

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 5th March, 2015

The House met at 2.30 pm

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

PRAYERS

COMMUNICATION FROM THE CHAIR

OPERATIONALISATION OF MEMBERS' MEDICAL SCHEME

Hon. Speaker: Hon. Members, this is to communicate on an issue relating to Members' Medical Scheme. In recent times, a number of Members have had concerns about the implementation of the Members' Medical Scheme, ranging from entitlements to Members to administration and management of the Scheme. The Parliamentary Service Commission (PSC) recently held a meeting with the management of the scheme administrators, M/s AON Kenya Insurance Brokers Limited. It has been agreed that the top management of AON Kenya Insurance Brokers Limited attend and brief a joint *Kamukunji* on Thursday, 12th March, 2015 at 10.00 am in this Chamber. This is, therefore, to request all hon. Members to note and attend the *Kamukunji*. All concerns and questions regarding the medical scheme will be addressed during the *Kamukunji*.

Thank you, hon. Members.

Next Order!

MESSAGES

CONCURRENCE ON THE NATIONAL YOUTH SERVICE (AMENDMENT) BILL

Hon. Speaker: Hon. Members, I wish to convey that I have since received a message from the Senate regarding the passage of the National Youth Service (Amendment) Bill, Senate Bill No.26 of 2014. The message states as follows:-

“The National Youth Service (Amendment) Bill (Senate Bill No.26 of 2014), which was published in the *Kenya Gazette* as a Bill originating from the Senate, was passed with amendments by the Senate on Thursday, 19th February, 2015.”

The Senate now seeks concurrence of the National Assembly on the said Bill.

Hon. Members, I am aware that the Clerk has since circulated copies of the Bill, which is scheduled for First Reading today, upon which it will stand referred to the Departmental Committee on Labour and Social Welfare for consideration. The Committee is expected to submit a report before the Bill is considered by the House for

Second Reading. I also direct that before the Bill is scheduled for Second Reading, the Committee must engage the Budget and Appropriations Committee of this House with a view to satisfying the requirements of Article 114 of the Constitution relating to money Bills.

Thank you, hon. Members.

SENATE RESOLUTIONS ON THE BUDGET POLICY STATEMENT, 2015

Hon. Members, Standing Order No. 41, relating to messages, requires the Speaker to expeditiously report to the House any messages received from the Senate. In this regard, I wish to report that on 2nd March, 2015, I received a message from the Senate regarding Senate resolutions on the Budget Policy Statement, 2015. This is the first time the Senate has considered the Budget Policy Statement. Since the Budget and Appropriations Committee of this House has already tabled its Report, which is due for consideration, I will allow the Chairperson of the Committee to move the Motion for adoption of the Report in an amended form, taking cognisance of the Senate resolutions.

Thank you, hon. Members.

Hon. Members, I know that there is anxiety as to the other communication, which I have decided to give much later, when we have more Members in the Chamber. The Communication relates to the issue that you canvassed extensively yesterday.

Hon. Bosire: On a point of order, hon. Speaker. I have a petition.

Hon. Speaker: Hon. Bosire, I do not have a record of a petition. Please hon. Members, when you have delays in processing your petitions, just bring such information to my attention in the office, so that we can direct the relevant committee to take action.

Hon. Bosire, approach the Clerk and let it be noted, so that we can make appropriate communication.

PAPERS LAID

Hon. Katoo: Hon. Speaker, on behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House today, Thursday, 5th March 2015:-

The Report of the Senate Standing Committee on Finance, Commerce and Budget on the Medium-Term Budget Policy Statement 2015.

The Report of the Auditor-General on the Financial Statements of the Kenya Universities and Colleges Central Placement Service for a five-month period ending 30th June 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Literature Bureau for the year ended 30th June 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on Financial Statements of the University of Nairobi for the year ended 30th June 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on Financial Statements of the National Council for Law Reporting, for the year ended 30th June 2014 and the certificate of the Auditor-General therein.

Thank you, hon. Speaker.

Hon. Speaker: Let us have hon. Chepkong'a.

Hon. Chepkong'a: On a point of order, hon. Speaker. We had a report to table this afternoon on the vetting of a nominee to the Kenya National Commission on Human Rights (KNCHR). Unfortunately, the Report was delayed because it had some errors. I am seeking your indulgence that the Report be tabled later on at 4.00 O'clock.

Hon. Speaker: Yes, the Report by the Departmental Committee on Justice and Legal Affairs on the vetting of the nominee to the KNCHR will be tabled at 4.00 p.m. today. We are just seeking the extension of time in which to table the Report. It is a Paper.

Is it proposed that the honourable Midiwo has a point of order?

Hon. Midiwo: Sorry, hon. Speaker. I wanted to raise a point of order. When you spoke about the Senate's wishes that we should incorporate the current budget policy--- I guess we are now complying with the court ruling. Since we are talking about the Budget, there is an issue which I thought at that point I should arrest because it has to do with the Budget; now that we are talking about the policy, we are about to talk of the "meat" in the Budget in the next few months. This is an issue that came up to the attention of Members in the last Budget, where there was an attempt by Members, and I do not see any Member of the Budget and Appropriations Committee here--- Hon. Mbadi will guide us since he is shouting.

Hon. Speaker, some of your flock is so used to shouting in this Chamber. I wish you could rein in on them.

(Laughter)

That is with a light touch.

In the last Budget there was an attempt by the Members of the Budget and Appropriations Committee to do something which Members of this House thought was very illegal. They allocated special budgets to their constituencies. I wonder how that would have been different from our normal view about rent-seeking. However, we wanted you to give guidance now that we are going to discuss the Budget Policy Statement (BPS), and we will be talking about the Budget; it is necessary for you to rule over this issue where a few Members of this House can give themselves powers to allocate money to their constituencies. They are few, and why not all so that you guide them in the right process of Budget-making. This is so that we do not look like we are fighting our own colleagues when it comes to the issue of the Budget debate.

I thank you hon. Speaker.

Hon. Speaker: Hon. Members, the problem is that some of you like raising their hands. I thought that was a habit in some process of learning, which I thought Members of this House left some time back. Since we have not got to that Motion, it will be fair to address the point raised by hon. Midiwo when we get to Order No. 12, even though I

have information that it may not be dealt with today. There has been a request to take it to Tuesday next week.

Any Member is at liberty to approach the Speaker and make such a request. It happens regularly. So, do not try to frown and appear like you are shocked. Some of you are always acting. This is not the time for *bonga points*. We will deal with the matter when we get to that Order. I can see the Temporary Leader of the Minority Party, hon. Athanas Misiko Wafula Wamunyinyi is in agreement.

(Laughter)

So, let us go to the next Order. It shall be gross disorder for any Member sitting in their places to start shouting things which are not quite clear to the Chair.

STATEMENTS

Hon. Speaker: Let us have hon. Katoo ole Metito.

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 10TH MARCH 2015

Hon. Katoo: Thank you, hon. Speaker. Pursuant to Standing Order No.42(2)(a) and on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the Business appearing before the House, the week beginning Tuesday 10th March 2015:

On Tuesday priority will be accorded to the following Motions:-

1. The Report by the Departmental Committee on Justice and Legal Affairs regarding the vetting of the nominee to KNHRC.
2. The Special Report of the Public Investments Committee on procurement of the Kenya Pipeline Company Limited Line One Capacity Enhancement Project.
3. The Report of the Kenya Delegation to Inter-Parliamentary Union.

Also scheduled are two Senate Bills, both of which are amending the County Governments Act. Should we conclude those Bills today because they are appearing on the Order Paper, we will consider the National Honours (Amendment) Bill 2014, which is also a Bill originating from the Senate.

The HBC is of the view that on Wednesday morning priority will be accorded to the following Private Members' Bills:-

1. The Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013.
2. The Persons with Disability (Amendment) Bill, 2013.
3. The Traffic (Amendment) Bill, 2014.
4. The Alcoholic Drinks Control (Amendment) Bill, 2014.

However, consideration of the Alcoholic Drinks Control (Amendment) Bill 2014 and the Retirement Benefits (Deputy President and Designated State Officers) Bill 2013,

are subject to availability of written recommendation from the Budget and Appropriations Committee on the amendment proposed to the two Bills.

Hon. Speaker, also to be considered next week by the House in the Committee of the whole House and Third Reading is the Protection Against Domestic Violence Bill 2013 and the Public Audit Bill 2014, which is one of the Bills with a constitutional timeline. I urge Members with proposed amendments to the Bills to hand them to the office of the Clerk in good time as they have to appear in the Order Paper.

Regarding the Cabinet Secretaries who are supposed to appear on Tuesday 10th March 2015, the schedule is as follows:-

1. The Cabinet Secretary for Interior and Co-ordination of National Government, will appear at 10.00 a.m. before the Departmental Committee on Administration and National Security to answer questions from hon.(Ms.) Ibren, hon. George Peter Kaluma, and hon. Ann Gathecha;
2. The Cabinet Secretary for Treasury will appear at 10.00 a.m. before the Departmental Committee on Finance, Planning and Trade to answer questions from hon. ChachuGanya and hon. Rachel Ameso;
3. The Cabinet Secretary for Education, Science and Technology will appear at 11.30 a.m. before the Departmental Committee on Education, Research and Technology to answer questions from hon. Isaac Mwaura, hon. Alice MuthoniWahome, hon. Kenneth Okoth and hon. Esther MurugiMathenge.

Finally, the House Business Committee (HBC) will meet on Tuesday 10th March 2015 at the rise of the House to consider business for the rest of the week. I now wish to lay the Statement on the Table of the House.

Hon. Speaker: What is the point of order, hon. Gumbo?

Hon. (Eng.) Gumbo: Thank you, hon. Speaker. I wish to thank the Acting Leader of the Majority Party for outlining the programme that will come before the House next week. In the programme that the Acting Leader of the Majority Party has outlined, one of the Bills slated for Third Reading is the Public Audit Bill. I have a number of amendments, in fact, about 50 of them, and it has taken me almost two weeks to prepare them. I am raising this concern because, when we did the Election Financing Bill, I made several amendments but the Committee considered them without inviting me. The amendments that appeared in the Order Paper left out some of my proposals. I believe a lot of these amendments are meant to enrich the Bill. The tradition we have had in this House is to engage the Member so that you reach an agreement. This is because some of these amendments will already be captured by somebody else. If we can engage, then we will be able to know which ones are going to be admitted, or which ones have been captured so that we do not duplicate our services.

Hon. Speaker: Indeed, that is important. When a Member has proposed numerous amendments to a Bill, it is only fair that the Committee concerned invites the Member so that you can try to iron out what can be ironed out in good time. This is so as to avoid a situation whereby in Committee of the whole House, it becomes like another re-opening of debate. Hon. Katoo, are you in that Committee?

Hon. Katoo: I am not in the Committee, but I will communicate that to the Chairperson of the Departmental Committee on Finance, Planning and Trade. As I have stated in the Statement, I urge my colleague and other Members who may have

Statements that this is one of the Bills with a constitutional timeline. We moved the deadline to May, 2015. As a House Business Committee we resolved that the earlier we finish the better. This is because these Bills have to go to the Senate.

*(Hon. Keynan greeted an hon. Member
while standing on the gangway)*

Hon. Speaker: Hon. Keynan, you are likely to be seeing the door in the next few minutes.

Hon. Kato: Hon. Speaker, I just want to communicate to hon. Eng. Gumbo and other Members who may be having backing amendments, especially on the Public and Audit Bill that this Bill has a constitutional timeline. The House, in its own wisdom, moved the deadline to May, 2015 something which can only be done once. This is one of the Bills that will have to go to the Senate. We had resolved as a House Business Committee that the earlier we conclude this Bill the better so that there is room for proper negotiation to beat the deadline.

Thank you, hon. Speaker.

Hon. Speaker: I think the point made by the Majority Whip is relevant. Any Member with desired amendments and proposals to the Public Audit (Amendment) Bill should, indeed, present them for the simple reason as explained. That the Bill after consideration by this House will go to the Senate which is at liberty to do whatever they may wish to do and bring it back. Should there be a disagreement, hopefully there should not be any then, of course, we are likely to invoke Articles 112 and 113 of the Constitution which could easily eat into the time available to conclude the two Bills.

It is only fair that everyone takes their work as seriously as hon. Eng. Gumbo, who has already proposed over 50 amendments. It is fair that you sit with the Committee so that you can go through and consider them. That way, when it comes to the Committee of the whole House, you minimize debate. Not many of you remember what happens in the Committee of the whole House because I noticed that usually they are very few. That is the most crucial stage of a Bill. That is when you make the law so that when you go out to the constituencies you can say you made this-and-that law. I know that everyone goes out there to claim that they made a particular law even when they did not participate in that crucial stage. These are very important Bills. They are important to the people you represent.

BILLS

First Reading

THE NATIONAL YOUTH SERVICE BILL (SENATE BILL No.26 OF 2014)

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

Third Reading

THE CLIMATE CHANGE BILL

Hon. Speaker: Hon. Members, the debate on this Bill by hon. (Dr.) Wilber Ottichilo was concluded, but the Question was not put. I proceed to do so.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

Third Reading

THE CHILDREN (AMENDMENT) BILL

Hon. Speaker: Order, hon. Members! Hon. Abass, do not cross the Floor in that manner! You are in the National Assembly.
Hon. Members, once again, debate on this Bill was concluded yesterday. What remains is for the Question to be put and I proceed to do so.

(Question put and negatived)

(Loud consultations)

Hon. Speaker: Order, Members! Take your seats. I will put the Question, again, for clarity. Please, resume your seats so that we put the Question, again.

(Question put and negatived)

Are those Members standing in support of a claim for a Division? Order Members, including this one walking out. Order, hon. Members! Order! Resume your seats.

(Hon. Abongotum shook hands with other Members)

Order, hon. Kamama! Hon. Members, just listen. Order, Members!
Hon. Rachel Nyamai, stop where you are. It means you do not even pay attention to what is happening. You are just busy shaking hands.

Hon. Members, any Member standing must say that they are claiming a Division.

Hon. Speaker: Is that the case?

Hon. Members: Yes.

Hon. Speaker: Any other Member should be seated. I want to see the Members standing to claim a Division.

(Several Members stood up in their places)

Order, Members! Those claiming a Division have the numbers. You may now resume your seats. Order, hon. Members! Serjeant-at-Arms, ring the Division Bell for ten minutes.

(The Division Bell was rung)

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

*[The Temporary Deputy Speaker
(Hon. Cheboi) took the Chair]*

The Temporary Deputy Speaker (Hon. Cheboi): Order, Members! I order the Bar to be drawn! Can all the Members resume their seats?

(Loud consultations)

(Hon. (Ms.) Munene stood up in her place)

Member for Othaya, Order! I do not really know what is exciting you. You are going to have the opportunity to vote one way or the other. It is about time we finalised this matter. I can see the excitement, but I will not allow disorder. Members, there is no point of order now. We are proceeding to vote. Members, you have the opportunity. I believe you understand that you are supposed to vote one way or the other.

There will be no shouting “no” or “yes”. Order, Members! I am going to take-----

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Hon. Members: No! No!

