

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Tuesday, 3rd December, 2013

*The Senate met at the Kenyatta International
Conference Centre at 2.30 p.m.*

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

PRAYERS

QUORUM CALL AT COMMENCEMENT OF SITTING

The Speaker (Hon. Ethuro): Hon. Senators, let us determine if we have quorum.

(The Speaker consulted with the Clerk-at-the-Table)

Hon. Senators, I am informed that we have quorum. Therefore, we may proceed.

NOTICES OF MOTION

THE NATIONAL HONOURS REGULATIONS, 2013

Sen. Elachi: Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, the Speaker do now leave the Chair to facilitate debate on the National Honours Regulations, 2013 laid on the Table of the Senate on Wednesday, 20th November, 2013 pursuant to Section 14 (3) of the National Honours Act, 2013.

Mr. Speaker (Hon. Ethuro): Order, Senator! You are giving the wrong notice. It is the next one. That one had already been given.

THE DRAFT PUBLIC FINANCE MANAGEMENT (UWEZO FUND) REGULATIONS, 2013

Sen. Elachi: Mr. Speaker, Sir, I beg to give notice of the following Motion.

THAT, the Speaker do now leave the Chair to facilitate on the Draft Public Finance Management (Uwezo Fund) Regulations, 2013 laid on the Table of the Senate on Wednesday, 27th November, 2013.

The Speaker (Hon. Ethuro): Sorry, Senator! I may I appear like I am torturing you, but you missed a very fundamental word there; “debate.” We are not facilitating regulations, but debate.

Sen. Elachi: Sorry, Mr. Speaker, Sir. I beg to give notice of the following Motion.

THAT, the Speaker do now leave the Chair to facilitate debate on the Draft Public Finance Management (Uwezo Fund) Regulations, 2013 laid on the Table of the Senate on Wednesday, 27th November, 2013.

The Speaker (Hon. Ethuro): Well done.

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! You realize that we are having a Supplementary Order Paper. I hope everybody has a copy.

Hon. Senators: No!

Hon. Senators: Yes!

The Speaker (Sen. Ethuro): Since I hear a mix of “yes” and “noes”, I am sure there will be sufficient information on the ground and you can learn from each other.

Please, make enough copies for Senators.

Let us have the requests for Statements first before responses.

Sen. Haji.

PERSONAL STATEMENT

ALLEGED RELATIONSHIP BETWEEN SEN. HAJI AND MR. MOHAMED AHMED, A SUSPECT IN THE MURDER OF THE VENEZUELA ENVOY TO KENYA

Sen. Haji: Mr. Speaker, Sir, I wish to make a Statement on an alleged relationship between myself and Mr. Mohamed Ahmed, one of the suspects in the murder of the Venezuela envoy to Kenya, Olga Foncesa.

Mr. Speaker, Sir, I wish to make a Personal Statement pursuant to the Standing Order No.85. My attention has been drawn to a news item appearing on page 6 of *Daily Nation* newspaper and on page 4 of *the Star* newspaper today, Tuesday, 3rd December, 2013, where allegations have been made to the effect that a suspect in the murder trial arising from the murder of the Venezuela envoy to Kenya, Olga Fonseca; that one Mohamed Ahmed is related to me and is my nephew.

I wish to state as follows: That I am not acquainted with Mr. Ahmed at all let alone him being my relative or, least of all, my nephew. The reporters of the news item did not bother to contact me before publishing the story. If they had done so, I could have clarified the matter. I demand an unequivocal apology and a retraction story in the newspapers in a similar prominent page to the ones where the news item appeared. I consider the publication of the items most defamatory of my person and standing in the

society. I intend to pursue legal redress against the two concerned media houses, should the apology and retraction not be published.

Mr. Speaker, Sir, we know there is a debate going on, on the Media Bill all over the country and it is sad that these people continue to defame prominent Kenyans as well as ordinary Kenyans. The fact that I have been a Minister for Defence has nothing to do with the allegation that they want everybody in this country as well as people in overseas to believe that leaders in this country are associated with criminals.

Mr. Speaker, Sir, even the civil society is up in arms and innocent Kenyans are made to demonstrate against the good will of the National Assembly. I want them to take note that I have directed my lawyer to take up the matter with the courts if they do not respond as requested.

Thank you.

STATEMENTS

WITHHOLDING OF KCSE CERTIFICATES BY SCHOOL HEADS

Sen. Musila: Mr. Speaker, Sir, I think this is appropriate, but I just wanted to raise a matter of a Statement that I sought on 1st August, 2013 in relation to withholding of Kenya Certificate of Secondary Education (KCSE) certificates. I sought that Statement from the Chair of the Committee on Education, Information and Technology.

On 1st August, 2013, I asked for this Statement. Again, I asked for it on 17th September, 2013. On 16th October, 2013, the Chairperson brought a Statement which the House considered unsatisfactory. On 12th November, 2013, the Chairperson asked for two weeks to issue the Statement. To date, four weeks since, no Statement has been given. Therefore, I am seeking your indulgence to kindly order the Chairperson of the Committee for Education, Information and Technology to bring this Statement, latest Thursday, this week. This is because it has taken over six months since this Statement was requested.

The Speaker (Hon. Ethuro): Is the Chairperson of the Committee on Education, Information and Technology here? The Vice Chairperson? Is there any Member of the Committee here?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, the Chairperson of the Committee is aware of the Statement requested. I want to seek your indulgence that I will let the Chairperson know that the matter has been raised and will endeavour to bring the report as soon as possible. Perhaps, Thursday is very soon, but we will try our best and bring the Statement within a week.

Sen. Musila: On a point of order, Mr. Speaker, Sir. The Member says that Thursday is too soon and I want to persuade the Chair to realise that this Statement was sought on 1st August, 2013. Is the Chairperson of the Committee going to allow this Statement to go to 2014? Is it fair to this House that when a Statement is sought, it takes over six months before it is delivered? What would be the purpose of that answer, if it is coming too late?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I am not privy to the circumstances that have led to the delay of this Statement, but I promise that I will inform my Chairperson that this Statement is required on Thursday. We will endeavour to get it on Thursday, this week.

The Speaker (Hon. Ethuro): Order, Sen. (Prof.) Lesan. Are you a Member of the Committee or the Vice Chair?

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I am a Member of the Committee.

The Speaker (Hon. Ethuro): This matter has been pending before the Committee for a long time. So, how can you say you are not privy? It is not a personal property of the Chair.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, the Chairperson has been handling some of the questions by directing those questions to the Cabinet Secretary on Education. Some of them are not tabled in the Committee meetings, particularly this one which has been pending for a long time. That is why I said that I am not aware what progress has taken place in an effort to try and get the answer to the House.

The Speaker (Hon. Ethuro): Given that this matter has been pending for too long, Thursday is too late for us. We want it tomorrow Wednesday afternoon.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I want to endeavour that I will try and reach the Chairman at the moment although he is out of the country, but we have a Vice Chair. So, we will try and endeavour to get the response.

The Speaker (Hon. Ethuro): Thank you.

WITHDRAWAL OF SEN. MUTHAMA'S SECURITY DETAIL

Sen. Muthama: Mr. Speaker, Sir, Sen. Orengo sought a Statement from the Chairperson of the National Security and Foreign Relations with regard to my security. My understanding is that it was to be delivered today, but nothing has happened to it. So, I am requesting that the Statement be issued immediately because I need my security assured.

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

(Sen. Haji responded away from the Dispatch Box)

Sen. Haji: Mr. Speaker, Sir---

The Speaker (Sen. Ethuro): Order, Sen. Haji. Your responses should be from the Dispatch Box.

(Sen. Haji moved to the Dispatch Box)

Sen. Haji: Mr. Speaker, Sir, I answered this last week, but the Questioner was not satisfied and the Speaker directed that we pursue the matter further. I believe we have already written to the Cabinet Secretary, but given the fact that he travelled to Kampala on Thursday to attend the handing over of the East African Chairmanship to His

Excellency the President and he only came back on Sunday, we are still waiting for a response from him.

The Speaker (Hon. Ethuro): Any expected time?

Sen. Haji: Mr. Speaker, Sir, knowing that we are going on recess on Thursday, we will attempt to answer before then.

Sen. Muthama: Mr. Speaker, Sir, this issue has been on and off since 7th November, 2013. We are now in December. In the first place, why did they withdraw my security personnel? It is my right to have a security detail. The Chairperson was to respond as to why the security personnel were withdrawn. It is as simple as that. As we are here now, I do not know what crime or offence I committed. The Inspector-General is on record saying that the orders came from---

The Speaker (Hon. Ethuro): Order, Sen. Muthama. Let us go by the process first. The Statement was responded to last Thursday. I am informed that it was inadequate and the Chair agreed to come back with more information. Therefore, the Chair rules it should come again on Thursday. It is only appropriate that you can raise those other issues on that day.

Sen. Muthama: Mr. Speaker, Sir, there is a court ruling that my security be reinstated. There is also a directive by the Chair that the security be given back to me. What is the position? It is up to the Chairperson to explain why they have not reinstated my security detail.

Sen. Haji: Mr. Speaker, Sir, up to now, I am not aware. But following the interest of the security of our colleague, I want to put on notice Members of the Committee on National Security and Foreign Affairs that I will summon the Minister to appear before us on Thursday at 10.00 a.m. and I expect all Members to attend.

The Speaker (Hon. Ethuro): Let us terminate there, Sen. Muthama.

Sen. Muthama: Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Sen. Muthama, let us terminate there. I am not inviting you to contribute.

Next Statement, Sen. Wamatangi.

REASONS FOR THE CANCELLATION TENDER
FOR THE CONSTRUCTION OF ENGINEERING
COMPLEX AT MULTI-MEDIA UNIVERSITY

Sen. Wamatangi: Mr. Speaker, Sir, I rise under Standing Order No.43(2)(c) to seek a Statement from the Chairman of the Standing Committee on Education, Information and Technology regarding the cancellation of a tender for the construction of the proposed Engineering Complex at the Multimedia University of Kenya. In the Statement, I would like the Chairman to address the following issues:-

(i) whether he is aware of this tender, the tendering process and the unclear and suspicious circumstances that led to the cancellation of the tender at the awarding level;

(ii) what the Government is doing to establish the truth of this matter on why the tender was not awarded to the lowest bidder despite having been recommended by the evaluation report;

(iii) whether the reasons cited by the tendering committee were legally valid and in accordance with the public procurement law and why the evaluation report was ignored by the tendering committee in its decision to cancel the tender.

(iv) whether the Government has satisfied itself that the provisions of the public procurement law have been adhered to in the cancellation of this tender and if not, what the Government is doing to correct the situation in the interest of all affected parties;

(v) what the Government is doing about reports of mismanagement, nepotism, tribalism and lack of adequate teaching in the institution;

(vi) whether the Government is aware that the failure to install a substantive vice chancellor at the university is affecting the smooth running of the institution and the steps the Government is taking to remedy this situation.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I will inform the Chairperson of the question raised in the House and we will beseech the Chair to give us, perhaps, up to the third week of the next session because this is a very detailed question and requires extensive investigations for us to satisfactorily answer it. So, we will endeavour to answer the question in the next session.

The Speaker (Hon. Ethuro): Order, acting Chairperson! Yes, it requires substantive time to interrogate, but that time will be accorded to you by the session. So, we will allow it to be answered the first day of the next session.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, I have no objection.

STALLED CONSTRUCTION OF MAKUTANO-KIKIMA
AND TAWA ROAD

Sen. Obure: Mr. Speaker, Sir, on behalf of the Chairperson of the Committee on Energy, Roads and Transportation, I wish to respond to a question raised by Sen. David Musila.

Mr. Speaker, Sir, Sen. Musila raised the following questions:-

(a) whether the Minister is aware that Victory Construction Company took seven years to construct the Kitui-Kangonde Road;

(b) whether he is aware that by the time the road was completed, the area that they had started with had already started peeling off; and,

(c) whether he is further aware that Victory Construction Company took seven years to construct 24.6 kilometres on Makutano-Kikima-Tawa Road and that the areas that were started---

Sen. Musila: On a point of order, Mr. Speaker, Sir. I would not like to interrupt my brother, but as a matter of fact, I did not ask those questions. Those were questions asked by Sen. Mutula Kilonzo Jnr. I only sought clarifications.

Sen. Obure: Mr. Speaker, Sir, I just wish to clarify as follows: -

The Speaker (Hon. Ethuro): Order, Senator! I am a bit confused. Are you responding to clarifications in another session?

Sen. Obure: Mr. Speaker, Sir, as I said earlier, I am responding on behalf of my Committee on Energy, Roads and Transportation.

The Speaker (Hon. Ethuro): That is correct, but responding to what?

Sen. Obure: Mr. Speaker, Sir, I have been told that this question was substantially responded to here, but instructions were issued that the supplementary questions which required clarification be responded to today.

The Speaker (Hon. Ethuro): Okay. Proceed!

Sen. Obure: Mr. Speaker, Sir, I wish to respond as follows:-

(a) The Ministry wishes to state that Victory Construction Company, from the date of commencement of works to the time of substantial completion, took four years and seven months to construct and not 11 years as alleged by Sen. Musila. I wish to confirm that the road project was substantially completed on 14th December, 2009 following the award of the contract on 14th December, 2004.

(b) The Ministry is not aware that at the time of completion, parts of the roads were already peeling off.

(c) I want to clarify that, again, this particular contractor did not take seven years to complete this road. I am aware that there was delay before the works were completed, largely because of non-payment of certificates issued and shortage of water.

(d) The Ministry wishes to state that Victory Construction Company has provided quality work and service for all the contracts that they were awarded. However, the delays may have been occasioned because of the various reasons that I have stated, namely additional works being granted to the company, shortage of water and failure on behalf of the Government to pay for work done.

Mr. Speaker, Sir, I had actually several other responses to make in respect of the questions raised. I do not know whether you will allow me to proceed and do so.

The Speaker (Hon. Ethuro): Proceed!

Sen. Obure: Mr. Speaker, Sir, the other question was raised by Sen. Ndiema. I believe that he is around. Again, it relates to the same contractor. He wanted to know how many projects Victory Construction Company completed within the last five years and how much money has been paid to them.

