

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 24<sup>th</sup> February, 2015

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### FOURTH RETREAT OF NATIONAL ASSEMBLY LEADERSHIP

**Hon. Speaker:** Hon. Members, this Communication relates to the Fourth Leadership Retreat of the National Assembly.

Hon. Members, as you are aware, at the beginning of each Session, the leadership of the National Assembly retreats for a day or two to undertake a review of the activities of the previous Session and lay the framework for the incoming Session. Therefore, I wish to notify you that the National Assembly has planned a two-day retreat for the leadership of the House under the theme “Reflections, Planning and Forging ahead”. The retreat will be held on February, 27<sup>th</sup> and 28<sup>th</sup>, 2015. In addition, Members of the Parliamentary Service Commission (PSC), the presidium of the House, Leader of Majority, Leader of Minority, other political party leaderships in the House as well as Chairpersons of Committees and members of the House Business Committee will this time round also be attending the retreat.

Hon. Members, the retreat will be an opportunity for the leadership to take stock of the business considered by the National Assembly in 2014 and prioritise key business for the Third Session in 2015. The retreat will also discuss the manner of considering and processing of the 2015/2016 Budget, related legislation and provide an early opportunity for the participants to discuss decorum and the general conduct of the business of the House and its committees. The leadership has also agreed to invite the Cabinet Secretary for Information, Communication and Technology to brief them on the status of the digital migration and the possibilities for all inclusive alternatives.

I hope that all the Chairpersons of Committees and other leaderships of the House will find time to attend this important retreat, so as to have a structured engagement as we collectively forge ahead in fulfilling our constitutional mandate.

Thank you, hon. Members.

**PAPERS LAID**

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The Special Audit Report of the Auditor-General on allegations of corrupt practices at the Rural Electrification Authority in accordance with Article 229(7) of the Constitution and Section 31(2) of the Public Audit Act, 2003.

The Eighth Periodic Report of the Ministry of Devolution and Planning on Kenya's implementation of the Convention on Elimination of all Forms of Discrimination against Women.

The Report of the Auditor-General and Financial Statements of NEPAD, Kenya Secretariat, for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the National Council for Population and Development for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Kenya National Bureau of Statistics for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of the South Eastern Kenya University for the year ended 30<sup>th</sup> June, 2013 and the certificate of the Auditor-General therein.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Members, the Special Audit Report on the Rural Electrification Authority is referred to the Public Investments Committee, while the Report of the Ministry of Devolution and Planning on Kenya's implementation of the Convention on Elimination of all Forms of Discrimination against Women is referred to the Departmental Committee on Labour and Social Welfare.

Yes, Chairperson, Departmental Committee on Education, Research and Technology, hon. Sabina Chege!

**Hon. (Ms.) S.WChege:** Thank you, hon. Speaker. Hon. Kajuju extended her courtesy to me and allowed me to use her card, but she also needs to take me through the process of signing in.

Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

Report of the Departmental Committee on Education, Research and Technology on the vetting of nominees for the positions of members of the Teachers Service Commission.

**Hon. Speaker:** Is there any other Member or chair of a committee who is supposed to table a report? Chair of Lands, are you the one or yours are notices of Motion?

Next Order!

**NOTICES OF MOTIONS****ADOPTION OF REPORT ON**

## RESETTLEMENT OF SQUATTERS

**Hon. Mwiru:** Hon. Speaker, I beg to give notice of the following Motions:-

THAT, this House adopts the Report of the Departmental Committee on Lands on the resettlement of squatters in Muri Farm, Mathengeta/Tumutumu/Riakanau Farm, Drake Farm and Kaseku Farm laid on the Table of the House on Thursday, 12<sup>th</sup> June 2014.

ADOPTION OF REPORT ON DEGAZETEMENT  
OF LAND BELONGING TO CHORLIM CO-OP SOCIETY

THAT, this House adopts the Report of the Departmental Committee on Lands on the Degazettement of Government Land belonging to Chorlim Co-operative Society laid on the Table of the House on Tuesday, 2<sup>nd</sup> December 2014.

ADOPTION OF REPORT ON LAND ADJUDICATION  
IN MERU/THARAKA-NITHI COUNTIES

THAT, this House adopts the Report of the Departmental Committee on Lands on Land adjudication issues in Meru and Tharaka-Nithi counties laid on the Table of the House on Wednesday, 3<sup>rd</sup> December 2014.

ADOPTION OF REPORT ON COMPENSATION  
OF GALLERIA MALL EVICTEES

THAT, this House adopts the Report of the Departmental Committee on Lands on compensation of evictees of Galleria Mall and expansion of Lang'ata Road laid on the Table of the House on Wednesday, 3<sup>rd</sup> December 2014.

ADOPTION OF REPORT ON LAND ISSUES  
IN TAITA TAVETA COUNTY

THAT, this House adopts the Report of the Departmental Committee on Lands on Land issues in TaitaTaveta County laid on the Table of the House on Wednesday, 3<sup>rd</sup> December 2014.

