Deputy Speaker, Sir, agriculture is a fully devolved function. However, as you can see in Clause 9 of this Bill, all the people who manage irrigation schemes come from Nairobi where the headquarters is located. This denies the people from irrigation schemes full authority to be involved in those schemes. The county governments are also reluctant to get involved. The governor would tell you: “The irrigation scheme is managed by the board, which is chaired by somebody in Nairobi.”

It is the high time we said no to this Bill and sent it back to where it originated from, so that they can clean and iron out some few things. Thereafter, when it comes back, we will have a Bill that will cater for the people who live in those irrigation schemes. It is ridiculous to see people who live in irrigation schemes still experiencing food insecurity when this is where crops are grown. When we see people from those areas begging for relief food, then we know that the true meaning of food production is lost. Therefore, we need to restore the irrigation schemes and ensure that crops are grown. The people who live on those schemes should be food secure before they sell their produce to other places. At the moment, this is not the case.

With those few remarks, I strongly oppose this Bill.

Sen. (Prof.) Ogeri: Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to comment on this Irrigation Bill. What is the purpose of irrigation? What instruments do you require to irrigate? You require water. Where does that water come from? We have the surface water, underground water, or water which has been conserved through dams, rainfall and the roof catchments. Basically, we are talking about a resource in the name of water.

One of my biggest problems with this Bill is that already in existence within this Bill is the Water Resource Authority (WRA). That WRA is supposed to function in the same manner that we are trying to create the irrigation authority. From the onset, it is quite clear to me that we are trying to create another authority parallel to WRA. What are we doing as Senate? We are doing a job creation expedition for people to be engaged in jobs when already there is an Authority which ought to be usefully engaged in giving advice and support on water usage within the counties and at the national level. We are making a big mistake if we do not draw these contradictions that are becoming quite apparent.

Mr. Deputy Speaker, Sir, there is an existing law within the WRA. The whole Authority is on the usage of water in this country. We are coming from the backdoor through the Irrigation Bill where we are creating another Authority. What a tragedy? It is a big tragedy that this House can be used to be a rubberstamp in creating Authorities. That is one glaring mistake the National Assembly should have looked at. What are the other prevailing legal mechanisms that we can fully use to manage this very important source?

The good thing about the WRA is on functions. It is developed and devolved up to the village level. We may have some difficulties with water service boards. However, that is something we can live with and correct through the legislative mechanisms in various counties depending on their usage of water. Creating another monster is a big mistake. You can see where I am driving to.

Mr. Deputy Speaker, Sir, the title of this Bill is big. I have already explained why I may not be happy with this Bill. Assuming they will have a look at it, what is the function of the Authority? What shall it be? In Clause 8, there are a series of functions that it should perform, for example, develop and improve irrigation infrastructure for national public schemes. When you talk of improving the infrastructure – in any legislative process – you must look at the historical perspective. We had the Garissa irrigation programme. The engineers and developers instead of pumping water downstream, they were pumping it upstream. So, what happened in that project? It died a natural death because of wrong engineering specifications.

We have the Kano Irrigation Scheme and the Mwea Irrigation Scheme where, at least, you can see some production of good quality rice coming through them. What about the multiplicity of other problems we have created for these irrigation farms? First, it is the question of production which is coming out that is not well coordinated. So, the small farmers who are involved in these irrigation schemes are hardly making their ends meet. There is also a plethora of diseases.

Mr. Deputy Speaker, Sir, I remember when I was at the Ministry of Health and the University of Nairobi's Medical School. One of the issues we had to deal with and one of my research areas was on the newly acquired preventable tropical diseases like *Schistosomiasis* or Bilharzia, for that matter, because of the irrigation schemes within these regions. There were tenet complications that were being noticed in some of these irrigation schemes. There are complications of kidney. That is why you see so many people going for dialysis and kidney transplant as a result of man-made diseases and complications through the so-called irrigation schemes.

We have not even sat down to evaluate what the benefits and disadvantages of these schemes are. If the benefits outweigh the disadvantages, what do we do with the disadvantages which are rising out of those irrigation schemes? That is one ailment that I want you to look at. Clause 8(e) which says, "in consultation with the Cabinet Secretary for the time being responsible for Finance" and the county governments raise funds for the developments of the infrastructure. Who has the capacity to raise funds? Instead of wasting money in creating this office, why do you not use nominal money – a small capital – to empower the county governments to do these programmes? Only give them the area and the benefit of research which is allowed.

Mr. Deputy Speaker, Sir, you can have a very elaborate national research laboratory on irrigation programmes. Through that research programme, you can then give the benefits to farmers or the county governments where they can benefit out of those irrigation schemes. Therefore, the proposers of this Bill should go and dismantle the whole structure of the Bill. If the Bill should come to this House, it should be the section of the Bill that deals with research programs and innovations for irrigation. That

they become a resource centre for providing information to the various county levels to manage their irrigation schemes. That would be much more reasonable and clearly so.

Clause 8(2) (g) says-

“provide technical advisory services on a commercial basis, on irrigation water management, including water harvesting and storage, and waste water recycling for agricultural use to all schemes under appropriate modalities, including agency contracts”

The Galana story is very fresh in our mind. I think the Senator for Tana River County has clearly expounded the tragedy that we went through. I was looking forward to an opportunity to grow this country’s Gross Domestic Product (GDP) by double digits through the irrigation scheme in Galana. However, we have had a fiasco there because they could only manage 5,000 hectares. The production cost in that scheme was far greater than the production cost of a peasant farmer in producing that maize. What went wrong? Have we learnt the lessons?