Mr. Speaker, Sir, I wish to confirm that Victory Construction Company has up to date completed two road projects. One of them is the road from Laikipia Airbase to Mt. Kenya Safari Lodge. It was given at a contract sum of Kshs815 million. The second road is the Kitui-Kangonde Road, at a contract sum of Kshs1,019,000,000.

Mr. Speaker, Sir, I also want to confirm that this particular contractor is also undertaking three roads which are currently ongoing, namely, Thogoto-Gikambura-Mutarakwa Road and Makutano-Kikima-Kalawali-Tawa Road. Those are the two other roads that the contractor is undertaking.

Thank you, Mr. Speaker, Sir.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I want to agree with Sen. Musila that I am the one who requested for this clarification. But on part "c" we had sought for clarification as to how long it would take Victory Construction Company to complete the 4.6 kilometres that they have been given, bearing in mind that they have taken seven years to construct 24.6 kilometres. That is the clarification that we sought. We want more details. Therefore, on part "c", the Principal Secretary has just repeated exactly what was in the previous Statement. That is the reason we sought for clarifications as to when this

road is expected to be completed and when the balance that remained was going to be tendered. Those are the clarifications that we sought.

Sen. Obure: Mr. Speaker, Sir, my understanding is that an agreement has been reached after Victory Construction Company has completed about 29 or so kilometres. A decision has been taken following agreement of all the parties that a fresh contract should now be awarded to complete the balance of the work up to Tawa. So that process of tendering is underway. That is my understanding.

The Speaker (Hon. Ethuro): Senator, the question is that in purporting to clarify, you repeated the same statement that you had made earlier, on which a clarification was sought. Even without the details, you do not clarify by repeating the same.

Sen. Obure: Mr. Speaker, Sir, in fact, on this particular matter, the contractor has already done about 29 kilometres out the 43 kilometres that he was required to do. An agreement has been reached to vary the works and all the parties have agreed to it. Therefore, the remaining 14 kilometres will be done under Phase 2 of that project under a different agreement. So, an agreement has been reached and the process of contract award is really underway already.

The Speaker (Hon. Ethuro): Is there any other Statement?

(Sen. Mutula Kilonzo Jnr. stood up in his place)

Sen. Mutula Kilonzo Jnr., you must appreciate that in life you may not get everything that you want at once.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I am not happy to receive everything at once, but it is fair that I state again what I was asking.

I am aware that the second phase is on a fresh tender. The delay was already confirmed and it was 68 weeks. We have no problem with that, but the portion of 4.6 kilometres which the contractor has not been completed. He has taken back the trucks to the yard because he has not been paid. How long do we expect to wait for the 4.6 kilometres of the 29 kilometres?

Mr. Speaker, Sir, the other portion has been clarified, that it is a fresh tender. But the 4.6 kilometres has not been paid for fully. The contractor has only been given Kshs1 million. For how long are we going to wait for the 4.6 kilometres to be done? That is the exact clarification that was sought.

Sen. Obure: Mr. Speaker, Sir, as you know, there was confusion regarding responsibility over roads. Some contractors actually slowed down because they had not been paid. I understand that this is one of those cases. But I am now told that after the Government released funds, the contractor has been paid. My understanding is that he was expected to resume work on 25th September, to complete the balance of the 4.6 kilometres that the hon. Senator is talking about. So, my understanding is that after he had been paid, he was expected to go back. I will just confirm whether or not he has gone back.

The Speaker (Hon. Ethuro): Senator, that understanding was from 25th September.

Sen. Obure: Mr. Speaker, Sir, I was not aware that he had not gone back. So, I will go and check from the Ministry why he has not gone back.

The Speaker (Hon. Ethuro): You check and then liaise directly with the hon. Senator. If he is not satisfied, I am available.

Do you have another one?

Sen. Obure: Mr. Speaker, Sir, I had three other Statements, but the hon. Senators who had raised the questions are not even in the House.

The Speaker (Hon. Ethuro): Let us wait until they appear.

Sen. (Prof.) Lonyangapuo!

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I thought that there was a directive that you also gave the same Committee; that when they are giving these supplementary answers they are supposed to also lay on the Table of this House a list of all the projects that have stalled since the beginning of year. So, I expected them to table that list of those projects that have stalled and what steps they are taking regarding those projects.

Sen. Obure: Actually, Mr. Speaker, Sir, I have those attachments; but they are contained in the responses to other questions raised by Sen. Abdirahman and Sen. (Dr.) Khalwale. That information is all here. That is why I was saying that I am prepared to answer the Questions by Sen. (Dr.) Khalwale, Sen. Abdirahman and Sen. Kagwe, during which period I will take the opportunity to lay the attachments on the Table. I do not know what I should do now in their absence.

The Speaker (Hon. Ethuro): I agree; the Chair is equally in a dilemma like you.

(Laughter)

What I suggest, Sen. Obure is that from tomorrow's sitting, if any of the three is available, then you can use that opportunity to deal with all of them. In any case, they are supplementary information. So, Sen. (Prof.) Lonyangapuo, you may have to hold your horses until you look for your colleagues, if you need that information.

Is there any other Statement?

Next Order!

Hon. Senators, before I call out the Mover, there are two Motions there; Orders Nos. 8 and 9, which really need to be dispensed with and they need to go through the Committee Stage. Because the Committees have been working round the clock; the amendments and their report are not ready. I, therefore, propose that we deal with the Plenary Session first. We conclude with that one. Then if they are ready before the end of the day, we will go to the Committee Stage. If not, the Committee Stage will be there tomorrow morning.

COMMUNICATION FROM THE CHAIR

Hon. Senators, before we proceed with the Business, we need to introduce our visitors.

VISITING DELEGATION FROM WEST POKOT
COUNTY ASSEMBLY

Hon. Senators, I wish to acknowledge the presence of visitors who are Members of the County Assembly (MCAs) of West Pokot. They are seated at the Gallery. The delegation is led by the hon. Robert Katina, Speaker of the County Assembly.

(Applause)

I will proceed to introduce the rest of the hon. Members and request each Member to stand up once they are called out so that we acknowledge them in the normal tradition of the Senate. They are as follows:-

Hon. Samuel Lemare, Chairperson of the County Assembly Sectoral Committee on Justice and Legal Affairs;

Hon. Wilson Takaramoi;

Hon. Peter Lokor Yerer;

Hon. Simon Chumakemer;

Hon. Lucy Francis;

Hon. Peter Kasimotwo;

Hon. Thomas C. Tuliakim;

Hon. Eliza Lotam;

Hon. Losiaboi Milcah; and,

Hon. Josephine Cheprum.

Hon. Members, we want to welcome them to our Assembly and wish them all the best as they follow our proceedings. You are most welcome.

(Applause)

Proceed, Senate Majority Leader.

MOTIONS

THE NATIONAL HONOURS REGULATIONS, 2013

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Speaker, Sir. I beg to move:-

THAT, the Speaker do now leave the Chair to facilitate debate on the National Honours Regulations, 2013, laid on the Table of the Senate on Wednesday, 20th November, 2013, pursuant to Section 14 (3) of the National Honours Act, 2013.

Mr. Speaker, Sir, on 20th November, 2013, the Senate Majority Leader laid on the Table of this House the Regulations on National Honours, pursuant to Article 14(3) of the National Honours Act of 2013, which requires the Cabinet Secretary to propose

regulations for the furtherance of that Act. The regulations tabled are brief. I am sure Senators have had time to look at them.

Very briefly, Mr. Speaker, Sir, the regulations provide for the various categories that will guide the Committees that will be recommending national honours so that people are given honours, depending on the achievement and the kind of qualifications and qualities in national service that the particular awardee has demonstrated.

Mr. Speaker, Sir, we have had these national honours before, but there has not been any law, regulations or guidance on who gets honours and for what reason and who does not qualify for national honours. So, the first aspects of those regulations deal with the various categories of medals which shall be available for conferment to deserving Kenyans. The first category is the Order of the Golden Heart (OGH) of Kenya, which will have three categories, the highest being the Chief of the Golden Heart (CGH), followed by Elder of the Golden Heart (EGH) and then Moran of the Golden Heart (MGH). Below the order of the Golden Heart of Kenya is another category; the Order of the Burning Spear (OBS), which again will be categorized, with the highest being the Chief of the Burning Spear (CBS), followed by the Elder of the Burning Spear (EBS) and Moran of the Burning Spear (MBS), in that order. There are other categories which are listed there, including Distinguished Service Medal (DSM), Long Service medal (LSM) and Good Conduct Medal (GCM), *et cetera*. So, the categories are well set out in these regulations.

Secondly, Mr. Speaker, Sir, these regulations tell us who qualifies; and I want to refer, particularly to Regulation 14 which says, amongst other things, that a person shall merit conferment of national honours if they have demonstrated, among other things, exemplary qualities, actions, achievements of heroism, sacrifice, bravery, patriotism or leadership for the defense, benefit and betterment of the country or a county. So, in terms of achievements and qualities, these regulations require that either somebody has shown exemplary leadership at national level or even at county level, now that we have moved towards a devolved system of governance.

Mr. Speaker, Sir, the other thing that I want to highlight again, in the interest of time, is the fact that it has not been seen as prudent also to have so many medals floating around. Regulation 15 talks about the available stock of medals. It says:-

“The National Honours Advisory Committee, when making recommendations, must take cognizance of the existing stock levels and recommend nominees, not exceeding two thirds of the medals in stock.”

Mr. Speaker, Sir, this will, of course, make it a big achievement that whoever gets these honours must really work for them. We do not want to have so many people carrying all manner of honours all over the streets. I think it is a good regulation based on the simple logic of basic economics; that the scarcer a commodity is, the pricier that commodity becomes.

Mr. Speaker, Sir, I want to very briefly also say that these regulations also provide for the establishment of Advisory Committees to advise on who gets these honours for the Judiciary, for the Executive and also for the Legislature. It is up to Senators to,

perhaps, debate this and find out whether there are things that we need to amend or vary in terms of what has been provided there.

Lastly, Mr. Speaker, Sir, the regulations provide for the manner in which a recipient, the person who has received a national honour, can lose those honours. In the past, once a national honour had been conferred, it has been a lifetime conferment. But these rules envisage a situation where somebody can be a beneficiary of a national honour and forfeit it if their conduct is not consistent with the conferment or the continued conferment of that honour. So, I think Regulation 26 is extremely important for the beneficiaries or for those who are lucky to be conferred with these national honours. It says that:-

“A recipient of a national honour shall forfeit the honour on the following grounds.

1. Dishonourable discharge from the Kenya Defense Forces (KDF);”

That is for the disciplined forces; if they are discharged from the forces in a dishonourable manner. But, also, the person will forfeit this honour:-

2. If they contravene Chapter 6 of the Constitution;

Again, another contour which I think the beneficiary should keep reminding themselves about.

Finally, a person will forfeit a national honour:-

3. If they are convicted - not accused – of any of the following crimes or offences: treason, sedition, murder, rape, corruption, terrorism, drug trafficking---“

I am sure we can enlarge this list of offences. Again, in the same spirit of ensuring that those who benefit from this scarce commodity called a national honour are people who are, indeed, honourable. They are people who give the best image of their country.

Mr. Speaker, Sir, I do not think I want to belabour so much because these rules are short and straight forward. I think Members have had occasion to go through them.

I beg to move and request Sen. Elachi to second this Motion.

Sen. Elachi: Mr. Speaker Sir, I rise to second the Motion. For many years Kenyans have always wondered how the process of identifying those who are supposed to be honoured is done. Indeed, today Parliament is coming up with a clear process where communities who feel that they have heroes can bring those proposals when the time comes so that they can be honoured.

Article 88(26) is very key and we know that in this country the tendency of avoiding the law or respecting that law----. We want to make it very clear to all Kenyans that if you know you disrespect the laws and regulations that have been put in place, then you risk punishment. For example, if you know you are a rapists or a corrupt person, then you do not need to fight to get this honour because Kenyans will come out, name you and shame you.

Mr. Speaker, Sir, I would like to request that those who are being given these honours to also—

Sen. Haji: On a point of order, Mr. Speaker, Sir. We pay the Kenya Broadcasting Corporation (KBC) for live coverage of Parliamentary proceedings and yet right now they are showing football. I understand that all members of the Press are on strike. Therefore, they should not be paid for today.

The Speaker (Hon. Ethuro): Order, Sen. Haji! Proceed Sen. Elachi.

Sen. Elachi: Mr. Speaker, Sir, we also want to see those Kenyans who are in the rural areas; the *mama mboga* and *jua kali* artisans being honoured. It should not just be us at our level who should be honoured.

It is very important to ensure that while we honour various individuals, we look at the whole country. We must look at the different sectors and honour those who deserve to be honoured.

I beg to second.

(Question proposed)

Sen. Billow: Thank you, Mr. Chairman, Sir, for this opportunity. I rise to---

The Speaker (Hon. Ethuro): Order, Sen. Billow! Where is the Chairman?

Sen. Billow: Apologies, Mr. Speaker, Sir. This is a very important regulation. For close to 50 years, we have been awarding honours or conferring medals to Kenyans for their various distinguished services to this country. While I have no problem with the different categories of medals that are being given for the various distinguished services, my main concern is the basis on which this is done. Regulation 14 that talks about the basis that will be used for conferment of a national honour is largely abused in this country. Even today, the list that was published in the media last week of the people who are going to be conferred with honours for the 50th Anniversary of the Jubilee celebrations leaves a lot to be desired.

One of the things that surprise you is that if anybody joins public service at a certain job group and above, automatically his or her name gets included for the award of these medals. I will give you examples of people who have just been appointed into various commissions, Principal Secretaries and Cabinet Secretaries, who until the other day were not in public service, who immediately get honoured. The trouble with this is that it is not being consistently applied to all those who are serving in the public service. For example, there are the elected leaders who are ignored. You should read what it says in Article 14. It says:-

(a) A person shall merit the conferment of a national honour if the person is:-

(i) A person who has exhibited or exhibits exemplary qualities, actions or achievements of heroism, sacrifice, bravery, patriotism or leadership of a county.

It is amazing that those who have served in Parliament, whether it is in the Senate or the National Assembly do not get recognized, yet you find even those who are serving in the rural areas in the public service, even to the level of a chief, get recognized. There are people in this House and in the National Assembly who have offered exemplary service by not just being leaders of the constituencies or the counties, but in terms of the legislation that they have brought in this country, the Motions that they have done and their contribution in many ways. I do not understand why it is so difficult for the Government to recognize anybody who is elected. I think that is the challenge.

