

PARLIAMEN TO F KENYA

THE SENATE

THE HANSARD

Tuesday, 15th July, 2014

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

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

PRAYERS

STATEMENTS

CUSTOM BARRIERS AND RESTRICTIONS AT NADAPAL CUSTOMS BORDER POST

Sen. Munyes: Mr. Speaker, Sir, I wish to seek a statement from the Chairperson of the Standing Committee on National Security and Foreign Relations on customs problems at Nadapal-Kenya-South Sudan border point.

In the statement, I would like the Chairperson to state:-

(1) whether the Government is aware that the Nadapal Customs Border post of Kenya and South Sudan suffers from numerous custom barriers and restrictions from the national Government;

(2) whether the Government is aware that Nadapal is not covered by the electronic cargo system technology practiced in all international border posts; and,

(3) To confirm that the problem at Nadapal affects revenue collection and social economic development of Turkana County and the Eastern Equatorial State of South Sudan.

The Speaker (Hon. Ethuro): Is the Chairperson here? I can see the Vice Chairperson.

Sen. Adan: Mr. Speaker, Sir, I request that we be given two weeks to respond to this particular statement, if that is acceptable with the Senator.

The Speaker (Hon. Ethuro): Sen. Munyes, is that okay?

Sen. Munyes: Mr. Speaker, Sir, could the time be reduced to one week given that we are losing so much revenue and the two communities depend on this border? This border has not been fully operational in the most efficient way for the last two years. We would want a situation where activities running along that border do so efficiently.

Sen. Adan: Mr. Speaker, Sir, I will try my best to have the answer within a week. But in the event that we do not get the answer within one week, I would request the Senator to bear with us.

The Speaker (Hon. Ethuro): Okay.

ESCALATING BANK INTEREST RATES

Sen. Billow: Mr. Speaker, Sir, I want to give a statement on the escalating bank interest rates that was sought by the Senator for Murang'a County. If I may proceed?

The Speaker (Hon. Ethuro): Proceed, Senator.

Sen. Billow: The statement sought was on three areas; one, the Senator wanted to know the relationship between the high interest rates charged by banks and the very high profit after tax being made by the banks in this country.

Secondly, he wanted to know the impact of the high interest rates on development and economic growth particularly in the counties.

Lastly, he wanted to know the relationship between the profit made by the Central Bank of Kenya (CBK) from lending to banks and the profits made by those banks.

Mr. Speaker, Sir, this is very useful because these are some of the topical issues today in the country. The Government liberalized interest rates in 1992 when all the controls on lending and deposit rates were removed. Subsequently, all the interest rates are being determined, since then, by the market forces. The Senator has a copy of the answer which is long. I will be very brief. I will highlight the key areas.

On the first question regarding the relationship between the high interest rates charged by the banks and the very high after tax profits made by the banks, over the past 11 years, interest rates on loans and advances in the banking sector constituted only 42 per cent of the total income of those banks. The rest of the income has been from the interest on Government securities and other non-interest income. This clearly shows that interest income on loans and advances does not constitute a significant portion of the bank's total income. It is also worth noting that despite the consistent increase in lending from Kshs315 billion in 2003 to Kshs1.6 trillion in 2013, the average lending rates have oscillated between 11 per cent and 20 per cent over the last 11 years on average. In fact, were it not for the very high rates in 2011 and 2012 – in 2011, the rate was about 20 per cent on average and in 2012, it was 18 per cent. In 2013, the rate was about 17 per cent. Otherwise, the average rate would have been 14 per cent over the ten year period.

Mr. Speaker, Sir, it is important to note that the banking sector financed an average of 83 per cent of their loans during this period from customer deposits. As a result, interest on deposits constitute 40 per cent of the total interest earned by the banks. That is the response to the issue of the high interest rates. What we are saying is that the high interest rates do not necessarily lead to the very high after tax profits. There is a schedule that we have provided, which gives the relationship across all the banks for the last 11 years. This is the relationship between the incomes by the banks and the interest rates. I will not go into that. The Senator has a copy of that schedule. But it is important to note that the high profits after tax has not necessarily been as a result of the very high interest rates.

The second part of the question is on the impact of high rates on development and economic growth particularly in the counties. It is true that the rate of economic growth and development is to some extent dependent on the ease with which productive enterprises and individuals can access funding to transform the viable ideas and opportunities into productive ventures. These funds can be obtained either through floating equity or through borrowing. In this regard, the high interest rates will raise the cost of borrowed capital and thus contain investments. We have made commendable progress over the years in growing the private sector credit. The private sector credit ratio to GDP has grown from 25 per cent in 2005 to 40 per cent in 2013.

This shows that despite the high interest rates, credit to private sector has continued to grow. This compares favourably with other countries in the region such as Nigeria, Tanzania, Uganda and so forth. But, of course, when you compare with other countries, it is lower, for example, in Mauritius, Malaysia and South Africa. This is largely credit for working capital. That is the one we refer to here. Therefore, the presence of bankable projects and the growth of the economy increases opportunities for investments and, thus, lowers the cost of credit. There is a schedule that has been provided with all those details, comparing all the countries in the region for the last five years. This is on the lending rates in those selected countries.

Mr. Speaker, Sir, based on several studies, the main factors contributing to the high lending rates in Kenya include the following:-

(1) The high overhead costs such as the wage bill, the cost of realizing collateral, infrastructure, particularly roads, power and stability, cash in transit costs and costs of the commercial justice system. Those factors are critical in determining the overheads that the banks charge on to their lending rates.

(2) High credit risks. It is only in 2010 that the credit information sharing was introduced to enhance credit risk management. Since it was introduced, in the last couple of years, over three million requests for information from the Credit Reference Bureau (CRB) have been registered, to the best of my knowledge.

(3) The existence of alternative investment opportunities for banks with higher returns. So, banks always have an option, to lend or invest in other areas where they have got higher returns.

(4) There is also the lack of effective competition due to prevailing market segmentation. Large banks are able to mobilize large deposits at much lower interest rates than smaller banks.

Mr. Speaker, Sir, those are some of the factors that contribute to the high lending rates. I have mentioned those four factors, among others.

Lastly, on policy initiatives and reforms to curtail the high lending interest rates, in an effort to deal with the above factors, several policy reforms and initiatives have been already been undertaken. Very briefly, these include the following:-

(1) The establishment of currency centres by the CBK in partnership with the Kenya Bankers Association (KBA) in an effort to mitigate the high cost of transporting cash. These days, we do not carry cash. They have set up centres to reduce the cost of transporting cash.

(2) Introduction of agency banking in 2010. Agency banking has allowed banks to provide banking services through third party agents to avoid huge overheads of setting up and establishing branches. That is there in many areas.

(3) Introduction of mobile phone financial services which offer convenient and economical channels of banking to customers. Again, that is true. Many of us can now undertake a lot of transactions from mobiles including *M-shwari* and *M-pesa* that offer a lot of opportunities. That roll out of mobile financial services has enabled banks to offer their services anytime and anywhere to the convenience of their customers.

(4) The roll out of credit information sharing. I mentioned this earlier, that this also enables banks, within their framework, for credit risk management, to share information. This has really helped banks in that regard.

(5) Promotion of consumer protection in the banking sector through the introduction of a prudential guideline on consumer protection by the CBK.

(6) The establishment and strengthening of deposit insurance protection fund has also helped to guarantee depositors of their savings and increasing the minimum core capital of the banks from Kshs250 billion in 2008 to Kshs1 billion in 2012 to promote strong banks and competition within the sector.

(7) Establishment of a Committee on Private Sector Credit and Mortgage. In January, 2014, the National Treasury constituted a very high level committee to explore ways of enhancing private sector credit and mortgage financing in Kenya. Among other things, to also determine why our interest rates spread is very high; this is the difference between the lending rates and the deposits. They came up with a number of proposals. They are very lengthy, I will not go through them. But among them, and most importantly, is the introduction of what they call Kenya Bankers Reference Rate (KBRR). This rate will allow the banks to use it to determine the base. The difference between this and what existed before is, before we had what we called a base rate set up by individual banks. Now we have a KBRR which is set by the CBK Monetary Policy, which is uniform across the country. It captures all the costs that are needed. What the banks merely need to add is their premium. This was set last week when the CBK had a meeting. It was set at 9.13 per cent. The CBK has issued a lot of notices on this. We expect the banks to start reducing their rates because it is now based on the actual base that has been set. Of course, there are several other recommendations made by that committee in order to reduce the rates.

Mr. Speaker, Sir, lastly, the last question sought was on the relationship between profit made by the CBK from lending to the banks and the profit made by the banks. The CBK discount window is the one that the CBK uses to lend, being the lender of the last resort. It is available to enable banks manage their short-term liquidity constraints. No bank can access money through the discount window while at the same time being able to participate in the inter-bank market as a lender. Therefore, banks are actually encouraged to address their liquidity challenges through the inter-bank lending. It is only when they are not able to access money from the inter-bank market that they are allowed and to discourage it, they normally charge the premium over and above the inter-bank rate. Again, there is a provision for that showing how much has been lent between 2009 to 2013 to banks and comparing that with the profits earned by CBK.

Let me stop there and allow Members to seek clarification.

Sen. Kembi-Gitura: Mr. Speaker, Sir, I would like to start by thanking the Chairman of the Committee for a reasonably well thought-out answer and for the support that he has given to it, but going through the whole of that Statement, one finds that there are a good number of contradictions in the relationship between the profits made and the interest rates charged. The last part of the question was a rider by Sen. (Dr.) Khalwale, and I am sure he is going to follow up on it.

Mr. Speaker, Sir, at least, there have been some concessions that there is that relationship between high interest rates and very high profits made because this must be the only country in the world where banks would proudly state at the end of the year that they have Kshs17 billion after tax profit. In the meantime, very few people have been able to finance their mortgages or borrowings because part of the reason there is that high profit is because of the recoveries they are making in realizing or fore-closing on mortgages.

There is a concession that 83 per cent of the loans are financed by the money we deposit in the banks as fixed deposits. You will note that if I deposit my Kshs1 million in the bank for six months or a year, I will get between 3 per cent or 5 per cent returns. If I borrow money, which is the one that another person had deposited there, I will be paying at the rate of 18 per cent per annum. Already, you can see that big disparity between how much I am getting in return for my money and how much the bank is getting.

Mr. Speaker, Sir, they talk about wage bills, this is not public wage bill. This is the wage bill for the people they have employed. Then they say that this compares in the region, it does not? It does not compare in the region because if you look at the table that has been put there, you will find that in South Africa, for instance, interest on borrowings is at 8.8 per cent on average for the last ten years. In Nigeria, it is 16.8 per cent which is high; in Mauritius it is 8.7 per cent and in Malaysia, it is only 4.8 per cent. Why is there such a big disparity?

Why has there been an oscillation between 11 per cent and 20 per cent in Kenya over a period of ten years? If it is not a human-made interest rate, CBK has given certain directives and some banks like Standard Chartered have already started charging lower rates. Which means it can be done if it was not something internal, either in management, policy or such other things which can be controlled. So, the question I am asking is: Does the CBK or the finance sector in Kenya realize how much investment opportunity are being lost because people cannot possibly invest unless they have cash kept in suitcases in their homes? If you have to borrow to develop, it is impossible to repay a mortgage over a period of five years, how much is this affecting the development in the counties? That is the reason I am asking these questions.

Mr. Speaker, Sir, at least, I can see some positives because CBK has set up that committee and we are hoping that it is going to bring down interest rates based on those policies and not necessarily on the Euro-Dollar Bond that was recently effectuated in the country. So, the Chair is supposed to look at all those questions and see why when they talk about 42 per cent and then they say “only”---

The Speaker (Hon. Ethuro): Order, Senator. I think you have made your case.

Sen. Kembi-Gitura: Allow me just to say this one. They say that 42 per cent is interest on income on loans and advances, then they say “only”. That is a lot of money. I hope we can get that answer from the Chairman, then we have can have other questions for him.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Senators! I suggest that if you want to make interventions because this is normal, just do the request. If you put it under intervention, I would imagine it is a point of order.

Proceed, Sen. (Dr.) Khalwale.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, in 2010, two things happened; we promulgated the new Constitution and the credit rating became the norm in the country. The two points I want him to clarify are; why is it that even with more judges being employed, Kenyans who are seeking credit are being punished because of the slow process of settling commercial disputes and the Government is watching but does not ensure that the particular department in the commercial justice system is served with enough judges so that the process is efficient? The second one is the issue of credit rating. Granted that in a listing that we read two years ago, the Governor of CBK was rated as the poorest in Africa, could the Chairman explain whether it is the inefficiency of the Governor that is the reason why he is ensuring that the benefit of credit rating which the banks are enjoying today is not passed on to customers but instead, Kenyans still continue suffering?

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I want to compliment the Chair of the Committee on Finance, Budget and Commerce for a very well-elaborated answer. However, I want the Chair to elaborate if 42 per cent of the high profits that the banks publish, the other 58 per cent constitute of Treasury Bills and other similar instruments--- We know that the banks are making most of their money by affording credit to the Government. Therefore, I have two questions; comparing with other countries, is it normal that the financial arrangements in the country are such that the Government must borrow and such that the banks make so much money by lending money to the Government instead of lending money to productive areas of the private sector?

Secondly, whether the Government supports this as a matter of policy or whether we would like to get out of it so that Kenyans can benefit from borrowing money from the banks for business. What is the Government actually doing to come out of it? I think this is part of the problem why interest rates are so high because banks do not miss the normal borrowers, they have a ready borrower.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, first, I want to thank the Deputy Speaker for bringing this Question to the Floor. Interest rates will always determine the direction of the economy. If you look at comparable jurisdictions that embrace market economy and the country, Kenyans are so fond of quoting the United States of America (USA). In the USA, even as they believe in market forces, there is no circumstance under which banks can wake up and impose interest rates on the economy other than the Chairman of the Federal Reserve. That is why when a new person takes over the Federal Reserve, it becomes big news in the economy of USA. You heard two months ago when everybody was talking of “Yellen Effect” because this lady

was coming in to take over from Bernanke. When they increase interest rates, it is normally 0.5 per cent at the very most.

When you look at the document which was brought by the Chair, first of all, it is unfortunate that we are comparing ourselves with the “incomparables”. When we compare ourselves with countries that are on a downward spiral, we are not doing very well. What is the Government doing to have CBK act like a central bank? First, control and embargo borrowing by the national Government. Secondly, set interest rates that can spur economic growth and so on. If you go to borrow money today, even as it is indicated here that it is 19 per cent, in fact, a borrower will pay about 23 per cent. If you are paying 23 per cent on borrowed money, for you to survive in business, you must make another about 10 per cent because 23 per cent goes to the lender. Unless you are a smuggler, there is no way you can survive in business with that kind of structure. What policies can we expect from the Government to reduce the escalation of interest rates?

For example---

The Speaker (Hon. Ethuro): Order, Senator! It is not a contribution. It is a clarification and you have already delivered two.