Lest I am misunderstood, I want to emphasize that nobody is opposed to creating food security for this country. We are all in agreement with the Big Four Agenda and food security for this nation. However, we are questioning the methodology of securing food security that is being put in place through legislation in this House. That is why we must examine this Bill and be satisfied that it will meet the criteria of rendering food security that we so desire.

Moving on fast, Clause 8(2)(k) states that-

“in collaboration with county governments and other stakeholders, promote the marketing and processing of crops, animal and fish products grown or produced on national and other irrigation schemes and to liaise in this regard with other responsible state agencies and organizations”.

One of the biggest problems we are having today with regard to even the basic maize production in Trans Nzoia, Rift Valley, Kisii and South Rift is the maize imports from Uganda. I will declare my interest - I am a farmer in Trans Nzoia, where we are expecting a bumper harvest. However, as I am speaking today, there is maize coming from Uganda retailing at Kshs1,100 to Kshs1,500 for a 90 kilogramme bag. The cost of production of the same for a farmer in that region is Kshs1,700. As if that is not enough, the National Cereals and Produce Board (NCPB) stores are already full with maize from the so-called commercial traders. Where does the ordinary poor farmer take his produce of 2018, which is coming in another three to four months’ time?

We have already jeopardized the food security of this country by allowing certain cartels to come in and completely distort the market. By so doing, this is a disincentive to farmers not to produce more maize. That is why farmers are switching from maize production to something else. Therefore, if we cannot manage the maize, mangoes, rice, fish and other commodities that we get from that irrigation scheme, we will then realize that it is impossible to encourage farmers to go that route because they have already hit a snag.

Mr. Deputy Speaker, Sir, from the look of things, instead of decentralizing, we are nationalizing. Agriculture is basically a function of county governments. However, this Bill only gives two slots for representatives to this board from county governments

through the Council of Governors (CoG). We are then telling Kenyans that we want them to be food secure; that we will provide ways and means of producing that food, yet we are centralizing this thing, and therefore, putting it far from farmers. We are creating bureaucracies that farmers can never be able to manage.

Mr. Deputy Speaker, Sir, Part IV of this Bill addresses the responsibility of the county governments. It states that county governments should establish county irrigation development units for irrigation. This is what we have had in the existing National Irrigation Board (NIB), which is being replaced in this Bill. We are now bringing in the Irrigation Bill to centralize these things and only create a nominal unit at the county level. When will counties ever have the capacity to do their own things? When will counties develop the wherewithal, including technicians for handling very simple things like water resource management?

There is already an existing Authority which we should use to educate and elevate the activities in county governments. Therefore, the responsibility of county governments cannot be reduced to a mere unit trying to perform a very important and central function of irrigation within counties.

Mr. Deputy Speaker, Sir, Part IV, Clause 14(3)(c) states that-

“The county irrigation development units established under subsection (1) shall have the following functions—

c) identify community-based smallholder schemes for implementation in line with national guidelines;”

This means that it is already marginalized, yet you are coming back here, putting in very nice clauses that you are going to identify the smallholder, when the center of decision making has already been centralized at the national level. Where is he going to have the voice? He has no voice anywhere. You are just telling him that it is nice, that we have catered for you in the Bill, yet the actual decision-making process is elsewhere. Therefore, this is a very misleading Clause in this Bill.

Mr. Deputy Speaker, Sir, Clause 14(3)(e) states that:

“The county irrigation development units established under subsection (1) shall have the following functions—

provide capacity building for farmers and support establishment of viable farmer organizations, and in particular, irrigation water users associations to develop and manage irrigation schemes including actively participating in conflicts resolution within irrigation schemes”.

The farmers being referred to here are not involved in the decision-making process because the reporting center is the Irrigation Authority, the Cabinet Secretary and then the Cabinet. The next thing they will see is that they will be given orders on what to do yet there has been no input whatsoever from that farmer. I do not think we should go that way.

Mr. Deputy Speaker, Sir, Clause 15(2)(b) in Part V on the irrigation services states that-

“Pursuant to subsection (1), the Cabinet Secretary shall take measures to—

(b) seek advice of the Water Resources Authority on the development of new irrigation water sources, including water harvesting, flood control and storage for irrigation.”

The Cabinet Secretary shall take measures to seek advice of Water Resources Authority on the development of new irrigation water sources. So, what business do you have to exist if you are seeking advice from Water Resources Authority? You have no original ideas of your own; instead, you are going to consult another existing authority that the State is paying heavily for its existence on what you must do.

All in all, I love the idea of food security, but the problem is that we are trying to create structures that are draining away resources from people to others who have fat salaries. We are trying to create services which are nationally centered instead of being centered at the county levels. Kisii and Nyamira counties may not have expansive land but I am sure that there would be some form of drip irrigation that could be done like what we see in Israel in small scale holders who irrigate their land through drip irrigation.

We still have to tighten up the dispute between us and Egypt on the usage of water from Lake Victoria because 60 per cent of the rivers that pour water in Lake Victoria come from Kenya. We have not resolved that, instead, we keep saying that we will dig more boreholes. By doing so, we are just depleting our aqueous ground waters and are not making use of our surface water which many a times goes to waste. Let us look for a better way.

With those few remarks, I oppose.

The Deputy Speaker (Sen. (Prof.) Kindiki): I now give the Floor to the Senator for Uasin Gishu County, Sen. (Prof.) Kamar.