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, can you now log in? Log out first, Members! Remove your cards. Hon. Members, log out. I can still see hon. Maanzo, hon. Osele and hon. Waluke. Hon. Waluke, please, log out. Hon. Keter, you have just logged in when I am asking hon. Members to log out. Hon. Ndambuki, I am going to remove you from the Chamber. Resume your seat! Hon. Ndambuki, that is total indiscipline. Can you resume your seat quickly? You might lose your right to vote, hon. Ndambuki. Members must be disciplined.

I said that all hon. Members should log out, which you have done. We will go through the normal process.

Hon. Members, log in now. You have 60 seconds to vote. For those hon. Members who do not have their cards, they will vote manually. I have made that order. We are very keen. Hon. Ndambuki and the rest will line up here and vote. The rest should proceed to the right of the Chair. I am surprised that even hon. Kaluma himself does not have his card.

Hon. Members, proceed to vote. I do not want hon. Members who come to vote as an afterthought.

(Question put and House divided)

(The Question negatived by 97 to 65 votes)

AYES: Messrs Odanga, Midiwo, Rai, Mwamkale, Kombe, Mwanyoha, Wakhungu, Robi, Maweu, Ngo'ngo, Mustafa, Mwaura, M.D. Duale, J.O. Omondi, Wandayi; Ms.Tuya; Messrs Injendi, J.K. Bett, Chea, Nanok; Eng. Gumbo; Messrs ole Ntutu, Wangamati; Prof.Nyikal; Messrs Kato, Opiyo, Mwadime, Rotino, Akujah, Kipyegon, Karithi, Kimaru, Simba, Koyi, Makenga, Tongi, Mbui, Lagat, Tonui, Lempurkel, ole Kenta, Mwaita, Magwanga, Gichigi, Andayi, Onyango, Mulu, Kangara, Ababu, Kajwang', Abongotum, Mwadeghu, Nderitu, Wetangula, B.K. Bett; Dr.Munyaka; Messrs Wamunyinyi, Korir, Keynan, Ichung'wah, H.K. Njuguna, Moi, Kaluma, Mwashetani, Lomunokol

NOES: Messrs Gethenji, Baiya, Abass, Abdinoor, Aden, Farah, Nooru, Oyugi, Dido, Wario; Ms.Chae; Mr.Lentoimaga; Ms. B.N. Nyaga; Messrs Shinali, Kitungi, Ganya, Njagagua, Nakuleu, Wambugu, Anyango, Gikaria, Bowen, Losiakou; Ms.Ghati; Messrs J.K. Chege, Ngare; Ms. F.I. Ali; Mr. F.K. Wanyonyi; Ms.Kajuju; Messrs Njenga, Ogalo; Ms.Duri; Messrs Osman, Kiptanui, Rop, Ekomwa, Murgor; Ms.Teiya; Messrs Omagwa, Kihagi, Serut, Waiganjo, Sakaja, M'uthari, Manje; Dr.Laboso; Messrs Kemei, KabandowaKabando, Murungi, Okoth, A.B. Duale, Sang, Muluvi; Ms.Otucho; Ms.Mbugua; Ms.Seneta; Ms.Munene; Mr.Onyura; Ms.Odhiambo-Mabona; Messrs Huka, Mohamed Abdi, Lessonet; Dr.ShabanMr.Koinange; Ms.Tobiko; Messrs Mwangi, Shehe; Ms. R.K. Nyamai; Ms.Shebesh; Ms.Amolo; Mr.Letimalo; Ms.Changorok; Dr.Pukose; Ms.Mumo; Messrs Bunyasi, Chepkong'a, Ndiritu, Anami, Karani, Mule; Ms.Chebet; Ms.Musyoka; Mr.Bosire; Ms. T.G. Ali; Messrs Kisang, Cheruiyot; Ms.Kering; Mr.Juma; Ms.Muia; Ms.Muhia; Messrs Mirenga, Nakara; Ms.Korere; Messrs Alfred Keter, Serem; Ms.Ngeny; Mr. C.M. Nyamai.

ABSTENTIONS: Hon. Njomo, Hon. (Ms.) Gathogo, Hon. (Eng.) Mahamud,

(Applause)

(Several hon. Members withdrew from the Chamber)

The Temporary Deputy Speaker (Hon. Cheboi): Those hon. Members who are walking out, be informed that the Speaker will be making a Communication from the Chair very shortly. I am sure hon. Members will be equally interested in that particular Communication from the Speaker. So, those hon. Members who are retreating, you should be informed that, that is going to be happening very shortly.

MOTION

EXTENSION OF PERIOD FOR CONSIDERATION OF AMENDMENTS TO STANDING ORDERS

Hon. Kajwang': Hon. Temporary Deputy Speaker, I beg move the following Motion:-

THAT, notwithstanding the provisions of Standing Order 263(4), this House resolves to extend the period for consideration of proposals for

amendment of the Standing Orders by the Procedure and House Rules Committee as initiated by the Chairperson of the Departmental Committee on Justice and Legal Affairs by a period of twenty eight (28) days from March 05, 2015.

Hon. Temporary Deputy Speaker, I hope we have recovered from the loss and the successes of the Children (Amendment) Bill, and we are ready to hear each other on this Motion.

Towards the end of the last Session, the Chairperson of the Departmental Committee on Justice and Legal Affairs, hon. Chepkong'a, wrote to the Chairperson of the Procedure and House Rules Committee, requesting consideration to amend Standing Order 176 to allow the House to approve any proposals for discharge of a Member from a Committee.

Hon. Temporary Deputy Speaker, you will recall that on February 25th, 2015, the Leader of the Majority Party wrote to the Chairperson of the Procedure and House Rules Committee, proposing amendments to Standing Order Nos. 108 and 109.

(Loud consultations)

This is something that hon. Members would want to listen to carefully. Please, protect me from the hon. Members who are consulting loudly.

The Temporary Deputy Speaker (Hon. Cheboi): Order! Order, hon. Members! The decibels are quite high! Order, Member for Nyandarua! Hon (Ms.) Muhia, hon. Abongotum, and the Chair of the Departmental Committee on Defence and Foreign Relations, please resume your seats. Let us give the opportunity to hon. Kajwang' to move his Motion in peace.

Hon. Kajwang': Thank you, hon. Temporary Deputy Speaker. I need to repeat, so that all Members very closely know that the Leader of the Majority Party wrote to the Chairperson of the Procedure and House Rules Committee proposing amendments to the Standing Order Nos. 108 and 109 to provide for stiffer penalties for hon. Members guilty of gross misconduct. In this regard, the Committee has been considering the following things: whether we can separate disorderly conduct from gross disorderly conduct and whether we can prescribe, or ascribe, a definition of what constitutes disorderly conduct and what is gross disorderly conduct.

You now know that Standing Order No. 107 does not differentiate misconduct from what is gross misconduct or grave disorderly conduct. The consequences of being named for disorderly conduct are---

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Kajwang'. I see the hon. Member for Kiminini. What is it?

Hon. Wakhungu: Thank you, hon. Temporary Deputy Speaker. I rise to seek your guidance or support. Hon. T. J. Kajwang' is raising a very important issue. Before he moved to the second part, there was an element in the first part, which is about whipping. I am humbly requesting, because there was so much noise, if he could, please, start afresh. Actually, that is something which is very critical.

The Temporary Deputy Speaker (Hon. Cheboi): Well, I thought hon. Kajwang' repeated it. I do not think it is proper that he repeats it. Probably, he will paraphrase it somewhere along the way.

Hon. Wakhungu: Thank you, hon. Temporary Deputy Speaker.

Hon. Kajwang': Yes, hon. Temporary Deputy Speaker. I am laying a foundation and basis on which we are requesting the extension of time; it began from the letter that sprang from the Chairperson of the Departmental Committee on Justice and Legal Affairs, hon. Samuel Chepkong'a, who wrote to the Chairman of the Procedure and House Rules Committee, seeking proposals on how to discharge a Member from a committee. You, hon. Members, know that hon. Chepkong'a had proposed, through the Committee, I believe, that when a Member is discharged from a committee then that Member should be brought before the Plenary for a resolution of the House, either to discharge him or not to discharge him. And so, he has requested a consideration of the Standing Orders that would effect that kind of thing.

Secondly, the Leader of the Majority Party has requested, similarly, for the Committee to consider whether we can graduate the Standing Orders to clearly define issues of gross misconduct. I was about to say the third thing, that is consequences to people named for disorderly conduct or gross disorderly conduct, so that there are also punishments which are commensurate to the conduct that is in question.

Right now, under the Standing Orders, the hon. Speaker will only send out somebody for the rest of the day or for at most four days or something like that. There is thinking from the Leader of the Majority Party that we may want to graduate these things so that the Speaker has a better control of order in the Chamber: the place of the Mace for example and interruption of procession of the Speaker. For example if someone were to cross the Speaker's line as the procession is either entering the Chamber; misconduct of Members, strangers in the Gallery, strangers in the presence of the House generally, misconduct of a Member during the President's Address on Special Sittings, misconduct of a Member after ordinary days of the sessions have ended, misconduct of a Member during the last day of the Session, and Members want to hear this also, procedure for the removal of the Speaker.

You know that the Standing Orders do not attempt to explain the procedure for the removal of the Speaker. It is left to the Constitution and until the Constitution has been broken down, either in legislation or in Standing Orders, hon. Members here who, for very good reasons, may wish to move a Motion that the Speaker be removed from office may not know the procedure by which that is done.

The Committee had several sittings to consider the above proposals. However, we request that any other hon. Member who has proposed amendments to the Standing Orders should write to the Committee, so that when we present the report to the House it is comprehensive and reflects the views in the contributions of the House. I remember that this was a very important issue of discussion during the leadership retreat, but I think it needs to be widened to cover all Members of the National Assembly, so that there is wide consultation on this issue, not just in the National Assembly but with other stakeholders and members of the public. We have public participation in these issues in general. We should be informed by the extensive consultations required, the analysis of several traditions, how other jurisdictions do their things in other areas, set precedent and

practices. The Committee, therefore, requests an extension by another 28 days to begin from 5th March, 2015 to be able to present its report.

I thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Very well. Who is seconding you? Is it hon. (Eng.) Gumbo?

Hon. Kajwang': I request hon. (Eng.) Gumbo, as a ranking Member of the House, to second this.

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Speaker. I wish to second the Motion as moved by hon. Kajwang'. This request is really timely and, as a House, we need to rise to the occasion, seize it and look at some of the deficiencies in our Standing Orders.

Hon. Temporary Deputy Speaker, being privileged to have sat in the last Parliament, I think that some of the carry forwards of our Standing Orders from the last Parliament are not helpful. I have in mind an example of Standing Order No. 33, which is on the Motion for Adjournment. This Standing Order has made adjournment Motions mere rituals, because we come here, debate and no action is taken. The reason is because in the last Parliament, that is the Tenth Parliament, Ministers used to sit in the House and they would be the last people to speak on Motions for Adjournment. I remember, for instance, in the last Session, there were over ten Motions for Adjournment on security.

People talk but no action is taken. It is an opportunity for us to reinforce these Standing Orders, so that we can use the Motion for Adjournment to come up with a decision of the House to bind the Executive to act on certain things.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. (Eng.) Gumbo, I have been reluctant because initially as you see, there was quite a lot of excitement here but I can now clearly see. In terms of your seconding, would you want to go into the meat of what is going to come up later, or you simply want to specifically talk about that issue of extension?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, when hon. Kajwang' was moving, he said that hon. Members who may have other suggestions can present them. That is the line that I want to take.

The Temporary Deputy Speaker (Hon. Cheboi): Well, but I am looking at the issue of the Motion itself. I would not want us to go into the content.

Hon. (Eng.) Gumbo: Yes, but hon. Temporary Deputy Speaker, I am just trying to look at the other aspects. I have also looked at a matter we have spoken about here that committees are mandated to look into reports. They can and are allowed to table reports within 48 hours of a resolution being made but we have not made a decision. If you look at the Standing Orders, they do not say how long a report of a Committee will take to be debated once it is tabled in the House. I think these are some of the deficiencies that we need to think about.

Lastly, I think it is time this House pronounced itself on the issues of chairpersons of committees. It is time that chairpersons of committees realised that they are just but first among equals. Some committees have shown a lot of laxity, yet they have hon. Members who can actually do those jobs. This provision which makes a chairperson of a committee sit there for about five years once they are elected or until a Motion is moved

should change. We should change the Standing Orders to make it mandatory to elect chairpersons of committees every two years.

With those remarks, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, I will give an opportunity to one person from either side and then proceed to put the Question.

I can see hon. Member for Balambala

Hon. Aden: Thank you very much hon. Temporary Deputy Speaker, for this opportunity. I stand to support this Motion as a Member of the Procedure and House Rules Committee.

*[The Temporary Deputy Speaker
(Hon. Cheboi) left the Chair]*

[The Speaker took the Chair]

The reason why we are asking for this extension is because there are very important amendments that are being suggested to the Standing Orders, which are the rules that govern the procedures of this House.

There are a number of them. We were handling the proposed amendment to Standing Order No. 176 by the Chairman of the Departmental Committee on Justice and Legal Affairs, and Standing Nos. 174 and 175. I must say that there are also suggestions for amendments on Standing Order Nos. 107, 108 and a number of other Standing Orders. What we thought was that because the request by hon. Chepkong'a is almost lapsing - 21 days within which the Committee is required to give a report back to the House - instead of just rushing without one report for debate on the Standing Orders, we would rather request the House for more time. This will enable us to put together all suggested amendments and bring them back as one solid amendment, that is all them together at the same time. So we are seeking that extension. We ask and pray that hon. Members grant us that opportunity, so that we can do one big comprehensive job on the Standing Orders as a Committee.

I thank you, hon. Speaker.

(Question put and agreed to)

Hon. Speaker: I had indicated that I would allow hon. Chepkong'a to lay on the Table certain Papers.

PAPER LAID

Hon. Chepkong'a: Thank you, hon. Speaker, for your indulgence.

Hon. Speaker, I beg to lay the following Paper on the Table of the House, today, Thursday, 5th March, 2015:-

The Report of the Departmental Committee on Justice and Legal Affairs on the approval for appointment of Dr. Samuel NjugunaKabue by His Excellency the President as Commissioner to the Kenya National Commission on Human Rights (KNCHR).

NOTICE OF MOTION

ADOPTION OF REPORT ON KNCHR

Hon. Chepkong'a: Hon. Speaker I beg to give notice of the following Motion:-

THAT, pursuant to section 11(7) of the Kenya National Commission on Human Rights Act, 2011, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs and rejects the appointment of Dr. Samuel NjugunaKabue as a Commissioner to the KNCHR.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, before I issue the Communication that I had indicated I would be giving, I wish to inform the House, as I had done earlier on, that through a request by the Budget and Appropriations Committee, the business appearing on the Order Paper as No. 12 is to be stepped down and be put on the Order Paper on Tuesday, 10th March, 2015 at 2:30 pm when the House reconvenes.

(Motion deferred)

Hon. Members after I finish making this Communication, the business that should follow is business appearing on the Order Paper as No. 13.

(Several hon. Members entered the Chamber)

I should get hon. Members who are standing to take seats, especially if they are Chairpersons of Committees.

An hon. Member: Were they in the retreat?

Hon. Speaker: Yes; they were in the leadership retreat.

COMMUNICATION FROM THE CHAIR

ALLEGED BREACH OF PRIVILEGE BY MEMBERS

OF PUBLIC ACCOUNTS COMMITTEE

Hon. Speaker: Hon. Members, I have this Communication on the alleged breach of privilege by Members of Public Accounts Committee (PAC).