Mr. Speaker, Sir, if today any of these hon. Senators is appointed to a public service job, immediately his or her name will be included. However, when he or she sits

here to represent thousands of people, he or she is not recognized. I do not understand why we have the basis for conferment. I think that is the first challenge I have.

Secondly, we are celebrating 50 years and honouring people who fought for Independence in this country. It is not in every county that we do know the people who have fought. Some of these people have luckily been recognized because they have been in the media and the history books. However, there are thousands of others from Mandera to Lamu who have contributed to the freedom of this country and yet they have not been recognized.

I am surprised because they asked the various counties to submit their names, but they did not bother to find out who contributed to Independence in that county and who stood up to the British rule because they were everywhere in this country. They did not look at those people who served in the 1960s, 1970s and the 1980s. They simply sat down and wrote the names of the people who are there today. I do not understand the basis on which that list is discussed, approved and published in the newspapers. So we may be making regulations, but they are overtaken by events. I do not understand the purpose for having these regulations when the list has already been published. Are we doing it for the shelves?

With all due respect to the Senate Majority Leader who moved this Motion, I think it is important that there is fairness and equity in the conferment of honours to all Kenyans who have contributed in many ways. We know of people who have done marvelous things or exemplary work in this country in their own ways, but I do not understand the basis on which that debate generates an individual who then gets listed for honours. For that reason, I although I support this Motion, we may be doing an academic exercise because that list is out. I do not know whether the Act lists the actual people who are responsible for identifying the individuals to the honoured and the process. However, in these regulations, it does not go very far to say the basis that the Honours and Advisory committee used. If they were going by this, then I think many people have been left out. It is important that they recognize all types of leaders, but not only those who are serving in the public service.

Thank you.

The Speaker (Hon. Ethuro): Maybe, for the benefit of Sen. Billow, part of the reason of publishing the names is for public participation so that if you feel that there are some of those names that deserve and are not there, maybe this is the opportunity to write to the relevant committees.

Sen. (Dr.) Machage: Thank you, Mr. Speaker, Sir. As I congratulate the Senate Majority Leader for laying this Paper for discussions on the Floor of this House. I would like us to remember what used to happen before, where leaders or rather individuals were given honours on dubious merit and their levels of sycophancy. The louder you were in singing the name of the hitherto leader of the country, the more likely you were to get a medal. Indeed, it puts into question the definition of what kind of bravado somebody has to express to be recognized and given a medal or honour in this country. Indeed, some of the recipients of these honours were known to be the best criminals in this country and people who cannot fit in Chapter 6 of the Constitution.

Sen. Keter: On a point of order, Mr. Speaker, Sir. With due respect to Sen. (Dr.) Machage, the allegations he is making-- it would be better he substantiates because this is a House of honour and we have said that our debate must be above board. He has made very strong allegations that some of the people who have been honoured before were of dubious character, criminals *et cetera*.

Sen. (Dr.) Machage: Mr. Speaker, Sir, I may not want to substantiate the obvious; on what the history of this country has hitherto shown. I will not go into that. I seek that you excuse me from naming anybody in the public service.

However, I will not withdraw because that is the truth.

The Speaker (Hon. Ethuro): Order, Sen. Machage! You cannot have your cake and eat it. We are talking about heroes. You have made two statements; one, that some of them shout the loudest and nobody challenged you on that one. I will allow that to pass.

The second one was in the negative. You said that they should not have been heroes, but criminals. Those ideas are two worlds apart. It was only proper that a Senator asks you to substantiate under Standing Order No.92(1). It is on the responsibility for statement of fact. It says:-

“A Senator shall be responsible for the accuracy of any facts which the Senator alleges to be true and may be required to substantiate any such facts instantly.”

I will not read the whole of Standing Order No.92(2), but the tail end says, “unless the Senator withdraws and gives a suitable apology, if the Speaker so requires”

The choices are clear. I will not compel you to name anybody. However, if I have to agree with you, then you have to withdraw and apologise.

Sen (Dr.) Machage: Mr. Speaker, Sir, since I do not want to be subjected to Standing Orders Nos. 108 and 109, I withdraw.

The Speaker (Hon. Ethuro): Those Standing Orders have also been made reference to.

Sen. (Dr.) Machage: Correct, Mr. Speaker, Sir. I withdraw and apologise.

The truth may be very painful. Indeed, there have been skewed allocations of awards in the past. God forbid, if you are from the marginalised and minority groups who are intentionally not recognized because you do not matter at all. I am concerned about Section 15 where it says:-

“A person who held a national honour conferred by the President prior to the commencement of this Act, will continue to hold the honour under this Act.”

The National Honours Advisory Committee, while making recommendations shall take cognizance of the existing stock levels and recommend nominees not exceeding two-thirds for the medals. I would expect the number of medals to be legally, a certain number. This is a statement that is subject to abuse by the authorities that be. You may get the real impact of recognition that we so desire by this Act. I would like this to be a subject of future discussions, but this is a good beginning. However, at least, we have a law governing recognition of the honourable people who have excelled in certain lines of their expertise. In so doing, let it be a national exercise and not an exercise of recognising members of the ruling party.

I support.

Sen. (Prof.) Lonyangapuo: Thank you, Mr. Speaker, Sir. I join my colleagues in congratulating the Senate Majority Leader for introducing these regulations at this time. Indeed, if you look at what is happening in our country, now that we have gone into devolution, celebrating 50 years of Independence, you will see that there are people who have made Kenya proud. I do not think this has any monetary implication at all. This is just a medal and an honour.

The first page says that the Act is the National Honours Act, 2013, and somewhere on that page, it also introduces a county. If you look at the names that were circulated for Kenyans to look at, you will see that a majority of people who played major roles in our villages, in our divisions and locations and counties, for that matter, are not there at all. This is a good step, but we can improve it further by coming up with a Counties Honours Act so that people who have played major roles in developing the counties and making Kenya move forward as cited in 14(a) can be honoured.

This section says that a person who has exhibited certain actions or achievements or certain sacrifices, bravery that leads him to leadership in a county should be appreciated at the end of the year. We should amend it and introduce the County Honours Bill. Let me cite here two categories. The first category is the Order of the Golden Heart of Kenya. This should be introduced at the county level because we have two levels of Government now. We could have the County Chief of the Golden Heart (CCGH) and the County Elder of the Golden Heart (CEGH) so that---

An hon. Senator: Are you talking about the Governor?

Sen. (Prof.) Lonyangapuo: Yes, we are talking about the Governor, the Speaker of the County Assembly, the people who have built the county. There are 47 such units that have made Kenyans very proud.

I was one of the recipients of this when I was a Permanent Secretary in my previous life. I was given the Chief of the Burning Spear, CBS. I am expecting one now. My Minister then, Sen. Chris Obure, had received one commendation ahead of me, the Moran of the Golden Heart. I think he also had another one, the Elder of the Golden Heart (EGH). Now that we are bringing order and sanity in the structure of Government, in the political class, I was expecting that this year, we would honour the people that Kenyans thought had shown exemplary qualities in leadership. The 47 Senators who are elected plus 20 who are nominated should get something better than what I was given. We should either get the Moran of the Golden Heart of something slightly above that. At the same time, we should consider the 47 Governors.

The Governors will now go to give the smaller medals that you are seeing down here at the county level. This will make people demotivated while others talk about motivation in other counties. People should walk and talk during national days while putting on national honour medals. If you go to my county, during the national days, no one puts on these medals because no one identifies with them. I think it is time that we recognised these people properly. They should feel that they belong in this country as they see the way they have been honoured.

I support this although we need to improve it further. I do not know who chose the members of the National Honours Committee. You will be surprised that these are a few people who were identified by the Head of Public Service those days. There was a

tendency for many people to nominate the people they knew because there was no procedure to be followed. We should have County Honours Advisory Committees; one per county so that we identify the heroes and heroines. This will make people do great things for the country so that they are recognized.

I support.

Sen. Kittony: Thank you, Mr. Speaker, Sir. I rise to add my voice. I am a beneficiary of this and I believe that I worked hard. I support the sentiments of Sen. (Dr.) Machage and Sen. (Prof.) Lonyangapuo.

Indeed, I think that if we truly want to do a good job, this advisory committee should be made known. I do not know whether I am late in asking the Mover to bring some amendments on this. We should know, as the Senate, who is serving in the Advisory Committee so that we do not have a replica of what we know. Indeed, as the other speakers have said, this has been abused. If we have to accommodate the counties, then we need to have other committees at that level so that everybody who has served and given contribution to the growth of this country gets an award.

Culturally, people go to stages and get recognized as they grow up. In the society, we are in, this should also apply. However, if we are left at the mercy of civil servants and give them the discretion to appoint who will get commendation, then they may get tempted and do things that are not proper. We know that there are a number of people who have been honoured and who did not deserve the medals. I am saying this although it may be a little bit late. I wish this Motion had come a little bit earlier so that we competently contribute to accommodate commendation at the Kenya at 50 Celebrations. I propose that the Mover of this Motion should look at it again and accommodate the suggestions that have been given.

Thank you. I support.

Sen. Murkomen: Mr. Speaker, Sir, I would like to support these regulations.

Mr. Speaker, Sir, first of all, the regulations are a product of the constitutional functions of the Presidency. Article 432 (4) says that one of the functions of the President is to confer honour in the name of the people and the Republic. The President has two very critical functions. On one hand he is the Head of Government, but on the other, he is the father of everyone. He is the Head of State. When performing the functions of the Head of State---

Sen. Orengo: On a point of order, Mr. Speaker, Sir. Did you hear what Sen. Murkomen said; that the President is the father of everybody? The President is not my father. Kenya is not a feudal State, but I agree that he is the Head of State.

The Speaker (Hon. Ethuro): Order, Sen. Orengo! Did you hear or listen to Sen. Murkomen?

Sen. Orengo: Mr. Speaker, Sir, I heard and listened to him.

The Speaker (Hon. Ethuro): If you did so, you should not, therefore, put words in his mouth. He said that the President is the father of the nation, but did not say that he is the father of everybody.

(Laughter)

Sen. Orengo: Mr. Speaker, Sir, can we check this on the HANSARD, because I listened very carefully? But even the very idea of “the father of the nation” is incorrect, because we are not a feudal state. We are not back in the old days of an imperial presidency. He is the Head of State, but not the father of the nation.

The Speaker (Hon. Ethuro): Order, Sen. Orengo! One, we will check on the HANSARD, because when you start by questioning whether somebody heard, you are only telling us that you heard better than everybody else. So, we need to verify and we will give you your dues, if it is the correct position. If not, we will also give you the opposite.

(Laughter)

But more fundamentally on whether or not he is entitled to say that he is the father of the nation, I think that, that is a point of argument, really. I do not think it relates that once you have a father of the nation, you are a feudal state. It is not necessarily correct.

(Sen. Orengo stood up in his place)

Order, Sen. Orengo! Do you really want to pursue this?

Sen. Orengo: Mr. Speaker, Sir, I do not want to pursue this issue, but I am saying that this is how things go wrong. If you look at the Presidents who were elected in 1963, they were filled, in their minds, with all this power in the clouds and supremacy. They gave themselves titles, some of which were not biological, but are meant to be biological, like “the father of nation.” I think that we have a new start and Constitution. So, the President should be given the respect and honour, but do not give him titles that do not belong to him.

Sen. Murkomen: Mr. Speaker, Sir, I read a little bit of the biography of Sen. James Orengo from various newspapers. He used to be an actor or person who frequented the theatre and recited Shakespeare poems. I suspect that he understands the usage of the English language, fairly so. So, if you say that someone is like a father--- Sen. Orengo is like a father to many in many ways. Fatherhood is not a fiefdom, but a responsibility. It is something that is taken with great responsibility, so that when the President is acting as the Head of State, he needs to demonstrate responsibility for everybody and treat them fairly, despite their tribe, region, race and culture. So, it is a great thing to be compared to being a father. I am one such father and very proud of that title.

The Speaker (Hon. Ethuro): Sen. Murkomen, in fact, I thought that you were going to add “just as I suppose that he is the father of his household.” For purposes of delegations here, the Head of delegation is like the father of the delegation.

Hon. Senators: No!

(Laughter)

Sen. Murkomen: Mr. Speaker, Sir, when your son or daughter calls you “daddy,” you can almost shed a tear. It is a very honourable position. So, if we even call the

President and equate him to be being a father, we are actually bestowing upon him a title that is even greater than the word “Head of State.” It is more honourable and responsible.

Mr. Speaker, Sir, I was saying that if you see Article 132 (4) (c), it says:-

“Confers honours in the name of the people and the Republic.”

It is important for us, as a House that protects devolution and this country, to also remind our Governors, Senators and any actors at any level of Government, that this function is not conferred on anyone else except the President. I am saying this with great humility, because I saw in another county a Governor attempting to confer state honours of this nature, in fact, commensurate to what is provided for in this Act, to people within the county. This is a Constitutional responsibility that cannot be performed by anyone else, except as provided for in Article 132 (4) of the Constitution, by the President and, as the Act lists, in the manner that he is going to be advised by the various entities.

Mr. Speaker, Sir, I have an issue with the regulations, particularly, when you read paragraph 16, which says that a recommendation for nomination may be submitted to the respective honours advisory committee anytime during the course of the year, but not later than three months to the date of confirming. If you read these regulations, you will find also that it is possible for us to confer honour to a foreigner, for example. Sometimes countries in the world confer such honours to heads of state or Presidents of other countries who, perhaps, stand firm to support a cause of a country like ours, when we are dealing with issues of regional conflict or any other issue. Three months is too long if, for example, we were to confer an honour to a head of state of another country.

Mr. Speaker, Sir, I do not think that it is necessary to talk about “three months before,” but we can use words like “reasonable time”, enough to facilitate publication and public participation in the conferring of that honour.”