Sen. (Prof.) Kamar: Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to add to the voice of my colleagues in discussing this very important Bill. From the outset, the Bill, in my opinion, does not sit well in devolution. We need to ask ourselves why we want to do irrigation. Irrigation is the process of enhancing food production, which means that we are only doing it for agricultural purposes.

The Fourth Schedule of the Constitution is very clear that there is only one role that has been given to the national Government as far as agriculture is concerned, that is, the agricultural and veterinary policies. Everything else lies with the county governments and that is why this Bill is not sitting well with devolution as per the current the Constitution. That means that the Bill is decentralising what was devolved by the Constitution. This Senate must look at this Bill carefully and check what has been devolved, so that we do not decentralise.

Mr. Deputy Speaker, Sir, what was the reason for devolving? If we look at the reason for devolution, according to the objects of devolution, Kenyans were very clear on what they wanted to achieve when we created a devolved government system. Sometimes we may misread some of the Articles.

Article 174 (b) of the Constitution reads-

“To foster national unity by recognizing diversity.”

This is one area where we have misread and behaved as though diversity is equal to ethnicity. We keep talking about diversity to mean our diverse cultures and ethnicity, without considering the fact that we are actually diverse as far as ecological zones of this

country are concerned. If we consider diversity of the country, we should also look at diversity as far as agricultural zones of this country are concerned. It means that each county will have different agricultural priorities. Some will want to do irrigation, while others will be interested in afforestation. The ecological diversity of the country dictates what we should be doing.

As far as I am concerned, these were some of the diversities that we were looking at when we were giving the powers to counties to promote themselves and foster their own development based on their diversity. Some counties are very good in mining and others are producing petroleum. Those are diversities that we must recognize and irrigation is one of them. Some counties will take irrigation extremely seriously and they must be supported as much in the devolved unit.

Mr. Deputy Speaker, Sir, Part II of this Bill talks about the development, management and regulation of irrigation. Under Clause 6(1), the Cabinet Secretary has been given the powers to develop, manage and regulate irrigation. If we are talking of development and management of irrigation, in fact, that is not what a policy maker should be doing. This is execution of irrigation itself. If that is what this Bill is going to give the CS, it means that counties and even farmers will not have the ability to do anything without being regulated at the national Government level by a CS who does not have powers to deal with agriculture, except at the policy level.

If this Bill is to pass, we must change it completely. It must rest under the current Constitution which has devolution and leave out what is not under devolution. Otherwise, a lot of functions that had been given to the counties will be returned to the CS at this level.

It is not practical for the CS to develop irrigation systems. I agree with those who have said a National Irrigation Authority is already past our Constitution. The Constitution cannot allow that in the current set-up. If agriculture has been devolved, this should be a county irrigation board. Counties that will embrace irrigation must have their own boards that will regulate the water. For example, we cannot regulate the water in River Tana the same way as the water in Kerio Valley.

Mr. Deputy Speaker, Sir, this Bill also forgets that irrigation is going on now. As my colleague, Sen. (Prof.) Ongeru has said, drip irrigation is going on. We have a lot of it currently going in flower farms, vegetable farms and farms that grow herbs for export. The Bill does not recognize the fact that it is already going on. We need regulation within the county itself on how to apply irrigation. This is because it is at the county level that we know the usage of our water according to our streams.

The source area of the water that is being used by downstream communities does not necessarily come from the same county. It, therefore, demands an inter-county relationship. In Uasin Gishu County, for example, we do irrigation to grow flowers, vegetables and other crops. Our source of water is Elgeyo-Marakwet County. Therefore, there has to be relationship between Uasin Gishu County and Elgeyo-Marakwet County, where most of the waters spring from.

Are we saying that the national Government will move around the country to do what it failed to do before devolution came? The failure in the irrigation sector was nothing but the massiveness of the jobs we were doing. If we want efficiency, then we

must fragment, reduce areas and allow a smaller board or a unit within the unit if the county to manage this for us.

I do not see how a CS shall develop and manage irrigation throughout Kenya. It is not possible and this is what we were running away from. We were running away from the massive projects that are not efficient. We were going towards smaller units as counties, where we can efficiently perform and do our work. Therefore, the National Irrigation Authority needs to be amended to be a county irrigation board. We need to introduce that as we amend this Bill.

Mr. Deputy Speaker, Sir, lastly, Part IV of the Bill is on the responsibility of the County Government. What has been taken from the county government is being introduced in small doses, as though the county governments have no power to do this work. In fact, from the outset of the statement, it is a disaster.

Clause 14(1) says-

“Each county government may, within its area of jurisdiction, establish a county irrigation development unit for the better carrying out of an irrigation function delegated by the Cabinet Secretary as may be prescribed in the Regulations”.

You may if you wish, but you do not need to have it. An Individual farmer may irrigate without any control because the way this Bill has been written does not take care of the powers that were given to counties in the Constitution.

Mr. Deputy Speaker, Sir, I think this Bill will be an example in this House of how we should do things in the new constitutional dispensation. We should use this Bill to distinguish between what was devolved and what was not. If truly we devolved agriculture, we need to manage it at that level. We know that we will be able to see different efficiencies in different counties. However, the regulation and the law pertaining to irrigation remains in the national Government, as was anticipated by the Constitution.

When it comes to development of irrigation, I support that these is an area that must be corrected by this Bill, so that the county governments can function the way they were set up in the Constitution.