You will recall that yesterday during the afternoon sitting, the Leader of the Majority Party, hon. Aden Duale, MP, sought the guidance of the Chair on the recent claims of malpractices within the PAC as a whole including its Chairperson. In particular, the Leader of the Majority Party sought directions on the following issues:-

- (i) Whether the claims made by Members of the PAC against the Chair and against each other constitute a breach of the privileges and/or conduct of Members of Parliament; and
- (ii) Whether following the allegations, the PAC would be in order to continue discharging its mandate of offering oversight of other Government institutions and agencies on behalf of this House.

Several hon. Members, including the Deputy Speaker, hon. Midiwo, hon. Manje, hon. Wandayi, hon. Yusuf, hon. Osele, hon. Ngeno, hon. Abdikadir, hon. Baiya and the Chairperson of PAC subsequently contributed to the debate, raising issues peripheral to those raised by the Leader of the Majority Party. Amongst the issues raised were:-

- (i) whether criminal culpability accrues to a group of persons or to an individual person and whether it is prudent to condemn a whole membership, either of a committee or of the whole House, merely on account of an allegation that is directed, or is concerned with a particular individual;
- (ii) whether the House should entertain allegations against its Members without substantiation by the person alleging as required under Standing Order No. 91;
- (iii) whether a matter that has been investigated by a committee and the outcome delivered in the committee can be revisited by the plenary of the House or by another committee of the House;
- (iv) whether allegations of breach of privilege or the ethics of Members of the House should be dealt with by their respective political parties or by the House.

Hon. Members, before I make my decision known to the House, allow me to revisit the question of the place of the PAC as I had done sometime last year. There has been growing interest in parliamentary accountability and oversight as part of the wider interest in stronger political institutions and structures.

The popularity of parliamentary public accounts committees is regarded as having originated in the nineteenth century in Britain with the establishment of a Select Committee of Public Accounts in the year 1861, which was a precursor to earlier notably sporadic committees and commissions of public accounts. This trend has developed in most parliaments with many legislatures having equivalent of public accounts committees to scrutinize government funds. In this regard, watchdog committees like the Parliamentary Public Accounts Committees have been established to deal with these matters. In our case the PAC and the Public Investments Committee (PIC) have been established by Standing Orders Nos. 205 and 206, respectively.

The Committee draws its power from the provisions of the Constitution of Kenya, 2010, in particular Articles 95 and 229, which give the National Assembly powers to appropriate funds for expenditure by the national Government and other State organs through approval of the Budget and subsequently oversight over the national revenue and its expenditure. On the other hand, the Auditor-General is required to audit and report on accounts of the national Government and other State organs, amongst others, and submit such reports to Parliament.

Hon. Members, the Auditor-General thus has a direct responsibility to Parliament and the Committee whose work is made more credible by the support of the Auditor-General. It follows, therefore, that the work and the reports of the Public Accounts

Committee (PAC) must, of essence, maintain the values of accountability, integrity, reliability and latitude of independence from any person or authority.

Erskine May, a leading authority on parliamentary practice notes that the oversight role of PACs is concerned with whether policy is carried out efficiently, effectively and economically, rather than with the merits of government policy itself.

The primary role of those committees therefore is the safeguarding of public interest. The stature of PACs has traditionally been placed above other Committees and they are seen as the apex for financial oversight and scrutiny. The Committees, most of which are usually headed by Members of the Opposition or Minority Parties in many jurisdictions, are seen as embodiment of the overall oversight image of Parliament.

Hon. Members, that brief now brings me to the question of whether the Speaker or the House has jurisdiction on a matter that has been canvassed or, indeed, settled in a committee.

Faced with a similar question, Speaker Statham of the New Zealand House of Representatives ruled in 1921 that:-

“The House has no cognisance of anything taking part before a Committee, unless it is reported by the Committee through its Chairperson, or the matter relates to a question of privilege.”

Later in 1979, Speaker Harrison of the same House, upholding the ruling of his predecessor observed that:-

“The Speaker has no jurisdiction or authority whatsoever to get involved in proceedings of a select committee, unless approached by the Chairperson following a resolution of the Committee calling the Speaker to adjudicate on any matter, or if the matter is one of the privilege of the House or personal privilege of a Member of that Committee.”

Hon. Members, you will recall that the Leader of the Majority Party indicated that his submission was a question of privilege and had posed the question whether the House should bury its head in the sand as if nothing had happened. The question, therefore for me to determine is whether the matters raised yesterday afternoon constitute privilege.

Hon. Members, let me allow the Members standing to take their seats.

(Hon. Members walked into the Chamber)

Hon. Members, the Mason’s Manual on Legislative Procedure, 2010 Edition, Section 220, defines a question of privilege as one that relates to the body or to its members in such a manner as to affect proper functioning of the body. The Manual goes to note that:-

“It is necessary that these questions be under immediate control of the body. They relate to the rights and privileges of the body or to any of its members in their official capacity, or to the comfort and the convenience of the body or its members in the performance of their official duties.”

The Manual further indicates in Section 222 that questions of privilege take precedence over all other questions except a motion of adjournment or an objection to the quorum of the House. I put emphasis on the words “immediate” and “precedence.”

According to the New Zealand House of Representatives Parliamentary Practice, “A Member may raise a matter of privilege at any time during a Sitting... and it must be in connection with something affecting the House or its Members in their capacity as such.” (Page 744). In addition, Section 100 of the Rules of the Philippines House of Representatives provides that questions of privilege are those affecting the duties, conduct, rights, privileges, dignity, integrity or reputation of the House or its members, individually or collectively.

Hon. Members, the allegations and counter-allegations of bribery or inducement made by the Members of the Public Accounts Committee PAC against themselves, including against the Chairperson are matters of public notoriety. You will all agree with me that a matter of this magnitude cannot be swept under the carpet on the basis that the Committee had dealt with it. The public who bestowed you with the honour of representing them in this august House deserves answers.

From the foregoing, I find that the matters raised by hon. Duale and other Members who spoke after him, indeed, relate to the privilege of the House and are therefore subject to the consideration and decision of the House as what goes on in the Committees affect the integrity and reputation of the House and its Members, individually or collectively, and cannot be wished away.

The next question that arises is, now that those are matters of privilege, what then do we do?

Hon. Members, to answer this question, allow me now to interrogate relevant provisions of the Constitution of Kenya, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the National Assembly (Powers and Privileges) Act (Cap 6 Laws of Kenya).

The allegations of compromises, prejudices, deceit or corruption against the members of the Public Accounts Committee relate to financial probity of State Officers which is governed by Article 76 of the Constitution of Kenya. In particular, I draw your attention to Article 76 (2)(b) which provides:-

“That a State officer shall not seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer.” This provision is replicated under Section 12 of the Leadership and Integrity Act, 2012. A similar provision is provided for under Section 11 of the Public Officer Ethics Act, 2003. Section 6 of the Leadership and Integrity Act further prescribes a general code of conduct of State Officers. It provides as follows:-

- (1) This part prescribes a general Leadership and Integrity Code for State Officers.
- (2) The provisions of Chapter Six of the Constitution shall form part of this code.
- (3) Unless otherwise provided in this Act, the provisions of the Public Officer Ethics Act shall form part of this code.
- (4) If any provision of this Act is in conflict with the Public Officer Ethics Act, 2003 this Act shall prevail.

Hon. Members, having made those observations, let me now interrogate the relevant legal provisions governing the consequences of any alleged breach of privilege or code of conduct of Members of Parliament. Firstly, Article 75(2)(a) of the Constitution

provides that “where a person contravenes Article 76 of the Constitution, he or she shall be subject to the applicable disciplinary procedure for the relevant office.”

Secondly, Section 3, (10) of the Public Officer Ethics Act, 2003 provides that:-

“...(10) The responsible commission for a public officer for which no responsible commission is otherwise specified under this section is the commission, committee or other body as prescribed by regulation.”

Thirdly, Section 41(2) of the Leadership and Integrity Act provides as follows:-

“(2) Where an allegation of breach of the code has been made against a State officer in respect of whom the Constitution or any other law provides the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law.”

Lastly, Section 10(4) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya) provides as follows:-

“(4) The Committee of Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any Member of the Assembly of the Code of Conduct issued under Section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the Member thereof, or to be contrary to the best interests of the Assembly or the Members thereof.

(5) The Committee of Privileges shall, after such inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate”.

Though our rules of procedure are silent on the manner of disposing questions of privilege, comparative jurisdictions from the Indian Lok Sabha, for instance, provide under their Rule 225, that the House may consider a question of privilege or refer it to a Committee of Privileges and the Speaker may issue such directions as may be necessary for regulating the procedure in connection with all matters connected with the consideration of the question of privilege either in the Committee of Privileges or in the House. Erskine May notes that the acceptance by a Member of either House of a bribe to influence his conduct in connection with any matter submitted or intended to be submitted before the House is contempt and an abuse of privilege and is of gross affront to the dignity of the House and an attempt to pervert the parliamentary process implicit in Members’ free discharge of their duties to the electorate.

It is, therefore, my considered opinion that a general reading of the aforementioned provisions and practices in comparable jurisdictions and practice, suggest that it is within the purview of the Committee of Privileges of this House to inquire into the alleged conduct of any Member who commits a breach of privilege or code of conduct. May I also hasten to add that issues of conduct of Members within the precincts of Parliament is solely the mandate of the Committee of Privileges and other outside investigative bodies may only deal with the matters if the Committee of Privileges recommends so and the House approves the recommendations.

Further, a study of the practice in the Commonwealth of Canada reveals the following:-

(a) A House has authority to require the attendance of any of its Members, whether they are Ministers or not. It should be borne in mind that the House has always claimed a right to exercise a substantial degree of control over its own Members when the matter in any way relates to privileges of the House, including in respect of attendance upon the service of the House, attendance before another House and even conflicts between Members.

(b) When a Member has been ordered to appear before the House or a Committee, the Member is under the same obligations to answer questions before the Committee just like a member of the public. Further, where a Member objects to a question in a Committee, the objection must be raised and determined by the Committee and not by the House.

Arising from the above and in order to protect the integrity of the National Assembly of the Republic of Kenya as a whole and to give a fair hearing to Members of the Public Accounts Committee, I now direct as follows:-

(i) THAT, the Committee of Privileges enquires into the matters of alleged breach of privileges and/or code of conduct of the membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit, and submit a report to this House in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act (Cap 6 Laws of Kenya) within 21 days from the date of this Communication. The House will be expected to deliberate on the report within three days thereafter. The Committee is at liberty to interrogate the submissions made by the individual Members in the Committee on 26th February, 2015, which are captured in the HANSARD of this House, including any related correspondences by any Member of the Committee to the Clerk of the National Assembly or the Speaker. May I also remind the Committee that, given the seriousness of an allegation of bribery, the standard of proof required to substantiate the claims ought to be very high. At this juncture, I want to refer to the Committee a letter of complaint handed over to me by the Chairperson of the Public Accounts Committee, hon. AbabuNamwamba;

(ii) THAT, invoking the provisions of Standing Order No.1, the operations of the Public Accounts Committee are hereby suspended until the expiry of the period that I have prescribed or such earlier time the House shall make a resolution following an earlier submission of the report by the Committee of Privileges. Let me make it clear that, this direction does not amount to disbanding the Committee or discharging any Member from the Committee.

(iii) THAT, hon. Moses Cheboi, the First Chairperson of Committees, is hereby appointed to chair the Committee of Powers and Privileges during the period of this inquiry on behalf of the Speaker. The Committee of Privileges is at liberty to co-opt not more than three other sitting Members who have served for more than one term to assist them in the inquiry. Such co-opted Members will, however, not be allowed to vote in the Committee nor will they be counted for purposes of quorum. The Committee should hold its first meeting on Monday, 9th March, 2015 at 2.30 p.m.

(iv) THAT, the Committee of Privileges develops, for consideration by this House, a code of conduct for Members of Parliament as required under Section 37 of the Leadership and Integrity Act, 2012. This should be submitted on or before the end of August this year.

Having said that, let me make it clear that by referring this matter to the Committee of Privileges, it is not to put the Public Accounts Committee under trial, but it is to allow the relevant body of this House as required by the law and practice of the House, to attend to the allegations of breach of privilege and/or code of conduct so as to assist the House to make a decision. Similarly, the Chairperson of the Public Accounts Committee asked me to confirm whether anybody is at liberty to divulge information shared with the Speaker in confidence. Certainly, an attempt to do so will be out of order. However, I can confirm that the submission the Chairperson was referring to was formally made to the Speaker in writing and seeking guidance. It was neither personal nor peculiar. Indeed, the matters contained in that letter were canvassed during the Committee's meeting of 26th February, 2015. The letter is the one that I have submitted to the Committee.

As I conclude, I wish to call upon the Members of this House to search their souls and conscience as to whether some of our actions befit the status of Members of this House. One famous British politician, commonly known to many people as the war general, Winston Churchill, stated that:-

“If you have integrity, nothing else matters. If you do not have integrity, nothing else matters”.

May I also paraphrase a saying of Confucius, one of the greatest philosophers from the book that I am reading. He said:-

“The strength of a nation derives from the integrity of Parliament”.

In our case, this strength is founded in Article 94(2) of the Constitution of Kenya, which provides that Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty. We, therefore, must have moral authority to be the peoples' representatives and to perform the mandate they have bestowed upon us.

Thank you, hon. Members.

Hon. (Eng.) Gumbo: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Gumbo, I hope your point of order is not related to this matter because there is not going to be any debate on it. I thought I told you that the Speaker's ruling is not subject of debate. That matter is finished. Therefore, we shall proceed with business.

Hon. Gumbo, I have indicated in my Communication that the Committee is at liberty to co-opt not more than three experienced Members. I am not saying who should be appointed. As I said, I have also removed myself from chairing that Committee, which I automatically chair.

Next Order!

MOTION

THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL

Hon. Sakaja: Hon. Speaker, I rise to move the Bill on behalf of the Chair of the Committee, to which I am a Member. He delegated the responsibility of moving to me.

Hon. Speaker: How was that position communicated to the Chair? How am I supposed to know?

Hon. Sakaja: Hon. Speaker, the Vice-Chair is in the House. He can confirm.

Hon. Speaker: The Vice-Chair? You see, any Member can rise and claim to have been given the responsibility to do one thing or the other.

Hon. Sakaja: The Vice-Chair can confirm that position, hon. Speaker.

Hon. Speaker: Hon. Sakaja does not have as much experience as hon. JakoyoMidiwo.

Hon. Midiwo: But he is a party leader, hon. Speaker.

Hon. Speaker: Maybe, that is the reason.

Hon. Members, the first thing one should check is whether they have their card. Hon. Gaichuhie, you have now started touching all parts of your body in search of your card.

(Laughter)

Hon. Gaichuhie, I know you know those processes.

Hon. Gaichuhie: Thank you, hon. Speaker. I want to confirm that the Chair of the Committee had delegated those powers to hon. Sakaja because we were engaged in another meeting. We thought that we would not be in the House by now.

Hon. Speaker: So, you are confirming that, indeed, he has your authority?

Hon. Gaichuhie: Hon. Speaker, I confirm that he has all the authority to continue with the business before the House.

Hon. Speaker: Hon. Sakaja, proceed and exercise the powers conferred on you.