Mr. Speaker, Sir, the honours provided for here, which include Distinguished Conduct, Silver Star of Kenya, Moran of Golden Heart, look like titles which can only be conferred to natural persons. It may be necessary for us, going forward, to think about other honours outside these traditional honours which are conferred on natural persons or individuals, so that we can have certain honours that are conferred to county governments. Such will include those counties which are able to attain a certain level of economic growth, bring down a certain level of unemployment and attract a certain level of investment. It is important that we introduce amendments to allow---

Sen. (Dr.) Machage: On a point of order, Mr. Speaker, Sir. Sen. Murkomen has talked of natural persons. Would I be in order to seek his view of what an unnatural person looks like?

Sen. Murkomen: Mr. Speaker, Sir, there is a difference between a human being--

The Speaker (Hon. Ethuro): Actually, that is not a point of order.

Sen. Murkomen: Okay, Mr. Speaker, Sir.

Mr. Speaker, Sir, it looks weird for me to confer to a company “Moran of Golden Heart (MGH)”. It looks more or less like it is an honour that can be given to an individual or human being.

We need to come up with certain honours, going forward as the Senate; that can only be conferred to certain counties that reach a certain level of achievement. While the

Governor, County Assembly Speaker or Members of the County Assemblies (MCAs) are going to receive certain honours, which are like this, it is important that we come up with unique honours that can only be conferred to entities like county governments, Ministries and departments of national Government or departments of county governments that are going to do exemplary work for the greater benefit of the people of Kenya.

I support.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I rise to support.

Mr. Speaker, Sir, I will not repeat what my fellow Senators have said, but there is something in the Act which I think is not covered by the regulations. It is in line with what Sen. Billow Kerrow mentioned. Under Section 11 of the existing Act, there is a very innocuous section which has a side note that reads: "Posthumous national honours. A national honour may be conferred, amended, suspended, revoked or restored posthumously."

Mr. Speaker, Sir, in fact, we have not considered the regulations in so far as Section 11 of the Act is concerned. As we celebrate the Jubilee year, it is important that we also honour the people who, in one way or the other, contributed to Independence. I have in mind, for example, Mr. Kiso Munyao, who was buried in Makueni. He was responsible for putting up the national flag on Mt. Kenya. The question is: In terms of what the regulations look like, you do not have provisions of how you will confer, amend, suspend, revoke or restore any of these honours posthumously. It is also important that I declare interest in it, because it will be very sad if somebody's title can be revoked posthumously, without proper regulations.

So, I am suggesting that the Senate Majority Leader looks at the regulations, so that we can have this done properly. I would hate for my late father's titles to be revoked posthumously, but it is important that as we confer honours on human beings, we should also consider the people who left us and maybe due to omission, we as a country, do not recognize them.

Mr. Speaker, Sir, I beg to support.

Sen. Haji: On a point of order, Mr. Speaker, Sir. I raised an issue that is very important to the House, regarding the rules---

The Speaker (Hon. Ethuro): Is it the one of the Kenya Broadcasting Corporation (KBC)?

Sen. Haji: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Well, I thought that, that was more of an administrative issue. So, the relevant officials can deal with the matter. What is, definitely, true is that they are supposed to be covering one of the Chambers. So, I do not understand why they are not doing it. It means that if they do not do it, then they should not be paid for a service not rendered. I think that, that is the important point that you are making. But we will find out about the issue.

COMMUNICATION FROM THE CHAIRVISITING DELEGATION FROM
WEST POKOT COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Senators, before I put the Question let me also introduce the second round of the delegation of the Members of the County Assembly of West Pokot. As you know, our Chamber is still small and so, we have to take them in phases. We hope that we will move to a bigger one soon.

I will introduce them and request each hon. Member to stand up once he or she is called out, so that we may acknowledge them in the normal tradition of the Senate. The second group of the delegation is composed of the following:-

Hon. Nancy Juma;
Hon. Jackson Korikwangan;
Hon. Joshua Chumel;
Hon. Christine Pedoo;
Hon. Pyatich Loporna; and,
Hon. Thomas Ngulesia.

The delegation is accompanied by Mr. Leonard Ongiro and Mr. Benson Loyotoman, who are clerk assistants in the county assembly. We thank you for visiting the Senate and want to welcome you in a very special way, as you follow the proceedings.

Thank you.

Hon. Senators, since there is no other contributor, I call upon the Mover to reply.

(Resumption of Motion)

Sen. Keter: Thank you, Mr. Speaker, Sir, for giving me this opportunity to reply. From the outset, I wish to thank all the Senators who have made their contribution towards this Motion. I believe we will have the opportunity to move some of the amendments in the Committee Stage like what Sen. Kerrow has mentioned. Once you are an elected Member of Parliament (MP), there should be automatic qualification so that there is harmony in the provision of all these honours being granted to hon. Members. Therefore, I will propose to Sen. Kerrow and others that we can make amendments so that the Parliamentary Honours Advisory Committee can also take into consideration all these factors, so that if we use the pecking order which we passed the other day, that can be a stepping stone so that we will know who will get what and at what level.

Having this Motion is a step forward than having nothing. So, for those of us who have medals, I remember in the last Parliament that we had to complain; we had to beg and say “why are the elected MPs being ignored in being given the Moran of the Golden Heart (MGH)?” We do not want that to continue. So, I believe this is a step forward. The regulations which we are going to pass here will be followed next year when honouring people.

Thank you, Mr. Speaker, Sir. I beg to move.

The Speaker (Hon. Ethuro): Order, hon. Senators! Before I put the Question, let me also declare my interest here. In the National Honours Act, the Parliamentary Advisory Committee is co-chaired by both Speakers and, so, it has taken the fidelity to the law to ensure that these regulations actually come here. So, really, this is a preliminary draft. I am quite happy about the contributions made. The Committee will definitely put them into account as we make progress. I, therefore, wish to put the Question

(Loud consultations)

Order, Senators! It is a bit tricky to establish whether this Motion affects counties or not, because one of the Committees is actually about national Government and county governments. There is a Parliamentary Honours Advisory Committee and the Judiciary Honours Advisory Committee.

(Loud consultations)

Order, Senators! Let me give the preliminary ruling for purposes of taking this forward; but I think there is merit in the opposite one that I will not use. So, the next one will have to interrogate the matter properly and rule that way. So, for now, let us assume that it is not a matter affecting counties *per se*.

(Loud consultations)

Order! For purposes of voting today, let us assume that it is not a matter affecting the counties *per se*; I have qualified my ruling.

(Question put and agreed to)

(Applause)

(Sen. Murkomen stood up in his place)

What is it, Sen. Murkomen?

Sen. Murkomen: Mr. Speaker, Sir, you have made a preliminary ruling; which is that you use the word *per se* in terms of determination of whether this Motion affects counties or not. Remember that the only reason we deal with anything that is legislative or *quasi* legislative is when it affects counties.

Hon. Senators: No! No!

Sen. Murkomen: So, Mr. Speaker, Sir, I am just saying this---

The Speaker (Hon. Ethuro): I am sorry, Sen. Murkomen; just repeat what you were saying.

Sen. Murkomen: Mr. Speaker, Sir, I have said that, generally, except where Motions are concerned, when we are dealing with legislation, including the parent Act, which is the Act where the regulations are emanating from, it is an Act affecting counties.

As you make your substantive ruling for tomorrow and any other day, I would like you to consider the regulations that are emanating from an Act which is affecting counties; these are regulations which are affecting counties. When that time comes, I want you to put that into consideration.

The Speaker (Hon. Ethuro): I do not know; I have a lot of sympathy with the contributions by Sen. Murkomen. It is only that given the timing – that is why I have actually given a provisional ruling for purposes of proceeding with this particular matter. My own gut feeling is basically to go by Sen. Murkomen; but I felt it is important that I give a considered ruling. So, I will do so, for the next matter. This is because, essentially, if the parent Act is affecting counties, then any other subsidiary Business would also affect counties. So, for purposes of looking at the regulations *per se*, we will do them tomorrow morning at the Committee Stage.

Sen. Orengo: On a point of order, Mr. Speaker, Sir. I am sorry to come back to this, but if you do agree with Sen. Murkomen – and I also agree with him in entirety – what then would be the status of the provisional ruling in which you say it does not deal with counties *per se*? Would it be vacated?

The Speaker (Hon. Ethuro): Sen. Orengo, it will not be vacated; the ruling has been made. Sen. Murkomen was doing it in the interest of future engagements. I think he was very clear and I am sympathetic to that future direction. But for the present, the ruling has been made. In fact, the Question has been put and carried.

Sen. Orengo: But, Mr. Speaker, Sir, I am just worried that you are going to make a substantive ruling which may now turn to be in contradiction with a ruling that you have made. It has gone on record that, that ruling is provisional. I would have been happy if you had not used the word “provisional” or the qualification that it does not deal with counties *per se*.

The Speaker (Hon. Ethuro): Okay. I see your point.

Sen. Orengo: Because as a matter of record, one of these days, somebody will subject these regulations to interrogations---

The Speaker (Hon. Ethuro): I see your point and I will be very categorical. The ruling has been made; what is provisional is the argument that has been raised. This is not the first time because we have always done it. We give an interim measure as we interrogate the matter further. By the time we have done research and interrogated the matter and looked at various experiences, we will then make a considered ruling that will apply henceforth from that point. It will not undo the previous ones. I think that should settle you down. Basically, Sen. Orengo, you know the way we do Business. Even at the Committee Stage, we do not operate with reverse gears. We move forward.

Sen. Orengo: That one I know.

The Speaker (Hon. Ethuro): It is the same spirit.

Next Order.

An hon. Senator: Sen. Billow Kerrow; the Chairperson of the Committee on Finance, Commerce and Economic Affairs.

(Loud consultations)

The Speaker (Hon. Ethuro): Proceed, Sen. Kerrow. The Order is reading funny. But when we transmitted the message, we definitely, gave it to the Committee on Finance, Commerce and Economic Affairs. So, it should be the Chairperson to move it. But if you look at your Order Paper, Order No.9 is reading other things.

Proceed, Sen. Kerrow Billow.

PUBLIC FINANCE MANAGEMENT (UWEZO FUND)
REGULATIONS, 2013

Sen. Billow: Thank you, Mr. Speaker, Sir. I beg to move:-

THAT, the Speaker do now leave the Chair to facilitate debate on the draft Public Finance Management (Uwezo Fund) Regulations, 2013, laid on the Table of the Senate on Wednesday, 27th November.

Mr. Speaker, Sir, in the regulations which have been distributed to the Senators, Members will find, for ease of reference, that there is an explanatory memorandum to the Public Finance Management Fund Regulations by the Cabinet Secretary (CS) at the back. So, we will be making reference to that.

Mr. Speaker, Sir, the regulations have been debated in the National Assembly. We will debate them here and, probably, tomorrow, vote on it at the Committee Stage. It goes back to the National Assembly again through the usual process that Bills go through. As we all know, the fund stem from the pledges of His Excellency the President to allocate Kshs6 billion, which was meant for the presidential runoff in the elections. Subsequently, Parliament allocated the full amount through the Appropriations Act and the President is the national champion and overall patron of the fund, which was launched on 8th September. Now, for the purposes of the Senators, the objectives of this fund are listed there. They are:- To expand access to credit to promote youth and women businesses and generate gainful self employment and, at the same time---

(Sen. Keter stood up in his place)

The Speaker (Hon. Ethuro): What is it, Sen. Keter?

Sen. Keter: Mr. Speaker, Sir, with due respect, I did not want to interrupt the chairperson of the Committee but I am just seeking your guidance because these are very important regulations. We have just been given about an hour to contribute to this Motion and we have to make meaningful contributions to these Regulations, we have to go through the whole document because we do not want to be rubberstamps. We do not just want to debate these Regulations today and make amendments tomorrow and then we go out thinking that we have actually passed Regulations which will stand the test of time. Although the relevant Committee is privy to more information, we should have been given this document in advance to go through it so that even as we contribute, we make informed decisions. Otherwise we do not need to debate them, we should just

rubberstamp them by passing them. I seek your guidance on whether we are going to the Committee Stage tomorrow morning or afternoon. Maybe, the Committee Members can explain to us, but most of us will just sit and listen to the debate.

The Speaker (Hon. Ethuro): What we had agreed on was that we proceed on the two Motions, debate them at the plenary stage and then we made a proviso that if the Report of the Committee is ready, then, maybe, we could do the Committee Stage later. The reason being that whatever we do, we must take it back to the originating House which is the National Assembly. But since now you have expressed desire, and maybe the time we have today is not sufficient for you to prosecute the matter, then we will go by the second option which had already provided that we can do the plenary today and then tomorrow, we will do the Committee.

That allows you to read the Report of the Committee, but also the Chair in moving, I am sure will raise a number of issues that by your presence here, you will benefit from them. There is a sense in which this matter must be disposed very quickly. In terms of the Regulations, if you look at the Motion, they were laid on the Table of the Senate on Wednesday, 27th November, and that was last Wednesday. So, really, you have had a number of days to look at the regulations and form some opinion. You cannot argue that they came one hour ago. It is only the Report of the Committee that has been delayed. So, you have a substantive bit. It is only the thinking of the Committee that may be you need and I think that one you can have for the remainder of the day so that tomorrow morning, we do the Committee Stage.

It is so ordered!

Sen. Billow: Thank you, Mr. Speaker, Sir. Maybe I should seek the indulgence of the House to add that, the Act under which these regulations are made, Section 205 of the Public Finance Management Act, requires that these regulations be adopted by both Houses and within 15 days of their passing by the other House. So, if the other House passed them last week, by next week if we do not pass them, they will have lapsed and they become regulations. So, we have only today and tomorrow and then it has to go to the other House again for debate before both Houses adjourn. I agree with you that the regulations were laid on the table of the House last Wednesday, but I want to advise the Members that there are not many issues. By the time I take you through in ten minutes, I think most Members will be familiar with all the pertinent issues and whatever changes the Committee proposes to make.

The objective of the Fund is to give access to credit to the youth and women business and create self employment. The principle that it employs is the table banking and the revolving funds. The modalities for the Fund will be supported by the following structure: At the national level, we have the Ministry responsible for youth and women affairs. They will facilitate and oversee the operations of the Fund. Specifically, they will be responsible for capacity building. Then we have the Uwezo Fund Oversight Board at the national level to provide overall management, the design and oversight of the Fund. This will be supported by a secretariat at Nairobi, similar to the other funds that we have like the Women Enterprise Development Fund, the Youth Enterprise Development Fund (YEDF) and the Constituencies Development Fund (CDF).