With those remarks, a lot of amendments must be put in place before we---

The Deputy Speaker (Sen. (Prof) Kindiki): Order! Sen. (Prof) Kamar, do you support or you oppose the Bill?

Sen. (Prof.) Kamar: Mr. Deputy Speaker, Sir, I support, subject to amendments.

The Deputy Speaker (Sen. (Prof) Kindiki): Very well. Let us have Sen. (Dr.) Kabaka.

Sen. (Dr.) Kabaka: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to give my views on this important subject that can transform this nation to prosperity if well articulated.

Before I proceed to the thematic areas of this Bill, it is imperative that I state my disdain for the “Lower House’s” inability to amend the Bill after it was rejected last year by this House. I have the Bill that was introduced in this House previously. When I looked at its contents from the beginning to the end, it is the same with the Bill that was before us. It is intact and nothing has changed. What does that tell us? It tells us that, the “Lower House” has no regard to the “Upper House”.

If we go by the functions that are well spelt out in Article 96 of the Constitution on the role of the Senate, particularly Article 96(b), it is the function of this House to participate fully in the law-making functions by considering, debating and approving Bills concerning counties as provided in Articles 109 to 113 of the Constitution. When we are called to debate, consider and approve or disapprove Bills, which of necessity are not financial Bills, we do so as men of high intellectual calibre. In other words, we interrogate them before we approve them. We are supposed to look at the content, the context and the philosophical foundation of that Bill before we approve them.

I submit that this Bill in the form it has been reintroduced this year has nothing of substance. The contentions that were used last year that made the Bill not to see the light of day are still intact. So, we need to reiterate them and reject it as it is.

I vehemently oppose it for the following reasons: One, the NIDA is improperly constituted and it is monolithically skewed towards the National Assembly. Indeed, if you look at the managerial composition or its structures, whereas it is supposed to be horizontal, it is vertical. Why is it vertical? It means that it has included many stakeholders like Cabinet Secretaries and Permanent Secretaries without taking cognizance of the county governments' representation.

To me, this is by design and not by default. It is put that way so that the national Government, which most of the time acts as an economic financial vampire to the national cake draining the funds that are supposed to be devolved directly to the county governments. This is a denial of the spirit of devolution.

It has been said and there is no gainsay about it that agriculture, pursuant to Article 186 of the Constitution, is a devolved function. The Fourth Schedule gives clear demarcations of the agriculture functions; thereunder lies the irrigation function. So, if at all the Bill as reintroduced is meant to cure food insecurity in the country, then it is lopsided. This is because it attempts to take away a well designated county function back to the national Government without attaching financial benefits to the same.

Mr. Deputy Speaker, Sir, Clause 7 of this Bill stipulates the city where the headquarters is supposed to be. It was mentioned earlier that it has to be in Nairobi City. However, when the Constitution of Kenya, 2010 was promulgated, the objective of devolution was salient. That power was to be decentralized from Nairobi to the rural areas. Therefore, these functions should be devolved to the county headquarters where management will be done.

It will be a disservice as the Senator for Machakos County, if I do not mention some of the intended irrigation schemes. We have the Yatta Canal which was supposed to be expanded. I know the Government did a good job by cementing the canal with the objective of avoiding percolation of water. The canal was supposed to be expanded to greater parts of Yatta, Masinga and some parts of Kitui, so that a lot of water that flows directly to Masinga Dam via Thika River can be captured.

Therefore, there is a lot to be done by the national Government in that regard. If that function has been devolved to the counties, then I am sure that if the County Government of Machakos is well funded, it will be in a position to give water to many deserving people for irrigation.

Mr. Deputy Speaker, Sir, when Masinga Dam was established over 30 years ago, it had two major functions. The first one was to generate power, which it does very well. Secondly, it was to be a holding reservoir for the other dams downstream. Of necessity, it was also supposed to be a source of water for irrigation for local inhabitants. However, the Tana and Athi River Development Authority (TARDA); the body owning and managing the Dam has not only refused to allow the people of Masinga to get water for irrigation in their farms, but it has also denied them drinking water. Therefore, the people of Masinga, where the dam is located, have been given a raw deal.

Mr. Deputy Speaker, Sir, I am addressing a professor of international law. We had a lot of international legal issues with regard to the Nile Treaty of 1929. I need to add my voice and say that we have allowed a lot of latitude to the Egyptian Government by even invoking environmental diplomacy in resolving the Nile Treaty of 1929.

As a historian, I have read this agreement very well, article by article and there is absolutely nothing which prevents Kenya from using the waters of Lake Victoria.

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

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

It is, therefore, high time that we educated some of our colleagues who think that the waters of Lake Victoria are untouchable and that we can use that water.

Madam Temporary Speaker, we should not, of course, be cowards when utilizing the waters of Lake Victoria, which is the source of River Nile. We should utilise it at will without any fear, especially the countries that border the waters of the River Nile; Kenya, Uganda, South Sudan and Sudan.

Just as Sen. (Prof.) Ongeru has said, we should not be duped by the Government of Egypt by being given some boreholes here and there. The waters of the Lake Victoria are our natural heritage and an endowment by the Almighty God. If anyone wants to start an international war, they should stand warned that we are not cowards.

Madam Temporary Speaker, in conclusion, a lot has been said about this Bill. Looking at the Bill from the top, bottom and sideways, we can see that the content has remained the same and there is nothing to be debated. Ours is just to return the Bill back to the National Assembly for further deliberations. We would be people of unsound mind to reject such an important Bill.