Hon. Sakaja: Thank you, hon. Speaker. I am sure you know that I am a Member of high integrity. I would never purport to assume powers that have not been bestowed upon me.

Hon. Speaker, I beg to move:-

THAT, the Senate Amendments to the Public Procurement and Disposal (Amendment) Bill (National Assembly Bill No. 31 of 2013) be now considered.

Hon. Speaker, I will give a brief history of this Bill to hon. Members. This is a Bill which was published in 2013. Coincidentally, I am the sponsor of this Bill. The Bill sought to bring into force provisions contained in both the Government's manifesto and Article 55 of the Constitution in order to empower our young people, women and people with disabilities by ensuring that in every financial year, those groups of people who are also referred to as 'disadvantaged groups', have access to, at least, 30 per cent of procurement opportunities at both the national and the county levels.

The Bill sought to ensure that those who have for a long time been at the periphery of the economy of this country – who constitute the majority – have an opportunity to participate in economic activities by opening up opportunities for them to access, at least, Kshs330 billion of the public money that is spent on procurement annually. With the absence of such affirmative action over the years, those groups of Kenyans have not been able to access any opportunities to do business. The uptake has not been as good as it should be, especially at the county level, where most of the procurement and tender committees have continued to ignore young people, women and

people living with disabilities. The procurement and tender committees have maintained cartels that have continued to do all the business. The reason as to why we sought to put it in law was to make sure that it is now mandatory. Once this Bill becomes law, it will be mandatory that the specified percentage of Government business opportunities goes to the youth, women and people living with disabilities. Just to remind hon. Members, this Bill was unanimously passed by this House during the last Session. It was subsequently passed on to the Senate. Unfortunately, the Bill took a very long time at the Senate because of some inhibitions that I will not get into. The Senators felt that they should amend a few provisions of this Bill. The Bill is now back to the National Assembly for concurrence with the Senate on the amendments they passed.

Hon. Speaker, I will quickly take hon. Members through the Senators' amendment, so that they can understand that the Senators only sought to tighten the definitions, instead of the repetition of 'youth, women and people with disabilities' contained in the Bill. We have now defined them as "disadvantaged groups". The rest of the amendments removed references that existed before the promulgation of the new Constitution. The Senate replaced all references to 'Minister' with 'Cabinet Secretary'. They have also prescribed public entities and listed them down, specifically because the real business that our young men and women need to access is at the county level. I thank the Senate for specifying that this applies to both the national level and the county level.

Those provisions have been enhanced because it has been established that lack of the ability to monitor the tendering processes has been a hindrance. We have since included a monitoring mechanism to the Bill in the form of a requirement that every three months, each and every public procuring entity gives a report to the Public Procurement Oversight Authority (PPOA) on how they have given contracts and tenders. The most important point to note is that it is not the total number of contracts or 30 per cent of the number of contracts awarded to our disadvantaged groups that matters; it is 30 per cent of the total value of contracts.

For example, after removing the Recurrent Expenditure from the national Budget of 2014/2015 Financial Year; Kshs1.8 trillion, 30 per cent would be Kshs330 billion. Every three months, the procuring entities have to show their progress towards achieving the total of Kshs330 billion worth of business award to our young people, women and people living with disabilities. Once the report has been made to PPOA, it has to present a report to Parliament through the Committee responsible for equalisation of opportunities, which is the Joint Committee on National Cohesion and Equal Opportunity, to which I happen to be the Chair. That way, we can find out which governors are not giving business to our young people, which Ministries are not giving business to women and which State corporations are not giving businesses to those groups of our society. We can then hold them to account.

Hon. Speaker, I would like to urge Members that we can quickly concur with those amendments of the Senate that have come to us so that this Bill finally sees that light of the day. There are many cartels that are having a field day because of the delay that we have had in Parliament of not passing this Bill. If we do not concur with the Senate, the Bill will have to go to mediation which may take us a number of months moving forward.

Finally, I would like to note to Members that, indeed, there is a new procurement law that is envisioned under the Constitution to be passed by May. Once Parliament has expressed itself on those provisions, they are also being put in as amendments to the new law. However, we should not waste three months where young people, women and people living with disabilities are being continuously disenfranchised from accessing what is their right.

With those few words, I would like to support and propose the Motion that the Senate amendments to the Public Procurement and Disposal Bill No. 31 of 2013 be now considered.

Hon. Speaker: Are you moving?

Hon. Sakaja: Yes, I am moving the Bill.

Hon. Speaker: Who is seconding you?

Hon. Sakaja: The Bill was to be seconded by hon. Ochieng of Ugenya, and I can see him on that side. Thank you.

Hon. Speaker: Is that hon. David Ochieng?

Hon. Sakaja: Yes, hon. David Ochieng who is the Secretary of the Young Parliamentarians Association which I also chair. Kindly second!

Hon. Speaker: I can see he is sitting in an unusual corner today and from where he is, he looks slightly shorter. Hon. Ochieng, you do not look your real self. Is it because you have assumed that new title that hon. Sakaja mentioned? What is happening?

Hon. Ochieng: It has been given to me by my party. So, I had to consult with my Whip so that I am not given a letter. That is why I sat this side. I stand to second this very important Bill.

Hon. Speaker, this Bill has been very long in coming. What this Bill intended to do is to ease access to business opportunities and tender opportunities by the young people, women and persons with disabilities. Like hon. Sakaja has said, I think it has taken unduly long. But I just wish to request Members that this is a matter where there is no need for a fight or a game of ping pong.

The Senate has tried to make itself relevant in as far as the provisions of this Bill are concerned. Most of the amendments that have been proposed by the Senate are just typos or I may call them lexical amendments. They are not going to the substance of the Bill that would make this House want to differ with the Senate. For example, they have just expanded and broadened the definition of groups like the disadvantaged groups, persons with disability, women and youth. Those are issues that are not in dispute. By appending their signatures in the Bill, they are saying that they want to see more affirmative action being taken by the bodies concerned. They want to ensure that bodies other than the county governments or Principal Secretaries are able to do this. They should be able to respond to the queries of the young people and that authority and responsibility is bestowed by law. There are areas where his House may have overlooked such as the definition and the use of the word “minister”, we are still having some visages of the past and we should not have a problem with that. That is why I beg the Members to allow the amendment proposed by the Senate as I second the Motion.

Thank you very much.

(Question proposed)

Hon. Speaker: Hon. Members, I wish to remind the House that the National Assembly passed this Bill on 24th of April 2014 after a thorough debate. Thereafter, the Bill was forwarded to the Senate for consideration as it is a Bill concerning county governments. The Senate has since made amendments to the Bill which is now awaiting the concurrence of the National Assembly. The manner of disposing those amendments is provided for in our Standing Order Nos.145 to 148. In summary, the House would generally debate the Senate amendments. Mark you, hon. Members, not the Bill, only the Senate amendments for a limited period not exceeding one hour.

Should the House resolve to consider those amendments, the House will dissolve into the Committee of the whole House to dispose of the amendments sequentially. Should that Motion be negatived, the provisions of Article 112 of the Constitution related to the Mediation Committee will come into effect. Similarly, should the Committee of the whole House amend or reject any of the Senate amendments - and this is important - the mediation process again takes effect. Please, also be guided that in the Committee of the whole House, the Chairperson will proceed to propose each of the Senate amendments without having to ask for a Mover. It is important that we understand that process.

Finally, should the House pass the Senate amendments as proposed, I will then proceed to forward the Bill to the President for assent in accordance with the provisions of the Constitution.

Hon. Speaker: Hon. Rachel Shebesh. Do you want to contribute? Let us have hon. Osele.

Hon. Onyango: Thank you, hon. Speaker. My contribution to the Bill is this: We wish to dispense of this matter by considering the amendments by the Senate. This House has a residual power to make laws, amend or even repeal them. As young parliamentarians, we are of the opinion that time has gone and the earlier we start the implementation of the provisions of the amendments, the better for young Kenyans.

The youth of this country bear the burden of the entire economic crisis that we face in our daily lives. We would wish to cushion them by ensuring that there are provisions within the law that ensure that matters affecting the youth are properly followed up. A report is given and what is justly theirs is reserved for them. As such, these amendments are going to ensure that the county governments, State corporations and every department that is in charge of procurement ensures that 30 per cent is given to the youth of this country; not just on paper but by action. I would like to support that we consider the Senate amendments. At the end of the day, should we find something necessary for this House to look at a future date, we can give it consideration.

Thank you.

Hon. Speaker: Let us have hon. Wamalwa. Hon. Members, we are debating only the amendments from the Senate. The Bill was passed by you as a House. So, only look at the amendments proposed by the Senate and debate them.

Hon. Wakhungu: Thank you, hon. Speaker. I rise to support the amendments as done by the Senate. It is unfortunate that this Bill took so long in the Senate and there are so many lost opportunities. I want to concur with the Senate on the issue of the disadvantaged groups. It is not just for the youth. We also have the women of this country who are suffering.

In line with the Jubilee Manifesto and remembering the first speech of his Excellency the President, he was actually very committed to the youth, women and the disabled. It is good that the Senate went and opened that gap so that we have a disadvantaged group and not the youth. That was done in good order and we support.

Secondly, it is important to know progress. If you talk of county governments and national Government, unless that Report is given to the Committee that is concerned with public procurement and oversight, it would be difficult to know what is happening. This amendment that the Senate did in terms of reporting is very critical and is going to help us in terms of monitoring and evaluation. As we continue to debate these amendments, I am calling upon the county governments or those in procurement to put conditions that are friendly to the youths. I have seen many in county governments asking for 15 years of experience. We must operationalize these amendments. As hon. Speaker has clearly said, we do not want to go to the Mediation Committee. We want those disadvantaged groups to continue benefiting. I am calling upon the Members to support the amendments that have been put across by the Senate because they are in good spirit. We do not want to waste more time or stand amending again what the Senators did, so that those disadvantaged groups can start benefiting. I am saying “disadvantaged” because women and the disabled are inclusive. I support and concur with the Senate amendments.

Hon. Gikaria: Thank you, hon. Speaker for giving me this opportunity.

I arise to support the amendments by the Senate. National Assembly had done quite a lot of work on this Bill. From the Senate amendments, we are mostly trying to clear some grammatical errors and giving definitions. The only problem I have is with one of the amendments. They are removing the words ‘youth, women and people with disability’ and inserting the word ‘disadvantaged groups’. They went ahead and explained what a ‘disadvantaged’ group means. They have left it so open and any person of any age or gender can claim to be a disadvantaged group. If you look at Clause 3 of the Bill, it says:-

“Delete and substitute with the following new clauses to say ‘disadvantaged group’”.

Then the explanation given there will allow any person who feels disadvantaged to join. This new clause specifically was meant for the youth, women and people living with disability. If we leave it as it is, any old man or I can just walk in and claim the position. If you look at what has been explained under Clause 3(a) of the amendment, it has quite a number of issues

The other bit I concur with them is this: They have expounded “public entity” by giving definition under Clause 3. They have indicated that it is not only the national Government that will support but rather, we need to look at any other Government institution that has capability. They have brought in the county governments, their departments and any other State corporation including the Central Bank and many others. I agree with hon. Sakaja that we do not look at 30 per cent only but rather, the value and it has been expounded clearly on who should be given. It does not have so many issues to do with the actual Bill other than giving fresh definitions and renumbering some of the programmes here and there. I agree that Senate plays a big role because this Bill will also affect the county governments. Whatever they have brought us will go a long way to try and assist the women, youth and people living with disability. It is important we get those

reports on a quarterly basis, just as hon. Sakaja has said. He is going to indicate some penalties. If a procurement entity does not meet that requirement, then what action should be taken? It is important for us to get those reports in Parliament.

One thing we need to consider is this: It is one thing to say 30 per cent but another to say the youth, women and people living with disability being able to register companies without any problems. It has become a cumbersome process where they have to come to Nairobi. We also have to look at other laws that relate to the Companies Act, Cap, 486 to see how we can make it easier.

Lastly, people have also taken advantage of those disadvantaged groups. We need to put some caution so that I, David Gikaria, or any other person, should not have access to such funds. That is because for me to qualify, I will take my children and indicate that it is a youth company. Business people are using their sons, daughters and women to get into this. At the end of the day, those less disadvantaged people cannot gain through the process that we want to establish. It is important that people also do not use companies of their children and deny the unfortunate in society. We will bring some amendments to try and see how we are going to use those other laws to ease the process of company registration so that those people can be enabled.

The National Construction Authority which has become an authority now is part of the requirement that most of the procurement entity use to charge exorbitant fees from those less advantaged groups. They have now increased fees up to Kshs35,000 to register a construction company. We have young boys and girls who are graduating from university and who are architects and engineers and they would want to start a company of their own. But they are told to pay a registration fee of up to Kshs75,000. It, thus, becomes very difficult for them to acquire those services.

So, we also need to look at other laws that will simplify the process for women, youth and people living with disability, so that they can benefit from what we are passing here in Parliament.

With those few remarks, hon. Speaker, I support the amendments from the Senate.

Hon. Speaker: Hon. Timothy Wanyonyi.

Hon. Wetangula: Thank you, hon. Speaker. I also wish to support those amendments. What the Senate has done is to enrich the Public Procurement and Disposal (Amendment) Bill as was passed by this House. The definitions of “persons with disability”, “youth” and “women” are broadened. This is something that is going to enrich the Bill. We ought to support those amendments.

The other part that I am in concurrence with is the amendment on Clause 5(c). They have done very well in making this requirement. Making this requirement is in order. Sometimes, persons with disability, women and the youth are not the beneficiaries of this process. Sometimes, people collect persons with disability, give them some token and use them to register companies and get those facilities. So, the people who benefit are not the ones who are targeted. By demanding that they must provide proof that the people who are benefitting are persons with disability, youth and women is in order.

These amendments are not going to change anything substantial in the Bill that was passed by this House. Instead, they are going to enrich what we have done. I totally support and agree with the amendments. We must move the process forward so that we do not cause any delay. People are not benefitting from what has been provided by the

Government. Maybe, the Government can look for a way of providing cheap credit facilities to people with disability, youth and women so that they can access those tenders. It has been provided, but most of them have no capacity to apply. Even getting the application forms is difficult. The Government should also make sure that information reaches the right people. So many times, even in our constituencies, people come and ask us: “How do we access this? How do we register companies? Where do we apply? Sometimes, it is very difficult to get this information. So, this information should be readily available so that the people can apply for the tenders.

Hon. Speaker, I support. I concur with the previous speakers that we must move this forward so that we do not cause any delay on this Bill.

Thank you very much.

Hon. Speaker: Hon. DennitahGhati.

Hon. (Ms.) Ghati: Thank you very much, hon. Speaker. Allow me to support the amendments by the Senate. This Bill is long overdue. We have discussed it in this House. As hon. Wanyonyi says, the Senate was probably just looking at our grammatical errors here and there. Nothing much has changed.

I support this Bill and those amendments because I am a woman, a youth and now a person with disability. The Senate has considered what we discussed in this House. It is high time we looked at how women, especially poor grassroots women, can access those tenders. The 30 per cent rule on tendering is not very clear, especially when it comes to women at the grassroots. Most of our women do not understand how to tender. Information is usually not available at the grassroots. How do they prequalify? How do they put in their requests? This is a challenge we have to address. Public entities and county governments should make sure that information on how to apply for those tenders is displayed publicly and loudly to reach women so that they know when those institutions call for tenders and how to prequalify.