Mr. Speaker, thirdly, at the constituency level, there is the Uwezo Fund Management Committee which is modeled along the CDF at the constituency level. The role of that Committee is to facilitate establishment of the committees to manage the Fund at the constituency level. At the constituency level, the membership of that committee is listed in those notes that we have provided there. There is the sub-commissioner of the county, the development officer representing the national Government, the district accountant and so on and so forth. There will be representatives from each of the wards in the constituency, representatives of the youth and the women in the constituencies, persons with disability *et cetera*.

Then in terms of the amounts involved in the Fund, the total amount is Kshs6 billion. Out of that, 3 per cent will be retained by the Board for administration purposes which comes to Kshs180 million. About 8 per cent will be for capacity building of the beneficiaries. This is about Kshs500 million. The balance, which is about Kshs5.3 billion, is what will be available to the members. Of that amount, the proposal in the regulations is that all constituencies will share 75 per cent of that equally and the remaining 25 per cent will be shared out across the constituencies based on the poverty index provided by the Kenya National Bureau of Statistics.

Mr. Speaker, Sir, of the total amount received by the constituency, the original proposal was that 20 per cent of it is earmarked for religious institutions that will use it as a grant to the youth and women within their jurisdictions. Of that amount, 75 per cent will be used as loans and 25 per cent as grants. However, as we shall see, there will be amendments proposed in this. One of the far reaching amendments that the National Assembly passed is to generally remove the religious institutions as beneficiaries. We will discuss why our Committee also thinks that probably that amendment should be retained.

The Fund administration, therefore, is that it will be given as a loan of between Kshs50,000 to Kshs500,000. An interest rate of about 1 per cent to the maximum is proposed. However, the National Assembly in their amendments have passed that there should be no interest charged, but instead an administrative fee of up to 1 per cent be charged. That will be used by the constituencies to manage the Fund and, therefore, the interest will not be removed. The loan will be for a two years' period after which it must be repaid within two years. So, I think it provides for a six month grace period before the payment is done.

Mr. Speaker, Sir, in terms of eligibility by the beneficiaries, all the registered women and youth groups who are registered with the Registrar of Societies do qualify under these regulations. The youth membership must be between 18 years and 35 years of age; and the women groups must be made up of only women and not a mix of women and men. Preference will be given to groups that have been in existence for at least three months and they must be based in the constituency and operate on a structure similar to table banking or any of the other contribution based groups. They must hold a bank account and so forth. So, generally, that is the brief on the Fund itself.

This was submitted to the National Assembly and they made quite a number of far reaching amendments. We will be proposing tomorrow at the Committee Stage some further amendments to some of those amendments. When we went through this, we did

not change a number of amendments which have been proposed by the National Assembly. For example, some of the representatives from the Uwezo Funds Committee at the constituency level from the youth and the women will be nominated by the respective Members of the Parliament or the women county representative. In the same way the persons with disabilities will nominate their own representatives, the ward representatives will also nominate their own persons. So, we did not propose those structures, but there are some changes that we propose which we think are crucial.

Mr. Speaker. Sir, let me point out that the Ministry did wide consultations on this before these regulations were submitted to the National Assembly. They consulted, for instance, the women members of Parliament under KEWOPA on a number of occasions. They also consulted the CDF committees and up to 25 women and gender organizations under the umbrella of National Women Steering Committee which include *Maendeleo Ya Wanawake*, Women Political Alliance, FIDA, Action Aid and so many young women leadership organizations. All those have been consulted. The National Youth Council, the Interreligious Council of Kenya and the National Commission for Persons with Disabilities. All those consultations were done including with the Ministries, departments and agencies.

So, the final draft is what was submitted to the National Assembly and a number of changes were made. Some of the far reaching changes include removing the role of the Cabinet Secretary in appointing three persons to the National Uwezo Oversight Board. In their case, they are proposing that those appointments be made by the National Youth Council and the National Gender and Equality Commission. We will be proposing tomorrow that, that be reversed for the reason that this is not a parliamentary fund. It is a national Government fund and to get these institutions to nominate will make the process quite bureaucratic and make it very difficult to get a consensus on getting those names nominated.

The other issue that is important is on the capacity building. The original draft regulations that you have propose that the oversight board at the national level conducts capacity building of the beneficiaries across the 47 counties but in clusters so that a number of counties are clustered in one area and so on. The reason is to encourage standardization on the type of content and curriculum so that all the beneficiaries get that kind of thing across. What the National Assembly had done in terms of the changes that are before us is that they have moved that responsibility to the constituencies and that the constituency committees be the ones mandated and that, in fact, is one of the things that we will be proposing would be more ideal to be retained at the National Oversight Board.

Mr. Speaker, Sir, the other thing that I think is important is the number of Government representatives in the constituency committee which was reduced from four to two. Being a national Government fund, we thought that when we bring our proposals, we will be retaining the number at four. For example, the sub-county member who is responsible for development planning really ought to be there in the same way that they are there in the CDF committees, and the district accountant who is one of the signatories should also be retained. We agreed with the National Assembly in our proposal to come that the sub-county commissioner be there as an *ex-officio* member.

I think the other point I want to raise is that because of the interest of time, we do not expect to make any fundamental changes other than the ones that I have mentioned relating to capacity building and raising the membership, lowering the interest rates where the National Assembly had proposed that they eliminate it and replace it with an administrative fee which is agreeable to us. They also eliminated the requirement that when you submit your application, it should be accompanied by a recommendation from a chief or an assistant chief or from some business person or a religious organization. They have removed that and we also kind of concurred and in the proposals we have we are not proposing any amendments to that.

Mr. Speaker, Sir, generally, those are the general outlines relating to the Fund. We are proposing in the amendments that to ensure that there is sustainability, every year, Parliament appropriates a certain amount of money to this Fund so that it becomes a revolving fund which will be there from year to year similar to what happens in the CDF, the Women Enterprise Development Fund and the Youth Enterprise Development Fund. This is a very important Fund which provides opportunities to our youth and women across the country. I need to mention that is a bit different in the sense that the process of applying for it and getting it is a bit easier than the ones which are now being administered by banks or those other institutions.

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

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

So, that is the general structure of the Fund and we will be proposing some few amendments tomorrow because we have to get them to the National Assembly and we have to get concurrence because of the need to get this thing done within the stipulated time. It is already six months into the financial year and if we do not get it approved this December, then it is likely that this money will probably not have been utilized and the year will end. I would urge Members to support us in getting this approved tomorrow so that we go into Committee Stage and make whatever amendments.

I beg to move.

The Deputy Speaker (Sen. Kembi-Gitura): Who is seconding?

Sen. Billow: Mr. Deputy Speaker, Sir, I will ask the Deputy Majority Leader to second.

Sen. Keter: Mr. Deputy Speaker, Sir, I thought that a Member of the Committee would second so that we have good contributions.

The Deputy Speaker (Sen. Kembi-Gitura): Order! Could you make a decision on whether or not you will second the Motion?

Sen. Keter: I will second and the other Members can make their contributions.

In seconding this Motion, I would like to say that this is a very important Fund. This is a Fund that has been long awaited. It is a Fund that the Jubilee Government promised to give in their manifesto. They said that they would set aside funding for our women and our youth.

Many of the regulations that will govern this Fund are very important. The only problem I want to emphasise is that this Fund must be managed in a different way. It should not be managed the way the Women Enterprise Development or the Youth Enterprise Development Funds were managed. I remember, during the last Parliament, that our constituencies were being given Kshs1 million. If a constituency wanted more money, that money would be channeled through the banks and the amounts did not reach the intended beneficiaries. So, I am very grateful that the formula that has been used is the same one that is used under the CDF. That means that 75 per cent is shared equally while 25 per cent is shared on the index of the population and poverty, among other things. That means that 95 per cent of the money will get down to the grassroots level.

My worry was; how do we manage it? If you do not put down proper regulations, the first groups like the women groups that will benefit between the ranges of Kshs100, 000 to Kshs500, 000 may be unable to repay. In that case, who will follow them so that other groups can also benefit? If a constituency is given this money and is managed by the Uwezo Constituency Fund, I do not think they will have the capacity to run it. These are members who will be appointed the same way that the CDF members are appointed. The CDF does not support recurrent expenditure but development. If you put about Kshs1 million to a school, you should not expect any returns.

The auditors only go round to inspect whether the school was built or not. This is money that should be returned to the account. It is good to have that clarification right now.

The membership of the constituency should be represented in the Fund. I do not think these groups will have the mandate to follow and see the benefits. However, it is good that the Chairman has brought in an amendment to see that proper regulations and guidelines are followed so that this is not a one-off thing. This should also be a recurrent Fund so that women and the youth can benefit. We do not want to see this Fund fail.

I have seen many amendments that were done by the National Assembly so that the Fund is similar to the CDF. It says that the Member of Parliament will nominate three members and the other members will come from other areas. I have no problem with the membership. That can be dealt with. However, the parent membership must take responsibility so that come next year, the end of the financial year, when questions are asked, with regard to how many groups benefited from the Kshs6 billion, somebody should take responsibility and say that there are about 1,000 groups that benefited in Kericho County. We should also know the repayment period because we may only be rushing to have regulations.

Members of Parliament now have another Fund besides the CDF. They now have the Uwezo Fund to manage. They also have a responsibility to manage their parliamentary work in Nairobi. They are not in Nairobi to supervise how the money is repaid. That is a problem. I remember one day saying that the regulations must be firm so that this is not a failure to the Government. At least, the Chairman has said that the Committee will bring some amendments to make strict regulations.

With regard to capacity building, my worry is that before this money is given, people must be taught how to use it. If a constituency is given Uwezo Fund and they do not know the concept of table banking, who will capacity build them? We should go by what the Chair is saying. We should bring an amendment so that the Fund is centralized

in the county. If a county does not have the necessary people to give guidance, then they should get these people from other counties. When I was the Member for Belgut, we started the table banking concept which is very good.

I want to ask Members to take a keen interest on it. You will find women doing business. You do not find women asking for school fees because they can pay it. It reached a point when men would ask, what about us and I told them, once school fees has been paid and your clothes have been washed, what else do you need as a man? You should just go round and do your own things. This is a good concept. We started it at zero. A woman who has Kshs50 can do business. The Kshs50 under the model of table banking, with about 10 to 15 members in a week, has a pattern that it follows. There is a pattern that they follow. In my constituency, there is a group that has transformed the lives of many people who used to take alcohol. They were drunkards but are now making a lot of money. Their children are now going to school.

This is a very crucial Fund. If it is managed properly, it will transform where we come from. The table banking concept has gone beyond Belgut constituency because it is now within Kericho County. We started at zero but we are now revolving over Kshs200 million. This is the money with the women there. So, today, another constituency can also develop to run the millions.

In future, working as a representative of the people will be very easy because we will carry out our role as policy makers while our constituencies will be very rich. I do not think that any of us would like to represent a constituency that is poor. Therefore, this is a model that we need to take a keen interest in. I urge Members, tomorrow during the Committee Stage, that this will be very crucial. The amendments we will make should be good and I have seen one.

The National Assembly deleted the part that required a chief to sign forms. My worry is; if there is a defaulter in a group, while the beneficiary is the group that has registered – some lie about the villages that they come from – if they just share the money among themselves, who will follow them? Stringent measures must be put in place. Otherwise, it will be very hard to implement. At the same time, if implemented very well, it is one of the funds that will assist this country to move forward.

I do not want to say much. I support this Motion. Tomorrow, we will make the necessary amendments and pass it. On Thursday, we will pass it and the National Assembly can also pass it so that the Fund is operationalised as soon as possible.

With those very many remarks, I beg to second.

(Question proposed)

Sen. Musila: Thank you Mr. Deputy Speaker, Sir. I also want to support this Motion. We are not re-inventing the wheel. We already have many Funds similar to this one. I want to support the sentiments expressed by Sen. Keter. We still have the Youth Enterprise Development Fund. We have had many funds before where the Government of the day says that we are giving out money to develop the youth and women. However, in a majority of the counties, these initiatives, although well intended, have not succeeded. Either, some people do not avail themselves to collect the money because

they believe that since they do not want to be in debt, the best way is to keep away. Others are very quick to come because they believe this is Government money. They take it thinking that nobody will ask about it.

I want to confess that in my former constituency, this happened so much. Despite the efforts to advance money to communities, I cannot say, as my brother said, that this has been achieved because of the funds. What am I saying? First of all, we must educate the communities. I have not seen any funds that have been appropriated or suggested for educating the community. If this Uwezo Fund goes somewhere I know, you will never hear of payment and that will be the end of it. Those who will benefit initially will be the first and last. So, we probably ought to have a fraction of this money to be used, first and foremost, to sensitize and educate the people of the need to pay loans, accept and put the money into proper use.

Mr. Deputy Speaker, Sir, regarding the forms that they fill, they will just collect one another and come as a group. If they are 20, for example, if you give them Kshs200,000 they will go out and share it outside and everyone goes their way. The Government has lost a lot of money in a similar manner before. The Government has intended to advance money to people in the past, and it has not really helped. I really liked the concept by Sen. Keter and would welcome him one of these days to spread it to my area.

Mr. Deputy Speaker, Sir, this Kshs6 billion or Kshs5.3 billion will be given and a lot of people will take it, but repayment will be a problem. But the most serious thing is that it will be taken and we will not see the development that, that particular person has initiated using that money. Therefore, first and foremost, I want an amendment. I hope that the Chair of the Committee or somebody is listening. We must set aside some funds for training. We need to sensitize the people and train them that this money is for their benefit and, therefore, they must take it only when they have a project that is going to advance them or the community, and it is payable. That is very important, otherwise, we will be just dishing out money.

I remember when President Kibaki took power, there was a fund that went wrong. In my area, they were saying: "*Hii ni ya Kibaki. Hailipwi!*" Then we introduced the Youth Enterprise Development Fund and later on a fund for women. They talk about tree planting and we do not see the trees. They also talk about water conservation and we do not see it. They say that they are buying and selling goats, but you do not see them. When you follow them, they say: "*Mbuzi walikufa.*" I really feel sorry for the community, but I want them to benefit. But before we give out this money, let us, first of all, ensure that we are giving it to the right people who have been educated on its use, so that it serves the purpose for which it is intended.