The Senate Minority Leader (Sen. Wetangula): Be fair to me, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order! You cannot say that.

The Senate Minority Leader (Sen. Wetangula): Thank you for being fair to me.

The Speaker (Hon. Ethuro): That is better.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir. If you talk to any bank in this country, and the Chairman must know this because he is a very respected accountant, every bank has an interest-free cash-ratio that they deposit with CBK, that is, money lying in your account in CBK idle, you do not receive even 0.5 per cent interest. Every bank will pass that idle money to the customers so that they can survive. It is only in Kenya where banks make obscene profits every year. Banks that are going under in the countries where they were incorporated are making billions in Kenya. What is the Government doing to reduce interest rates in view of all this? There are many examples we can give but this is not a debate as you have said, so let me leave it there.

Sen. Murungi: Mr. Speaker, Sir, the issue of cost of money in this country has been there for some time. I think the Chairman will remember what celebration there was in this country when we passed the “Donde” Bill. Under that Bill, the total amount that a borrower should pay back to the bank in terms of interest rates should not exceed twice the amount borrowed. So, I would like the Chairperson to clarify whether that rule is still in force or whether it has been forgotten.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. I wish to thank the Chairperson of the Committee on Finance, Commerce and Budget for the answer he has given. I want to seek some clarifications on the fact that this country has recently floated some Euro bonds and there is certainly some money which has flown into the country, hopefully into the Central Bank of Kenya (CBK), but which belongs to the Government of Kenya. I want to have clarification as to what the inflow of money that has come and which is

coming into the country as a result of the floatation of the bond has on the present day interest rates and probably in the near future interest rates.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): If all contributors were like Sen. (Prof.) Lesan, then we would have allowed more; unfortunately, there are another five and since you came, the period between the ones who had requested and you were quite long and there are already many contributors who have made interventions. Let me allow the Chairperson to respond to those ones.

Proceed, Mr. Chairperson.

Sen. Billow: Thank you, Mr. Speaker, Sir. The Senators have sought very useful information; I will try my best to answer them. As for the clarification sought by the Senator for Murang'a, it is true that when you compare with other countries in the report that I had submitted; for example, in South Africa, the private sector credit is 100 per cent of the Gross Domestic Product (GDP) compared to the 42 per cent in Kenya. In other words, there is less money that was available to the private sector in Kenya than if you compare to Mauritius, South Africa and some of the other countries.

Mr. Speaker, Sir, what he said is also true; that when you look at the lending rates for other countries like South Africa and so on, and so forth, it is much lower compared to Kenya. For example, in the same South Africa, it was 8 per cent in 2012 but nearly 12 per cent in 2009. When it was 12 per cent in South Africa in 2009, it was 14.8 per cent in Kenya and you could see that it compares. So, sometimes depending on the year and the circumstances in the country and the economy, and so on, and so forth, that change in the interest rates actually varies from year to year.

However, Mr. Speaker, Sir, I agree that one of the challenges we have and the reason why this Kenya Bankers Reference Rate (KBRR) Rate was introduced last week by the CBK – it will remain in effect for six months, it can only be changed after every six months, it forms the baseline and they can only add their premium – and it has an effect, therefore, of reducing the rate significantly. This is a matter that has been agreed upon by stakeholders, which included the banks for the first time. So, it is our view that in the next few months, this rate should actually go down because of that competitiveness created by the KBRR; and it captures all the costs – transaction costs, the cost of the money and everything else and so on, and so forth – it is about transparency. The banks are now required to also publish every year their annual percentage rate which takes into account what their costs have been, and so on, and so forth.

Above all, I want to also mention that there was a study done by the World Bank (WB) recently which shows that the actual cost in the interest rates in Kenya represents only about 48 per cent and that, up to 40 per cent is actually their profits. This study was done by the WB recently. Clearly, what it means is that with this rate and the CBK's pressure for the banks to comply, there is really no reason why the banks should not reduce their rates. I think it is important for the CBK to start acting; it is not just about publishing a rate; but I think they must, as the regulator, put pressure on the banks to reduce their rates in line with this KBRR. So, I am hopeful that the situation will change.

Mr. Speaker, Sir, the second question by Sen. (Dr.) Khalwale is about the Judiciary. Just before 2010, the Government set up the Milimani Law Courts that deals

with commercial disputes. The intention was for commercial disputes to be fast tracked so that they can actually eliminate these delays. Part of the challenges in the costs to the banks is not just in the Lands Registry, where it becomes very expensive for transactions regarding registration of titles when you are creating mortgages; but it is actually even within the costs in the courts. When there are issues, it becomes very expensive for the banks and that is part of the cost that they have referred to. But I agree with him that it is time for the Judiciary to actually take into account the economy of the country with regards to dealing with commercial disputes because you cannot put on hold an urgent matter that affects the cost of doing business and which also affects even the commercial interest of businesses in the country.

Mr. Speaker, Sir, with regard to the second point he raised about the Governor, I do not think for a moment that the status of the Governor of the CBK in any way impacts on the high lending rates in the country. Let me clarify that the CBK Governor works on the policies, regulation, laws and the legal environment that are set up not just by the board, but by this House and, of course, by Parliament in general. So, it is the responsibility of this House – as indeed we did when we passed the Donde Act – to come up with appropriate regulations in this regard. It is possible and I want to challenge Sen. (Dr.) Khalwale. You remember when the petroleum – and Sen. Kiraitu is here; he was the Minister for Energy at the time – when the proposals to limit the price of petroleum was proposed. It was challenged but, eventually, the regulator has controlled the prices. So, I think it is possible for us to bring appropriate regulations.

Mr. Speaker, Sir, Sen. (Eng.) Karue raised an issue about Government borrowing. It is true; the fact that we can only lend 42 per cent to the private sector and the balance is really going to the Government is a clear indication that the borrowing by the Government from the domestic market significantly affects the amount of credit which is available to the private sector. It is because of that, that the Government has decided to go for the Eurobond to borrow externally. It is part of the reasons why the Government has moved from Treasury Bills to long term treasury bonds. I think, generally, our challenge is known to all the Senators here; the revenue that we generate in this country from our taxes is just above 50 per cent of our total expenditure as a Government. That is part of the reasons why the Government is now trying to go for other forms of borrowing.

Mr. Speaker, Sir, as for the question by Sen. Wetangula, I agree to some extent that we should not compare ourselves to some of the countries. The countries that we have been comparing ourselves to are not necessarily countries that are propelling themselves to the bottom; not really. I think it is appropriate to compare ourselves with Uganda because it is our largest trading partner globally. Their interest rates stood at 23.3 per cent last year compared to ours of 19 per cent. Nigeria is the single largest economy in Africa after South Africa and it was not doing very badly; its interest rate was standing at 17 per cent, which almost compares to our 19 per cent. So, I think we are not doing badly. But I agree with him that we must limit Government borrowing domestically because it is clearly affecting the---

I also share the view that the cash ratio contributes to the high interest rates because if a significant amount of your capital as a bank is held by the CBK as a cash reserve ratio, then it limits your ability to lend. It is the reason why the CBK has reduced

the Cash Reserve Ratio (CRR) over the years. In fact, it used to be over 20 per cent but it has been reduced to 12 per cent. It has probably been reduced significantly over the years to about 10 per cent in order to allow banks to enjoy that liquidity and be able to lend. That is why the CBK is also a lender of last resort; it is because of the fact that they keep money with the CBK. For the CBK to lend, it charges a very minimal amount – a maximum of about 1 per cent or 1.2 per cent – and this is when the banks cannot borrow from other banks.

Mr. Speaker, Sir, Sen. Kiraitu spoke about the Donde Act. I am not sure, but I do not think that, that rule has, in any way, been repealed. I remember that that Act is still in force. To the best of my knowledge, when you borrow, the total amount of repayments that you make should never exceed twice the principal amount that was borrowed at any one time. I think part of the challenge we have is transparency by banks. There is a case in court which is challenging this issue and which is actually going to put a lot of strain on the commercial banks because Section 44 of the Banking Act about the charges that the bank is supposed to charge, you are not supposed to change the rates or the charges unless it is approved by the CBK. What banks have been doing is that they have been changing the rates without getting the concurrence of the CBK. As a result, there are people who have gone to court; a class action that we saw in the newspapers last week. I think it is important that banks take heed of the fact that any law that has been passed by Parliament remains in effect and they must comply.

Mr. Speaker, Sir, the last point is by Sen. (Prof.) Lesan; the cash inflow from the Eurobond, the moment it comes, I have no doubt that it should reduce the rate of interest in the country. On that one, we are sure.

(Applause)

So, thank you very much, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): I see three persistent requests, so I will just allow those ones. They are Sen. Kajwang, Sen. Muthama and finally Sen. Kembi-Gitura. Let us be brief.

Sen. Kajwang: Thank you, Mr. Speaker, Sir. I did not hear the Chairperson talk about the profits that our banks seem to compete in making. In fact, they are no longer even obscene profits; they are windfalls. I want to know why a bank should compete to make the kind of profit of over Kshs5 billion. The only way in which they have raised this money is actually through increased interest rates, increased penalties and no serious trade. This is not very healthy for the economy; that money is being sucked from the investors and even from the small people by the banks in large quantities every year and they seem to be very cheerful about it.

The cash ratio which the Chairperson has referred to is still extremely high. I do not see why we should keep a whole 10 per cent of the lendable money in the CBK and leave little money which then becomes very costly to the economy. You keep some money there, it is doing nothing, it is earning you nothing but at the same time, it makes the money very expensive for the people who should be doing business and making the economy better. I wish you went back there to explain some of those very serious issues.

The Speaker (Hon. Ethuro): Sen. Muthama.

Sen. Muthama: Thank you, Mr. Chairman, Sir.

Mr. Chairman, Sir, I want to---

The Speaker (Hon. Ethuro): Order!

Sen. Muthama: My apologies, Mr. Speaker, Sir. I would like to seek a clarification from the Chairperson of the Committee on Finance, Commerce and Budget. There are two discriminative interest rates in this country. One applies to people who do not trade using the local currency. These people trade with hard currency like dollars among other currencies. The interest rate for the dollar in this country is between 10 per cent and 12 per cent. There is the more discriminative interest rate that is based on the local currency. This one ranges between 18 per cent and 24 per cent. Those who apply for credit facilities based on US dollars get less. When the dollars are sought from outside, a Kenyan will be charged an interest rate of between 5 per cent and 6 per cent if he or she wants to trade and bring the money here. In this situation, the foreign currency is charged between 10 and 12 per cent. Therefore, Kenyans cannot access both. What is the regulator or the Central Bank of Kenya (CBK) going to do to balance this situation so that if you borrow foreign currency, you are charged the same rates that apply to Kenyan shillings?

That is the clarification I am seeking.

Sen. Kembi-Gitura: Thank you, Mr. Speaker, Sir. The huge profits which are being made by the banks and which some Senators have referred to as obscene and the interest rates must have a co-relationship. I would like to submit that I have not understood the relationships. There is something very unclear and hidden. I do not know whether this is out of pressure from the Kenya Bankers Association (KBA) or whether this is coming from where the rates are initiated. However, certainly, something is very wrong with the interest rates that we are being charged and, therefore, unable to invest.

The profits being made by the banks year in, year out, are now in billions and billions of shillings. The CBK, in my view, must put pressure on the banks as a matter of policy to specifically reduce interest rates so that they are sustainable. We want it to be possible to invest and to create wealth in this country.

My last point is that if what we read as a move by the CBK last week to reduce interest rates is a matter of policy and if the effect of it is to bring down interest rates, then this strengthens my position that this is a matter of policy or disconnect between the CBK and the commercial banks. The CBK should put its foot down and regulate the interest rates that are charged in this country so that investment becomes possible.

Finally, Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): I thought that was your last point?

Sen. Kembi-Gitura: Mr. Speaker, Sir, the thoughts are conjoined. The flow of a thought from one to the other is not an easy thing and, a lot of times they are jointed.

The Speaker (Hon. Ethuro): Even the English language has a provision of jointed things.

Sen. Kembi-Gitura: Mr. Speaker, Sir, the thoughts are co-jointed.

The customer, a lot of time, suffers for sins that are not theirs. If you look at some of the reasons for high interest rates, you will see they are high overhead costs such as

wage bills, cost of realizing collateral and interestingly, infrastructure, particularly roads and power instability. Banks are not manufacturers. I do not know what they have to do with infrastructure and power instability. I do not understated why we have hidden costs.

Mr. Speaker, Sir, you know that there is a case pending in court right now against one of the major commercial banks by a customer on hidden costs going back many years. I hope that case will help to unravel some of the sufferings that customers undergo with banks particularly with the hidden costs which then build interest rates to figures that make investment impossible.

The Speaker (Hon. Ethuro): Sen. Wamatangi, seek one clarification.

Sen. Wamatangi: Mr. Speaker, Sir, I also want to add my voice to the sentiments that have been expressed by my colleagues. Banks in this country are making profits which are immoral. It is not justified that---

The Speaker (Hon. Ethuro): Order, Sen. Wamatangi! You must seek a clarification and not just putting forward a statement.

Sen. Wamatangi: Mr. Speaker, Sir, I wanted to seek a clarification on why, in spite of all the expiations offered, regulations have not been put in place so that banks do not continue to make immoral profits at the behest of peasants. The savers in these banks are hawkers and peasants, people who do small businesses. You will hear a bank pronouncing, at the end of the year, a profit of Kshs17 billion. This is money collected from small enterprises like Small Micro Finance Enterprises (SMEs). This is a matter that has to be dealt with firmly.

Sen. Khaniri: On a point of information, Mr. Speaker, Sir. I would like to inform the distinguished Senator that the regulations are there. He says that we must come up with regulations. The problem is the regulator, the CBK, which is not enforcing the regulations that have been put in place. A good example is the Joe Donde Bill that Sen. Murungi referred to.

Sen. Wamatangi: Thank you for that clarification, Sen. Khaniri. Just to finalise on my point, as a matter of a sound economy in a country, there is no way, if we build ten giants in the entire country and a million peasants that we will get the economic development that we want. The only way to get proper economic development is to trickle down to the bottom and to ensure that those who are empowered are the ones who are at the bottom of the triangle.

The Speaker (Hon. Ethuro): Order. I will not allow you to proceed. You are now making a statement instead of waiting for your clarification to be answered.

Sen. Billow: Mr. Speaker, Sir, the clarification sought by Mr. Kajwang about profits, I have also made it very clear that the high profits being earned by banks is a matter of concern not just by the Government but the whole country. This matter has been raised. It is unacceptable. Even when the economy is not performing, the single sector that performs well in terms of profitability is, in fact, the banks. I want to clarify that it is only 42 per cent of the data that has been earned here that is interest earned from banks. The majority of their profits, 52 per cent come from outside interests which have been earned from those loans. It comes from Government securities and other non-interest incomes. It is important to clarify as we mentioned earlier that the Government must start---

These days, Government Treasury Bill have risk free, very nice premiums that they earn. The cash ratio is part of the international best practice. It is part of the prudential guidelines that govern the central banks globally. We must retain a certain amount of cash ratio and the limits are determined by best practices.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. Is it in order for the Chairman to continue telling this House that the continued high profits of the banks are unacceptable without telling us what the Government is doing to reduce or stop the situation? Is he in order?