With devolution, so many people are taking advantage of women. We have so many people who are taking Identification Cards (IDs) and so much information from women in the pretext that they are helping them to register companies. However, they end up putting their children and cronies in charge of those companies. We also need to look at and lobby the county governments. We have many women who have not registered companies because they do not know the procedures of how companies are registered. I would, therefore, propose that we make some laws that are very simple and easy to understand, especially for women. If there are registered groups, for example, from my county in a ward like North Kanyamkago or South Kanyamkago, those women groups can even access tenders using their groups’ registration certificates. That way, it becomes easier so that women with a valid group registration certificate are also able to clean the road and collect garbage. We also have the tendency to think that women, youth and people with disabilities should only get small tenders for menial work like cleaning a road instead of getting huge tenders that can improve their lives.

So, I support the amendments by the Senate. They are long overdue. They will also save the disadvantaged groups. I am happy that the Senate has considered the disadvantaged groups as very serious groups. They have clearly indicated here “disadvantaged group”, “women”, “people with disability” and the “youth”. For a long

time, those groups have been ignored and sidelined. Now that that it is very clear, we are getting there.

With those few remarks, I wish to support the amendments. I wish to congratulate the Senate for supporting this Bill. Thank you.

Hon. Speaker: Hon. Kimani Njuguna.

Hon. H.K. Njuguna: Thank you, hon. Speaker. I rise in support of those Senate amendments since---

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Speaker.

Hon. Speaker: Just a second, hon. Njuguna. I want to hear a point of order from hon. Millie.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Speaker. I rise under Standing Order No. 95(2). I wish to move that the Question be now put.

Hon. Members: No!

Hon. Speaker: Let us hear this one who says he is supporting. I think we will proceed. In the meantime, finish quickly so that we can proceed as proposed.

Hon. H.K. Njuguna: Thank you, hon. Speaker. I rise in support of these Senate amendments. I have gone through them. In Clause 2, the Senate is merely aligning the Bill to Article 27 of the Constitution on equality and freedom from discrimination, Article 54 on persons with disabilities, Article 55 on the youth and Article 227(1) which says that:-

“When a State organ or any other public entity contracts for goods and services, it shall do so in accordance with a system that is fair, equitable, transparent and cost-effective.”

I do not see anything wrong in that clause. In fact, it is merely upholding the spirit of the Constitution in matters of public procurement. I have no problem with that clause. In fact, I can see where the Senate is coming from. It is merely supporting hon. Sakaja’s amendments. Looking at Clause 3, where the Senate amendment is talking about disadvantaged groups, persons with disabilities, women and youth, those are the same things that we were talking about when hon. Sakaja was moving his amendments. We said 30 per cent of our public procurement should go to the youth. Recognition was made that when we are talking about public procurement, it is big business in a political process. Currently, talking about 60 per cent of our annual budget translates to about Kshs1.1 trillion. So, when we give them the 30 per cent, which the Senate is seconding we are taking care of our youth, women and disadvantaged groups. I support that Clause. I see nothing extraordinary. In fact, they are in support of our amendments.

The amendments they are proposing, like the “Cabinet Secretary” instead of the “Minister,” are correct. The earlier law was talking about the Minister. But now the law talks about the Cabinet Secretary. There is nothing wrong. They are talking about what is there. They were just polishing the amendments that hon. Sakaja had moved in this House.

In Clause 3(d), the Senate has merely defined a public entity. The new constitutional dispensation recognises the various levels of the Government namely, the county governments and the national Government. There are other institutions like the constitutional commissions, independent offices, State corporations and schools. They are merely expanding the definition of a public entity. I do not see anything wrong with that.

I support the amendments and I take the sentiments of the other Members of this House who have said that we need to move these amendments and approve them as fast as possible so that the 30 per cent of our disadvantaged members of our society can take part in this big business in a political system. We need them so that we can promote creativity and innovation among our youth.

With those few remarks, I support the Senate amendments.

Hon. Speaker: Hon. Members, I revisit the point raised by hon. Millie Odhiambo that the Question be now put.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Muturi) left Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Shebesh) took the Chair]*

SENATE AMENDMENTS TO THE PUBLIC AND DISPOSAL (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members who are standing, please, take your seats. We are now moving to the Committee of the whole House on the Senate Amendments to the Public Procurement and Disposal Amendment Bill, National Assembly Bill 31 of 2013. Just to inform you, this particular Committee is different from what we normally do. You had already been given guidance by the Speaker about how we are going to move on with this. So, we will begin.

Clause 2

Senate Amendment

Hon. Sakaja: I beg to move:-

THAT, Clause 2 of the Bill be amended by deleting the proposed new paragraph (g) and substituting therefor the following new paragraph-

(g) "to facilitate affirmative action for disadvantaged groups in accordance with Articles 27, 54 and 55 of the Constitution and to advance their participation in the procurement process in accordance with Article 227 of the Constitution".

This is facilitating affirmative action for disadvantaged groups and makes reference to the Constitution.

(Question of the amendment proposed)

*(Question, that the words to be
left out be left out, put and agreed to)*

*(Question, that the words to be inserted
in place thereof be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

Clause 3

Senate Amendment

Hon. Sakaja: I beg to move:-

THAT, Clause 3 of the Bill be deleted and substituted with the following new clause-

“Section 3 of the principal Act is amended by-

(a) inserting the following new definitions in their proper alphabetical sequence-

“disadvantaged group” means a group of persons perceived to be denied by mainstream society of access to resources and tools which are useful for their survival in a way that disadvantages them, or individuals who have been subjected to prejudice or cultural bias because of their identity as members of a certain group without regard to their individual qualities, and includes enterprises in which a majority of the members or shareholders are youth or persons with disability;

“persons with disability” means a person with disability who has attained the age of eighteen years and includes a company, association or body of persons, corporate or unincorporated in which, at least, seventy percent of the shareholders, members or persons and a majority of the directors are persons with disability;

“women” means a person of the female gender who has attained the age of eighteen years and includes a company, association or body of persons, corporate or unincorporated in which, at least, seventy percent of the shareholders, members or persons and a majority of its directors are of the female gender;

“youth” means a person who has attained the age of eighteen years and has not attained the age of thirty-five years and includes a company, association or body of persons, corporate or unincorporated in which all its directors or proprietors are persons who have attained the age of eighteen years and have not attained the age of thirty-five years.

(b) deleting the definition of the expression “accounting officer” and substituting therefor the following new definition-

“accounting officer means-

(a) for a public entity other than a county government entity, the person appointed by the principal secretary to the treasury as the accounting officer or, if there is no such person, the chief executive of the public entity; or

(b) for a county government entity, a person appointed by the county executive committee member responsible for finance as the accounting officer, or if there is no such person, the chief executive of the county entity;

(c) deleting the definition of the word “Minister” and substituting therefor the following new definition –

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance”;

(d) deleting the definition of the expression “public entity” and substituting therefor the following new definition –

“public entity” means-

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Cap 490

Cap 211

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(a) the national Government or any department of the national Government;

(b) the county government or any department of the county government;

(c) the courts;

(d) the commissions and independent offices established under the Constitution;

(e) a state corporation within the meaning of the State Corporations Act;

(f) the Central Bank of Kenya established under the Constitution;

(g) a co-operative society established under the Co-operative Societies Act;

(h) a public school within the meaning of the Education Act;

(i) a public university within the meaning of the Universities Act;

(j) a college or other educational institution maintained or assisted out of public funds; or,

(k) an entity prescribed as a public entity for the purpose of this paragraph”;

The Senate Amendment to Clause 3 is dealing with the new definitions. It has put together the issue of youth and people with disability and disadvantaged groups. It has also gone further to define a person with disability, a woman and a youth for purposes of clarity. It also goes further to clarify who an accounting officer is. This is important. For a public entity other than a county government, it is the person appointed by the Principal Secretary to the Treasury as an accounting officer and for a county government, a person appointed by the county executive committee for finance. It is basically dealing with definitions.

Finally, it is dealing with expressions of public entity to show who is going to ensure that the 30 per cent is given to women, youth and people with disability. It is the national Government, any department of the national Government, county governments, the courts, commissions and independent offices, State corporations, any parastatal, the Central Bank of Kenya, any co-operative societies established under the Co-operative Societies Act, a public school, public universities, colleges and any entity described as a public entity.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I can see some interest in speaking. Hon. Isaac Mwaura. Remember, you are speaking to Clause 3.

Hon. Mwaura: Thank you, hon. Temporary Deputy Chairlady. I rise to support the Senate Amendments with regard to Clause 3 as provided in the Order Paper. Those amendments seek to further clarify the ownership of companies that would qualify for that preferential public procurement. If, for example, you look at the definitions of “persons with disabilities, women and youth,” it is very clear that they should own, at least, 70 per cent of the companies to qualify to be defined as such. Therefore, this will ensure that we do away with the issue of “tenderpreneurship” where just for qualification and compliance, those disadvantaged groups are used by people who are moneyed, who can canvass and who have been in the gravy train to fulfill the obligations of the new law. So, that threshold is quite high and it is going to ensure that, indeed, there is going to be more empowerment and enrichment of those disadvantaged groups of people with regard to participation in business.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you. Hon. Abdikadir. Keep it short, please, because we are in the Committee Stage.

Hon. Aden: Thank you, hon. Temporary Deputy Chairlady. I agree very much with this particular clause. I like the definition of “disadvantaged groups”, which include people who are denied by the mainstream. In Kenya, by and large, the beauty of our identity is in the small clans and tribes. It so happens that in some places of the country, there are certain minorities within the mainstream. This amendment goes a long way in ensuring that they are never denied the opportunity to participate. It is a very good enrichment coming from the Senate on this issue.

I support.

Hon. Temporary Deputy Chairlady, I also like the widened scope of the definition of “public entities”. I really want to take issue with a number of organizations. Public institutions should facilitate people with disabilities to access the required documentation in order for them to benefit from public procurement.

In my constituency, I have a young man called Mohamed Aden Mohamed, a disabled youth who wishes to take advantage of the provisions of affirmative action. Unfortunately, the public entities are making it very difficult for those people to attain the necessary documentation required for them to participate and take a share of the national cake.

Hon. Temporary Deputy Chairlady, I support the amendment. It is a very good addition. The Senate has done it well to enrich this particular Clause.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Makali, you are looking at me with such pity. I will give you a chance.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairlady. I support the amendments but I want to give a rider. The definition of “disadvantaged group” could cause challenges in implementation. This is one of the areas we need to be very careful when it comes to implementation. It could easily be misused. I just want to go on record on that; that the way they define “disadvantaged groups” could cause confusion and make implementation very difficult.

I support the amendment.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 3 as amended agreed to)

Clause 4

Senate Amendment

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 4 of the Bill be amended by-

(a) re-numbering the existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

(b) inserting the following new paragraph immediately before the re-numbered paragraph (b);

(a) deleting the word “Minister” appearing after the words “present to the” in sub-section (b) and substituting therefor the words “Cabinet Secretary”.

(Question of the amendment proposed)

Hon. Temporary Deputy Chairlady, the import of the amendments in Clause 4 is to do two things. One is to introduce the word “Cabinet Secretary” and replace the word “Minister”. You realize that the parent Act was an Act of 2005 and this is the first or second time it has been amended. It is cleaning up.

The second one is an insertion of a new paragraph by the Senate, which serves to strengthen what we are trying to do in terms of monitoring. It says “to ensure the procurement entities implement the preference and reservations and provide data to the

authority disaggregated to indicate the number of disadvantaged groups that have benefited”.

That is the only way we will be able to monitor the value, whether those procuring entities are giving 30 per cent to youth, women and people with disabilities.

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

Clause 4 as amended agreed to)

New Clause 4

Senate Amendment

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 4-

(i) New Clause 4A

Section 20 of the principal Act is amended-

(a) in subsection (2) by deleting the word “Minister” appearing after the words “Board and to the” and substituting therefor the words “Cabinet Secretary”; and

(b) in subsection (5) by deleting the words “the Minister” appearing at the beginning of the sub-section and substituting therefor the words “the Cabinet Secretary”.

(ii) New Clause 4B

THAT the Bill be amended by inserting the following new clause immediately after clause 4-

Clause 4B

The principal Act is amended in paragraph (a) of section 22(1) by deleting the word “Minister” appearing immediately after the words “appointed by the” and substituting therefor the words “Cabinet Secretary”.

(iii) New Clause 4C

THAT, the Bill be amended by inserting the following new clause immediately after clause 4-

Clause 4C

The principal Act is amended in Section 33 by deleting paragraph (b) of sub-section (1) and substituting therefor the following new paragraph-

“a Cabinet Secretary, public servant or a member of a board or committee of the Government or any department of the Government or a

person appointed to any position by the President or a Cabinet Secretary;
or,

(Question of the new clause proposed)

(New clause read the First Time)

*(Question, that the new clause be
read a Second Time, proposed)*

*(Question, that the new clause be read
a Second Time, put and agreed to)*

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

Clause 5

Senate Amendment

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 5 of the Bill be amended-

(a) by re-numbering the existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

(b) by inserting the following new paragraph immediately before the re-numbered paragraph (b);

(a) deleting the words “the Minister” appearing after the words “subsection (8)” in subsection (2) and substituting therefor the words “the Cabinet Secretary”;

(c) in the proposed new Subsection (9) by deleting the words “the youth, women and persons with disability” appearing after the words “allocated to” and substituting therefor the words “disadvantaged groups”;

(d) in the proposed new subsection (12)-

(i) in paragraph (b), by deleting the words “youth, women and persons with disability” appearing after the words “the number of” and substituting therefor the words “disadvantaged groups”;

(ii) by inserting the following new paragraph immediately after the proposed new paragraph (b)-

(c) provide an explanation for failure to comply with the provisions of this section and the efforts made by the entity to ensure compliance in the future;

(e) in the proposed new Subsection (13) by deleting the words “youth, women and persons with disability” appearing after the words

“opportunities for” and substituting therefor the words “disadvantaged groups”;

(f) in the proposed new Subsection (14) by deleting the words “Articles 55 and 227(2)” appearing after the words “objectives of” and substituting therefor the words “Articles 27, 54, 55 and 227”;

(g) in the proposed new Subsection (15) (b) by deleting the expression “the youth” appearing immediately after the words “impediment to” and substituting therefor the words “disadvantaged groups”;

(h) in the proposed new subsection (16)-

(i) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) facilitating affirmative action to ensure that disadvantaged groups access employment and have opportunities to participate in economic spheres of life as contemplated under Articles 27, 54, 55 and 227 of the Constitution;

(ii) in paragraph (b), by deleting the words “the youth” appearing after the words, “advancement of” and substituting therefor the words, “disadvantaged groups”

Hon. Temporary Deputy Chairlady, again the amendments in Clause 5 deal with the issue of the words “Cabinet Secretary” in place of “Minister”. They are also inserting a new sub-section, which talks about reservations. These reservations are where certain categories of procurement are purely reserved for certain groups. The 30 per cent is on any category of procurement that the youth, women and people with disabilities can be able to compete with anybody else. Anybody else also can apply for this category of tender. However, the reservation is that a certain category is reserved, and only youth, women and people with disability can get. It says that they shall apply to candidates in the disadvantaged groups, micro and SMEs, which is a sector we need to grow; work, services and goods or combination thereof. They can also be identified into regions, depending on the discretion of the procuring entity. However, that does not negate the 30 per cent rule, which must be achieved. We have preferences and also reservations. That is what it provides for.