Mr. Deputy Speaker, Sir, finally, in the administration of the fund, I have seen every elected person being given a role in the management of this Fund; from the Member of the County Assembly, Women Representative to the Member of the National Assembly. But I have not seen anywhere where the Senator has a role. Ladies and gentlemen, we are making ourselves irrelevant, because soon or later, people will come to you and say: "I want help to access this Fund." You will tell that person: "I am going to

ask the Member of the County Assembly, Women Representative or Member of the National Assembly.”They will wonder what your role is in this.

So, I want to plead that some sort of space be created, as a role for the Senator to play in his county, even if it is a committee to see how the money is spent. So, I am pleading with the Chair to ask his Committee to find out what role a Senator can play, so that he is not just a bystander and watching as things happen. I think that this is crucial, lest we become irrelevant.

Mr. Deputy Speaker, Sir, it is not by accident that we are missing in this management. It is by design. Now that we have an opportunity, we must amend these regulations, to create a role for the Senators, so that we all play the role together.

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

Sen. (Dr.) Zani: Mr. Deputy Speaker, Sir, it is good that we are starting off with the Uwezo Fund, when we have had other funds that we can make reference to, and probably look at how they worked, where they worked and where they did not work. We should look what went wrong and try to avoid those specific pitfalls. It is always good to learn from what has happened before.

Mr. Deputy Speaker, Sir, the Youth Enterprise Development Fund (YEDF) and the Women Enterprise Development Fund (WEDF) did not work for various reasons. Some of the reasons were administrative in terms of personnel and the way they were allocated and went about doing their work. But I think also that there were lots of financial and accountability issues. There is the issue sending out clear information on where the money has gone to and which group has received what amount of money and how much of that money has been paid back. Some of the money, for example, has been given out through organizations. Those organizations then also give out the same money to smaller groupings within their communities.

Then, it becomes very difficult for those organizations to follow through, collect the money and ensure that it ends up in a kitty, where it can be returned back to the original fund. Sometimes that happens because of accounting systems in those organizations and that money tends to get mixed up with the money that the organization already has. That can create a lot of problems.

Mr. Deputy Speaker, Sir, therefore, there needs to be follow-up, so that if there is any organization that is disbursing this money, it does that in such a way that there are clear follow up mechanisms. Therefore, the importance of record keeping across the board for the various organizations and groups also becomes very critical. Usually, the basis of such groupings is knowledge of each other, cohesion and levels of integration. So, in any area where it has been applied, it is important to know whether that level of integration really exists. If it does not exist, it makes the implementation very difficult.

Mr. Deputy Speaker, Sir, there are key things that are very critical to make the fund work. Training has already been mentioned, but sometimes when you speak about it, we just take our old training methods and train people the same old way, without putting into consideration the dynamics of new facts that have come into play, that make it very difficult for people to implement and use the money successfully. If they are being trained, what sort of modules are being used? What new innovative training capabilities are they being given, so that when they take that money, they are able to put it into some

sort of entrepreneurial exercise which is very innovative? This is because, again, what tends to happen is that everybody tends to copy each other. Therefore, you will find that very little is going on in terms of profits or interests that come in as a result of that.

Mr. Deputy Speaker Sir, many times also, after the training, there is no real follow up on the ground to find out that the training is actually effective and that they are doing what is expected of them. I was a visitor to a group where they were doing table banking and it was very impressive to see the level of engagement and transparency that was there. In fact, the members would sit and collect the money. The money would be counted and everybody would know what is coming in, but the key thing was that members had to re-borrow from those funds and pay back interest to that specific group, so that, that money could get generated. That is how the interest gets shared at the end of the year to everybody. But when groups are able to do that because of their levels of integration, knowledge and commitment, they are able to move to a different level and go to better places.

Mr. Deputy Speaker, Sir, therefore, even as we think about identification of the groups, because that is where the problem really is, how well do these people who are coming together know each other? What is their background and how committed are they? If they are not committed, so that they hold each other accountable, it will be almost impossible for them to pay back that money. They will actually all go to different directions.

Mr. Deputy Speaker, Sir, who, therefore, is held accountable again? In most of these groups, you will find a leader. That leader has to be dynamic, able to pull together and find a way of making things work. But, again, without the automatic cohesion in specific areas, it becomes very difficult for people to follow each other up. This is because you might find that you are following somebody up, but they are not really responding. But if there is a sense of togetherness and having a purpose, closeness, integration and cohesion that is already in place, that makes it possible for them to do that. Therefore, even as they get their interests and profits, they are able to gain from that.

That is the sort of entrepreneurship that should come as a result. It should also help them to move to the next level and identify ways of using that money, so that it makes a difference in their lives. In specific counties, it is really about the various other industries supporting. For example, for the case of Kwale, we think about tourism. Women can look for vegetables, eggs, chicken or do whatever business, so that, that money can actually come back into a kitty, but be used for entrepreneurial activities. I think that, that is the way we will gain. So, it should not just be about giving money and taking it back, but giving money and growing those specific groups. We should also create a culture of accountability; that whatever money you have received, it is meant to go into a generational fund, so that it is self-generating. From the money that is paid back, others should be able to benefit from that particular fund and not just have one group taking the money, using it and not accounting for it.

Mr. Deputy Speaker, Sir, with the various challenges, these are the ones that we need to look out for and come up with the necessary amendments, probably in the Committee tomorrow, so that we can determine how this fund can be administered.

Thank you, Mr. Deputy Speaker, Sir.

Sen. Ndiema: Thank you, Mr. Deputy Speaker, Sir. I rise to support. In so doing, I also want to associate myself with the views that have been expressed here; that a fund as this one is not new in terms of experience and expected outcome. The outcome really is that there is no guarantee that this money will be paid to that level that, perhaps, can be seen as a revolving fund. We should look at this fund as a grant to the youth and women, to uplift their standards.

Mr. Deputy Speaker, Sir, with regard to the funds that we have had over the years, there seems to be a criteria that if you want to assist women or youth, you must force them to form groups. Most youth and women, who are in business today, are there in their individual capacity. They know how to handle business in that manner. Therefore, as you give them money in form of groups, first of all, you are forcing them to operate in an atmosphere that is not normally theirs. I would want us to look at this fund, perhaps, in a different way; that while the fund goes to assist those already in groups, the individual youth and women who are in small-scale business can be assisted.

Mr. Deputy Speaker, Sir, we have spent a lot of money training the youth in our polytechnics and universities. In my county, I had an experience where the youth came to me and there were those who had finished universities. Some are lawyers and engineers, but in their locality but in the locality that they are in, there may be two or three. So, to form a group, they would have to merge with those others who are perhaps doing non-professional work. In so doing, they end up perhaps rearing chicken while their priorities were not really in rearing chicken.

Mr. Deputy Speaker, Sir, perhaps we should categorize this Fund and issue it in terms of the amounts that go to groups, the amount that go to women in business, those in farming and so on, and so forth. Today, we have the *boda boda* sector, which is generating a lot of employment for our youth, yet most of our youth cannot access funds to buy motorcycles; and not only to buy – because some of them have managed to buy – but they cannot afford to train themselves to ride on motorcycles, hence causing accidents and sometimes they lose their lives and the lives of other Kenyans. Why can we not target some of these funds, say, to train the youth to get the necessary skills? Those who have been trained – there are so many youths who have completed their training in village and national polytechnics – need the tools to go into the trade.

There are masons who need a bit of capital to now engage in the contracts that are coming up. We have told them that we are now going to give them contracts, but they do not have the tools to operate with. If we can set aside an amount of funds out of this to start off the youth who have finalized college education, it will go a long way in assisting them; and it is not necessarily true that they will repay, but perhaps if they can repay, it is well and good. If they do not repay, we can consider it so.

Mr. Deputy Speaker, Sir, churches play a very important role in our society today. They are the best policemen; they are the ones who are mentoring our youth, persuading them to leave anti-social activities, but then the pastors cannot give these youth alternative and decent means of livelihood. When I see an amendment coming up here to say that no funds should be channeled through churches, it is worrying. I think we should trust our churches. They also have youth and women groups within them, and we should give them that money to administer. We should not fear that because ours is a State

where the church and the state are separate, we should not assist them; after all, this is just a grant. I do not think this can really qualify to be a fund in a financial institution that will strictly go accordingly. In any case, if we wanted to give them loans, then let us operate through the structures that are already there.

There is a joint loans board for those in trade; there is the Agricultural Finance Corporation (AFC) and if we have to assist the young people who are in farming; let us give it through the AFC even at that interest of 1 per cent. There are other institutions which are already established and they do not really have enough funds or even enough work to do. Why do we duplicate institutions to administer Government finances while we already have so many? I support the Fund fully, but we want it to assist the young people and the women who are suffering in a manner that will ensure that they will benefit.

With those few remarks, Mr. Deputy Speaker, Sir, I beg to support.

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Kagwe.

Sen. Kagwe: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I want to say from the outset that I support the Uwezo Fund, but like my colleagues, I see a lot of areas of concern that need to be addressed.

Mr. Deputy Speaker, Sir, things fail because of management and they work because of management. What I cannot see in these regulations is the proper establishment or what one might consider as the properly thought out management scheme for the Uwezo Fund. When you look at the element of oversight and supervision that is there, you can see in the regulations and in the Act exactly how the money is going to be disbursed; you can see the Board, you can see the Committee and you can see the secretariat. What we cannot see in the Fund is how exactly do you monitor the use of this Fund so that, for instance, you will get a monthly report to say “this is what has transpired; in this month, these are the activities that we undertook; we took another Kshs5,000 and this is what we did with it.” In other words, the management and supervision of the Fund is what I feel concerned about.

Mr. Deputy Speaker, Sir, they say that six months is the grace period and the loan must be repaid within two years.

Any businessman will tell you that it is simply not possible to set up a business and get it to work within two years. It is not going to happen! Therefore, there is no point of making a rule which you know very well in the initial stages is inoperative, and then you demand that these people pay; and you say they have failed because they did not pay after two years, when it was very clear that it was a set up to fail in the first place.

An hon. Senator: Tell them!

Sen. Kagwe: So, it is not possible for us to limit the number of years that the money should be repaid to two years.

Mr. Deputy Speaker, Sir, when you look at the whole scheme of things, we have to decide that either, A, this is a medium, long-term that can be paid; B, this is how we are going to supervise this money so that the money is repaid or, alternatively, say “this is simply a grant.” According to the Keynesian Theory of Economics, give them money, and once they have the money, the economy will grow. If that is not the case, then we

must be very clear about how we intend to supervise the Fund and what kind of terms we give them.

In any case, the determination of the period of the loan is normally dependent on the activity and the business thereof; because it is one thing if somebody is trading and quite another if somebody is going to start a going concern. If it is a going concern, it is going to take a lot longer than two years. If it is trading, it can take even three months. So, there is a sense in which we need to grow to understand that business must be operated according to the nature of the business, not according to how you perceive or pre-determine those things in advance.

So, Mr. Deputy Speaker, Sir, we need to get people involved in the Uwezo Fund in addition to the proposed people in the regulations. It is necessary for us to work with people who are skilled in management, particularly people with banking knowledge; people who understand how cash flow statements and how cash flow projections are made; and how payments can be planned for. Otherwise, what happens is that you give the money to a group and the first thing they do is to pay school fees. Once they have paid school fees with that money, it is not going to be possible to get the money back. So, we have to determine in advance whether we are planning on getting the money back; and if we do, then the supervision and administrative part of it must be better planned.

Mr. Deputy Speaker, Sir, I support the Uwezo Fund because if done properly, it will have a huge effect on poverty. At the moment, our economies – especially for those of us in Kenya and the neighbouring countries – are basically operating on what is known as inefficient economics. We need to get these people going so that, eventually, we can move to efficient economics. This will bring a stop to *Harambees* - keeping in mind Sen. (Prof.) Anyang’Nyong’o Bill of *Harambee* - because if people have money, then they will reduce the necessity of *Harambees* for medical bills, school fees and so on, and so forth. As Members of Parliament (MPs) are very much aware, in my opinion, these have become so much that Members can no longer cope. When you hear Members here speaking, all they say is that “I have got 100 or 200 *Harambee* cards” and there is a lot of to and fro regarding exchange of cards in this House and, ultimately, what is happening is that people are unable to cope with the demands of *Harambees*.

The MPs can no longer cope with the demands that are made on them by *Harambees*, especially with reduced salaries and so on. So, any money that can go to our constituents to assist them in moving out of poverty can only be supported by the MPs. But it can only have an effect if it is thought about clearly in terms of the long term; not one moment when we give the money and then from there, we have no idea about what happens to the people we give the money. So, we must ask ourselves; after this, what happens? How are we going to scale up the businesses that we give these people?

Sen. Musila was talking about how people buy goats, and how people will go into that sort of thing – making *ciondos* and so on – but we must appreciate that, that is only a beginning point. How many goats can we keep on buying, honestly? What sort of economy is the economy of buying goats? We must consider this issue very seriously. We do not know of any nation that can talk about having moved from a third world to a second world economy on the basis of buying goats and such associated activities! Therefore, we must plan real businesses for our people.

(Sen. Ndiema stood up in his place)

The Deputy Speaker (Sen. Kembi-Gitura): Sen. Ndiema, what is your point of order?

Sen. Ndiema: Mr. Deputy Speaker, Sir, is my friend, Sen. Kagwe, in order to belittle goats, which really are a major and very important source of livelihood and survival for a majority of Kenyans and, in fact, humans all over the world?

(Several hon. Senators stood up in their places)

The Deputy Speaker (Sen. Kembi-Gitura): Order, take your seats, gentlemen! I thought I heard Sen. Kagwe saying that no economy has moved on the basis of goats.

(Laughter)

Sen. Ndiema: Mr. Deputy Speaker, Sir, I know of economies – if not national economies but, at least, household economies – which have moved from owning a hen to owning a goat, a cow, a camel and even beyond!

(Laughter)

(Several hon. Senators stood up in their places)

The Deputy Speaker (Sen. Kembi-Gitura): Is your point of order on the same point?

An hon. Senator: Yes, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I would rather that Sen. Kagwe deals with the goat issue first.

Sen. Kagwe, can you, first, deal with what Sen. Ndiema has raised? Maybe, you need to clarify on what you mean by movement of economies.