In certain jurisdictions, the Government sets a ceiling and says that if you make more than 20 per cent of a certain set figure, the amount above is surrendered to the Government. The Government has the opportunity and the ability to do this. Is it in order for you to continue lamenting instead of giving us solutions?

The Speaker (Hon. Ethuro): Sen. Wetangula, I thought that you would comment on the 42 per cent. That is not a small percentage. It is very significant.

Sen. Billow: Mr. Speaker, Sir, I respect the Senator. However, I think he missed something. When I was presenting, about page four of that Report, I said that there are up to seven, eight or nine steps that the Government is taking to try and address that issue. One of them is the one that I mentioned on the KBA preference rates that were published last week.

There are many other steps that are being taken. I did not want to go into detail. You can read these in the statement. The correlation in the schedule that is provided here is very clear. There is no direct correlation. I want to give two examples because this matter has come up several times.

The figures from 2003 up to 2012 are provided. If you look at 2009/2010 Financial Year, you will see that in 2009, the interest rates were 15 per cent and banks made Kshs137 billion. The following year when the interest rates went down to 14 per cent, commercial banks still made a profit of Kshs177 billion. In other words, the profits were still going up even when the rates were going down. That means that the profits were not just from the interest earned on lending. This comes also from other sources and this is what I said.

In 2012/2013, the percentage interest rates were at 20 per cent and yet they earned Kshs207 billion. In 2013, when the rates went down to 13 per cent, the figures went to Kshs278 billion. So, the problem is not necessarily directly correlated. That is the point I was making. There are a number of steps that are proposed. The challenge is on us to determine how we want to regulate interest rates. In 1992, when we liberalized the markets, since then, the rates have been determined by market forces. It is the desire of Parliament to regulate interest rates and to set limits on the maximum that a bank can charge as we have done in petroleum and other sectors. That responsibility is upon this House. I think that is something we can look at. So far, there is no regulation in force that limits lending rates. Therefore, you cannot say that a Governor is the one who has failed to enforce existing regulations.

The last point with regard to what Sen. Muthama raised on the difference between rates for foreign currency and the Kenya shilling in terms of lending, this is a fact. The risks and the costs associated are not the same. The risks associated with lending in

Kenyan shillings are not the same as those which are associated with lending in dollars. The rates are invariably different wherever you go. That is not just a matter of the CBK to decide so that we lend at the same rates for both currencies.

The one for Sen. Wamatangi and the issue by Sen. Kembi-Gitura were about these rates not being acceptable and being obscene. The challenge is on us to regulate. We need to make that policy as a Government. It is upon us to determine. The measures now are to lower the rates, increase transparency and at the same time determine the hidden costs. There should be no hidden costs within the formula that they use.

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

(Interruption of Statements)

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF BARINGO COUNTY ASSEMBLY WOMEN CAUCUS

The Speaker (Hon. Ethuro): Hon. Senators, before we proceed to the next Statement, I have a communication to make on the visiting delegation from the Baringo County Assembly Women Caucus.

I wish to acknowledge the presence of a delegation from Baringo County Assembly Women Caucus which is seated at the Speaker's Gallery. As I proceed to introduce the delegation led by the Chairperson of the Caucus, Hon. Safina Chelagat, I request that if an honourable MCA is called, she should stand up and be acknowledged in the normal tradition of Parliament. They are as follows:-

1. Hon. Safina Chelagat
2. Hon. Risper Kimaiyo
3. Hon. Emmy Butuk
4. Hon. Lisa Chebet
5. Hon. Lydia Francis
6. Hon. Judy Yator
7. Hon. Cynthia Kiptui
8. Hon. Purity Tallam
9. Hon. Valentine Sergon
10. Hon. Eunice Karani
11. Hon. Magdalene Chebet
12. Hon. Juliana Letangule
13. Hon. Jeniffer Kiptoo
14. Hon. Jeniffer Koipiri
15. Hon. Beatrice Changwony
16. Hon. Lucy Ngetich

They are also accompanied by the following staff:-

1. Jepkomo Chemase, Deputy Clerk - Administration
2. Miss Betty Toroitich, Legal Officer

3. Miss Fridah Chelagat, Senior Security Warden

On behalf of the Senate and on my own behalf, this is to welcome you to the Senate and to wish you a fruitful visit during your one week induction by the Senate. Thank you.

(Resumption of Statements)

The Speaker (Hon. Ethuro): Mr. Chairman, do you have another Statement or we allow the other one to go first? You have the Statement for Sen. (Dr.) Khalwale. In order to give you breathing space, we allow Sen. Kivuti to give his Statement.

MEASURES TO ERADICATE WILDLIFE POACHING IN KENYA

Sen. Kivuti: Mr. Speaker, Sir, I stand to issue a Statement with regard to the request posed by Sen. Kittony who sought to know the number of rhinoceros and elephants that have been killed so far, the state and the measures that the Ministry has put in place to arrest wildlife poaching, in particular the poaching of elephants and rhinos which has continued to sky rocket; the number of Sitatungas that are still alive in the country and explain why the Ministry in conjunction with the county governments has not established the Country Wildlife Conservation and Compensation committees as provided for in the Wildlife Conservation Management Act, 2013 and when the Ministry is planning to establish the Country Wildlife Conservation and Compensation committees in all the 47 counties and finally, why poaching has not been declared a national disaster.

As an overview, illegal wildlife trade, poaching and encroachment of wildlife protected areas and destruction of wildlife habitat are some of the security challenges posing a threat to wildlife conservation and management efforts in the country. The Kenya Wildlife Service (KWS) is working to enforce existing laws and treaties protecting wildlife and has continued to carry out its mandate of protecting Kenya's biodiversity by eliminating poaching within protected areas and reducing it to a bare minimum outside protected areas. The demand and price of ivory and rhino horn in the illicit market continues to drive poaching. Growing affluence and economic growth in East and South East Asia has increased demand for wildlife products. In addition, the decision of the one off sale of elephant ivory by Southern African countries in 2007 and the urge for sale of ivory stock piles haunts wildlife security in Kenya and beyond.

Mr. Speaker, Sir, in answer to the questions sought by Sen. Kittony, I would like to answer as follows: On the number of rhinos and elephants killed, I wish to state that from the beginning of the year up to 25th June, 2014, there has been a gradual decline in elephant and rhino poaching particularly in major hotspots in the country where 103 elephants and 22 rhinos were poached compared to 165 and 26 elephants and rhinos respectively in the same period in 2013. This shows 38 per cent and 15.4 per cent decline in both elephant and rhino poaching countrywide, respectively.

On the question of the measures taken by the Ministry to arrest poaching of elephants and rhinos, the Ministry has been strictly implementing the Rhino Strategic Plan of 2012 to 2017 and the Elephants Strategic Plan of 2012 to 2022. These strategic plans were launched in the wake of global escalations in wildlife poaching. The Ministry

takes pride in the successes and gains from these strategies as they determine the future of conservation for the species. Full implementation demands for unwavering support by partners, both locally and internationally.

The Ministry through the KWS has developed strategies aimed at enhancing elephant and rhino security to protect them from poaching threats, mainly from armed gangs and also apprehending and dismantling the poaching syndicate. This is a 100 day operation called “*Operation Okoa Ndovu*” which is one of the initiatives aimed at combating elephant poaching in the country. *Operation Okoa Ndovu* commenced on 22nd April, 2014 and covers the entire country.

Tremendous achievements have been realized since the inception of the operation whereby armed gangs have been eliminated, many arrested and other poaching gangs and networks disrupted. Notable recoveries include firearms, ammunition, ivory, other hunting weapons and impounding of vehicles used in transporting ivory and other illegal wildlife products. The Ministry, through the KWS, has reorganized its current deployment of security personnel and equipment by providing security to all national and some private sanctuaries with high level rhino poaching threats such as the Solio Ranch and Oljogi Wildlife Sanctuary, among others. There is also a rapid response unit and teams to support other private rhino sanctuaries such as Ol Pajeta and Lewa conservatories.

Mr. Speaker, Sir, the Ministry is strengthening law enforcement capacity through training, acquisition of modern security equipment and restructuring of units to cover poaching hotspots. It efficiently and effectively deploys resources to achieve the desired objective in ever changing and dynamic wildlife crime environment. The Ministry has further facilitated the following through KWS:-

(1) Formation of an inter-agency wildlife Anti-poaching Crack Unit. The Unit comprises of General Service Unit (GSU), Rapid Deployment Unit and KWS rangers. These have been deployed to the hotspot areas of Tsavo, Narok and Laikipia/Isiolo respectively.

(2) Recruitment and training of 556 rangers to address the game rangers shortfall.

(3) Inclusion of KWS as a member of the National Security Advisory Committee and County Security Intelligence Committee at the county level. This has enhanced collaboration among other security organs and sharing of intelligence on poaching threats.

(4) Procurement of nine land cruiser pick-ups and deployment of a fleet of 21 vehicles from the KWS Headquarters to boost wildlife security in the parks and wildlife dispersal areas.

(5) Enhanced ground aerial patrols in wildlife rangelands and intelligence collection with regard to trafficking.

(6) Prosecution of wildlife wards offenders using the new Wildlife Act, 2013 which is more punitive.

(7) Enhanced collaboration and awareness programmes to communities in the poaching hotspot areas.

(8) Enhanced institutional and regional collaboration with Tanzania Wildlife Authority, Uganda Wildlife Authority and Ethiopia Wildlife Authority with the rest of

the horn of Africa countries and with other law enforcement agencies such as Interpol, CITES, EAPCCO, IFAW, LATIF among others.

(9) Establishment of specialized units such as the canine unit, the horse unit, the KWS prosecution unit, the major wildlife crime investigations unit and the emergency management unit to deal with wildlife crime.

(10) Enhanced joint cross-border and concurrent anti-poaching operations with other law enforcement agencies to curb poaching in the hotspots within trans-boundary protected areas in Kenya and Uganda.

(11) Developed area specific strategies, designs and adopted to deal with unique security challenges. These include adoptive seasonal strategies to follow migrating herds of wildlife and adoptive wildlife security strategy to cope with emerging threats such as forward patrol teams which prevent intrusion by poachers.

(12) Collaborating with other managements of various private rhino sanctuaries through joint operations, attachment of game rangers to the private sanctuaries, training conservancy scouts, sharing of intelligence and guidelines on appropriate security personnel deployment.

(13) Constructed a forensic laboratory which is in the process of being equipped in order to conduct DNA tests and investigate the origin of the trophies which are usually intercepted abroad or at the border points.

(14) Continues to work with other law enforcement agencies especially, the Customs Department, the police, Interpol, the Lusaka Taskforce Agreement, Kenya Airports Authority and Kenya Ports Authority, among others, in ensuring that local and international laws on wildlife crimes are enforced.

(15) With support from the Kenya Revenue Authority, sniffer dogs have been stationed at the entry and exit points in verifying exported goods in search of contraband wildlife trophies, especially ivory and rhino horns.

(16) Spearheaded the engagement of other African states and international community in combating the current upsurge in wildlife crime and illegal trade in wildlife species. This led the Government of Kenya, CITES and the Population of Media Centre to sponsor a side event at UNAA on illegal trade in wildlife and trafficking of wildlife products on June, 24th, 2014, in Nairobi, Kenya. It is expected that the side event will fill gaps in understanding the dynamics and the causes of trade in wildlife and other products and present snapshots of what is happening in some countries like Kenya.

On the question of the number of Sitatungas that are still alive in the country at the moment, Kenya is home to approximately 256 Stititunga antelopes according to an estimate cited by the Kenya Wildlife Service and there are 39 in Siawa Swamp, 8 in Lewa Wildlife Conservancy, 125 in King'wal Kimondo Swamp, 20 in Kibabet Tea Estate, 50 in Kesses Dam, 8 in Boit's Farm Marula Swamp and 6 in Kisumu Impala B. The main threat facing this wetland antelope is the gradual reduction of wetlands and poaching for bush meat.

Mr. Speaker, Sir, on why the Ministry, in conjunction with the county governments, has not established the county wildlife conservation and compensation committees, I would like to say the process of establishing these committees is already underway. This is being undertaken through consultations between the Ministry and the

county governments. The Kenya Wildlife Service (KWS) has already prepared the relevant guidelines for use by the committees. These are currently awaiting gazettment before they are operationalized in all the 47 counties.

Mr. Speaker, Sir, on the issue of plans to establish county wildlife conservation and compensation committees in all the 47 counties, the advertisement for the recruitment of the chairpersons for these committees was done on 30th June, 2014. The respective committees will be established in all the 47 counties by the end of August, 2014.

Sen. Hassan: On a point of order, Mr. Speaker, Sir. Whereas I appreciate the thoroughness of the Statement and eloquence of the Senator for Embu County, I think we should create a rule or tradition in this Senate, where we keep our answers quite brief. We can then have part of that information as an addendum to the Statement, so that the person who has sought it can then be given the answer together with the addendum. He is telling us about all the elephants that we have and so forth, which is fair enough. However, could he give an indication of how length his answer is?

Sen. Kivuti: Mr. Speaker, Sir, I have only one sentence remaining. In the past, hon. Senators have sought the fullness of answers being given. A few times we have been referred back to the Committees for giving inadequate answers. That is why I chose to give an adequate answer this time.

Mr. Speaker, Sir, the last question was why poaching has not been declared a national disaster. Despite the recent reports on heightened cases of elephant and rhino poaching, the vice has not been declared a national disaster. This is because there have already been concerted efforts to contain the menace by enhancing security, including the combined patrols that I have outlined here before. At the moment, the rate of poaching, especially on elephants, has declined.

Mr. Speaker, Sir, that is my answer.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. I just want to draw your attention to the fact that since the Senators are very committed in Committees and elsewhere, they have started walking out of the Chamber. Given that we are due for a Division, could you consider bringing it forward, so that we can capitalize on the presence of the Senators at the moment?

The Speaker (Hon. Ethuro): I hear you, Sen. (Dr.) Khalwale. However, that will mean that we will have to terminate this Order and move on to the next one, which I have no problem with completely. There is Sen. Zipporah and the Chairperson of the Committee. Could you indulge us so that we can prosecute this matter tomorrow?

Sen. Zipporah Kittony, we are requesting you if you could interrogate the Statement tomorrow.

Sen. Kittony: Most obliged, Mr. Speaker, Sir.

(Applause)

Sen. Kivuti: Mr. Speaker, Sir, I was imagining that from the thoroughness of the answer, the interventions will not even take five minutes. This is because I have already discussed with Sen. Kittony and apparently, she is happy with the answer. I am just

requesting if you could dispense with this matter because it has been moved on four previous occasions.