The objectives of the Bill are well articulated, however, so many areas have legal flaws. That is why we are calling on the promoters of the Bill to take it back for polishing and further deliberations so as to fit the standards capable of being debated by this honourable House pursuant to Article 96(1) of the Constitution.

Thank you. I beg to oppose the Bill.

Sen. (Eng.) Hargura: Thank you, Madam Temporary Speaker. No government can claim to be sovereign if it cannot feed its people. For the last 50 years as Kenyans, we have had a centralised Government, where everything was decided from Nairobi. Because of that, very little has been percolating to the rest of Kenyans who are far from Nairobi.

This, coupled with skewed policies like Sessional Paper No. 10 of 1965, institutionalised or legislated marginalisation in this country. It is after 50 years that we, as Kenyans, decided that we have to come up with a Constitution whose main agenda is devolution. We went ahead, in Article 6 of the Constitution and came up with two levels of government.

We said very clearly in Article 6(2) of the Constitution that-

“The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.”

This does not mean that one form of government is subordinate to the other. In the Fourth Schedule of the Constitution, we assigned the two levels of government their various functions.

Madam Temporary Speaker, this Bill deals with agriculture and the Fourth Schedule is very clear on that. In Part 1 of the Fourth Schedule, Kenyans gave the national Government function No.29, which is the function of just coming up with the agricultural policy and nothing else. However, Part 2 of the Fourth Schedule started with agriculture, as the first function of county governments.

It states-

“The functions and powers of the county are—

1. Agriculture, including—

- (a) crop and animal husbandry;
- (b) livestock sale yards;
- (c) county abattoirs;
- (d) plant and animal disease control; and
- (e) fisheries.”

Therefore, we are very clear on who does what. The national Government should just be doing agricultural policy, while the actual implementation of that policy should then be by the county governments. This should be done in such a way that we are still one Government having the same policies but every county implementing according to its specific needs.

Madam Temporary Speaker, due to climate change, for us who come from pastoral areas, pastoralism is now no longer a sustainable way of livelihood; neither is rain-fed agriculture for those who come from areas where they practise that. Therefore, the best way forward is water-fed or dry area agriculture where each county will have to implement what is suitable for them. This is because different soils support different kinds of crops.

Those of us from pastoral areas might even be thinking of growing pasture for our animals through these irrigation systems. Therefore, once the national Government comes up with the policy, we expect county governments, through their county assemblies to come up with specific legislation applicable to food production within their jurisdictions. That is why we have county assemblies.

Madam Temporary Speaker, when we come, sit here in Nairobi and come up with a Bill like this one – which says that it is the Cabinet Secretary (CS) to come up with the development and implementation of matters of agriculture – then the Senate, which is

supposed to be serving the interests of the counties will not be doing justice to our existence in this House. It would mean that we are not representing or protecting the interests of counties. We would then just be giving back the interests or functions of counties back to the national Government.

[The Temporary Speaker (Sen. (Prof.) Kamar) left the Chair]

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

Mr. Temporary Speaker, Sir, it was my hope that counties, which are normally required to come up with their own County Integrated Development Plans (CIDPs) for that five-year period, will capture what they intend to do. Thereafter, they will develop their annual budgets and plans from that CIDP. Therefore, this is something which was thought of at that level. Of course, food production will be central in the CIDP. Consequently, it will be to the disadvantage of the counties if we now sit here and say that we have to come up with a National Irrigation Authority (NIA) which has to run the day to day agricultural issues.

Clause 3(2) of the Bill says-

“Upon the commencement of this Act, no irrigation development may be carried in Kenya, otherwise than, under this Act,”

So, all the 47 county governments will have to follow what is in this Act, which gives all the powers to the Cabinet Secretary (CS) dealing with irrigation. This is because in Part II on development, management and regulation of irrigation, all powers are given to the CS. This CS might not even be the CS for Water and Sanitation because, as we have been told before, we have observed that irrigation oscillates between the Ministry of Water and Sanitation and the Ministry of Agriculture and Irrigation, depending on who is making the decision.

So, if irrigation is in the Ministry of Agriculture and Irrigation, then even matters water will be determined by that CS. After all, the Bill says that the CS will have powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation. That is a water department function, but we are giving it to a CS who might even be responsible for agriculture.

The Bill defines a small irrigation scheme to be 100 acres and less. Anything between 100 acres and about 3,000 acres is medium. So, a county cannot decide to try something in terms of irrigation. For example, in an arid area, a county cannot decide to grow pasture by irrigation because they have to get a license from the CS for any scheme. The CS is supposed to monitor and enforce the conditions attached to the license. The national Government could not even monitor – leave alone licensing of irrigation and all that – the licensing of dams.

We had the Solai tragedy because the Water Resource Management Authority (WARMA) and others could not monitor and now we are coming up with another Authority to monitor small scale irrigation schemes. We are literally introducing a lot of bureaucracy and cannot move.

We have given counties the authority to run their own agricultural affairs and now we are saying that we cannot start even a small scheme of 100 acres without a license from a CS who is based in Nairobi. In addition, that CS is the one to monitor that. In fact, the Bill says that we must have parallel systems. The Authority will have offices up to the sub-county level. This is a county government function and we are putting some parallel systems which will just cause conflicts. This is because county governments will want to do their own things and we have staff up to the sub-county level. So, the Bill, as it is, is not in the interest of devolution. It actually denies Kenyans, in a very critical sector, what they wanted to do for themselves.