Sen. Kagwe: Mr. Deputy Speaker, Sir, I am a very proud owner of goats, and I agree with the Senator that, indeed, goats are very necessary, especially for peasant or even just above peasant farming.

I would agree with that; but I am simply proposing that for our national economy – not household economy – to grow and for us to move from a third world economy to what can be considered as either a second or a first world economy, we must move beyond subsistence farming. Subsistence living does not develop nations into becoming first world nations. No nation I can think of globally has moved – and I stand to be corrected – in spite of the fact that there are very many goats in Japan, France and America. What I am proposing is that it is very important for us to maintain our goats. In fact, we should be improving. Part of the money can be given to better animal husbandry so that the goats can improve and we can get goat milk which we can then process and sell.

What I am talking about is scaling it up. It is not possible for everybody who is borrowing money to simply buy a goat and prosper. I have experience now where everybody is doing the business of tents. All groups want to buy a tent. Now when you buy a tent, even the group you would have leased it to, has also got a tent. So, who are you going to lease that tent to if everybody has a tent? If one group had the tent and the other one had the chairs, at least, you can be trading with each other.

Mr. Deputy Speaker, Sir, what we are saying is that in terms of this Fund---

The Deputy Speaker (Sen. Kembi-Gitura): Have you finished with Sen. Ndiema's point of order?

Sen. Kagwe: I agreed with him, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): I want to assume that Sen. Murkomen has given up on his point of order.

Sen. Murkomen: In the interest of time, Sir.

Sen. Ndiema: On a point of order, Mr. Deputy Speaker, Sir. As we talk here, we have counties that are pastoral whose main economic activity---

The Deputy Speaker (Sen. Kembi-Gitura): Is that a new point of order, Sen. Ndiema?

Sen. Ndiema: It is the same, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): Then it has been dealt with unless there is something that was not made clear.

Sen. Ndiema: Mr. Deputy Speaker, Sir, I want to put it clear that in the semi-arid and arid areas, goat rearing is an industry and we do not want to create a situation whereby we are saying that the Uwezo Fund is not going to assist the pastoralists.

The Deputy Speaker (Sen. Kembi-Gitura): I think that is argumentative because Sen. Kagwe was putting across a debate. Unless you ask him to withdraw and apologize, I think everything else you are saying now is just argumentative and I cannot see what he should withdraw or apologize for. You will have to be more specific.

Proceed, Sen. Kagwe!

Sen. Kagwe: Mr. Deputy Speaker, Sir, I think I made the point very well. I respect people who own goats and I also even own them. I am simply saying that let us also think higher. Let us think how this Uwezo Fund can be used in building technology and making our youth move ahead in the ICT sector. That is the only way we can globalize our economy and make sure the youth are participating effectively. I want to support it with a proviso that we should look at the long term. Let us lend money on long term basis and look at the supervision and management aspect of this Fund very seriously. I agree with Sen. Ndiema that we should also look at the possibility of scaling up individual businesses for those who are already in business because they just need a little bit of funding to grow. The money they can borrow from the banks is too expensive. So, if they were given a little push from the Uwezo Fund, they would be able to boost their business and create further employment.

With those few remarks, I beg to support.

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

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

Sen. Obure: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to make very few remarks. The matter before us is very important and I only wish that we had more time to study and make more meaningful suggestions on how this Fund can best work. This is an initiative intended to help reduce poverty among our population. It is an initiative which is intended to involve people by engaging them in various useful economic activities. It is an initiative that is intended to improve the quality of life of our people. To that extent, it is a really welcome initiative.

Mr. Temporary Speaker, Sir, I just want to raise a few concerns, some of which have been raised by those who have spoken before me. I believe that there is need to strengthen the structures. I think the Senator for Nyeri pointed that out. The management structures for this kind of Fund should be strengthened to make it really meaningful and to be able to deliver the objectives you want to deliver. There is need to monitor what happens to make sure that the money is put to proper use. It should not just lend to individuals who will then go out there and disappear so that the money is not available to others after them. We should also intensify supervision and accountability. I think this is a major concern.

Secondly is what the Senator for Trans Nzoia has highlighted. The emphasis here is to assist people who come forward in groups. I think we are really losing it. How do you explain that there are many secondary school graduates, middle level school graduates, first degree holders and other professionals but they are usefully engaged? People have attained diplomas from agricultural institutions and degrees in environmental studies and all that but they are unemployed? I think we should target these individuals. These are some of the people who should benefit from this Fund. I think a sizeable proportion of this Fund should be set aside to be lent out to individuals in those categories. I think the whole concept would be enriched if we extended it to individuals rather than to groups.

Mr. Temporary Speaker, Sir, my other concern is really membership to the Uwezo Fund committees at the constituency level. If you look at the membership, it is the sub-county commissioner or his representative. That is the equivalent of the former District Commissioner (DC). The other member is the sub-county development officer. There is also the sub-county accountant and the sub-county representative of the national Government who are all civil servants. I do not know who these people are accountable to. Today, under the devolved system of Government, we have county governments operating in these areas. I do not see any accommodation for them. I do not see them involved at all in this scheme. I am aware that the county governments are in the process of recruiting ward administrators. I expect that these people should be given a role in the management of this kind of Fund because we have governments in place which are properly set up, elected by the people and are accountable to the people.

I think we should make amendments to accommodate this category of people and enhance the membership of these committees through that arrangement. I also think that a representative from each ward in the constituency will be nominated following consultations between the county women representative and the National Assembly

Women representative or the Constituency Member of Parliament. There is going to be consultation between the Member of the County Assembly and the Constituency Member of Parliament. There should be consultations between the two in order to appoint a representative from each of the county wards. What happens if those consultations do not achieve a consensus? I think we should create some mechanism through which an agreement would be fostered.

Mr. Temporary Speaker, Sir, as much as I support the Fund, I hope that the amendments that will be made by the Committee will really take care of the various concerns which have been expressed. Otherwise, I think this is a good scheme and people are looking forward to it and hoping that they will benefit from it. Let us address some of the pitfalls which we see now so that the Fund does not fail like others have failed in the past.

I support.

Sen. G.G. Kariuki: Thank you, Mr. Temporary Speaker, Sir. I rise to support this scheme. Before I do so, I would like to congratulate the President for having been the pioneer of this movement because he is the one who pronounced and announced that there will be this kind of scheme and it is now becoming a reality. We are now standing here to discuss about the pros and cons of this scheme. I hope very sincerely that this scheme will prove to be a scheme where Kenyans and especially the youth and women will remain to say, thank you.

I must raise a caution here because the Uwezo Fund with Kshs6 billion minus Kshs700 million for training and also for administration, I think is not enough. I hope that this is just a beginning for the Government to see whether it is going to work and if it works well, I think there is need for the Government to rethink and put more money in this kind of project.

Mr. Temporary Speaker, Sir, I think the youth and women need to know that this money will not benefit many of them because, in my understanding, it is a way of introducing the youth and women into the world of business. Those who will manage will make the money later on but not through this Fund. This Fund will prepare them for bigger and more challenging businesses. I think this Fund should not be looked at like something has happened that is going to help all the youth and women.

I hope there was no political overtone in deciding to start this movement because in this country, especially during the elections, politicians give false hope to the youth and women and this has never worked. This is because politicians run away from the reality because they are supposed to direct this country to more progressive economic programmes where all the people of Kenya benefit, without separating the gender. If there is a project that is going to help the women, I am sure that it can also help men and the youth.

Let us not put a lot of emphasis on this. I think this is just political. We need to think of how we can keep these young men and women busy in terms of employment. This way, we will give opportunity for those who are better than others so that they do business once they are introduced to it. All the people you see in businesses were not taken to any school. However, they are in businesses. They are the owners of shops and big firms.

As a Senate, let us not spend a lot of time talking about the structure because these will change as we move on. We have tried these structures and they may not work. Maybe these ones may not also work. We should get the right form of management. The value for this money is to introduce young men and women into the world of business. That is the way I look at it. If a loan is between Kshs50,000 to Kshs500,000, what kind of business can one do? Can you consider that to be money that can do business? How many cows can you buy with Kshs500,000? These are not even more than 10. So, this is very little money. Let us not think that we have discovered something to assist Kenya. We are still far behind in terms of assisting Kenyans in what they expect us to do.

Giving money at a rate of 1 per cent is like giving out free money. That rate is like the one given out in donations although one will be expected to pay the money back. This programme, with political middlemen, will be very difficult to handle. You can laugh and think about it. However, I think it is very difficult. For those who have been in politics for some time, you know it is not easy to deal with people. They will come to you and say that they borrowed Kshs400,000 and are seeking for *Harambee* so as to pay back the Government's money. We will just go into deeper problems. However, things need to be tried out. Some will succeed while some will not succeed. That is common in the world of civilization.

The concept is good but not an answer to our problem. I want to insist that. We need to see this country developing in totality and not in groups. We should not pretend that we will have done a very good job for them. I want to repeat that this is a kind of introduction of young people who are in business. They will be introduced to this money without expecting something out of it.

Sen. Chelule: Thank you, Mr. Temporary Speaker Sir, for giving me this opportunity to contribute to this Motion.

I also support this Motion because the said Fund, the Kshs6 billion that was promised by our President and the Deputy President during the campaigns period, was a pledge. I take this opportunity to congratulate our two principals for fulfilling their pledge to the people of this country.

We all know the kind of poverty that is at the community level. We know that 70 per cent of our country's population lives below the poverty level. There is no way we can empower these people except through such Funds. I do not want to concur with some Senators who are suggesting that these will not help in solving anything. People on the ground are suffering. If an individual on the ground is given up to Kshs3,000, he or she will make something out of it. The Kshs50,000 is not little money. We have people who are really suffering. I do not want to instill a belief that the money will not come back to the Government because it is a revolving Fund.

We still have the Youth Enterprise Development Fund and the Women Enterprise Development Fund. I am a witness of what women have done with that Fund. Most of them have refunded the amounts they had borrowed and have borrowed other amounts. All they need is training and sensitization on how to use the money.

The people on the ground are waiting for this money. They know that the money will be released in January next year. Most of the youth and women are prepared to take it. Most of the youth and women have registered and taken all the steps that are required

to have this money. They are ready to have it. I request fellow Senators to use encouraging language to our youth. What do you do with so many youth who are just idling at home doing nothing and who are getting nothing at the end of the month? It is a high time that we sensitized the community about the money that the Government has set aside for them. This is a revolving Fund that will be given to particular people. After a certain period, the same money will be used to empower a sister or brother of the same person.

I support the amendments by the National Assembly. A six months grace period is enough for any group to prepare and see that they benefit from the Fund. The two year repayment period is good time for anybody who is serious. The Senator from Meru suggested something good. However, we are talking about the community. This is not about the first, second or the third class. We are talking about communities that are suffering; a community that if a youth group was given Kshs100,000, to start business, the profit would assist them and at the end of the day, they would repay and make some profit that can assist their people at home.

People are suffering. When I say this, I know what they are going through. They are going through problems at home because of poverty. I believe that this money will benefit them.

I am happy that a committee will sit tomorrow to look at these regulations. Probably, we should consider giving individual loans because it is easier to follow a loan that has been taken by an individual rather than a group. This can still be applied the way it is done in the women and the youth funds. The rate of 1 per cent is not even interest. This is the administrative fee and money that will be used by people who will be at the secretariat level.

I am happy that the money will be managed through two structures, at the national and at the sub-county level. The sub-county is the most important part because this is where people are waiting for this money. I support this Fund because I know it will benefit people. I cannot say that people will not pay it back for sure. However, people need to have proper training in entrepreneurship and sensitization which will make them understand that this is a revolving fund. It should move from one person to another. We need to make them understand that concept.

I request fellow leaders to use any channel to sensitize the people, be it radio or anything that you come across. However, this is the money that will be given to your brother; sister and even assist other people. I stand here being one of those people who want to do something about this between now and January. People are waiting for this money. I would like to request fellow Senators, if there is anything that we need to do; we do it before going on recess.

With those few remarks, I beg to support.

The Temporary Speaker (Sen. Murkomen): Hon. Senators, before I put the question, I would like to invite the Mover to reply.

Sen. Elachi: Thank you, Mr. Speaker, Sir. First of all, we know that this Fund was as a result of a pledge by the Jubilee Government. We promised that if there was no run off, we would use the Kshs6 billion to assist the youth and women who are disadvantaged to move on and establish their businesses.

I also want to thank the county women representatives and the Members of Parliament for agreeing to work together in support of the Fund. I know that we would have wished to see the disbursement being done differently, having looked at different organisations and how they have been managing table banking. For instance, we have Jaiwa and other merry-go-rounds which have done very well among others. We know that table banking never fails.

I believe that if Members of the National Assembly have agreed that county women Members of Parliament will bring in a certain number of members and the constituencies will also do that, our prayer is that they will look after the organizations that are within their constituencies. They should look at the women groups that are there and ensure that they are the beneficiaries. Therefore, the fear of not repaying the money will not arise. Women will repay this money. They know that it is their money and that it is a revolving fund. They should go ahead to ensure that while they revolve the fund, there are dividends. Once they have received the dividends, you will see how they will be proud while repaying the money.

The other thing I want to urge the Senate is that while we are doing the amendments, we should know that we have 47 Bills in the National Assembly. Therefore, if we put in requests in terms of amendments, they may either be passed or rejected. At the end of the day, it will be women who will be disadvantaged on this.

I plead with Members, while we bring our proposals, that we limit ourselves and look at the fundamental issues.

Senator Musila asked why the Senate does not have any roles. I would like to inform him about the role of the woman Member of Parliament who is in charge. I think it would only be fair to leave Senators out of the management of these funds. One time or another, there has to be someone who will be accountable. You will be asked: Since you were also sitting on that board, why did you allow money to be mismanaged? I will request the Senators who are there to be overseers. You are there to create awareness and enlighten Kenyans about these Regulations and where to get the money at this level. That would be very important and will save Senators from sitting in many constituency meetings. When you look at the structure, it is more of a constituency fund than a county fund.

Lastly, as I reply, I would like to say that it is important to also understand where the President was coming from. Therefore, we would wish the National Assembly to look at it that way. His Excellency the President would have wished young people who were moving during the campaigns to start their own businesses, be self-employed and have something on the table as they do other businesses. Therefore, the issue of people who are already in business, we have the Fund for the youth and one for women who are in business. This is the fund where I believe we are bringing in those who are just beginning so that they can tap into other funds that we have.