The Speaker (Hon. Ethuro): Order, Sen. Kivuti! First, part of the problem is that there have been too lengthy Statements this afternoon, including yours. If Sen. Kittony is happy that does not mean that other Senators are equally happy. This is because now it is a property of the House. While I appreciate and agree with you completely that actually we have been pushing this matter and it might be unfair on your part, but because of the other business before the House, which is equally important, let us just push it plus the rest to tomorrow.

Sen. Kivuti: Most obliged, Mr. Speaker, Sir.

(Statement deferred)

The Speaker (Hon. Ethuro): Next Order!

BILLS

Second Reading

THE POLITICAL PARTIES (AMENDMENT) BILL (SENATE BILL NO.3 OF 2014)

(By Sen. (Dr.) Khalwale on 1.7.2014)

(Resumption of debate interrupted on 10.7.2014)

The Speaker (Hon. Ethuro): Is it my understanding that the debate was exhausted, the Mover replied and so, it is just voting? Can I get the indication that we have the requisite numbers?

(The Clerk-at-the-Table counted the Senators present)

Order, hon. Senators! Under Standing Order No.74, voting on any division shall be by Electronic Voting. I, therefore, direct that the Division Bell be rung for two minutes. If you are voting on behalf of your Delegation, you need to register with the Clerks-at-the-Table.

(The Division Bell was rung)

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

[The Deputy Speaker (Sen. Kembi-Gitura) took the Chair]

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! The Division Bell has stopped ringing. Could we have the Bars drawn now?

(The Bars were drawn)

The Deputy Speaker (Sen. Kembi-Gitura): Order, hon. Members! Naturally, we will vote by Division. So, I am giving you one minute to settle down. According to our Standing Orders and the Constitution, all Bills of the Senate have to be voted by Division. We shall take one minute to vote. You now know the procedure; you can now insert your cards.

Hon. Senators, you may now proceed to vote and remember you just press “YES,” “NO” or “ABSTAIN” just once so that the record can show.

Proceed to vote now.

(Hon. Senators proceeded to vote)

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

The Deputy Speaker (Sen. Kembi-Gitura): Order, Sen. Obure! I cannot see your intervention on the screen.

Sen. Obure: Have you voted?

The Deputy Speaker (Sen. Kembi-Gitura): I can assure you that I have voted. I know my legal rights rather well.

(Senators consulted off record)

Order, Senators! What is the point? Sorry, I cannot hear you. One thing I do not understand is whether you can give a point of order and your intervention shown on the screen when we are voting because that has not happened in the past.

Sen. (Dr.) Khalwale, you may move on to the Dispatch Box to make your point of order. I can see you, but I cannot hear you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Thank you for allowing me. Since this screen was put there for us, we have noticed the numbers build then they started dropping again. There is a possibility that somebody might have fiddled with the button. For that reason, I request that you restart the voting.

The Deputy Speaker (Sen. Kembi-Gitura): Remember that if you are delegated to vote, then you must have your delegation. It is showing that 40 hon. Members are present, you can deduct the common--

Sen. (Prof.) Anyang'-Nyong'o: On a point of order, Mr. Deputy Speaker, Sir. It is very simple. Two of my colleagues here, thought that if they pressed it twice, they would be making a very strong point for “YES.” So, they pressed twice. That is why it dropped from 24 to 22.

(Laughter)

The Deputy Speaker (Sen. Kembi-Gitura): What is showing right now is that 22 have voted for and 2 against. I would take Sen. (Prof.) Anyang'-Nyong'o's word seriously. We will give it one more go, but please, remember you press the button of your choice only once and that is it.

Could you wipe the screen now? I have made a ruling that we do it again.

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

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kivuti, I can see you, but I cannot hear you. I will allow your point of order as soon as I can hear you.

Please, wipe out the screen completely? Take us back to the normal situation.

Sen. Kivuti, what is your intervention?

Sen. Kivuti: On a point of order, Mr. Deputy Speaker, Sir. I have two points to make. One is about the voting issue. I am aware my colleagues delayed and tried to vote after one minute. That means he was time-barred. Secondly, I would need your guidance on this matter. This Bill is on a national matter; that is, the Political Parties (Amendment) Bill. I do not think it is a matter of counties---

The Deputy Speaker (Sen. Kembi-Gitura): I challenge you, Sen. Kivuti. If you look at the Standing Orders, all Bills in the Senate affect counties. The rule is clear that when it comes to Bills, you vote by delegations. That is the law. So, there is no grey area. It is only in Motions that the Speaker has to determine.

Can I have a copy of the Standing Orders?

*(The Clerk-at-the-Table handed over
a copy of the Standing Orders)*

I want to make this clear to you because it has come up one or two times and I think it is good to have it clear, Sen. Kivuti.

Article 123(2) of the Constitution states clearly and I quote:-

“When the Senate is to vote on any matter other than a Bill, the Speaker shall rule on whether the matter affects or does not affect counties.”

This is replicated in our Standing Order No.73(1) which states:-

“Except on a matter affecting counties, any question proposed for decision in the Senate shall be decided by a majority of the Senators present and voting.”

(Sen. Kivuti consulted with other Senators)

It fascinates me that, Sen. Kivuti, you raise an issue and then you are not even listening. It fascinates me because you either blow hot or cold, but we must follow these things together because I do not want it to come up again. Are we clear now? On a matter to do with Bills, every Bill in the Senate is voted for by delegations.

Sen. Billow: On a point of order, Mr. Deputy Speaker, Sir. What is not clear is when a Bill is referred from the National Assembly to the Senate. If it is a Bill affecting counties, I can understand in accordance with the Constitution and our Standing Orders. What if there is a Bill proposed by a Member of the Senate which is not on counties, but

on matters of a national nature? Are we saying that the Senate cannot enact or propose any Bill of a national nature other than on counties? It is not very clear.

The Deputy Speaker (Sen. Kembi-Gitura): Well, I can only read the law to you again. The Constitution is very clear on that point in Article 123(2). Now we are voting on a Bill. When it comes to a Bill, the Speaker is not enjoined to make a ruling whether or not it affects counties. It is only in Motions that the Speaker has to determine whether it affects counties or not. Every Bill in the Senate shall be voted for by delegations under Article 123 of the Constitution.

Are we ready to vote? Shall we go back to voting? Tell us when you are ready. I wish to remind Members that you must vote “YES,” “NO” or “ABSTAIN.” There is no other option. The record will show how you voted.

(The Division Bell was rung)

DIVISION

ELECTRONIC VOTING

(Question put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Abdirahman, Wajir County; Sen. (Prof.) Anyang’-Nyong’o, Kisumu County; Sen. Billow, Mandera County; Sen. Boy Juma Boy, Kwale County; Sen. Hargura, Marsabit County; Sen. Hassan, Mombasa County; Sen. Kagwe, Nyeri County; Sen. Kajwang, Homa Bay County; Sen. Karaba, Kirinyaga County; Sen. Kembi-Gitura, Murang’a County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Kivuti, Embu County; Sen. (Prof.) Lesan, Bomet County; Sen. Madzayo, Kilifi County; Sen. Melly, Uasin Gishu County; Sen. Munyes, Turkana County; Sen. (Eng.) Muriuki, Nyandarua County; Sen. Murungi, Meru County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr, Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Ndiema, Trans Nzoia County; Sen. Ntutu, Narok County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Wamatangi, Kiambu County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! The results of the Division are as follows:-

AYES: 28

NOES: Nil

ABSTENTIONS: Nil.

So, the “Ayes” have it.

(Question carried by 28 votes to nil)

The Deputy Speaker (Sen. Kembi-Gitura): Draw the Bar and open the door.

(The Bar was drawn and the door opened)

Next Order!

THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL)
(NATIONAL ASSEMBLY BILL NO.31 OF 2013)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, I beg to move that The Public Procurement and Disposal (Amendment) Bill) (National Assembly Bill No.31 of 2013) be read a Second Time.

(Loud consultations)

The Deputy Speaker (Sen. Kembi-Gitura): Order, Senators! If you want to withdraw, please, do so quietly. If you want to consult, please, consult in low tones because we still have Business in the House.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Deputy Speaker, Sir, The Public Procurement and Disposal (Amendment) Bill) (National Assembly Bill No.31 of 2013) is a Bill that is aimed at guaranteeing, for the first time in the history of our country, access to opportunities for young people, women and persons with disability to do business in terms of the supply of goods and services with the Government at national and county levels.

Mr. Deputy Speaker, Sir, for a long time, the opportunities to do business with the Government have been available mainly to men; not just men, but to rich men, and most rich men have been old. So, what this Bill is trying to do, number one, is to say that even among the male gender, young people – that is persons aged between 18 and 35 – have not been able to access Government tenders for the supply of goods and services simply because of a rigorous public procurement and disposal legal regime. So, other than men, there are also the women who have also been disadvantaged for many years as well as persons living with disabilities.

These three groups are categorized in this Bill as disadvantaged groups. These are groups which have been disadvantaged historically in terms of access to procurement opportunities.

Mr. Deputy Speaker, Sir, I am aware that a key plank of the manifesto of the Jubilee Government was actually to improve access to procurement to young people and persons living with disabilities. I am equally aware that even within the Opposition, this is something that they also support. Therefore, I expect that this is something that should be a bipartisan Bill that is supported by both sides of the House.

Mr. Deputy Speaker, Sir, this Bill is giving effect to a number of constitutional imperatives or requirements. The first one is Article 27(6) of the Constitution which provides for non-discrimination among other things or among other grounds on the basis of gender. There is also Article 55 of the Constitution which requires the Government to

take measures to ensure that young people access economic opportunities for their socio-economic development.

On top of that, there is Article 127(2) (a) and (b) of the Constitution which provides that the Government must ensure that the system for the procurement of goods and services is efficient, transparent and equitable. If it is going to be equitable and fair, then it must make sure that people are not obstructed from accessing procurement opportunities by virtue of their gender, age or disability.

Mr. Deputy Speaker, Sir, this Bill defines the three categories which belong to the genre of disadvantaged groups. First, it defines young people within the agreed definition under various statutes. We now have even the National Youth Council Act, which defines young people as persons falling between 18 and 35 years of age. This can be men or women. For women, these are females of 18 years and persons with disabilities are male or female persons who are not children; meaning they are over 18 years.

Mr. Deputy Speaker, Sir, this Bill provides opportunities to access procurement opportunities for goods and services whether at the level of the national Government or at the county level of Government, not only for individual youth, women and persons with disabilities, but also for anybody or company or entity of a legal nature; what lawyers call “juristic persons.” We have natural persons and then we have juristic persons. Juristic persons are legal persons, a company, a body or both incorporated and non-incorporated entities. They fall under this category so long as they are owned substantially by any of these categories. I can see Sen. Hassan Omar is excited.

Mr. Deputy Speaker, Sir, for a company or a juristic entity to qualify for tenders for the supply of goods and services under the category of youth, first and foremost, the only requirement is that all directors must be young people. That is a bit different from the qualifications for persons with disabilities and for women. For persons living with disabilities, an individual must be 18 years and above. If it is a company, at least 70 per cent of the shareholding must be persons with disability. Over and above that, a majority of the directors must also be persons with disabilities. For women; if it is an individual, must be over 18 years. If it is a company, at least 70 per cent of the shareholding must be females. In addition, the majority of the directors for that entity must be women. Those are some of the qualifications.

Mr. Deputy Speaker, Sir, I have seen a curious provision; that is, the amendment to Section 2 of the principal act, that is The Public Procurement and Disposal Act of 2005. That amendment to Section 2 provides for the objects of this Bill. It says among the other objects which are stated there, it is to achieve affirmative action for young people, leaving out women and persons with disabilities. So, I hope that within the debate and within the Committee Stage, a way will be found to include the other two categories in that amendment because it captures the entire objective of the Bill.

Mr. Deputy Speaker, Sir, the Bill also amends Section 9 of the principal Act, which section deals with the functions of the Public Procurement and Oversight Authority, better known as PPOA. It includes additional functions for the authority, which includes now to ensure procurement entities comply with reservations and preferences that are introduced by this Bill. What that means is that from now on, if this Bill passes, the PPOA must monitor, track and ensure that these reservations and

preferences for young people, for persons with disabilities and even for women, have been adhered to as is required by law. It also includes as an additional function to this authority that the authority must provide disaggregated data of beneficiaries of Government tenders.

They must, first of all, track compliance and also say that within these three or four months, because it is quarterly, these are the beneficiaries under the category of persons with disabilities for each Government agency at the national level and also for each county government across the country. So, it is a way of monitoring progress on implementation.

Mr. Deputy Speaker, Sir, since I do not intend to speak for too long, the other issue is the amendment to Section 39 of the principal Act. This is the main thrust of this Amendment Bill. The Bill introduces a new sub-section 9 to Section 39 of the principal Act to provide that at least 30 per cent of the procurement value in each procuring entity is allocated to youth, persons with disability and women. This is the engine of this Bill. The key word in this section is “at least.” In other words, nothing prevents a procuring entity from actually surpassing the 30 per cent benchmark. I hope that through the Section 9 vehicle which is provided there to monitor progress, we will be happy to see which procuring entities at the national level and at the county levels are going over and above the minimum requirement of 30 per cent. I believe those are the procuring entities that should be emulated as we seek to bring equity among men and women; to bring equity among older people and young people in our country in terms of business opportunities.

Mr. Deputy Speaker, Sir, a new sub-Section 10 is also introduced to amend Section 39 to provide that each procuring entity must ensure that any money paid out to an enterprise owned by young people or persons with disabilities or by women is paid to an account where the mandatory signatory is a youth, a woman or a person with disability. Just to do away with the mischief, that some people can take advantage of women, youth and persons with disabilities, help them to form companies and then the beneficiaries will be different people. So, the requirement here is that if, for example, a certain Ministry in the national Government or a certain department of a county government is procuring, it is not enough that you show that this company is owned by either youth, persons with disability or women; that is not enough. When the money is being paid, the procuring entity is under obligation to make sure that the account where that money is being paid is an account where the mandatory signatory is one of those designated groups depending on the category in question; either a young person, a person with disability or a woman.

Mr. Deputy Speaker, Sir, sub-Section 11, which is new, provides that each procuring entity at the national and county level must make quarterly reports to the PPOA to say these are the tenders we advertised. These are the tenders we awarded and this is how we have met the at least 30 per cent criteria for each category. As I have said, we look forward to counties and even national Government departments going even over and above the 30 per cent minimum requirement. These reports will go to the PPOA from the procuring entity.

The PPOA must do quarterly reports to Parliament. This is also very important. As soon as they get that data, they are supposed to report to Parliament. For the avoidance of doubt, it is expected, therefore, that the reports about procurement will be coming to the Senate and the National Assembly, including those by the national Government agencies.

Sub Section 13 says that the PPOA will make quarterly reports to Parliament meaning both National Assembly and the Senate. This should be easy. The Bill says that this will be done through the Committee which is in charge of Equalisation of Opportunities. I believe that there is a Committee of both Houses of Parliament that deals with national cohesion and equal opportunities. This is the Committee that will be tackling how women, young people and persons with disabilities access procurement opportunities for goods and services.