Then there is also cleaning up of Sub-clause 9, which states that every procuring entity shall ensure that, at least, 30 per cent of its procurement value in every financial year is allocated to the disadvantaged groups.

A very important point which I like hon. Members to note is that we have seen certain people registering groups on behalf of the youth and, subsequently, gone to withdraw the money. Those are not youth, women or people with disability. We had made a provision earlier on which states that every procuring entity shall ensure that money paid out to an enterprise owned by youth, women or person with disability is paid into an account where the mandatory signatory is a youth, woman or person with disability.

Once the money is in the hands of the young person, if they want to give it to somebody else, we cannot help. However, we have made sure that, from the point of

procurement to the point of payment, the businesses are actually owned and run by young people.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Chairlady. This is a good amendment as has been moved by hon. Sakaja. As we go into regulations, what I have seen in procurement for the young people is that it provides very good laws but we, again, bring pitfalls. For instance, when you say that 30 per cent belong to the young but you ask them to give bank guarantees and insurance bonds, which are very expensive, how do you help them? As we go into making of regulations, these are the kinds of things that we need to clean up.

More importantly, the House is aware that we are doing the Public Procurement and Disposal (Amendment) Bill. It will be nice when all these good proposals are included in this Bill so that, as we do the larger regulations, we can cover it.

As I conclude, there is a recent statistic which should worry all of us. It indicates that 70 percent of the public sector in Kenya today is actually composed of people who are 35 years and above. That is the reverse because majority of Kenyans are below 35 years. If 70 per cent of the public sector is 35 years and above, then that is not the way to go. This is a good amendment that we will accommodate.

I support.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 5 as amended agreed to)

New Clause 5A

Senate Amendment

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5-

Clause 5A

The principal Act is amended in paragraph (d) of Section 105(1) by deleting the words "Kenya Anti-Corruption Commission" appearing after the words "entity and to the" and substituting therefor the words "Ethics and Anti-Corruption Commission".

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 6

Senate Amendment

New Clause 6A

Senate Amendment

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 6-

Clause 6A

The principal Act is amended in Section 140 by deleting the words “the Minister” appearing at the beginning of the section and substituting therefor the words “the Cabinet Secretary”.

Hon. Temporary Deputy Chairlady, the amendment in Clause 6 and New Clause 6A is really a simple amendment as well. It amends section 140 by deleting the words “the Minister” appearing at the beginning of the section and substituting therefor the words “the Cabinet Secretary”.

In section 6, that was a related amendment which talks about electronic waste. It had been sponsored by the Chair of the Environment and Natural Resources Committee. What has happened is purely just renumbering.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

*New First Schedule
Senate Amendment*

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the First Schedule to the principal Act be amended-

(a) in paragraph 3(1) by deleting the word “Minister” appearing after the words “addressed to the” and substituting therefor the words “Cabinet Secretary”;

(b) by deleting paragraph 3(2) and substituting therefor the following new paragraph-

3(2) A resignation is effective upon being received by the Cabinet Secretary or by a person authorized by the Cabinet Secretary to receive it.

(c) in paragraph (4) by deleting the words “the Minister” appearing at the beginning of the paragraph and substituting therefor the words “the Cabinet Secretary”.

(Question of the amendment proposed)

Thank you, hon. Temporary Deputy Chairlady. These are amendments to the names “Cabinet Secretary” and “Minister.” There is an amendment in Sub-clause 3(2) that a resignation is effective upon being received by the Cabinet Secretary or by a person authorised by the Cabinet Secretary. This was not directly relevant to the issue of 30 per cent but had been passed by the National Assembly. These are just grammatical errors in the schedule. In part (8), it is also an amendment to the terms, renumbering and changing from “Minister” to “Cabinet Secretary”. I think that is all, hon. Temporary Deputy Chairlady.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(New First Schedule as amended agreed to)

*New Second Schedule**Senate Amendment*

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Third Schedule to the principal Act be amended-

(a) in paragraph 2(1) by deleting the words “the Minister” appearing after the words “section 22(1) (a)” and substituting therefor the words “the Cabinet Secretary”;

(b) in paragraph 2(2) by deleting the words “the Minister” appearing at the beginning of the paragraph and substituting therefor the words “the Cabinet Secretary”;

(c) in paragraph (4) by deleting the word “Minister” appearing after the words “into operation, the” and substituting therefor the words “Cabinet Secretary”; and

(d) in paragraph (17) by deleting the words “the Minister” appearing at the beginning of the paragraph and substituting therefor the words “the Cabinet Secretary”.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question. that the words to be inserted in place
thereof be inserted, put and agreed to)*

(New Second Schedule as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now through with all Senate Amendments, it is now time to report.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairlady. I beg to move that the Committee doth report to the House its considerations of the Senate Amendments to the Public Procurement and Disposal (Amendment) Bill (National Assembly Bill No. 31 of 2013) and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Hon. Deputy Speaker in the Chair]

REPORT

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THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Public Procurement and Disposal (Amendment) Bill (National Assembly Bill No. 31 of 2013) and approved the same without amendments.

Hon. Sakaja: Thank you, hon. Deputy Speaker. I beg to move that the House doth agree with the Committee in the said Report and also request hon. (Dr.) Naomi Shaban to second the Motion for agreement with the Report of the Committee of the whole House.

Thank you.

Hon. (Dr.) Shaban seconded.

(Question proposed)

Hon. Deputy Speaker: Do I see some names here?

Hon. Members: Yes.

Hon. Deputy Speaker: Hon. David Ochieng?

Hon. Ochieng: Thank you, hon. Deputy Speaker. I want to thank the Senate and this august House this afternoon. As you know, this has taken too long and I think it is high time we made a closure to it so that our young people, wherever they are, are able to access procurement opportunities all over the country. Even as I do that, I want to request the offices of the Registrar of Companies, the Kenya Revenue Authority (KRA) and other offices concerned with ensuring that the young people are able to get the necessary documents of doing business, to move with speed to devolve their services so that people do not have to move from Siaya and Ugenya, where I come from, to Nairobi to register companies. People do not have to come from Kwale and North Eastern to Nairobi to register companies. These services should be taken to where they are for them to benefit from these services.

I also want to call upon the Government entities, organs and institutions concerned to ensure that they put aside the 30 per cent as we decide today for the young people; not just in talking but also in deed.

I, therefore, support and urge the whole House to support this so that we move on with helping our young people. Thank you so much.

Hon. Chepkong'a: Thank you, hon. Deputy Speaker. I rise to support these very important amendments. Although, as you know, we have the other constitutional requirement that we pass the new Public Procurement and Asset Disposal Bill which has already gone through the Second Reading, I am just hoping that these amendments that are being made today will be useful for the interim period of between now and May.

I have been assured by hon. Sakaja that the youth and women who we are targeting, who have in the past suffered a lot of prejudice because they have been ignored whenever they participate in tenders both in the county governments and the national Government, will benefit. We have seen that they have been discriminated by those who are well advantaged in terms of money. We hope that this will be a reality. We do not

want disappointments with these amendments. As someone said, disappointment is the difference between expectation and reality. The passage of this amendment Bill will bring reality closer to the people.

I support, thank you.

Hon. Deputy Speaker: Hon. Timothy Wanyonyi, you have some comment on this? I can see there are almost ten people. Is it on the same, hon. Wanyonyi? Yes or no?

Hon. Wetangula: Yes, hon. Deputy Speaker. What the Senate has done is to use their experience - because most of them are Members who are very experienced in legislation - to enrich this Bill and have, if you look at the definitions, expanded and cleaned some few errors here and there. I think it is something that we should adopt and move forward because it is not going to alter anything substantial in the original Bill as passed by this house.

Therefore, I support and look forward to moving with speed so that the people who are targeted to benefit from this legislation do so. Thank you very much.

Hon. Deputy Speaker: Hon. (Prof) Nyikal. I see MakaliMuli, IsaackMwaura and Abdikadir Omar. All of you had spoken on this Bill.

Hon. (Prof.) Nyikal: Thank you, hon. Deputy Speaker for giving me this opportunity. I will be very brief. We have done a great thing that we have come out and agreed with the Senate and that is really going to progress things. I want to just say one thing and I would like to address it to the young Parliamentarians.

(Hon. Sakaja consulted)

If hon. Sakaja would listen to me, I want to tell him that the youth are really disadvantaged and I have noticed that even with the Uwezo Fund that we have, they have difficulty in filling the forms. What I have noticed is that the civil society has done a big job in making the youth politically sensitised but they have done very little in making them able to do things that will help them in income generation. You would do a great job even as a group of young people to change the philosophy of the civil society. In the same way they worked on the youth in participating in governance, they should use the same commitment and the same amount of resources to help youths to develop themselves in terms of entrepreneurship.

Lastly, I would also say that in implementation, the introduction of disadvantaged groups will be a problem as hon. Makali said. My advice, which I am sure the young Parliamentarians will follow, is to insist on criteria of supporting the disadvantaged groups.

Thank you, hon. Deputy Speaker.

Hon. (Dr.) Shaban: Thank you, hon. Deputy Speaker. I just want to add my voice and also mention that I do not like the word “disadvantaged persons” because such words can be misused and played around with. In South Africa, sometimes back there was something called “black empowerment” and in the process of registering their companies, people took drivers, cooks and house helps and put them there and in the end they were the ones who were doing business. The major people who were doing business were the same cartels who continued to do business. We do not want a situation where this 30 per cent or a third which we are talking about for the affirmative action will end

up in the wrong hands. We have to be very careful and the words have to be very clear. Let us not use these words. Even if they really wanted to change, they should have used “marginalised groups” because those are the words in the Constitution. I hope this goes a long way in assisting Kenyans; the youth, disabled persons and the women.

Thank you.

Hon. Deputy Speaker: Hon. Mulu. Please, a minute each, this is not the time to debate.

Hon. Mulu: Hon. Deputy Speaker, I will take a very short time. I want to start by thanking hon. Sakaja for this initiative and also thank the National Assembly and the Senate for how far we have come. I listened to hon. (Ms.) Ghati when she was making her contribution and I realized that even though I do not belong to the group of the youth - I am also not a woman - I am a potential candidate for disability and all of us are. It is good that this law is factoring in the disabled people because all of us can join that group of people. Looking at this Bill, it is an important Bill and my concern, which hon. Sakaja should listen to, is what hon. Chepkong’ a has said. We have already debated the new Bill which is the new Public Procurement and Asset Disposal Bill and it is supposed to be passed by this House before 27th May, 2015.

My concern is that if these important amendments do not get - I have looked at that Bill and I do not think this is part of that – to the final Bill because we are repealing what we have already amended, automatically you are likely to lose all these. I want to emphasise that it is important you run with speed to make sure these amendments are part of the new Bill.

Thank you.

Hon. Deputy Speaker: Good advice because we do not anticipate debate and we do not even know whether that one will pass but in the interest of what you are saying, it is important that this is included in the Bill that is coming.

Hon. Mwaura: Thank you, hon. Deputy Speaker. I rise to support this Bill and I want to congratulate---

Hon. Deputy Speaker: Hon. Mwaura, I hope you realise that we are not debating now, we are just finishing. It is not even Third Reading.

Hon. Mwaura: Yes, I am doing so.

I just want to make some quick observations. One is that, indeed, we need to ensure that these amendments are also introduced at the Committee Stage when we are discussing the constitutional Bill of Article 227. Two, as hon. Members have expressed, if you introduce the word “disadvantaged group”, first, it is only capturing persons with disabilities and youth but it leaves out women. It also goes ahead to make this preferential procurement superfluous and we do not want to go to the way of broad-based black economic empowerment in South Africa.

Those are issues we need to look at because even if we are not anticipating debate, if you look at the proposed new Bill of 2014, the word “disadvantaged” is very much used in that proposal. We need to be careful so that we maintain Government’s intention of policy of ensuring it is only youth, persons with disabilities and women and, if for example, you find yourself in the categories of disadvantaged, then you can as well be a youth or a person with disability or a woman.

Hon. Aden: Thank you, hon. Deputy Speaker. I thank the Senate for the good spirit in terms of their concurrence with us on this Bill. Particularly, I wish to thank hon. Sakaja. He has represented the youth of this country very well in this House. I must say that we are very proud of him for the role that he is playing in terms of representing the youth and ensuring that these kinds of legislations that touch on their interest is pushed through. I call on His Excellency the President to sign this into law.

This sends a message to the youth of this country, the women and persons living with disability to do their bit and register themselves into organised groups or companies that can benefit from the Government resources as per this law. On the same breadth, I call on the Government agencies to ensure that we make the process easy for those persons to register themselves. Remember that most of the youth and the disadvantaged persons here do not have the financial capability to register.

One of the youth in my constituency whose name I mentioned earlier, wishing to register a company as a disabled person was asked for Kshs.50,000. Where will this person get that money? I suggest that as future improvement, we waive charges of registration for persons with disabilities and youth so that those groups can register companies and benefit from this.

I thank you, hon. Deputy Speaker for the opportunity.

Hon. Gaichuhie: Thank you, hon. Deputy Speaker for giving me this opportunity to contribute to these amendments. I want to thank both the National Assembly and the Senate for considering this Bill that was brought to us by hon. Sakaja. I also want to thank this House for agreeing with the amendments from the Senate though they had some reservations. I also want to confirm that the Departmental Committee of Finance, Planning and Trade, where hon. Sakaja sits, has taken your views that we need to include these amendments in the new Bill that is coming. Hon. Sakaja is spearheading those amendments and they shall also be included in the Bill. I want to assure the House that all we have done today is not in futility. We are going to make sure that it is in the new Bill.

With those few remarks, I want to thank everybody for taking those amendments.

Thank you.

Hon. (Ms.) B.N. Nyaga: Thank you, hon. Deputy Speaker, for giving me this opportunity to support these amendments by the Senate. I have an issue and I would like to address the concern of the youth, women and the disabled. You realise that tenders are advertised in the newspapers only. I wonder how many youth and women, particularly in the villages, can access newspapers. I would urge the procuring entities to make sure that the information reaches everyone who is concerned. This is a very important Bill. It is overdue and it is supposed to support the youth and every Kenyan who is supposed to be assisted.

I support. Thank you.

Hon. (Eng.) Gumbo: Thank you, hon. Deputy Speaker. As engineers, we always say that you cannot fix it unless you can measure it. I have looked at the definition of “disadvantaged group” but as we go into the main Bill which is coming, while I do not intend to anticipate debate, let us find a way of identifying disadvantaged groups without perception because perception as you know is subjective. I am also happy that hon. (Dr.) Shaban brought in the issue of black economic empowerment programme. I witnessed

the debate which was raging in South Africa where people went behind the disadvantaged people to register companies which were meant to benefit the black.

Finally, because there is no time for debate, if we promise women, youth and the disadvantaged persons with disability fruits, let us not promise them fruits with big print but make the fruits unreachable, in small print. I had said that if you give tenders to the youth and yet you put hurdles like tender security and performance bonds which are impossible to achieve, we are not achieving anything.

I hope all these things that we are talking about will be taken care of in the regulations that will come in the main Bill that has a constitutional deadline.

Thank you.