The National Assembly should also look at the commission on poverty eradication and provide funds for it. So, when they denied the commission funds, there was money which had been allocated by the Government. Today, that money is just lying because they did not give a way forward on how to manage it. So, we request them to look at the fund like "*Njaa Marufuku*" which was started by the former President Kibaki.

They should find out where the money is and how we can tap it as we think of the sustainability of Uwezo Fund. Therefore, we need to consolidate all the funds and bring them together.

As we look at the proposals by the task force looking at the parastatals, we realise that they want all funds to be merged. So, as we look at it, we need to know the time frame for Uwezo Fund otherwise, we might find it collapsing by next year.

With those few remarks, I beg to move.

The Temporary Speaker (Sen. Murkomen): Hon. Senators, before I put the question, I would like to apply my mind to whether this is a Bill concerning counties or not.

Hon. Senators, Article 110 of the Constitution requires that a Bill concerns counties if it is a Bill containing provisions affecting the functions and powers of the county governments as set out in the Fourth Schedule, a Bill relating to elections of Members of County Assembly or County Executive and a Bill referred to in Chapter 12 affecting the financing of county governments. If you look at the Regulations before us and which we have discussed, they neither contain provisions relating to functions and powers of county governments as provided for in the Fourth Schedule; nor do they relate to Members of the County Assembly or County Executive and the finances of county governments.

If you look at Article 123 which deals with the decisions of Senate, it provides that when the Senate is voting on any matter other than Bills, the Speaker shall rule on whether the matter affects or does not affect counties. In the first place, these regulations are not a Bill. They are regulations. Since it is not a Bill, it is incumbent upon me to make a ruling as to whether it does affect counties or not.

As I have already said, these Regulations do not affect counties. So the question that comes before us is why did the Regulations come to this House if they do not affect counties? If you read the Public Finance Management Act, Section 205, it is express and says that the Cabinet Secretary may make regulations not inconsistent with this Act respecting any matter that is described under this Act or for carrying out or giving effect to this Act. In making regulations, the Cabinet Secretary shall consult the inter-government budget and economy council, I am sure he did so, and the regulations may apply or be limited in application of different factors and so forth.

If you read Section 205(5), it says; regulations approved under sub-section 4 shall not take effect unless approved by a resolution passed by Parliament and Parliament is both Houses, that is, the National Assembly and the Senate. In sub-section (5), it says that regulations approved under sub-section (4) shall take effect on the day after the date in which both Houses approve them or if a later date is specified in the regulations. So, both Houses again were emphasized. In sub-section (6), it says, if a House of Parliament does not make a resolution either approving or rejecting the regulations within 14 sitting days after submission, the House shall be deemed to have approved the regulations.

So, in other words, I would like us to be very clear that these regulations were imported and brought to this House, pursuant to the provisions of Section 205 of the Public Finance Management Act which makes it mandatory that the regulations made under the Act must be approved by both Houses.

Therefore, it falls under Article 123(3) of the Constitution which is that these regulations are a matter which does not affect counties other than a Bill. So, in the usual manner since this is a matter that does not affect counties, we will be voting by simple majority.

Now based on my ruling, further consideration going forward, the Speaker should contextualize the place of regulations in the discourse of Bills because we are still going to have the Committee Stage tomorrow. So, we need to contextualize the position of the Regulations and the fact that it goes through the First Reading, the Second Reading and so forth. That ruling should substantially be made by the Speaker.

(Question put and agreed to)

ADOPTION OF REPORT ON FAMILIARIZATION
TOUR OF GEOTHERMAL POWER PLANTS
IN OLKARIA AND NAIVASHA

THAT, this House adopts the Report of the Standing Committee on Energy, Roads and Transportation on the Familiarization Tour of Geothermal Power Plants in Olkaria – Naivasha, Nakuru County on 12th August, 2013 laid on the Table of the House on Tuesday, November 26, 2013

(Sen. Mwakulegwa on 27.11.2013)

(Resumption of Debate interrupted on 27.11.2013)

Sen. Obure: Mr. Temporary Speaker, Sir, I stand to second the Motion.

The Temporary Speaker (Sen. Murkomen): Order, Sen. Obure! If my memory serves me right, last time, Sen. Mwazo did not finish moving this Motion. He left it midway and I think I am very clear on that because I was in the Chair. So, this Motion has not been moved for you to second it.

I want to make a formal ruling on this; that the next time this Motion comes on the Floor of the House, the Vice-Chair of the relevant Committee should be here, because it has been pending for too long and that has been occasioned by his absence. Remember that even if Sen. Gideon Moi comes here, he cannot move this Motion because it was being moved by Sen. Mwazo. So, it is important that the Vice-Chair of the Committee be present to continue moving that Motion.

For that reason, the Motion is deferred.

(Motion deferred)

Sen. Obure: On a point of order, Mr. Temporary Speaker, Sir. In the light of what you have just said, would it be in order if I proceeded to move the Motion?

The Temporary Speaker (Sen. Murkomen): First of all, that is after the fact. I have already deferred the Motion. As to whether in future anyone else other than Sen.

Mwazo can move the Motion, because he was midway, the Chair will give a substantive ruling.

Next Order!

CONSTITUTION OF COMMITTEE TO UNDERTAKE
SECURITY REVIEW IN KENYA

THAT, aware that national security is prerequisite for maintaining a stable nation state; concerned that Kenya continues to be confronted by factors that threaten national security such as terrorist attacks, road carnage, cattle rustling, inter-ethnic conflicts, food shortage and floods; further concerned that various forms of threats to national security, such as cyber-crime and terrorism, constantly mutate thereby posing a challenge to security organs; appreciating the efforts of successive governments to safeguard national security; noting with concern that despite the efforts insecurity continues to increase; further noting that no security review has been carried out since independence to forge a common strategy on safeguarding national security; the Senate urges the National Government to constitute a Committee to undertake a comprehensive security review with a view to formulating modern strategies capable of containing crime and safeguarding national security interests.

(By Sen. G.G. Kariuki on 28.11.2013)

(Resumption of Debate interrupted on 28.11.2013)

The Temporary Speaker (Sen. Murkomen): This Motion by Sen. G.G Kariuki was moved, if my memory serves me right, under very difficult circumstances for him. It was seconded by Sen. Lonyangapuo and what was pending was to propose the question. Therefore, I would like now to propose the question.

(Question proposed)

Sen. (Dr.) Zani: Mr. Temporary Speaker, Sir, I rise to support this Motion.

Mr. Temporary Speaker, Sir, let me start by decrying the state of security or lack of it. We have discussed insecurity in this country in various fora. We have talked about it in the Senate and had various broader discussions with various other stakeholders. What is amazing is that the rate of crime is increasing in all areas, be it cattle rustling, murder, manslaughter or cyber crime. All sectors of crime seem to be increasing and we need to ask ourselves why this is happening, to begin with.

I believe that before we can curb or arrest a situation, we need to find out what are the basic facts that lead to it. Where have we gone wrong in Kenya? Is it our educational system, for instance, that creates too much expectation? According to scholars such as Martin, they say that if, for example, the level of expectation is higher than what you can

attain, then people tend to seek even what they cannot find. This can be used to explain white collar crimes specifically where, for many youth, the dream is to drive a car and to own a house without a plan of how they are going to do it.

I remember asking a group of youth sometime back that, if they got the chance to steal their first million, would they steal it? They happily and very confidently said yes, because at the end of the day, crime has become a means to achieve anything that you need to achieve in this society without really putting a lot of consideration in terms of the cost and the consequences. For many of the youth, issues like drugs have come in and made them not really think about their actions, hence determining these particular actions. To a large extent also, the failure of security organs to arrest and reprimand properly most of the offenders has also caused an increase in these specific crimes. So, somebody knows, one way or another that he will get out of the loop by having lawyers who, over time, are able to defend them, and they will do so at whatever cost.

We have a group of people who will get into crime and know that they will get out of it because they will find a way in the system of either legally or illegally getting out of it. Legally if they get lawyers who can get them out of the situation, but illegally because there are systems in terms of security organs and the processes which also tend to be corrupt. It is not new in Kenya; that we know that people give money and get away with acts of crime that they have actually perpetrated.

So, how do we go forward in terms of addressing these issues? Where do we move to? One, I think we need to exhibit our commitment; that we really want to change. If we exhibit such a commitment, we begin to ask ourselves; how do we begin to change the *modus operandi*? What new strategies can we come up with in terms of combating crime? I think very little has been done in terms of strategies of combating crime, and for many discussions that have taken place, most of the time, it is as though the perpetrators are actually one step ahead of the protectors. Cyber crime, for example, you find that now there are new ways and means of stealing from Automated Teller Machine (ATM) cards, for example.

So, we find a group of people who are always one step ahead in terms of planning and execution of these crimes. Unfortunately, this society is reaching a point where criminals and their way of life are sometimes seen to be the successful life. Therefore, if we do not find ways and means of discouraging criminal activities and creating norms and values---, because even as we talk about strategies, we need to have a background for implementing those strategies. What levels of values do we have in this society? What level of commitment to fighting crime do we have in this society? Then we can begin to think more strategically about how we can actually implement various sorts of strategies.

Unfortunately, even the strategies have not been discussed extensively, starting from police reforms that have been advocated, especially from the post-election violence; and a need to audit and say: "Where are we in terms of these police reforms? What sort of capacity building has been given, for example, to the forces so that they can actually implement their work effectively on what they do on a day to day basis and the other issues of housing, security and how they can be tackled? In Kenya, sometimes we tend to make one step forward and one step backward. We come up with ideas and strategies that we do not discuss extensively in terms of where they will take us to, the advantages, the

disadvantages and the steps to take us to the right direction. We implement policies, and then go a step backwards and accept that we went wrong.

Community policing is one of those initiatives. It is a good initiative to begin with, but to a large extent, in terms of research that has been put into it, it has failed because people do not trust those same community initiatives that have been put into place to fight crime. In the long run, you find a situation where there is community policing but nobody really comes forth to report what is happening on the ground. You will find a community that does not look at a police officer as a friend, like it happens in the Western world where community policing has been effective.

People will not come forward to report anything that is criminal, like if illegal guns have been identified somewhere or there is a theft that is about to happen. They will not report such and try to contribute towards averting a crime.

Mr. Temporary Speaker, Sir, the issue of small arms is an issue that has been discussed many times even in this Senate. What strategies can we come up with to curb the proliferation of small arms in this country in order to ensure that every Tom, Dick and Harry does not have a weapon in this country? Sometimes we hear devastating news that some of those weapons are hired out by those who should be protecting the same citizenry. This raises the issue of the best strategies to put in place.

I think we have not had a national discussion and I think this is what is being advocated by Sen. G.G. Kariuki. We should come up with a committee to undertake a comprehensive security review with view to formulating modern security strategies capable of containing crime and safeguarding national security interests. We should have national conversations in a very concise and honest manner so that if there are new strategies, then they should be brought on board. It is the responsibility of the Members of that committee to do that. This would be like a think tank that will really look back at the background and the statistics and the event of the crimes that happen, the causes for the specific crimes and the specific strategies that can be used at the various levels, be they at the individual, community, county or national level, so that it becomes very specific.

Mr. Temporary Speaker, Sir, I think the terms of reference for such a committee would be to ensure that the strategies they come up with are really new and dynamic. If we keep churning out the same old strategies that have not worked, then it will become very difficult for us to curb crime. I think such a committee should also constitute experts from the various fields be it the political, economic or security forces so that they can actually bring into interplay their knowledge and skills.

Fighting crime has always been very difficult for many generations. In fact, if you look at the rates of crime, you realize that even those who are jailed and released go back to it again. Sometimes we have heard that people in jail are still perpetrating criminal activities from inside the jail. For those who have come out, they still perpetrate the same crimes. That means that something has gone wrong somewhere. The message that crime is not acceptable has not been really received.

When many people think of what decision to make, they think of rational choice model where you put your costs and your benefits on one side. Once we put together the costs and benefits, you will see that the benefits outweigh the costs. That will be an

incentive to benefit all. From a psychological point of view with regard to using punishment as a strategy to curb crime, we should ensure that criminals are given crime deterrent sentences to ensure that they do not go back to commit crimes. That argument has been made especially in rape cases where if maximum sentence is applied--- The problem is that the judge is given discretion to decide to give either the minimum to the maximum. All those factors come into interplay in making a decision about the maximum sentence someone should be given.

That is where the whole combination of the criminologists themselves, police officers, and the judiciary need to come together. I think there has not been enough interaction between those specific arms. At times, the issue of crime is proliferated further because everybody seems to be moving to a different perspective rather than joining together. Judges and prosecutors should articulate the cases. However, there seems to be a lack of balance between what is expected of them and what they come to do.

In countries where systems are working very well, we still have issues coming out in terms of the way sentences are given. Some countries, especially those in the West have moved to a different strategy to deter people from going back to crime. Some countries have come up with the use of houses where people are still in prison but are allowed to go out. The cost of putting people in prison is very high. Some people who are put in prison do not even give back. I have seen people who get very happy when they are arrested because they think they can get everything in prison for free. If this is the mindset of the people who are in prison, then how will we deal with them? People who are convicted of crimes which are not very serious should be left out so that they anticipate going back to their families and to give back to the community.

What happens to families where a father has been imprisoned and, therefore, cannot play his fatherly role? Is there a way we can balance this? How do we treat a chicken thief *vis-à-vis* someone who has stolen billions of money within a particular society? We should have that balancing act and look at the systems. We need to know what has gone right and what has gone wrong with those systems and to evaluate what has made people in other societies that have found it critical for people to move forward.

This Committee needs to be empowered. However, the selection of who needs to be in the Committee needs to be done carefully. This needs to be a think-tank of brilliant new minds that want to do things differently. The issue of criminals and crimes is not something that is only being fought by the Third World. The developing world is also fighting. This is being fought by everyone everywhere.

With those remarks, I beg to support.

ADJOURNMENT

The Temporary Speaker (Sen. Murkomen): Hon. Senators, it is now time to adjourn the business of the House. It is now 6.30 pm. The Senate is adjourned until tomorrow, 9.00 am, Wednesday, 4th December, 2013.

The Senate rose at 6.30 p.m.