Mr. Deputy Speaker, Sir, apart from that, sub Section 14 provides that the Cabinet Secretary makes rules to ensure the attainment of the 30 per cent quota. What this provision tries to do is simple. It is not enough to say that 30 per cent of the opportunities will go to women, young people and to persons living with disabilities. That is not enough. There must be a way of developing regulations that will give effect and ensure that these quotas are fulfilled. This happens through requirements like those that relate to registration of businesses and bonds. In some tenders, you must have a bond of not less than Kshs100 million. It is very likely for companies owned by persons with disabilities; women and youth may not compete. Therefore, there is need for regulation to see that this quota is actualized in reality.

Under the new dispensation - the Chapter on Legislature - we expect that these rules will also come before the two Houses of Parliament for approval so that we input what the Cabinet Secretary has suggested based on our experiences. We all interact with businesspeople with disabilities. We know the kind of challenges they go through and why they cannot access business opportunities. These rules are supposed to be made within 90 days after entry into force of this Bill. Within three months, we should expect to discuss the regulations under this Bill.

Finally, the Bill amends Section 129 of the principal Act. Section 129 deals with the disposal of unserviceable, obsolete and surplus stocks owned by Government. This one says that such goods are to be disposed of through certain methods, including public auction, tenders and transferring to other procurement entities in the public sector. There are many methods used to dispose of such goods and services which are either unserviceable, obsolete or surplus.

The addition in this Bill talks about radioactive or electronic waste. The Bill says that radioactive or electronic waste shall only be disposed of by persons who are licenced to handle such waste in accordance with Section 99 of the Environmental Management and Coordination Act of 1999. The aim of this additional amendment is Section 129 is to make sure that not everybody is allowed to handle electronic waste or radioactive waste because of the public health and environmental implication.

The person who handles that waste, even if it is a company owned by young people or women, or persons with disabilities, must be licensed to handle such waste according to Section 88 of the Environmental Management and Coordination Act.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to move that the Public Procurement and Disposal Amendment Bill, 2013 be read a second time.

I invite Sen. (Prof.) Anyang'-Nyong'o to second the Bill.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I would like to second this Bill which has been moved, very ably, by the Senate Majority Leader, Sen. (Prof.) Kindiki, from the other side.

I think he has gone into details of the implications of the amendment both to the principal Act and to the Constitution. The Articles of the Constitution that he referred to state very well that in public procurement, the youth, the disabled, women and children must be taken into account.

The Bill provides for the percentages that are necessary. This one requires an Act of Parliament for us to go into detail on how it will be done. I will not repeat what my colleague has said. However, I would like to point out the following. One, indeed, he emphasized on how companies owned by women, youth and the disabled will be identified to the extent that they can be called companies that are for youths or companies that are established by women. I hope that in practice, this will not open doors for what we may refer to as imaginative entrepreneurs. By this, I mean people who will make sure that they get some youths, women and the disabled who have absolutely no interest in a company and provide them with tender documents among other things. They should not get women who have no interests and reap the benefits. Kenyans are very good at this. Probably, this is something that we should be aware of.

Due diligence should be done. I do not know whether at the Committee Stage a rider can be added to this effect. However, in our Committee, we did an amendment which more or less said, in the event that some malpractices are discovered, there will be very serious penalties to be faced. I think that amendment was proposed by our Committee. This is quite possible. It can happen and can tarnish the good name of this law which aims at doing social justice and creating equity to those who have been discriminated against in terms of progress in the past.

The second issue about this Bill, which is equally important, is that procurement has always been an avenue for primitive accumulation in Government. Procurement officers themselves are personally interested in the outcome of particular tenders and will leak information selectively to particular people bidding for tenders. This selective leakage of information which has been a big problem in Government must, indeed, be avoided, especially where people entering the ring have what I would call "regional innocence."

This is the first time that women and the youth will be introduced to these malpractices that procurement officers are involved in. I do not mean all of them, but most of them have been involved in this dangerous practice. If they are initiated into this malpractice where you get leaked information so that you procure wealth that will set a very bad circle of events to follow. An innocent group of people called the youth, the disabled and women will enter into practices that are not good and which will make the fight against corruption more complicated. That is one thing I wanted to take note of in practice.

The third issue is about information. One thing that happens to many promising people, especially young ones, is that they do not have information about the tenders. Quite often, Government departments have published information in the daily newspapers. At least, there is a procurement law that says that you must publish the information in the daily newspapers. Some information is found in the Kenyan Gazette which is only accessible to a few people. Those who follow the law in publishing should be providing information to a bigger community. The women and youth may not necessarily buy or access a particular daily newspaper and they will miss having very critical information. I was going to propose, especially at the county level that every county should have an information and resource centre within the county premises.

Mr. Deputy Speaker, Sir, the information and resource centre must be known by the Members of the County Assembly (MCAs) and everybody else. This is the centre where you should get information about available tenders in the counties before you visit the tender offices. You should get information about how to fill tender documents. In fact, this should be a centre for some kind of capacity building. In this regard, you will find some people with very good ideas, but without information. These resource centres will enable such people to participate in tenders with some amount of ability and capability. At the moment, you will find that ordinary people who want to tender for something do not get information in good time. I know this because I have members of my family who run companies. I know that when I was a Minister, there was a tender in the Government which I did not get to know about it. I did not get to know about it and information passed me.

Now that we have the devolved system of Government and there is a lot of business at the county level, county governments should do much better than what has been done before. This information should be made available in the electronic media. The FM stations have had a tremendous effect on the dissemination of information in our country. In fact, the Communication Authority of Kenya (CAK) proposed to counties to establish radio stations. Counties may not afford to open up radio stations at the moment. However, they can partner with the private sector which can give more county information.

Mr. Deputy Speaker, Sir, at the county level, we can use electronic media to give information, especially in the language that is most understood. If the local language is used to advertise for a tender which, for example, requires someone to supply school books to a school and there is somebody running a local shop in the local market that person will participate. Then that is where the Centre for Research and Information becomes important because this fellow then would be told how to fill forms and compete. We are saying this because we want business to go down to the grassroots. When CDF was introduced, the one thing that it did was that for the first time at the grassroots level, we could see the life of our people changing. For example, the little young boys who used to come to us, Members of Parliament, in the morning looking for handouts disappeared because they were now being employed by local contractors. They were being productive. With devolution, this should even stand further.

Mr. Deputy Speaker, Sir, my experience has been that women groups in rural areas are very enterprising. In fact, I do not know why men do not have men groups.

When you go to harambees, you will find that the women groups are the ones who provide a lot of money and the women are the ones who stay there the longest to contribute. These women groups which have been there for a long time do all kind of things, for example, table banking, trading and so on. This is now the opportunity for county governments to have a list of women groups that exist in the county. It would be good to have their addresses and when things like these happen, send information and alert MCAs that these are the youth or groups in their wards. They should receive this information and make the decision where they want to compete in the advertisement of tenders or not.

When resources are scarce, people tend to scramble desperately for those scarce resources and usually people take advantage of lack of information. Those who have received it before, keep on receiving and becoming more and more prosperous while the new entrants find it very difficult to enter into the process. Now, this blocked competitive system must now be opened in this particular regard because this is a new thing that should take a new life that should be much fairer, more dynamic and that should reach more people.

Finally, this is one of the Bills that show us that in order for the Constitution to become alive, laws must be made for the implementation of that Constitution. Even laws that were not envisaged, for example, the Sixth Schedule which stipulated the sequence and time action plan within which laws were to be implemented to implement the Constitution---. Even where there are no laws to implement those Schedules in the Constitution, I think it is important to do something like what we are doing today. I will suppose that in the retreat of the Senate on 30th July, 2014, this is one of the things that we should be discussing. Are there certain pending laws that should be passed in view of the implementation of the Constitution? Are there certain aspects of the Constitution that really contradict the spirit of the Constitution?

Mr. Deputy Speaker, Sir, if you look at the history of many countries when they passed constitutions, most amendments or laws are done within the first five years of that Constitution. If you do not do it when the window of opportunity is still open, then certain practices take root and human beings are generally conservative. Once something takes root, it becomes much more difficult to change it because there are tremendous established interests who will not see the alternative for what they are experiencing. Therefore, as it is said in English language, strike the iron while it is hot. It is also very important that we look at the Constitution and look at the laws that need to be passed to implement it. We should look at certain lacunas in the Constitution that make it difficult for us to really live the spirit of the Constitution.

One of such lacunas is, of course, the status of the Senate. I would say that you cannot really have a Senate which is not an Upper House and which does not have a lot of say on money Bills. You cannot have a Senate which is given the power of the Constitution to look after counties and take care of their interests which then does not have power of money Bills affecting those counties or just limited powers. So, these are some of the issues that we need to look into in this particular Bill which is extremely important in dealing with the disadvantaged in society. That word is very important. It means that those of us who are not women or children are advantaged because the

Constitution that created this nation at Independence did not look at these issues. So, it is accepted as legal, but morally and ethically, it has been wrong.

Mr. Deputy Speaker, Sir, in correcting it, we must go even further than that and say; the extent to which the women, youth and children are disadvantaged are not just tackled by this law. This law is just one of the first steps that are being taken, important as it is, to deal with the issue of being disadvantaged. There are many other issues that touch on this social category of our population which deal with their being disadvantaged. I hope this Senate will look at these other issues and the fact of being disadvantaged over time will be eroded so that these citizens of our nation become as advantaged as others who do not belong to this particular social category.

I would like to support.

(Question proposed)

Sen. (Dr. Khalwale): Mr. Deputy Speaker, Sir, I want to support this Bill very strongly and find a rare opportunity to congratulate the Jubilee Coalition Government for coming up with this very important Bill.

I would like to advance the case of the youth and point out that as I support all the clauses in this Amendment Bill, youth do not just have access to procurement simply because of the absence of a law. The law is now there. However, there are other serious challenges that make it difficult for our youth to get an opportunity to get these tenders. High on the list is the issue of national identity cards. If the Government is not going to be proactive in making sure that it avails identity cards to our youth, you will find that this money will be available to the children whose parents are in the middle class or upper class. This is so, especially with regard to the girls. After 18 years, if the girls have not continued with their schooling, they end up getting married. When they move from one village to the other one, then the chief insists that before the girl gets an identity card, she has to go back to her parents and bring their identity card, and come with a letter from the chief of that village telling this other chief that this is, indeed, a *bona fide* document from the actual parent of this child. This youth will then end up being asked for a tip from the chief where she is married and a tip from the chief where she was born. Then she just gets confused and gives up. It is not rare to find young women in marriage up to the age of 25 who do not have identity cards. I, therefore, urge the Government to make acquisition of identity cards to be easier.

Mr. Deputy Speaker, Sir, the second challenge that our youth have and which the Government must endeavour to remove is access to information. Newspapers where tenders are advertised by the Government cost money. Newspapers do not circulate very well in the rural areas. Again, I want to take this opportunity to congratulate one newspaper which is doing an experiment; *People Daily*. *People Daily* is now giving out its newspaper for free every morning in the hope that they will make their money on advertisements. I want to encourage more newspapers to do that, so that they make their money from advertisements, but the newspapers to be readily available so that our youth can then have access to that particular information.

The other challenge is the issue of financial illiteracy. There are many youth who would want to go into business. Therefore, they wish to procure goods and services from the Government, but they are financially illiterate. You will find that in the rural areas, if you give a cheque to a youth who has supplied his goods, that youth will be hesitant. This is partly because of the bad history of cheques; both individual and even Government cheques have been bouncing. I hope that as the Government starts giving our youth these cheques, they must not bounce the way they sometimes do.

Mr. Deputy Speaker, Sir, further to that education on finance that we need to give our youth, we should be alive to the fact that the youth have seen their parents who go and borrow money from micro finance institutions being auctioned and so they fear. They think that taking a loan is tantamount to being auctioned at the end of the day. These are the issues that we must give our children by way of education. The other challenge that these youth will face is actually access to credit. As we debated early in the afternoon, credit is not cheap in this country. I was not satisfied that the Government was telling us this afternoon that they can do nothing about the 19 per cent or 23 per cent interest rate being charged by banks. Something must be done so that these high interest rates can go down for our children to access cheap money for them to then be able to fund whatever tenders that they are going to win.

Mr. Deputy Speaker, Sir, now that *Uwezo* funds are starting to be rolled out, again, let me laud the Government for making this money available. It is my belief that these funds will initiate our youth into business. Once the youth have done that internship using the *Uwezo* funds as seed money, it will be possible for them to then carry that culture of business years and years into the future. However, if these *Uwezo* funds will be treated the way the Youth Enterprise Development Funds (YEDF) were treated or the way the Women Enterprise Funds (WEF) were treated, we will not go very far because there is serious red tape and serious bureaucracy connected to the funds that I have said. I hope the model of *Uwezo* funds will make it easy for our children to access this money.

Since I am talking about this, may I comment about the *Uwezo* Fund. *Uwezo* Fund is no different to a large extent from the Constituencies Development Fund (CDF). This Senate must lead the country in ensuring that legislators, be they Senators, Members of the National Assembly or Members of the County Assemblies (MCAs), have nothing to do with controlling funds whatsoever. All the money under the CDF, *Uwezo* Fund, WEF and the YEDF should go to the Governor. He should be the one who dishes out the money and we oversight him properly, so that the process is neat. Mr. Deputy Speaker, Sir, at the moment, it is so appalling that already people are rolling out ward enterprise funds, which operate like the CDF, completely with no law in place to govern them. On the ground now, some MCAs are walking with pre-printed Bills of Quantities (BQs). They sit at a shopping centre with a pre-printed BQ and say: "If you pay upfront, I will be able to give you this contract."

If you noticed, *The Standard* newspaper today has written an editorial saying that the Senators are fighting for CDF. I am expecting that the Office of the Speaker of the Senate will rebut this issue and make it clear that we were talking about resources to run the office of the Senator and not to go and do development. Even if you give me Kshs100 million or Kshs500 million with 12 constituencies, I will have no impact. So, I would

rather sit and oversight the funds that I carry from this House to the Governor on the ground.

Mr. Deputy Speaker, Sir, there is the important issue of safeguards from abuse. I am glad that this has been included in this amendment Act. But there is something more. It is quite important that we should put a clause for punishment. This is because Kenyans are very good at creating proxies. If they created proxies in the name of Mobitelea, including proxies for funds like Anglo Leasing, there will be nothing difficult in them creating proxies through which the money will be siphoned. We must put punishment so that *bona fide* companies belonging to our youth are the ones that access credit.