Hon. M'uthari: Hon. Deputy Speaker, I take this opportunity to also thank the Senate. This is good concurrence. It is good that this law has come to this level. Suggestions have already been given that we factor this in the new Bill. This will help because it will ensure that ours are not just cosmetic statements that youths and other groups are disadvantaged and left out. It will ensure that those disadvantaged groups are included in wealth creation. However, a danger still exists because people will create groups yet the real targets might not be reached. So, there is a law to empower or facilitate the youth to stand out. The youth are not there to be pitied, they need to be creative and take advantage of the new law.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Manson Nyamweya.

Hon. Nyamweya: Thank you, hon. Deputy Speaker for giving me a chance to also contribute. I want to thank the Senate. If you look at the amendments that they have brought, they are minimal. I urge Members that we accept these amendments as we move on. If we bring anything that will require amendments then it will mean that we form a joint Committee to resolve the issues. However, in the spirit of being the Parliament of this country, let us accept these amendments. We may discuss about the names and the definitions, but what is important is the sincerity of implementing what should be done.

We have talked about it here, that the youth have no resources and knowledge. The biggest challenge is that they do not have knowledge. They need to be trained. Money is not the issue. What is required of any person is trust. The youths need to be trusted if they are going to participate in this. We need to trust that the youth are able to deliver when they are given work. The worst situation would be those who are well off hiding behind the youth and then forming companies. These wealthy people sit at home and send their kids to go and look for business. It will not be any different from the situation as it is presently. So, the critical question is this: Can we truly live the spirit of the Act? I am talking about recognizing the groups which are mentioned here, that is the disadvantaged groups such as the youth and the women. If we do so, they will be able to grow. If we trust them, they will grow. However, if we do not trust them, even if we bring all the amendments that we think are nice, we will remain where we are. I am afraid to say that if you look at the tenders that are taking place---

Hon. Deputy Speaker: Hon. Nyamweya, please remember that it is not debating time. You were just to make your final comments.

Hon. Nyamweya: Those are my final comments, hon. Deputy Speaker. Thank you.

Hon. Deputy Speaker: Hon. Winnie Karimi.

Hon. (Ms.) W.K Njuguna: Thank you, hon. Deputy Speaker for giving me this opportunity. I want to thank the Chairman for bringing this Bill and also the amendments. This is a very important Bill which is really going to touch the people who have been forgotten for a very long time. It is very important that we make it easy for these groups mentioned here to access tenders. This is because in certain areas very hard conditions are placed, for instance, requiring women and youth to get certificates online. We know that most women and youth in this country cannot access these certificates online. Sometimes they request for bid bonds and so many other things. We want this to be done in an easy way so that it can get the change that the Government wants. Our intention should be to change the lives of these people who have been left behind.

We want to encourage the youth and the women so that they get all these tenders. We need also to do an evaluation to find out the change it is bringing to our community. So, I want to support this Bill and the amendments. This is a noble Bill and project for the Government and the people of Kenya. Indeed, it should be taken very seriously.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Anthony Kimaru.

Hon. Kimaru: Thank you, hon. Deputy Speaker. I stand to support the Amendment Bill that is before this House. Basically, it is because it brings clarity into the Bill that was earlier proposed or passed by this House. We now have a clear definition of who the various groups are. When we talk of affirmative action, at times in a country like ours, unless we spell out certain things in crystal clear manner, there is always that opportunity to misinterpret and misapply certain provisions. We are seeing very clearly the youth being defined, the disabled and even the women or groups which may fall under the women category that would benefit from this Bill.

It cannot again be said what benefit there will be. To echo the words of the Mover of that Motion, this category of people constitutes a large section of the population. If they are empowered, indeed, we are going to have a difference in the way wealth is distributed in this country and in the way the youth and others are empowered. I take cognisance of the beautiful and powerful role that Uwezo Fund is going to play to ensure that these groups are able to carry out those tasks. When I go home this weekend, I will be disbursing about Kshs14 million from the Uwezo Fund. Since there are a few roads being assigned out there, I do not know whether this can be applied earlier than usual. Since that provision also exists, these groups may be able to benefit. I support, hon. Deputy Speaker.

Hon. Speaker: Hon. Dennis Waweru and then the last comment by hon. Sakaja.

Hon. Waweru: Thank you, hon. Speaker. I want to register my support on this Bill. If you do a brief description of some of the groups, say, the youth, you realize that a Kenyan youth is a person who has no capacity in terms of capital and has no experience. The youths need help to be lifted. One other reason why I would want to support this Bill is that it gives opportunities to women, the disabled and other marginalised groups.

Looking at the Government procurement, you realise that the biggest buyer in this economy is the Government of Kenya. So, having given this opportunity to our youth, women, persons with disabilities and to other groups, we are, in fact, empowering them and enabling them to partake of the national cake in this country. I would urge that we

move a step further and ensure that some of these road blocks that block our youth, women and persons with disabilities to participate in the national activity are removed. If, for example, I was to give priority to business in Dagoretti South, one of the biggest problems that we will face is that of the demand that they produce bid bonds. I do not know if they will be able to do that. Most of them, even after they have got the contracts in a Government institution, again, it would be a requirement in law that they should be able to provide a performance bond which is very expensive.

I do not know if someone will be looking for this requirement or for ways to perform and deliver on the contractual obligation of that opportunity that has been accorded to them.

I want to support this Bill. However, we need to go further, so that we can empower our young people out there. The only surest way of securing ourselves and this country going forward is to empower our youth and come up with very deliberate interventions that are going to lift them up from their levels of poverty.

Hon. Sakaja: Thank you very much, hon. Deputy Speaker. This is the culmination of a very long process. The Bill was first published in 2013 and it is now close to two years since then. It has been a long journey with a lot of hurdles especially when the Bill went to the Senate. I have heard the reservations and the comments from the Members. I also had reservations on some of the amendments by the Senate especially on broadening the definition of “disadvantaged groups”. I would have wished that in the parliamentary spirit, when a Private Member’s Bill goes to the House, it is prudent to invite that Member to go and explain what he was thinking. I was not invited by the Committee on Finance, Commerce and Budget of the Senate. I just found the amendments. I am sure if we had interacted, we would have made more robust amendments to this Bill.

However, as a comfort to the Members, the regulations that currently exist are very specific as to which groups we are talking about. The regulations are specific that we are talking about youth, women and people with disability. That takes care of that fear.

Secondly, I would like to assure Members that there is a new procurement law that is coming. I have already presented the same amendments as had been passed by the National Assembly before they went to the Senate to the Committee on Finance, Planning and Trade, where I sit and to the legal team. These amendments will be part of the Bill that we are passing.

However, it was important for us to finish this process for two reasons. First, it is a process that has taken time and investment to get to where it is. It is always good to finish. People will not remember how you start, but they remember how you finished. Second, even in the intervening period, these three months between now and May, it will make a world of difference for these young people, women and people with disability who are struggling to do business within the counties, parastatals, public schools, universities and all public entities including the national Government. It will also give us time for three months to start receiving the reports of monitoring that will be sent to the Public Procurement Oversight Authority (PPOA) to come to Parliament through the Committee on Equal Opportunities, for us to start questioning our governors, Cabinet Secretaries and parastatal heads on why they are not giving business to young people.

I would like to tell any Accounting Officer in this country that times have changed. We are going to unearth cartels to the greatest extent that we can. We must give our young people an opportunity. The youth and women of this country are not looking for favors. All they need is an opportunity to prove themselves. They have the ability, energy and capacity to do business.

As I conclude, I would like to deeply thank the Committee on Finance, Planning and Trade where I sit. We are represented here by the Vice-Chairman, hon. Gaichuhie. I would like to thank hon. Benjamin Langat because from the pre-publication period they have supported this Bill. I would also like to thank the legal office in Parliament for its support throughout this process. I would like to thank the Young Parliamentarians Association for pushing and supporting this Bill in both Houses because we have membership in the Senate and the National Assembly. I would like to thank the Senate for having dealt with this Bill. It could have been faster but we thank them all the same for not rejecting it.

I would like to thank as well the Executive. The Cabinet Secretary for Devolution and Planning has tried to make sure that young people get these opportunities. Her Youth Advisor, Lydia Mathia, has been at the forefront of pushing for this procurement Bill. There is a one-lady army at the registration of these certificates and her name is Ms. Otunga. She has really gone out of her way. For the past three years, Ms. Otunga has really stood for young people. She has been the secretariat with a few people making sure that these businesses are registered. We would like to assure them of our support. I would like to urge the President to expedite and sign this Bill once we have completed the process at which tail-end we are, so that our young people can start reaping the benefits of this Government, appreciating and making money through the Government.

With those remarks, I support this Bill.

Hon. Deputy Speaker: Thank you, hon. Members. Those Members who have just come in, you can make contributions in the next sitting.

(Question put and agreed to)

(Consideration of Report of Bill ordered for tomorrow)

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

Hon. Gaichuhie: Hon. Deputy Speaker, I beg to move that the County Governments (Amendment) Bill (Senate Bill No.1 of 2014) be now read a Second Time.

We, as the Departmental Committee on Finance, Planning and Trade considered this Bill that came from the Senate and we brought a report to this House. When we received the Bill we decided to consult further. We invited the Office of the Attorney General and the Ministry of Devolution and Planning which are charged with the responsibility to oversee county governments.

After talking to the Attorney-General, he referred us to Section 2 of the Urban Areas and Cities Act, 2011, which defined “urban areas” to mean municipalities or towns. Sections 9 and 10 of the same Act further provide for the criteria for eligibility of an urban area to be classified as a municipality or a town.

We rejected this Bill for the aforementioned reasons. We also noted that the location of headquarters of any county or district is always left to the people of the area to decide. We normally call leaders from all walks of life within the district or county to have a consultative meeting and agree where the headquarters should be. For those reasons, we found that we did not have to legislate where the headquarters of a county should be.

We also considered and noted that we have other areas like Baringo, TharakaNithi, Kiambu, Laikipia, Nyamira, Nyandarua and Meru among others, which even currently are in dispute over their headquarters. We thought that if we decided to legislate on where headquarters should be, we will be going against the wishes of the people. The Constitution of Kenya provides for public consultations. We are very sure that before this Bill went through, there were no consultations in the counties to have agreed to use these channels to have their headquarters stationed at those particular areas.

As you know, towns and cities are expanding. I would like to take a case in point of Nakuru County. It is a very expansive county with its headquarters in Nakuru Town. Nakuru Town is fast growing and very soon we might find that the headquarters is very congested. We have vast tracts of land. We can purchase other areas and decide, after consulting the general public of the whole of Nakuru County, to locate our district headquarters elsewhere.

We decided, as a Committee, that if we agree that these headquarters should be permanently placed in the locations that were stated in that Bill, then we will be curtailing these headquarters to further expand. Therefore, we decided to bring this Bill as a formality, and that is why I am moving it; to let the House of the county to decide if they want their headquarters to be permanently located in the areas that the Bill stated. For the purpose of clarity, the proposal for the 47 counties is as follows:

In Mombasa, the physical location should be within Mombasa City; in Kwale, the physical location should be within Kwale urban area; in Kilifi, it should be within Kilifi urban area; in Tana River, it should be within Hola urban area; in Lamu, it should be within Lamu urban area; in TaitaTaveta, it should be within Wundanyi urban area; in Garissa it should be within Garissa urban area; in Wajir it should be within Wajir urban area; in Mandera it should be within Mandera urban area; in Marsabit, it should be within Marsabit urban area; in Isiolo, it should be within Isiolo urban area; in Meru. it should be within Meru urban area; in TharakaNithi, it should be within Kathwana urban area; in Embu, it should be within Embu urban area; in Kitui, it should be within Kitui urban area; in Machakos, it should be within Machakos urban area; in Makueni, it should be within Makueni urban area; in Nyandarua, it should be within Olkalou urban area; in Nyeri, should be in Nyeri urban area; in Kirinyaga, it should be in Kerugoya urban area; in Murang’a, it should be in Murang’a urban area; in Kiambu, it should be in Kiambu urban area; in Turkana, it should be in Lodwar urban area; in West Pokot, it should be in Kapenguria urban area; in Samburu, it should be in Maralal urban area; in Trans-Nzoia, it should be in Kitale urban area; in UasinGishu, it should be in Eldoret urban area; in

ElgeyoMarakwet, it should be in Iten urban area; in Nandi, it should be in Kapsabet urban area; in Baringo, it should be in Kabarnet urban area; in Laikipia, it should be in Rumuruti urban area; in Nakuru, it should be in Nakuru urban area; in Narok, it should be in Narok urban area; in Kajiado, it should be in Kajiado urban area; in Kericho, it should be in Kericho urban area; in Bomet, it should be in Bomet urban area; in Kakamega, it should be in Kakamega urban area; in Vihiga, it should be in Vihiga urban area; in Bungoma, it should be in Bungoma urban area; in Busia, it should be in Busia urban area; in Siaya, it should be in Siaya urban area; in Kisumu, it should be in Kisumu City; in Homa-Bay, it should be in Homa-Bay urban area; in Migori, it should be in Migori urban area; in Kisii, it should be in Kisii urban area; in Nyamira, it should be in Nyamira urban area; and in Nairobi, it should be in Nairobi City.

Those were the proposed headquarters of the various counties. As a Committee, after consulting in those two departments, we rejected the Bill on the premise that people should be left alone to suggest where their headquarters should be, knowing very well that counties have their own governors and administration. We have said that we need devolution to let the people decide and consult widely. As a Committee, we rejected this Bill. I want to ask Members to consider this Bill. They are free to decide whether they need their urban areas to be in that area. It is a Bill which leaves it upon the County Assemblies to decide.

With those remarks, I beg to move and ask hon. Dennis Waweru to second.

Thank you, hon. Deputy Speaker.

Hon. Waweru: Thank you, hon. Deputy Speaker. I rise to second the Bill.

Having considered all the factors in this Bill, we felt that it is against the spirit of devolution. We are now in a new constitutional dispensation and, therefore, we cannot change fundamentally what the Constitution has given to our counties and the county assemblies. The Constitution seeks to ensure that decisions for counties are made at the lowest level possible. In that spirit, we felt it was not wise to define and specify exactly where the county headquarters should be located.

Having also looked at the counties which are corporate bodies in their own self, they can enter into a contract. They can be able to sue and make their own decisions especially with their assemblies. It is also an issue of democracy to let them be able to debate agree, vote and decide on which towns should be their headquarters. We have had several instances where there have been issues in counties neighbouring Nairobi. We have had a lot of acrimony about where the county headquarters should be. Therefore, we felt that we should leave it to the elected Members of the County Assemblies (MCAs) and their governors plus the community. With some consultation, they should be able to decide their destiny and determine their affairs.

With those few remarks, I support the position of the Committee. Thank you.

(Question proposed)

Hon. Deputy Speaker: Let us have hon. Irungu Kang'ata.

Hon. Kang'ata: Thank you. I rise to oppose the Report of the Committee. It has rejected the proposal by the Senate to fix county headquarters. The reason I am opposing

is because of Murang'a. I have seen from that Schedule that the proposed legislation had proposed to fix Murang'a Town as the headquarters of Murang'a County.