The Constitution talks of public participation. We have to make decisions and implement them at the county level. However, when you take an important sector like food production and create an Authority composed of ten members as proposed by the Bill, majority of who are from the national Government--- Two of them will be proposed by the Council of Governors (CoG). They will be proposed to the CS and approved by the President. That is not a representative of the county governments. It is still a national Government individual. If it is your own representative, there should be no other roadblocks again. It should be the county governments proposing that person directly to sit in that board without going through any other vetting or approval.

Now, the CoG just submits the name to the CS and, of course, by nature, you will not submit two names. Otherwise, that CS will just be a conveyor belt. Four or five names will have to be submitted and the CS will choose the ones he or she wants. So, it will be a national Government representative. County government, who are actually responsible for food production because agriculture is a county government function, will not have any credible representative or somebody they have trusted to put in that board. Even whatever CoG proposes has to go through the CS and then the President approves. So, it cannot be a county government representative.

Mr. Temporary Speaker, Sir, this Bill is not in the interest of devolution. We cannot tell county governments that this is their responsibility and say that nothing happens in this irrigation sector, except according to this Act which gives powers to a board and a CS. The worst is Part IV which talks about the functions of county government in this Bill or matters irrigation.

Clause 14(1) says-

“Each county government may within its area of jurisdiction, establish a county irrigation development unit for the better carrying out of an irrigation function delegated by the Cabinet Secretary as may be prescribed in the Regulations.”

This is the county government's irrigation mandate in accordance with Part 2 of the Fourth Schedule of the Constitution.

We are already legislating for the county government on how to run its functions.

I remember when we were doing public participation for the Roads Bill, in the last Parliament, there was the issue of the Conditional Roads Maintenance Fund, which is strictly under the Kenya Roads Board Act for the Roads Maintenance Levy. It was proposed that county governments should have a unit within the infrastructure department for roads maintenance. That is something which is natural, because you

cannot do roads maintenance if you do not have that unit. However, governors refused and said that we cannot legislate for them. They said that they know how to carry out their functions and can legislate at the county level.

We are now seated legislating for county governments that they need to have a unit, whereas agriculture is a county government function. So, by nature, they must have that unit, but we do not need to legislate for them and then go ahead and say: "To carry out irrigation functions delegated by the County Secretary as may be prescribed in the Regulations."

The county government is forming a unit to perform its functions which will be delegated to them. By delegation, it means that it is not their function, but that of the CS who now delegates to the Governor to do some work. The county government has been given that right under the Fourth Schedule of the Constitution. Now, we are putting county governments even below that Authority. We form an Authority and then put county governments below it to be delegated works by the CS. That is belittling the Constitution. Whoever drafted this Bill should have known that the way to go is to give counties power to make their decisions on how best to serve residents of that county in terms of food production.

The Government should be very clear when coming up with policies. Livestock keepers have no policy. There is tea, coffee and other crops' policies. For livestock, specifically, what is available now is just for the big ranchers. We, the pastoralists, are told that it is just a way of life. For over 50 years the Government has not come up with any policy on that. That is what it should be concentrating on and not going into implementation of small irrigation schemes, where we are told that we cannot have a 100 acres irrigation scheme, until we get a license from a CS. I think some parts of this Bill might even be unconstitutional if we look at it that way.

Mr. Temporary Speaker, Sir, if we have come up with a Bill, then it must be specifically on policy issues. There are many policy issues lacking in this country, especially concerning livestock production. We have been thinking of coming up with disease-free zones. If it is not possible to do the disease-free zones, then we should have some way to control quarantines so that people who rely on pastoralism can export their animals through policies which will enable them to meet the export standards. However, nobody is talking about that. We are still struggling with who should license 100-acre irrigation schemes.

Mr. Temporary Speaker, Sir, based on those issues, we need to have a Bill on how the national Government should execute its agricultural policy function but not a Bill like this. If it is the way it is, I oppose.

Sen. Omogeni: Mr. Temporary Speaker, Sir, from the outset, I rise to oppose this Bill for the following reasons. Record will bear me witness that the Bill that is before the House is the same Bill that was debated and rejected by the Senate. Under the Constitution that we enacted in 2010, Chapter Six has a clear Article touching on issues to do with leadership. As Senators, we must ensure that whatever we do, we do not bring disrepute to this honourable House called the Senate.

Under Article 73 of the Constitution, the decisions that we make as the Senate must bring honour to the nation and dignity to the office of a Senator. The decisions we

make must also promote public confidence and demonstrate integrity in the offices that we hold. They must also demonstrate respect for the people that we represent.

We will be negating all the responsibilities of leadership which are captured in Chapter Six of our Constitution and more specifically in Article 73, if we as a Senate rejected a Bill six months ago and then the same Bill is brought to us for consideration and we pass it. If not for anything, for that simple reason that our views as the Senate have not been taken into consideration to improve this Bill even by 10 per cent, that is ground enough for us to reject it.

Even if that is to be disregarded, this Bill is utterly unconstitutional and against the gains of devolution. It is a classical case of a national Government that wants to operate as if Kenya never enacted a new Constitution in 2010 that created two levels of Government; the national Government and county governments.

Under Part 2 of the Fourth Schedule of our Constitution, agriculture is a devolved function of county governments. Issues dealing with water and sanitation are functions of county governments. When people talk about diseases in areas where irrigation schemes are, they are concerned about sanitation. These are responsibilities that the people of Kenya have passed over to county governments and you cannot divorce irrigation from agriculture. When you talk about irrigation, you are basically talking about agriculture which is about improving farming productivity and crop husbandry.