Mr. Deputy Speaker, Sir, the process of formation of a company is also difficult. We might at our level think that it is very easy, but when you go to a village in Navakholo in Kakamega, forming a company is a big challenge. So, the youth should find it easy to register a company. In the era of the YEDF, we have village consultants who were earning from writing proposals. So, if the youth want to start a project of doing bricks and they are supposed to borrow, probably, Kshs100,000. There is a consultant; sometimes, a retired primary school teacher who knows how to write project proposals. He will say: "Put Kshs10,000 on the table before I give you the proposal." The youth will just give up because they cannot get the Kshs10,000. These are the practical issues on the ground. Once again, we do not want to use this fund to expand the gap of poverty between children whose parents are in the middle class and the children of the *hollo polloi*.

Mr. Deputy Speaker, Sir, my final point on this is for me to request my colleagues that during this amendment, probably, it is an opportunity for us to think further, harder and deeper. This is because I notice that sometimes there is a lot of wastage. Let me give an example. If you want to spend Kshs100,000 for a particular service, the process of procurement of advertisement, tender committee sitting to peruse the applications, award and so on, attracts sitting allowances, cost of advertisement and so on. When you count what these people are being paid, they will have spent that Kshs100,000 that they wanted to make sure that they sell out or something very close to it. Maybe a time has come where we should go the international way. A tender committee should be allowed a certain minimum amount of money which they can spend without necessarily going through the whole process of procurement. It could be Kshs500,000 or something like that, so that this wastage through sitting allowances, advertisements and so on can be controlled.

Mr. Deputy Speaker, Sir, in fact, do not be surprised that some of the newspapers are very careful in critiquing devolved governments, because they fear that if they are very aggressive on them, they will be denied advertisements. So, you should allow tender committees to say: "For projects of Kshs200,000 or Kshs500,000, we can spend the money through internal controls and give receipts and so on." There is an additional benefit. If you buy a biro pen straight from the shop, it will cost, probably, Kshs50. But if you tender and people hear that the same biro pen is being sold to the Government, where Sen. (Prof.) Kindiki is the Senate Majority Leader, they will say that each biro pen is Kshs150. You will then find that, that money has been paid, because of this lengthy process which we can control by simply people knowing that in a supermarket a biro pen

costs Kshs50. So, if somebody bought 1,000 biro pens, that is Kshs50,000. You do not have to take them to task so long as receipts are there and actual deliveries have been made.

Mr. Deputy Speaker, Sir, with those many remarks, I want to strongly support this Motion and thank the Government for the amendment.

Sen. Kajwang: Thank you, Mr. Deputy Speaker, Sir. This is a progressive Bill because it helps us in the implementation of the Constitution. That is why all of us support it.

Mr. Deputy Speaker, Sir, procurement has been a serious problem in this country, especially because corruption flows from it. In fact, if you talk about corruption, you are talking about procurement. Secondly, procurement has been dominated by a few people or clubs in this country, to the exclusion of others; to the extent that the gap between those who make a lot of money and those who are making nothing widens every day. This is not good for societal wellbeing. I think that this Bill is taking us somewhere.

Mr. Deputy Speaker, Sir, first, there are no jobs to go round. So, the young people must create jobs themselves. They can only create jobs in this procurement world, which is largely controlled by the Government. In fact, if you look at the total business that goes round in the country, it is either in the national Government, county governments or Government-owned parastatals. So, we must find a way in which we will become inclusive, so that we do not exclude our youth and women forever out of business. So, this is a good proposal that we have here and we should support it.

Mr. Deputy Speaker, Sir, I want to say a few things that will make it realistic. The other day, I saw an advert from a county government that was saying: "This one is for everybody; this one is for women; this is one for people with disability; and, this one is for youth." In other words, there is competition amongst the youth for whatever they have been assigned. I do not know whether that is how this was thought out, but I saw it in one of the adverts. Somebody will have to do a lot of work to check or audit whether the entity that was procuring actually shared out these things according to the provisions of this Act. When it was said popularly "30 per cent" we did not have a way of auditing that. When you now say in law "30 per cent", then it must be audited. It is not small money.

If Kenya were to procure goods and services worth Kshs500 billion, we are talking of setting aside Kshs150 billion worth of goods and services for the youth. These are youth who, probably, have not done business, because they were excluded before. They do not have a track record, bank accounts, title deeds, collateral and experience. Of course, this is a good starting point. However, if you were to audit at the end the year and find that the young people who were given the business did not actually procure those services, because they did not have resources, it would be a sorry thing. I do not know who will be punished for it. In my own county, the county executives or the people popularly known as "ministers" started this earlier.

The young people who were given roads to repair, first of all, did not even have the money to do so. So, you are given a job and a Local Purchase Order (LPO) and told: "Go and supply." However, you cannot supply because you do not have money and if you go to a bank and you have never banked before, you will not get money. The bank will tell you: "We cannot give you money because we do not know you." Eventually, of

course, you will go to a businessman who is already known to, probably, back you or something like that. But I have seen that they have not supplied and done what they sought to do in the first place since May when they were given these jobs. However, the procurement entity is now calling back the tenders.

So, merely saying that we will give 30 per cent of the business to the youth is not helping them. Even if we gave them LPOs, and I know that banks do not trust those LPOs in the first place because some have been falsified---. But even if they checked, some people have gone behind the LPOs and have been paid money directly into other accounts and avoided paying the money to the banks. You will have to do a lot of persuading to our banks to finance LPOs.

Mr. Deputy Speaker, Sir, if we really want to support these groups, because I am sure that we will give them the tenders, but they will not supply. We will tell them: “Go and do uniforms for all the nurses in Homa Bay Hospital.” Of course, you have the machinery to do it, but you do not have the resources to buy the materials, do it and supply before you are paid, because they are not going to pay you in advance. So, essentially, we will be going back to where we came from.

Mr. Deputy Speaker, Sir, this Bill should have been backed by some financial arrangement that would make it easier for the people who have been given these businesses to leverage it against that financial arrangement. I am thinking of a Government institution like Post Bank which is 100 per cent owned by the Government. But when the Government is creating the WEF, *Uwezo* Fund and the YEDF, the money is given to other banks. Yet, Post Bank has branches in almost every market that I know of in this country. So, I do not know why we are not supporting our own as a Government and investing in them.

Look at the situation at which we are buying things in bulk like sugar, rice, fertilizer and so on. Cereals board has nothing to do with procurement. In fact, it is like the Government is procuring these things and then gives to cereals board to keep because they have warehouses. We have a huge case in which cereals board had to pay almost Kshs500 million and yet, there is a Government entity which is 100 per cent owned by this Government called the National Trading Corporation (NTC) which used to do bulk importation and bulk distribution of some of these goods. We have let it die because we want to support a system which is very amorphous where people can make money. Let me leave that for another day and address the issue of youth support.

The Bill says that we are trying to deal with discrimination. It is Article 16 on page 4, bottom right. It is talking of equality and freedom from discrimination. In fact, this Act is discriminative because it is saying that 30 per cent must go to the youth. This is called positive discrimination and sometimes it is a good thing. That is also what is called empowerment. I hope that the Government will come back with a good initiative. Otherwise, we will be wasting time. This is the initiative in which we will back the youth so that when they are given these tenders, even if it is supply of chalk, exercise books or text books, they can then go with the LPO to a bank, buy those books from Text Book Centre, supply, the bank is paid and then they get their bit. If we do not give financial access, we are wasting time and they will not go anywhere. I am saying this very passionately because most of us here, except for Sen. Murkomen, we are now older and

we have young people in our homes who have no jobs. They have gone to school, some are masters graduates, but there are no jobs. If they were to go and apply for these tenders and they are given, probably, they would not be jobless.

(The amber was switched on)

Is my time over? Thank you very much for giving me some little time.

I thought we could start progressively by saying that tenders up to---

The Deputy Speaker (Sen. Kembi-Gitura): Order! Sen. Kajwang, you have not been added any time. You were just being warned that you are in your last five minutes.

Sen. Kajwang: Thank you very much, Mr. Deputy Speaker, Sir. In that case, I have some time. If we were to say that any business that goes up to Kshs500,000 where you do not have to go to public tender, you give to the youth, women and persons with disability. That would be the best beginning point and then we progress that way. I have realized that some Government entities do a lot of tendering under Kshs500,000 without going to public tender. That is where the money is if you multiply so many of those little things that are supplied from exercise books, envelopes, papers, cartridges and so on. When I was a Minister, I noticed that the budget for envelopes in the Ministry was about Kshs104 million every year. So, there is a lot of business that can be done with the amount of Kshs500,000 without going to the public tender. We could earmark this for the young people and women, but we should back it with some money.

Mr. Deputy Speaker, Sir, I know that the Constituencies Development Fund (CDF) has supported some young people, especially *fundis*. We have to go round it. When we went for public tenders, good *fundis* who had no money could not do the tenders. So, we had to give tenders to people who are not *fundis* to come and hire them. Then we realized that it is a waste of money because it is even more expensive. I hope that we will leverage this against some money so that young people who do not have money, but have the skills and can deliver get access to this. Otherwise, we will be making very sharp businessmen to be brokers in the process killing very good progressive arrangement for our young people.

Mr. Deputy Speaker, Sir, with those many remarks, I beg to support

Sen. Murkomen: Mr. Deputy Speaker, Sir, I rise to support this Bill. First of all, I would like to congratulate the Member of the National Assembly who came up with this Bill, Hon. Sakaja. I would also like to congratulate both houses for partnering in terms of ensuring that this Bill is moving in the constitutionally required procedure. In the past, many lies have been peddled around that the two Houses are unable to work together or that there is an ulterior motive from any of the two Houses and should be denied Bills. That is far from the truth. If there is anything that demonstrates that a bicameral legislature works, it is the enactment of Bills. The fact that the other day we passed one Bill by Sen. Sang, a Member of this House, and now we are discussing a Bill that was generated by a Member of the National Assembly, demonstrates the fact that our bicameral legislature is working. These two Bills are Private Members' Bills. Therefore, it is a testimony that the new Constitution is working, bicameral legislation is working

and we are able to add value to the country and the people of Kenya through partnership and working together.

Mr. Deputy Speaker, Sir, this is a very important Bill because it is targeting the largest population of the country, that is, youth, women and persons with disabilities. Basically, this Bill might be in very few pages, but its impact is profound. One of the reasons it is important to ensure that we address the issue of marginalized groups, particularly youths. This is because for a long time, the youth of this Republic have been used and promised that they are leaders of tomorrow. Most of us were promised for a long time that we are the leaders of tomorrow and we should work hard to have a better life. There were songs were sung to say that “*vijana* must go to school” so that they can have a better life in future. This future has become a forever promise. As you might know, the politics of this country, the *vijana* age keeps being stretched. So, achieving that objective of prosperity is becoming like a mirage. You keep on shifting the goal posts until you find someone is 40 years

old and he is being told “*kijana* work hard so that you can get a better future.” Therefore, a better future has become an illusion.

Mr. Deputy Speaker, Sir, to make that future a reality there must be specific steps that must be taken. This Bill plays a major role by ensuring that Government takes steps that are planned or deliberate to ensure that those opportunities are created. First of all, I want to speak about women. The women of this country are very industrious and hard working. Most of them are doing family chores. Most of them, due to historical and cultural issues have been unable to get an education as compared to men. As much as we love this country to say that we must follow the law in procurement, those technical terms in the Public Procurement and Disposal Act and other financial acts are complex. They are making it difficult for some women to understand procurement procedures or regulations. Therefore, many women in this country shy away from participating in procurement of goods or doing business with the Government. Considering that the Government is the single richest entity to do business with, it is important that the women of the Republic of Kenya are enabled, in a language they understand even if it means translating those legislations into Kiswahili or mother tongue. This is the only way they appreciate that there is an opportunity and space for them to do business with both national and county governments.

Mr. Deputy Speaker, Sir, if this Bill is passed and I believe it will be passed, it means our women will move from the *mama mboga* business to become *mama* contractor. They will move from being just a mere *mama njugu* to become *mama* supplier because that is what we need so that we can make our country a more prosperous nation and a more equal society. This Bill is very critical if you look at Chapter 4 of the Constitution in terms of equalizing society, bringing equity and ensuring that these women are able to take care of their families. It has now become the norm. I saw a story in the media where a certain man in Nyanza was trying to sue the wife for maintenance. So, we are moving to a more equal society. Therefore, we must also enable these men to benefit from the businesses that are done by their wives, sisters and daughters.

Mr. Deputy Speaker, Sir, when it comes to youth, the biggest population in this country, they have suffered in the hands or lords of resources. They have suffered in the

hands of brokers in this country. Sen. Kajwang can tell you because he has been a Minister before; some of us only hear this as part of rumours and sometimes from stories given by other people. That you can go to the Government and you realize that the people who are doing business with Government might have done it from 1960s. They have understood the system. You can be a Cabinet Secretary (CS) or a Minister, but these people have compromised the ladder and you may not understand what goes on. They have done it for as many years as possible. They have done what T.S. Elliot, in his poem “*Macavity: The Mystery Cat*” has called they have the power of levitation; they are able to pass this corner to the other corner.

These people have monopolized every business. If you go to the county government, they know the Governor; they even argue that they are the ones who have financed maybe half of the Governors to be Governors. If you go to every Government, if this party wins the Government, you are told that they are the ones who are financing the elections. If this other one also wins, they say that they have been financing the elections. These people have taken the country captive. One way of saving or redeeming the nation from the captivity of brokers is to take these deliberate steps to look for men and women out there, and the young people who have not been employed and tell them:-

“Wait a minute, come; there is a share for you which is 30 per cent; we have been waiting for you here. Come, we will show you how to fill the forms; we will show you where to get the Local Purchase Orders (LPOs); we will show you where to get the financing; we will show you the procedures to ensure that we have another critical set of businessmen and women in his nation.”

Mr. Deputy Speaker, Sir, if we do not do so, young people will continue doing what they have been doing. They will lose hope, crime will go high, alcoholism and alcohol abuse will go high and we do not want a country that is disenfranchised as a result of us doing nothing. This Bill is a saviour. This law will play a critical role in bringing our country to its senses in ensuring that men and women are able to get the business that we need.

Mr. Deputy Speaker, Sir, I have one suggestion which I think in the appropriate stage, it will be better that we amend the Bill. I know it is provided here that for a business to get that advantage, because this is a positive advantage or discrimination, that all the companies for the youth must be all by youth. I think just like the persons with disabilities and women, it is enough to say that 70 per cent of that company be youth owned. Sometimes the youth need maybe one or two older people. They may not be so old; maybe they are 40 years old or even if it is 80 years old – somebody who will jumpstart them and initiate the process. They may give them the first capital or assist them register that business. Therefore, I would support a situation where we will say that as long as 70 per cent of the ownership and directorship of the company and the benefits of the company come from youth, it is enough. So that then, the youth can get other older people who have capital who can assist them to start the process; perhaps someone who will donate his land; give the first capital; donate machinery or something that will ensure that they start their business from there.