As an area Member of Parliament (MP) for Kiharu where Murang'a Town is, I am very happy with that proposal. I would never want a situation where Murang'a Town is no longer the county headquarters. There have been whispers in my county that people have been proposing to move the county headquarters from Murang'a Town to another place. Those whispers are wrong and I thought this Bill by the Senate would have ensured that those whispers are buried in the deepest sea and that debate is forgotten.

The reasons are obvious and I would imagine that they apply to each and every county in Kenya. The reasons are that Murang'a Town has super infrastructure. There have been heavy investments by various Ministries to upgrade roads and the sewerage system. We have a multimillion water installation. Therefore, if you try to move the headquarters to another place, it would mean that you are going to employ a lot of resources to upgrade that new town to make it reach the standard of a county headquarters which currently Murang'a is benefiting from. I am sure those reasons apply in Kitui, Turkana, Siaya and almost each and every county in Kenya. This is so that we do not give room for maneuvering and fights. It would make sense for us to fix specifically a county headquarters.

It is also part of our legislation tradition, these days I have noted a new practice where we are fixing in our statutes headquarters for various entities. I was in this House when we were discussing the Media Bill where we stated that the headquarters for this body which is created under this law shall be in Nairobi.

I have also seen several pieces of legislation where they have expressly stated the location of the headquarters of that entity. If we were have been doing that, what is wrong with us specifically providing for the headquarters of a certain place? There is nothing wrong. If we do not do that we may be creating a very major lacuna. For instance, we are going to elect a governor, who using his own whims, may as well decide to change the location or headquarters of a certain county. That is going to bring a lot of chaos and acrimony. I want to declare my interest here. I was born and raised in Murang'a Town. My parents have businesses there. If somebody was to say that the headquarters is to be shifted from Murang'a to another place, I am sure I will be the first person to oppose that kind of proposal. So that we let the so-called ghosts of regionalism to lie, we should fix, through legislation, the headquarters of a certain place. I have heard the Vice Chairperson of that Committee advance an argument that we should allow people to democratically decide the county headquarters and so we need not to specifically legislate on that issue. With all humility, I think that argument is illogical. I say so because we are elected leaders with a very clear mandate on behalf of the people. Therefore, we have every reason to come and sit down here, decide and make resolutions. The presumption is that we are doing that on behalf of the people who have elected us. That argument, therefore, does not make sense.

This proposal came from the Senate. According to the Constitution Senate is the custodian of devolution. Therefore, the irrefutable presumption is that the Senate sat down and listened to the people. It is important we do not leave this issue to conjecture and guesswork. What would be the advantages from an economic point of view for us to specifically legislate over headquarters? It will mean that those areas may now attract

massive investments. Assume you are from another country and you want to know the county headquarters of a county so that you invest your resources there, you will find it difficult. You will be going round and round inquiring where the headquarters of, say, Garissa is. You may as well be told it is Garissa Town. After you pump in millions and billions of shillings in Garissa Town, a governor wakes up one day and decides to shift the headquarters of Garissa to, say, Garbatulla. To avoid such kind of shenanigans we need to specifically provide for the headquarters of counties. This is so that the 47 units become centers of attraction and development for this country.

When you do a social and economic projection, especially when you want to raise standards of a country, you need to have that country urbanized. All factors being constant, *ceteris paribus*, the 47 key towns of this country are going to become the centers of development. Kenya will develop when 80 per cent of Kenyans will be living in urban areas. This means, if we are moving towards an area where majority of our citizens will be in urban areas, it is important we start early to boost development of urban areas. One way of doing that may include coming up with a master plan of the 47 clearly legislated areas which are going to become the engines of development. These proposed legislations would be one way for us as parliamentarians to gear this country towards that direction. We should clearly state the headquarters of the 47 regions and then we facilitate investment in those regions. Majority of Kenyans will stand urbanized and those areas will become the cities of the future.

However, when you keep it open, you are going to create a situation where there is some form of darkness and informality. Our work as legislators is to ensure that we fight informality and convert it to formality.

Thank you. I oppose.

Hon. Deputy Speaker: Hon. James Nyikal.

Hon. (Prof.) Nyikal: Thank you, hon. Deputy Speaker, for giving me the opportunity to contribute to this. I stand to support the decision of the Committee. This Bill seeks to do only two things. One, it seeks to create a Third Schedule in the County Governments Act. That Schedule provides which towns are going to be the headquarters of the various counties.

I have not got any information even from the Committee on the process that the Senate used to reach this decision. We know that there have been a lot of discussions in various counties to decide on their headquarters. That is as it should be. It would not be right at this level to decide for the people where their county headquarters are going to be. The spirit of devolution assumes that in every county the people will make a decision. Whereas the hon. Member likes this because it coincides with what his wishes are, it could very well be that there are many other people who find that this decision is not what they were thinking of. This will, therefore, deny them the chance to participate in deciding what their county headquarters would be.

The proposed Section 6A(2) in this Bill seeks to provide the process that the County Assemblies will use to decide what their county headquarters are. Once that is done, it is brought to the Senate for approval. Once again I ask: "Who will have more information on where the county headquarters should be?" Is it people sitting in the Senate or people on the ground? I am aware that it may take a very long time and a lot of arguments. However, issues like having a county headquarters or county boundaries are

emotive issues. People should be allowed to ventilate as much as they can. They should be allowed to talk to each other, have town hall meetings and find ways through which consensus can be reached. Once consensus is reached by the people then that is how it should be.

This Bill also seeks to define cities which are already defined in The Urban Areas and Cities Act. The only centres that may qualify as cities according to the law are Mombasa, Nairobi and Kisumu. The rest should be left to the people of the counties. Even if it were that governors would seek to change this, it must be left for the people to decide at this point.

With those remarks, I beg to support the decision of the Committee on this matter.

Hon. Deputy Speaker: Hon. Jared Opiyo.

Hon. Opiyo: Thank you, hon. Deputy Speaker, for giving me the opportunity to speak to this matter. The Constitution of Kenya gave different assemblies, governments and Government agencies different mandates. It is not right for any organ of the Government to try to change that through the back door.

My understanding is that the headquarters of the various counties are meant to affect the social and economic progress of those counties. Even when we would want to regulate and control the way people decide where their headquarters are going to be, it is only fair that, that decision be largely left to the people of those various regions.

Each and every county has its own social and economic dynamics, which, sitting in Nairobi, may be very difficult to understand. That is why the business of deciding where the headquarters of the various counties should be, should be left to the counties themselves. They can do this by building consensus among the communities and then later on legislating in their County Assemblies. It is not true to say that a governor can wake up one day and say that he wants the county headquarters next to his home and it happens. These headquarters are centres of development and progress. In democracies such as the one we have in Kenya, where a governor is elected by the people, it is unimaginable that a governor can single handedly decide where the headquarters of the county is meant to be. Probably, we will have to re-look at our Constitution and give more mandate to the Senate, so that they can have more business to transact. There is a tendency that sometimes they encroach on areas that may not necessarily be theirs.

With those remarks, I support the position of the Committee.

Hon. Deputy Speaker: Hon. Antony Kimaru.

Hon. Kimaru: Thank you, hon. Deputy Speaker. From the outset, I support the position of the Committee. As the Deputy Chair of the Committee stated, my own county has a problem with the relocation of the seat of the county government. As it is right now, the county government headquarters are in Nanyuki, but the county assembly changed the headquarters to Rumuruti. There is nothing wrong with Rumuruti. Indeed, there could be all the right reasons to take it to Rumuruti. But the relocation of the headquarters was done without any consultation. The MCAs sat one afternoon and decided to change it. The threshold for changing the headquarters was pretty low such that the fears that my friend had earlier on, if that becomes the trend, headquarters will be changed day in, day out, without any proper consideration.

The proposed amendment by the Senate may not get my support mainly because it includes Rumuruti as the headquarters. I believe that Senator G.G. Kariuki, who comes

from Rumuruti, was instrumental in identifying Rumuruti. I wonder where he got the authority from. As an elected leader from that county, I was never called to any meeting to discuss this matter. While proposing these headquarters, the senators should lead by example. Public participation is essential. They should have sought the opinion of the hon. Members from the various counties. I do not think that was done. If it was done, I must have been excluded. The reason as to why I was excluded is obvious. It was not a transparent process. Therefore, as much as I would want this Bill legislated into law, I would opt for another route: The Senate or whoever is concerned should facilitate public participation in identifying the headquarters of the counties, so that we can have the concurrence of everybody else.

There is some beauty in some of the proposals contained in this Bill although that beauty has been spoiled by the Third Schedule, which was arrived at without consultation. If consultation would have been done in arriving at the Third Schedule, the other clauses, for example Clause 6; would be amended by inserting Sub-section 6A, which states that for any county seats of government to be transferred, it would require the approval of two-thirds of the membership of the County Assembly. That is a good provision, if only we could tide up the Third Schedule.

Secondly, the Bill says that even after a County Assembly has approved, the particular resolution must be taken to the Senate, where there could be some degree of sobriety. If two-thirds of the membership of a County Assembly vote in favour of relocating the county headquarters, the threshold would be sufficient to cater for all other interests. For example, Laikipia County has already established its headquarters. They have all the offices they need. They have even built an Assembly in Nanyuki at a cost of Kshs50 million. I do not see why they would invest in a headquarters today and later on relocate the same to another area that has no infrastructure and facilities. It would not be prudent use of money. I am not opposed to Rumuruti being the headquarters of Laikipia County, but is building of another headquarters a priority for Laikipia County?

It does not require aeronautics or space engineer to know that building new headquarters would cost so much money. In a county like mine, which does not have water, what value will building another headquarters at billions of shillings bring? I am sure that the people of Rumuruti would require good water supply and sewerage services, which they are entitled to. I am sure that such services can come gradually but, first and foremost, we have to take care of water, roads, electricity and hospitals.

People in Laikipia County have to travel all the way to Nairobi to come for dialysis and cancer screening. Those are the priorities that we should concentrate on as of now. If we would equip the hospital in Nyahururu and the one in Nanyuki with modern equipment, we will save our people the cost and agony of coming to Nairobi. This morning I had to send some money by phone to a patient who was stranded at Kenyatta National Hospital (KNH) and had been there for a couple of days yet had not been attended to. At the end of the whole exercise they did not have enough money to go back home. I like what is happening in Meru County. I hear they are equipping those hospitals properly. I think a county like Laikipia should borrow a leaf and put first things first. A county headquarters will not benefit anybody. The HudumaCentres and so on where the headquarters is located may be immaterial. What is greatly important is that we do not go

about investing a lot of money in establishing headquarters while we have other priorities.

Hon. Deputy Speaker, Mutara will also be a nice place to establish a headquarters but even if we were to establish our headquarters at Mutara, it would require a lot of money. Mutara is bare ground where there is absolutely nothing apart from a few kiosks. That being the case, the cost of doing our headquarters in Mutara would be very expensive. Whereas Nanyuki is on one end of the county, probably putting a county headquarters at the middle will be a good thing. But if you look at that, the opportunity cost of doing that *vis a vis* the other more urgent needs, we would have to hold that for the time being. If this schedule was to be redone, I would propose that Nanyuki continues to be the headquarters of Laikipia County.

In the interest of time and maybe other hon. Members who may want to contribute, I beg to support the Committee's Report. Thank you.

Hon. Mwaure: Thank you, hon. Deputy Speaker. I rise to support the Report of the Committee. If we look at the history of the world, you realise that in the days of the medieval ages, we had great cities like the twin cities in Greece of Sparta and Athens. Coming to the modern society, it is very interesting because even with the development of the westphalian model of the state, we are kind of going back to that. I was taken aback sometime back when I was in London to realise that the economy of London was growing while that of the rest of the United Kingdom was down. The same case was happening in Aberdeen, Scotland. It is also true of Kenya. If you look at our headquarters, you are told that more than 60 per cent of the economy is within the greater Nairobi area. That tells you the importance of a headquarters. Now, the spirit of devolution is to bring services closer to the people. Indeed, with the advent of devolved system of Government, we have started to hear of new places like Habaswein and Rumuruti; places that we would not have heard of before. The trend has of course been necessitated by the fact that even at the macro-level, it is important to have decongestion of our capital cities. Right now most of us will agree that Nairobi is becoming a nightmare. In fact, the situation has been exacerbated by the fact that fuel prices have gone down and so everybody who has middle-class inclination or imagination is driving to and from work and that is affecting everybody. Even some of the infrastructure that was created ostensibly to help the situation is now filled up and a good case is Thika Road.

Hon. Deputy Speaker, the practice all over the world has been that it is important to have two headquarters: the commercial headquarters and the political headquarters. A case in point is our neighbouring Tanzania where you have Dar es Salaam as the commercial headquarters and Dodoma as the seat of Government. In South Africa you have Pretoria as the seat of Government and Cape Town as the seat of Parliament. In the USA, New York is the capital and Washington, DC is the political capital. This trend has moved very fast and these are discussions that have been coming time and again with regard to our country, if for example, we were to separate Nairobi to be a commercial capital and get a political capital even if it is just a smaller city closer here.

Therefore, we cannot overstate the gains of development. What I find very interesting with the proposal from the Senate is that the Senate is speaking to the issue of an urban area where they do not expressly talk about a specific town. I have a problem

with that because the ambiguity of the definition of “urban area” may be positional. What would constitute an urban area? Is it a more developed area of the county? Even if it were to be so, the import of devolution would be, if it were possible, to ensure that you do not cause further marginalisation by empowering already developed areas within the county. So the sovereign will of the people to determine where their headquarters is must be upheld. In fact, as it has been observed by earlier hon. Members who have spoken, this list that is being presented to this august House is not a subject of public participation. In fact, further than that, it is very clear that some of the interests may have been entrenched by the fact that some Senators may have suggested them.

I want to say that yes, we can as a matter of fact, locate the headquarters of a country within a statute but now that we would want to locate headquarters of counties, in my opinion, that is over-legislating. Two, there is obviously the question of the fact that some of the towns that are being suggested to be permanent headquarters of counties do not have even room for expansion. A very good example is our nearby county, Kiambu. If you look at Kiambu Town, it is a one street town. There is no room for expansion because it is surrounded by many coffee estates that are of private enterprise. A town like Thika has served the purpose so far. Of course, there have been questions and disagreements in that regard. Sometimes if you look at the location of some of these county headquarters, they were picked because of their proximity to some major infrastructural projects without necessarily looking at the centrality of that county therefore disadvantaging some people who have to come from very far to access the services.

In the interest of time, I wish to support the recommendation of the Committee and implore this House to allow members of the various counties, in the spirit of devolution, decentralisation and equitable distribution of development, to agree with the Committee.

I rise to support.

Hon. Deputy Speaker: Hon. Rotino, do you want to take that one minute left?

Hon. Rotino: Hon. Deputy Speaker, I will continue next time---

Hon. Deputy Speaker: Of course, that is the practice. Start your contribution and you will continue next time.

Hon. Rotino: Thank you hon. Deputy Speaker for giving me the opportunity to support the views of the Committee. As my colleagues have said, it is important for us to understand and underline the importance of decentralisation. It is the devolution that all of us fought for that we are trying to support and emulate in this country. It is important that communities are given the opportunity to decide---

ADJOURNMENT

Hon. Deputy Speaker: Hon. Rotino, you have a balance of nine minutes when this next comes on the Order Paper.

Hon. Members, the time being 6.30 p.m. the House stands adjourned until Tuesday, 10th March, 2015 at 2.30 p.m.

The House rose at 6.30 p.m.