The definition of agriculture is clear in the Constitution. It states that agriculture includes crop and animal husbandry. So, there is no way the drafters of this Constitution can be ingenious and disregard a very clear mandate of county governments.

Under Article 96 of the Constitution, our main role as Senators is to protect devolution. If we pass a Bill that clearly wants to take away functions of county governments, we will have failed miserably. So, if not for any other second reason, the fact that this Bill wants to eat into functions of our county governments is ground enough for this House to reject this Bill.

Thirdly, I have never seen a Bill that is drafted in a simplistic manner. The approach taken by the drafters of this Bill so simplistic. The drafters of this Bill could not think of any innovative ways of doing irrigation other than the traditional large-scale irrigation schemes such as Mwea and what we have in Ahero. If we have to ensure food security in this country and if we have to improve productivity of our smallholder farmers, we must be broad in our approach to what we perceive to be irrigation.

The point this Senate needs to put to the drafters of this Bill is that irrigation includes empowering the smallholder farmer, including the poor woman who wants to increase her income. That woman must be empowered to do irrigation in her small farm that can lead to high productivity of whatever farming that she undertakes. Many of the poor farmers I am talking about include women of this country who should be economically empowered. So, a proper Bill should not have this simplistic definition of what irrigation is.

They have stated that irrigation means any hydraulic engineering process. That is an offence to the poor farmers in our counties. We all know and it does not require anybody to go to school that we have drip and sprinkler irrigation which do not need what the drafter is calling hydraulic engineering process. People are even going to the

level of having solar-powered irrigation but all these have been left out because the drafters of this Bill are enemies of devolution. They just looked at large-scale irrigation schemes that were being run by the NIB. For that reason, we as Senators should reject the attempt by the national Government to disregard the people whom we represent because if categories of people undertaking irrigation by means of drip, sprinkler and solar-powered irrigation were taken into account in this Bill, then the people I represent from Nyamira County would have been covered.

If we adopt this Bill, it means that I do not care about the small-holder farmer in Nyamira County where I come from and the county that my friend Sen. Seneta comes from, yet those are the people we represent.

I was expecting the drafters of this Bill to be innovative and sensitive in addressing the problems the small-scale farmers who want to convert their three acres into viable farms which can produce high yielding vegetables and fruits that will not only improve the food security of this country, but will also increase their income, are facing.

I expected this Bill to address issues of financing small-scale farmers in purchasing the small irrigation machineries to do proper farming helped by irrigation. It seems the drafters of this Bill do not understand the challenges that our farmers are facing. At the back of their minds, they think that talking about irrigation is having Mwea Irrigation Scheme. We are losing the point.

Mr. Temporary Speaker, we represent the small-scale farmers who want to do irrigation, but they lack finances. People have greenhouses for farming, but small-scale farmers cannot afford them in their farms. These are the people we need to address. There is lack of support services to these farmers. I thought this Bill will obligate counties to have support services to the farmers who want to undertake irrigation in their small farms. This is not being addressed. I expected this Bill will address the issue of having county-based engineers who are experts in irrigation and can have agricultural extension services to farmers.

As a result, they train them on how they can move away from the traditional means of farming and adopt the more modern irrigation-based farming, using their small farms. That is the only way we can proudly say we are fighting for the interest of our counties.

Mr. Temporary Speaker, Sir, who does not know that the NIB has failed miserably? If we are looking for solutions, then the national Government will not offer those solutions, but instead our county government will. Two weeks ago, I was in Mwea for a funeral. I stopped in to buy rice in Mwea Town. I asked the farmers how they managed to farm rice all this time. They told me that they were abandoned by the NIB many years ago and that they are now managing those irrigation schemes themselves. What is this obsession that we cannot undertake irrigation unless we pick Principal Secretaries from Ministries based in Nairobi to manage irrigations in our counties? That is not the way to go. That is not the way we can have food security for this country. The people in counties can manage these irrigation schemes and farming on their own.

We have 21 Ministries in this country. I have looked at this Bill and the people proposed to be on the board, to say the least, this is how insulting somebody can be. The Ministry in charge of devolution has been left out of this Bill. They are proposing a

representative from Treasury, Principal Secretary Department of irrigation, Principal Secretary responsible for Agriculture, Principal Secretary Water services and so on, whereas, the key link that is the Ministry of Devolution and ASAL areas has been left out as indicated in Clause 9. That should tell you the people who drafted this Bill do not care about devolution. Their mentality is about national Government. How can they dare to leave out the Minister in charge of devolution out of a function that deals with counties?

Mr. Temporary Speaker, Sir, the other reason why I am opposing this Bill is because there is an attempt by the Cabinet Secretary to micromanage counties.

Clause 6(1) says-

“The Cabinet Secretary shall develop, manage and regulate irrigation throughout Kenya and to this extent shall ensure the effective exercise and performance by any authority or person under the authority of the Cabinet Secretary of their powers and duties in relation to irrigation and drainage, including water harvesting and storage for irrigation.”

What tells this Cabinet Secretary that county governments cannot manage and regulate irrigation in their counties? They have the capacity. What is it that any time we want to create boards, we must mention particular Ministries. In Tana River, for example, we have the largest irrigation schemes. Why can we not mention by name that the Governor for Tana River County will be sitting as a member of this board? Why can that not be the case? Why must we mention particular Ministries, but we do not want to mention particular counties of interest?