Mr. Deputy Speaker, Sir, the other category of persons that has been left out for a long time is the persons with disabilities. We have said and sang in this country that

disability is not inability. But there must be practical steps towards ensuring that, that person who is unable to see or to walk; or that person who has no hands is deliberately assisted. It is important that this country takes proper stock of every person with disability, in fact, including those who may have mental challenges or disability. Therefore, it must be possible that if you go the county headquarters, the Governor, at a click of a button, can tell you how many people in this county have disability and the nature of their disability. He can also tell you what deliberate steps are being taken to ensure that they are registered; that they are given business opportunities, they are assisted to form business groups, they are assisted to get the contracts and, ultimately, assisted to deliver. If they deliver the first time, the second time and the third time, then these people will stand on their own and it will inspire so many other people.

I have seen situations in this country, shamefully, that a parent is tying down their child because they have mental disability until they lose their hands. That should not be the case. This mentality that if a person has any form of disability, he or she, is a curse to the family must be banished from our families. We must ensure that we have a country that respects every citizen of this Republic the way they have been created by God.

Mr. Deputy Speaker, Sir, the good thing about this Bill is that it makes it mandatory and possible for both levels of Government; that is, the national and county governments levels, to be held responsible and accountable. I want to speak because this is a House that protects counties. However, protecting counties is not protecting a single individual, whether it is the Governor or the Speaker of the county assembly and so on, and so forth. Our counties were created as provided for in Article 174 of the Constitution so that they can be the self government of the people. It is a very unique statement; self government of the people at the local level. Those people at the local level – the youth, women and the persons with disability – must feel that they have a government of their own. But these governments are slowly being privatized. They are slowly becoming an entity of a few individuals, particularly the Governor and his cronies. It is saddening to hear, for example, that if the Senator of a particular county is not accessing information about what is happening in the county, how much worse is it for a person with disability, women in the rural areas and for the youth?

Mr. Deputy Speaker, Sir, even as we go to the second year of financing the county budgeting and planning for the county, there must be deliberate steps that the counties take during budgeting to call and finance persons with disabilities, youth and the women to attend those forums to ensure that their voices are heard. It is not enough to attend a forum in a hotel, sign your name and you do not even know the language they are using. They must be assisted, even if it means translating what is happening into vernacular languages. The Constitution allows the use and development of vernacular languages in the counties. We must translate what the county wants to do. We must keep the county and the people of the county informed on what the counties are doing. That information must be quality information and not quantitative; we should not just give people information just for the sake of it. It must be information that gives people feedback to appreciate that they have their own government and that they have business they have created.

Mr. Deputy Speaker, Sir, the same lords of corruption; the same masters that have held this country hostage since 1963; the same procurers and brokers have now devolved themselves to the 47 counties. They are even becoming richer than they used to be because they are taking every county hostage. For example, the procurement of Elgeyo-Marakwet is combined together with the one of Kwale and Homa Bay counties. If you look at the business, it is either the same man who was doing this business for many years, or they have just registered subsidiary companies. That should not be the case. There must be deliberate efforts to ensure that the youth and youth groups of that county have been enabled to register themselves and do business. There is nothing so secret in publishing that “we have awarded contracts to such and such number of youth groups and the names of the directors of those youth groups are these ones.” We hope that in the next financial year, they will have got the strength to compete and even look for business elsewhere. We will also give a new lot of fresh young people the courage to also start business.

Mr. Deputy Speaker, Sir, this is a Bill worth supporting it. It is a Bill that we must all be proud of. We must thank hon. Sakaja for it. I must confess here because I was part and parcel of those who drafted the Jubilee Manifesto; this Bill is completely supported by the Jubilee Manifesto.

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

The Senate Minority Leader (Sen. Wetangula): Mr. Deputy Speaker, Sir, with or without the Jubilee manifesto, this Bill is a pro-people Bill. This is a Bill that will help the youth of this country regardless of the situation. The Constitution recognizes the youth as a category of our population that requires affirmative action. This Bill is part of, but not the whole of the solution to the issue of our youths. We have a very large number of unemployed and restless young people in this country. One of the problems that we face in this country with our youth is not just whether we can access them to procurement or not. There are more variables than that. This is a good step. I support the Bill to the extent that it curves out the constitutional threshold of helping young people, women and the disadvantaged people like the disabled.

In doing so, Mr. Deputy Speaker, Sir, the Government of the day must do much more than tokenism. If you look at the procurement law of this country, even with this amendment, the procedure of procurement remains a very major hurdle for the young people, women and the disabled to access opportunities. It is one thing to say that one-third will go to women, the youths and to the disabled. It is another issue realizing access to credit. This is a nightmare. This afternoon, we were talking about the obscenity of the level of profits that our banks make at the expense of our economy. The culpability runs back to the Government. Successive governments in this country have forgotten that there are institutions that can help disadvantaged Kenyans.

The point that the distinguished Senator for Homa Bay made about the neglect of Government institutions by Government is startling, but true. We have private banks in this country which started operating 15 years ago. However, because of Government tutelage, they are now the largest banks in this country.

Sen. Kajwang talked about Post Bank. If you go to North Horr, you will find a post office. I am counting the disadvantaged and neglected areas. If you go to Moyale,

Liboi, Lokichar, Lokitang and even Kibish, you will find a post office. Why can the Government, with the Post Bank backed by the post office network not run the affirmative action funds through these institutions of Government and make money for the Government and for the people of Kenya?

When the Kenya Commercial Bank (KCB), Equity or National Bank make money that is much better. However, when Barclays Bank makes Kshs10 billion profit, that is money out of our economy. When Standard Bank makes those billions that is money out of our economy. Once you make your profits if you are an entrepreneur in Kenya, our law allows you to repatriate without any hindrance. When Equity Bank makes money, this is money that goes to the pockets of individuals. However, if Post Bank made money, this would be money into the hands of the people of Kenya. This is money that goes to boost the balance sheet of the Government. This is what we must do. Procurement can be done in the manner that the Bill proposes.

Mr. Deputy Speaker, Sir, I think our next level of legislation should be to compel the Government to use this positive and affirmative action funds like *Uwezo*, CDF and many others and channel them down through public institutions. Post Bank and National Bank as currently constituted still remain public banks. A portion of the KCB, although it is now in the hands of private individuals and investors, is still partly owned by the Government. I would hesitate and, in fact, encourage the Government, being the biggest enterprise that anyone can do business with, has no business bolstering private individuals on very dubious criteria.

We have had all manner of public funds. When you check and inquire, you find that the Fund is being run through Equity and Family Bank. We have Government institutions. There is no way that the owners of Equity Bank will share their money with the Government or with anybody. However, when the Post Bank makes a huge profit, the money goes to the Treasury and underwrites free education. It will pay for the laptops that have become a scandal and do many other things in this country that will aspire to give to our people.

As you have said, we will give affirmative action in procurement to our youths. I may be repeating what has already been said. One, we need to amend or to create a law to allow the disadvantaged groups to register or incorporate organs for free. The Government can afford that. Any group of youth, disabled persons or women should incorporate a company very quickly at no costs. That is part of the support that we can give.

[The Deputy Speaker (Sen. Kembi-Gitura) left the Chair]

[The Temporary Speaker (Sen. Murkomen) took the Chair]

Mr. Temporary Speaker, Sir, secondly, it is one thing winning a tender. It is one thing to say that 30 per cent of all procurement will go to the youths. What will we see after that? We will see the invisible rich people that you have been talking about who have run this system since Independence. They will now form companies with surrogate youth directors. You will have proxies in every company. They will register and say that

70 per cent of the people are women, but the owner of the company will not even be a woman. They will say that 70 per cent of the owners of the company are disabled, but there will be no disabled people in that company.

The same fellows are always a step ahead of the State. They are the ones who will come round, prequalify themselves with every name conceivable – you will remember the famous name Fired Earth and Balistic Missiles which were owned by one man. These are the companies that destroyed Karura Forest. You will see them emerging in all forms; Fired Youths, probably, and they will be the same people. We must simplify the way youths; women and disadvantaged groups can do business. The general feeling among members of the public about this *Uwezo* Fund is that when it is a public fund, it is for free. It is seen as a slush fund for people to eat. When you give them money, they take it with no intention whatsoever of ever repaying it.

A young person or woman will go and take a loan and the next day, he or she is at your doorstep as their Senator and they will tell you that they are not able to repay. When you ask them what they did with the money, they are not able to tell you. If you probe further, they will threaten never to vote for you. So, as the Senator, you have to start finding ways and means to pay these loans. Many times as a leader, you introduce needy cases to a bank. They put their land as collateral and after six months, they have not serviced the loan, the bank is going to auction the land and they come to you and say: “If you did not advise me, I would never have taken that loan”. So, you have to pay for it. All these things are going to happen. At the Committee Stage, we need to come up with a provision that covers this.

Mr. Temporary Deputy Speaker, Sir, there is no way any enterprise under our current legal regime both at the national level and the county level can go to tender on any transaction without a budget for it. One would expect that the county governments and their departments and the national government and their departments, when young people who have never run an account and who have no money win a tender, they will show an accompanying letter to that victory in the tendering. That they can walk to bank of their choice, whether Kenya Commercial Bank or the Co-operative Bank and introduce the company and say, a company known as this and that has won a contract, we guarantee that we hold the money for this contract and we shall pay directly to your account and then they will get their profit out of it. If it is a tender for Kshs1 million and the profit margin is going to be 20 per cent which is Kshs200,000, the sponsoring entity will eventually pay the Kshs1 million to the bank and the youth will take out his Kshs200,000 and walk away and then there are no nightmares.

Unless we do that, what is going to happen is that there are going to be even more shylocks in our system. People who just sit with money, the youth win a tender and you go to him and he tells you that he will finance the contract provided he or she takes 70 per cent of the profit. You know how shylocks operate even from the days of Shakespeare. If you do not pay, they slice off a pound of flesh next to your heart. That is what is going to go on and on. Those shylocks are ruthless. You borrow Kshs10 and you acknowledge receipt of Kshs100 and sign for it. When they come down on you, it is like a ton of bricks. You can tell them whatever you want but they will not listen. So, we must help these young people by making sure that the process is smooth and without hurdles.

Mr. Temporary Speaker, Sir, what is worrying me now is when you go to the counties. You know we have devolved money and in my view, we are not giving them enough. Even the little we are giving them, the level of corruption going on down there is shocking. It is absolutely appalling. I just hope that the end of five years, it will be like Nigeria where they sent three quarters of the Governors to jail. That is how Nigeria went. The first five years of devolution, two thirds of the Governors went to jail because of corruption. When you go to the counties, some Governors are armed with cronies and tendering is just a ritual. They advertise tenders in the newspapers but there is no intention in their minds of going through that tender, it is just to satisfy the law. The winners of the tenders and those who participate in the tenders are not related. People are just called in the night and given forms that they have won tenders which they even did not tender for in return for a kickback. This is dangerous for our country.

I want to see the Jubilee Coalition Government apply the law without fear or favour. Never mind that a Governor has entertained the Head of State, the Deputy President or a Senator like me. If he transgresses the law, hit him hard. That is the only way. We either start well or we never start at all. When against all scientific data a Governor tells the country that he has tarmacked 30 kilometres of a road in three months, even the most foolish person will not believe this and yet we are busy posting on the wall saying that he is the most hard working, positive, enlightened Governor. We are destroying our country. When a Governor, against the Constitution takes the load of a non devolved function and goes and buys 120 police cars when he has only 30 police establishments in his county, how do you explain this? That is the money the youth or the women would have used to procure something else. This Senate has its work cut out. The Khalwale Committee has to do pre-emptive strikes.

Sen. Sang: On a point of information, Mr. Temporary Speaker, Sir.

The Senate Minority Leader (Sen. Wetangula): He can inform me, Sir.

Sen. Sang: Mr. Temporary Speaker, Sir, I want to inform the Senator for Bungoma that when the same Governor is invited for questioning by the Ethics and Anti-Corruption Commission (EACC), he goes to court to prevent the process. That tells you how far that kind of Governor is going.

The Senate Minority Leader (Sen. Wetangula): Thank you for that information. We presume this Governor is innocent until proven guilty. If he has not done anything wrong, why would he fear being questioned about what he is doing and parading himself everywhere? Sometimes the law does not punish people on behalf of others, but sometimes examples must be set because this is going on and on and on. This devolution will come a cropper if we do not get it right. We devolve resources to help the rural people; we devolve resources to help the disadvantaged people. I have said here and I can again say that we have counties like Wajir where children read about tarmac roads in books, where children read about piped water in books. Now we are telling the youth of Wajir that even if we are giving you Kshs3 billion, that is more money than the Wajir County has ever received throughout our 50 years of Independence. That money can change lives; that money can jumpstart lives. So, this law must be fine tuned properly. It is not enough just to say let us give 30 per cent to women, the youth and the disabled. We must have a mechanism of how to finance that process and how to audit that process.

You have heard of the *Uwezo* funds that Sen. (Dr.) Khalwale talked about. Now I am told that the Jubilee Coalition Government has promised *Maendeleo ya Wanawake* that they are going to put in a kitty Kshs200 billion for their activities and *Uwezo* funds will be moved to be managed by *Maendeleo ya Wanawake*.

We have no difficulty with our women folk, but this kind of populist issues will not help this country. My mother has been in *Maendeleo ya Wanawake* all her life. She is now over 80 years old and has retired. I also have supporters, relatives and friends in *Maendeleo ya Wanawake*. But when we are talking of public resources, we must structure things properly, so that---

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. I really respect my leader from Western Kenya, but is he in order to say that the President promised Kshs200 billion, yet the Kshs200 billion that he talked about is the same 30 per cent that we are talking about in procurement? He never promised to give the money to *Maendeleo ya Wanawake*. They were told that they need to build their capacity to access the Kshs200 billion that he has given to women. Is he in order to mislead the country, really, that *Maendeleo ya Wanawake* was promised the money?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, at least, we all agree that the figure Kshs200 billion was mentioned. How it was mentioned and designed is a matter of detail.

The Temporary Speaker (Sen. Murkomen): Sen. Wetangula, you have already made a statement that Kshs200 billion will be given to *Maendeleo ya Wanawake* as an unstructured public entity running public funds. Maybe the information from Sen. Elachi will help you correct that approach and we move on.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I can tell this House without any fear of contradiction that among the women who visited State House, were women who support us and who were elected. They have told us that they were promised that there will be Kshs200 billion for women that *Maendeleo ya Wanawake* will run. Also, an office for each county will be built for *Maendeleo ya Wanawake* and there will be *Uwezo* funds that will go to them. I do not take that as a decision of the Head of State, because the Constitution says that it has to be in writing. So, I am taking it as populist politics. But I am giving you a very---

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. The Senator needs to substantiate because *Maendeleo ya Wanawake* is an organization that draws money from donors. It will be very unfortunate for this House to now tell the donors that *Maendeleo ya Wanawake* is going to be funded by the Government, because they will close their doors. What I have said and clarified is what I heard at State House; that it is time that women built their capacity to be able to access the Kshs230 billion that has been---

The Temporary Speaker (Sen. Murkomen): What is your point of order?

Sen. Elachi: Mr. Temporary Speaker, Sir, is he in order to say that women were promised money even offices, when they were not?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Whereas Sen. Beatrice was rising on a point of order, is she in order to use that opportunity to further mislead the House that this Government extends money to organizations that are

not public, when we know that as recently as over the weekend, the same Government was in Kakamega State Lodge feeding Muslims using public funds?

The Temporary Speaker (Sen. Murkomen): Each one of you is making a statement which is not substantiated. Sen. Elachi had requested Sen. Wetangula to substantiate his statements, but he did not do it in the required procedure. So, I will assume that, that one goes.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. I want to advise Sen. Elachi that being in a meeting and hearing what is going on are totally unrelated. But let me carry on.

Sen. Sang: On a point of order, Mr. Temporary Speaker, Sir. I really hate to disrupt my senior, but is he in order to insist that what is more believable is what he was told by his supporters, against firsthand information from somebody who participated in that meeting as a leader? Could he substantiate beyond just telling us that he was told by his supporters?

The Temporary Speaker (Sen. Murkomen): So, what are you asking Sen. Wetangula to do?

Sen. Sang: That he substantiates the statements that he has made about the State House meeting.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, some chips are better left to lie where they fell, otherwise, you will just end up---

The Temporary Speaker (Sen. Murkomen): Sen. Wetangula, you have been asked to substantiate what you said.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I can. The women from the counties in the west reported and told me, after the meeting, the proceedings and promises that they received. I have no difficulty in women being given Kshs200 billion or even more. I have no problem with that. All I said is that we want structured use of public resources.

The Temporary Speaker (Sen. Murkomen): Sen. Wetangula, it is now the word of women who are not in this House against your own colleague in the Senate, and supposedly all of them were in State House. So that we move forward and avoid many points of order, I think that you should have noted that you were told by some women, but you are not insisting on it, because you have no information. If it was the way you were told, it would have been wrong, but if it is otherwise--- We need to move forward.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, by doing that we will be sanitizing---

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

The Temporary Speaker (Sen. Murkomen): Sen. Wetangula, are you willing to be informed?

The Senate Minority Leader (Sen. Wetangula): Yes, Mr. Temporary Speaker, Sir.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I would like to inform the Senator for Bungoma and the Senate Minority Leader that under the Witness Protection Act, which we passed in this House, he is not under any obligation to disclose the names of those women, because they must be protected. That is the law.

Sen. Elachi: On a point of order, Mr. Temporary Speaker, Sir. I did not know that there was fear that the President has now taken all the women. But for the sake of the institution of *Maendeleo ya Wanawake*, which is an organization that draws funds from donors and has its rules and regulations, I think that it would be very unfair for this House to say that it has now decided to be sponsored by the Government. That is why I want the Senator to substantiate and if he cannot, just withdraw for the sake of the institution of *Maendeleo ya Wanawake*.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, it is not the first time that---

Sen. Kajwang: On a point of order, Mr. Temporary Speaker, Sir. I have for a long time substantiated and sometimes withdrawn things that I said here if I cannot substantiate. But the basis of substantiation is like evidence. If you have seen or heard that is all you can say. If you have heard, been informed or read, that is all you can substantiate, because that is what came to you. If I have heard the debate here, Sen. Elachi heard and Sen. Wetangula also heard. The only difference is that Sen. Elachi heard from State House and Sen. Wetangula heard from some hotel or wherever it was. So, let us just forget about it and proceed with this debate, otherwise, we will never move on.

The Temporary Speaker (Sen. Murkomen): Let me rule on this matter. The reason---

The Senate Minority Leader (Sen. Wetangula): But I have not responded---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Wetangula. You have made a statement where Sen. Sang and Sen. Elachi asked you to substantiate. You are unable to do so in the manner in which you are avoiding the issue. I suggest that you apologize and we move forward.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I do not think I have been unable to substantiate. Sen. Elachi's argument, if you hear me, is that *Maendeleo ya Wanawake* receives money from donors and so it is not excluded from receiving money from the Government. In fact, if you listen to her, she said the President told women that they can access Kshs200 billion available for various affirmative action issues. That is not donor funds and we are not saying anything different.

The Temporary Speaker (Sen. Murkomen): Sen. Wetangula, I heard you very clearly. Your argument was very logical that entities that are not provided in law and which are not public entities are going to be given Kshs200 billion to run on behalf of women and this is illegal. The only point here which would have made sense is if the assumption you are using that the President said Kshs200 billion was correct and substantiated. You are making a very good logical argument, the only problem here is that I cannot tell or any other person cannot tell whether the basis of that argument is correct. Since you are unable to substantiate, what is the problem in withdrawing and we move on.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I find it difficult to follow. I said women were promised Kshs200 billion and she confirmed. She also said that they will access it in a manner different from what I said. That kind of---

The Temporary Speaker (Sen. Murkomen): I do not want to prolong this because I also got Sen. Elachi right. She said that the President told women to build the necessary capacity to access Kshs200 billion. That is her position which I cannot also substantiate. The only point I want to ask you is that if you are unable to substantiate, you were not in State House and you have no written directive from the President---

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, the women leaders who told me this are impeccable. I can put my neck on the block for them because these are leaders who have led *Maendeleo ya Wanawake* for the last 20 years. Be that as it may---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Let me, for purposes of moving on, presume that my information was incorrect but I will tell you, a hyena told a stone, "even if you do not answer me, you have heard me".

The Temporary Speaker (Sen. Murkomen): You have not done what the law says.

The Senate Minority Leader (Sen. Wetangula): I have withdrawn and I will move on, but she has heard me.

Mr. Temporary Speaker, Sir, I was talking about devolution of corruption. We have pointed out a point in case, the oldest new road in Kenya---

(Sen. Mugo consulted loudly)

On a point of order, Mr. Temporary Speaker, Sir, even if I am on the Floor. Did you hear what Sen. Beth Mugo said?

The Temporary Speaker (Sen. Murkomen): What is it she said?

The Senate Minority Leader (Sen. Wetangula): She said "what a lie?"

First of all, Senators do not lie.

The Temporary Speaker (Sen. Murkomen): Sen. Mugo, you are completely out of order. You cannot shout at another Senator while on the Floor. As the Chair, I will not allow altercations across the Floor. You should press the necessary button so that your point of order is heard.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you for allowing me to continue. I urge the Chair to enforce the rules of this House strictly because there are no special Senators in this House.

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. It is not acceptable that the nominated Senator for Nairobi has not been in the House when the argument was taking place; she has not---

The Temporary Speaker (Sen. Murkomen): What is it, Sen. (Dr.) Khalwale? We had dispensed that matter.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, the point I want to make is that the Senator is grossly out of order. The Chair should find the same and take the necessary action for us to respect the Senate of the Republic of Kenya.

The Temporary Speaker (Sen. Murkomen): Order, Sen. (Dr.) Khalwale! Order! We have passed that issue.

Proceed, Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. Sen. Mugo is my friend and I want to caution her that next time, we will release a ball on her that will keep her out of this House for some time.

Mr. Temporary Speaker, Sir---

The Temporary Speaker (Sen. Murkomen): Order, Sen. Wetangula! You are not the Chair, so as much as the rules say what they say, you have no authority to enforce any rules. So, I had already---

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I had already acknowledged that she is my friend.

The Temporary Speaker (Sen. Murkomen): Well, friendship as it may be, but you---

The Senate Minority Leader (Sen. Wetangula): She is a victim of friendly fire. But we can continue with the debate.

The Temporary Speaker (Sen. Murkomen): Okay, proceed.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Temporary Speaker, Sir. There is a provision in this Bill for an annual report to be made on how the new dispensation will be fulfilled. I support this but I also agree – I believe it is probably Sen. Kajwang who said that penalties--- You know, when you set a threshold, there must be attendant penalties. If the county or national Government releases a report and we find that, in fact, they did not meet the 30 per cent threshold for youth, women and the disabled; or they release a report and we found that the 30 per cent women, youth and disabled were, in fact, fraudulent characters masquerading as such, there must be some attendant penalty to whoever files the report that will be carrying false information.

Giving false information to a public entity is a criminal offence already under the law. So, we will deal with the county government and whoever is responsible for giving that information. For the veracity of this kind of information, we need to give the responsibility to a specific office because if we just say Government, it is too amorphous. We can say the head of the department where procurement is done or the head of the Ministry, or in the county government, the Chief Executive. They must be held to account that this is being done to support the youth of this country.

More importantly, Mr. Temporary Speaker, Sir, it not enough just to say "persons with disability." This may look laughable, but it is very important. When we are talking about persons with disability, for example, we have my good sister here who definitely needs positive support in many respects. You will go out there and you will find very fraudulent characters – a man with a twisted finger who stands there and says "I am disabled and I want to benefit from this." We have seen it! Or a man with a squint stands there and says "I am disabled and I must benefit."

(Laughter)

Sen. Kajwang has informed me that even some people who have lost teeth in a brawl will stand there and say “I am disabled and I must benefit.” We must have a clear definition on how to help disabled people so that people do not just take advantage.

Mr. Temporary Speaker, Sir, during the days we were doing the Constitution, somebody turned up and said “that man is not sufficiently disabled; it is me!”

(Laughter)

We do not want to get into that kind of situation. We want people who really deserve to benefit from this. You have seen in the Olympics, somebody putting on dark glasses and running as a disabled person; the real disabled people are different!

We want to make sure that the disabled who are recognized and as such are not taken advantage of by fraudsters with twisted fingers masquerading as disabled. This will end up marginalizing them more. How will my sister here wheel herself to City Hall to queue for a tender?

When we are talking about affirmative action, we clearly need to define rules that will help the disadvantaged so that they truly benefit from what we are saying. That is why I support the need for reporting back. It is not enough to say that 30 per cent of all tenders should go to the disabled. We want a clear description of who this disabled person is. Is a person who squints and walks all over in every bar and calls himself disabled really disabled? No, we also have such masqueraders. I am sure you know of such people who walk all over. When it suits them, they are mentally imbalanced and when it does not, they are okay. They are all over. We need to protect our society. If money is meant for the disabled, then it must go to the disabled.

I know of a lady who has held her 23rd birthday five times in a row. Those kinds of fraudulent characters will remain below 35 for 20 years and take advantage of the law to benefit. We must guard against this so that the money meant for the disabled and the disadvantaged goes to them.

Finally, I want to re-emphasise the point that if the Government is serious in helping the disadvantaged people, it should use Government institutions. In this free market economy, you will meet someone who has never borrowed money. All they have seen are auctioneers called *madalali* coming to take away their cows and chicken because their father borrowed Kshs50,000. Will such a young person ever agree to go and borrow Kshs20,000? Never! We must find a way of using public institutions. For example, we can put money into Post Bank which is everywhere in this country and ask the management not to charge more than 5 per cent administrative costs for this Fund.

This is a public Fund. If you want to charge interest, it cannot be more than 2 per cent above the 5 per cent administrative fee. These people can then compete with those who are borrowing. You heard, this afternoon, the Chairman of the Committee on Finance, Commerce and Budget say that you can go and borrow and you have to pay the bank 19.6 per cent. For you to make a profit of 10 per cent, you have to move 29.6 per cent. Unless you are a smuggler, what business can give you that kind of profits? This is simply not possible. So, we must use Government institutions to help.

Finally and more important, as we deal with procurement, we must understand, as a country, we are getting it wrong to think that in helping young persons, we must make them do business. Not everyone wants to do business and not everybody is a business person. We must be more innovative in helping young people. There are some who do not want to queue to procure and supply pens and paper. All they need is money to start farming. There are others who are just looking for money to do something else. There are even others who are just looking for money to acquire skills. How do we help them?

The presumption is that every young person who cannot get a job must be driven into business is wrong. There are those who can do business and those who cannot do business. So, let us find a way, as we carry out affirmative action for those who are not business inclined, which may just be about 10 per cent of the entire youth of this country, who cannot sell timber, charcoal and who cannot do procurement work. How do we help the youth? We need a comprehensive policy. This is not about Jubilee or CORD. This is about all of us. We need a comprehensive policy on how to handle the situation of the huge population of disadvantaged and restless young people. We can give them promises, we can even play the tribal card like many people are playing, but it will not help. When the hungry are hungry, it matters not what barriers you place in their way; they will go through the wall and reach the food. We must start thinking in this direction. That is why there are those who come here blindly and think that we are just here to defend, do not just defend things that you do not understand. You should defend things that you understand.

I beg to support.

Sen. Omondi: Thank you, Mr. Temporary Speaker, Sir, for allowing me to add my voice to this very important Bill. I want to thank the initiator of this Bill because I did not know that fellow Senators without disability understand disability issues. From the way they are contributing to this Bill, today, I have come to understand that they understand the challenges people with disabilities undergo.

First, allow me to unpack the word “vulnerable groups” that is commonly used where it means people with disabilities, the youth and persons with disabilities. I want to say that this word makes disability not visible and disadvantages the disabled when it comes to sharing the resources that are set aside for the three groups. When it is a time for the vulnerable groups, what comes at the back of many Kenyans is women and the youth while the disabled are left out. I want to say that first we must unpack this description and make disability a stand-alone entity or group of people whereby if 30 per cent is allocated to the three groups of people, then it must be shared out equally. We should find out how many counties are complying with the rule of law in terms of equitable allocation.

Mr. Temporary Speaker, Sir, in Kenya, we have good policies, tools and instruments that allow the protection of people with disabilities, but the service providers or the implementers give us a raw deal. It is only on paper, but practically, it does not work. With this Bill, I am sure that if the law is reinforced, we are going to enable people with disabilities, the youth and women to share resources that are set aside for them equally without favouring a certain group of people. The requirements for tendering should be made flexible and friendly to especially the youth, the women and the disabled.

The most disadvantaged are the disabled persons. For example, where they require a certain amount of money, it should be waived for this group of people so that it allows them to apply for these tenders. What lacks for the groups of people with disabilities is information. Information reaches the disabled persons when the deadline has passed. I want to pose a challenge to the service providers to reach out to everybody when they are disseminating information. They must understand how best the information can reach everybody. People with disabilities lead the poorest state of life. They are unable to read or receive information from the media, for example, the radio. Most of them cannot afford even a small radio.

Most of the disabled people of my age never got the chance of going to school. So, if we say that they are going to get the information from the print media, then we are locking them out from getting the information that is required. When it comes to tendering, there is what we call reasonable accommodation. This is an international standard where you need to allow each type of disability to get the support that is required in whatever capacity or service you want to give out. This is what is lacking in our country. If this Bill becomes law, I am sure it is going to protect the interests of people with disabilities as far as the economic stability of each Kenyan is concerned. For us to make sure that the rule of law is obeyed and respected, I want to say that---

The Temporary Speaker (Sen. Murkomen): Order Senator! Tomorrow when we resume, you will have nine minutes to conclude your contribution.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Hon. Senators, it is now time to adjourn the House. The Senate stands adjourned until tomorrow, 16th July, 2014 at 2.30 p.m.

The Senate rose at 6.30 p.m.