Clause 14 states that the Cabinet Secretary will delegate irrigation functions to the counties. What a joke? How can a Cabinet Secretary delegate functions to county governments? That is not the way to go. The best way to make Kenyans enjoy the fruits of devolution is by empowering our governors. While appreciating the problems we, as a nation must appreciate the problems we face and look for their solutions.

Mr. Temporary Speaker, Sir, one of the challenges we face is that 80 per cent of this country does not receive adequate rainfall. That is a documented fact. Our counties are in the 80 per cent and the remaining 20 per cent receives erratic rainfall throughout the year.

Another challenge is that we need to ensure we have food security in this country. Also, we have so many peasant farmers in this country who we need to empower, increase their level of farm production and allow them to engage in high value return farming so that they move out of poverty. The attention should never be to the traditional irrigation schemes which have been there and not succeeded.

Last Friday, I drove through Ahero Irrigation Scheme, but I did not see any activities going on there. The national Government has abandoned those irrigation schemes. What does that tell us, as leaders? That national Government lacks the capacity to manage those irrigation schemes. If that is the case, we then need to look for a solution from outside the traditional approach, which we have had for several years since Independence.

Mr. Temporary Speaker, Sir, I have said severally in my contributions that this Senate should not condone the suspicion between the national Government and county governments. The Constitution is very clear that we have two levels of government which

shall be interdependent and which shall collaborate with each other. Therefore, even if the Government wants to assist county governments in issues dealing with irrigation, it should first appreciate that this is a function of the county governments and that they can work in collaboration. It should not be the other way round.

Mr. Temporary Speaker, Sir, in conclusion because of time, this Senate should not play small, because doing so will not help this country. Whether this Bill was passed by the National Assembly or not, we as the Senate have a constitutional obligation to reject it if it does not serve the interests of the counties that we serve. We are not flower girls and we are not here to rubber-stamp what the National Assembly has passed. We are here to ensure that every Bill that we pass serves to protect devolution. We must reject this Bill because it does not serve that purpose.

Thank you.

(Applause)

Sen. Seneta: Thank you, Mr. Temporary Speaker, Sir, for also giving me a chance to add my voice to this Bill.

Before I do that, I wish to first confirm my stand and support for the Government initiative to conserve and protect the Mau Forest. As the delegation from Kajiado County, we shall support the Government initiative to conserve not only the Mau Forest, but all other catchment areas in order to protect our water bodies in the country. This is because we cannot talk about food security as a country without talking about water. Similarly, we cannot talk about manufacturing or housing as our agenda without talking about water. Therefore, as the people of Kajiado, we want to support the Government initiative.

Mr. Temporary Speaker, Sir, from the outset, this Bill is unconstitutional. It is one of those Bills that does not recognize the role of constitutional bodies like county governments and county assemblies, which are mandated to do regulations or policies concerning counties. It does not also recognize the mandate of the Senate which is to protect the interests of counties.

This Bill also intends to duplicate the work of different departments and agencies like the National Irrigation Board (NIB), which has always been there. It is just duplicating roles. There is no need for us to baptise some old government institutions. What we legally do is to look into where they have failed; where there is a gap and we can give more strength, rather than baptize them.

This Bill also seeks to sideline the county governments by developing irrigation water sources. If you may allow me to read, this Bill through the Water Resource Authority, puts strategies to develop new irrigation water sources, including water harvesting, floods control and storage for irrigation. The Bill also puts appropriate arrangements on inter-catchment transfers for water irrigation, in consultation with county governments and water resources. So, the Bill denies county governments the capacity and authority to look at the sources of water they can develop and the capacities they have.

We have counties with seasonal and permanent rivers and those with big pieces of land, where they can develop dams. However, this Bill still gives the National Irrigation

Authority (NIA) the mandate to develop and give licences for these water sources to counties.

Mr. Temporary Speaker, Sir, this Bill mandates the Cabinet Secretary (CS), in consultation with the National Land Commission (NLC), the Board and county governments, by a notice in the *Kenya Gazette* to designate and offer licence for an area to be developed as a water resource for irrigation. This is a simple thing that our counties can do, but they still have to go for licences from the national Government.

At the same time, this Bill also gives the Authority and the CS the right to acquire land, through this board, for irrigation purposes. This is a dangerous move. We are trying to bring back the colonial days where the Government used to move people from a particular area to pave way for a project.

This Bill is unconstitutional and dis-empowers counties. I do not understand how a county government can allocate money to a project that is being designed, managed, monitored and evaluated by an Authority of the national Government.

I urge the relevant Committee to relook at this Bill. If it is intended to address policies for irrigation, let it be a national irrigation Bill, which only addresses policies, because that is allowed in the Constitution. We should then come up with an irrigation Bill for counties, so that we do not create a conflicting mandate.

Mr. Temporary Speaker, Sir, because of---

The Temporary Speaker (Sen. Lelegwe): Order, Hon. Senator. Sen. Seneta, you will have a balance of 11 minutes next time when this Order comes up for discussion.

ADJOURNMENT

The Temporary Speaker (Sen. Lelegwe): Hon. Senators, it is now 6.30 p.m., time to interrupt the business of the Senate. The Senate, therefore, stands adjourned until tomorrow, Wednesday, 25th July, 2018, at 2.30 p.m.

The Senate rose at 6.30 p.m.