ADOPTION OF REPORT ON  
BANITA SETTLEMENT SCHEME

THAT, this House adopts the Report of the Departmental Committee on Lands on Banita Settlement Scheme laid on the Table of the House on Wednesday, 3<sup>rd</sup> December 2014.

## ADOPTION OF REPORT ON DISPUTED KAREN LAND

THAT, this House adopts the Report of the Departmental Committee on Lands on the disputed Karen land (LR 3586/3) laid on the Table of the House on Thursday, 11<sup>th</sup> December 2014.

**Hon. Speaker:** Hon. Members, it is important for other committees to feel challenged. This is a committee giving notice of Motions for adoption of seven reports, yet there are some Committees--- Where are they really? It is unfair for one committee to give notice of Motions for adoption of seven reports when others have done nothing.

**An hon. Member:** We have tabled!

**Hon. Speaker:** Where have you tabled them? You do not table them in your head or in television talk shows. It is here in this House where you are supposed to table your reports! It is fair to feel challenged; I am saying this because among other things, we want this House to debate reports, so that we know what it is that the Committees have come up with.

I know that hon. Kamama has tabled very many reports in the past.

**Hon. Abongotum:** I have tabled a few.

**Hon. Speaker:** Yes, you have tabled a few.

*(Laughter)*

**Hon. Speaker:** The Committees I am talking about know themselves. I can see hon. Wandayi smiling because he knows the Committees that are not performing. Please, feel challenged.

Hon. David Were, the Floor is yours.

**Hon. Were:** Hon. Speaker, I checked with the Clerk and he mentioned that my Notice of Motion is not ready yet.

**Hon. Speaker:** You are supposed to give notice for the adoption of the Report of your Departmental Committee on the National Social Security Fund (NSSF) Tassia II Settlement Scheme Infrastructure Development. That is what the hon. Member is trying to say. Honestly, what has happened? Did you table the Report?

**Hon. Were:** Hon. Speaker, I tabled the Report last week and I signed the Notice of Motion in the morning. However, I checked with the Clerk because I had not got the approved notice and he indicated to me that I should give that Notice of Motion tomorrow.

**Hon. Speaker:** Tomorrow then. Liaise with the Clerk.

Leader of the Majority Party, the Floor is yours

**Hon. A.B. Duale:** Hon. Speaker, this animal called NSSF Tassia II--- I remember that the Public Investments Committee (PIC) tabled a Report on the same last year, and now we have the same animal coming back through a different committee. Through you, I would like to urge all chairpersons of committees that when we get to Mombasa we discuss and agree that two committees should not investigate the same matter. The PIC tabled it here but it has not been debated, and now we have the Committee on Labour and Social Welfare dealing with the same National Social Security Fund (NSSF) Tassia II

Settlement Scheme Infrastructure Development. For the sake of prudence in resource management in Parliament especially in the National Assembly, it should be one of our serious agenda items, but not the one set by the *Nairobi Star* today. The *Nairobi Star* is talking of a different leadership meeting where they will discuss some of their own agenda; what we have is what we have communicated. Having committees doing similar reports should be something of the past this year.

**Hon. Speaker:** Similarly, Members, sometimes Kenyans fail to understand why we have two Houses. Sometimes you find that this House has adjourned to discuss a particular matter allegedly of national importance, and then the next day another House does the same. It is not competition! If one House has to deliberate on a matter--- I am saying this because I have a request from hon. Muthomi Njuki, who wants the House to adjourn to discuss a matter he considers to be of grave national importance relating to digital migration.

Hon. MuthomiNjuki, you sit in that committee and you have heard my Communication. We have invited the Cabinet Secretary to come and brief the entire leadership on that matter. I have disapproved of your request so that the House can now deal with it as business. Your committee should table a report. Because you are seized of that matter as a committee, please, proceed. I have indicated that you urge the leadership of your committee to table a report then the House will debate it. Otherwise, this thing of adjourning everyday at 5.30 p.m. to just have a discussion without anything being adopted for the committee chaired by hon. Soipan to do a follow up--- Anyway, there is no room for debate. It is disallowed.

Hon. Sabina Chege, you are to give Notice of Motion of your Report?

#### ADOPTION OF REPORT ON TSC NOMINEES

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker. I beg to give notice of the following Motion:-

THAT, pursuant to Section 8 of the Teachers Service Commission Act and provisions of Standing Order No. 45, this House adopts the Report of the Departmental Committee on Education, Research and Technology and approves the appointment of the following as members to the Teachers Service Commission:

- |    |                           |   |        |
|----|---------------------------|---|--------|
| 1. | Mr. Mbarak Said Twahir    | – | Member |
| 2. | Mr. Kinoti Imanyara       | – | Member |
| 3. | Mr. Tache Bansa Gollo     | – | Member |
| 4. | Mrs. Beatrice Marembo Adu | – | Member |
| 5. | Mr. Albert Fred Ekirapa   | – | Member |

Thank you, hon. Speaker.

**Hon. Speaker:** Very well. Hon. Members, we wish to recognise students from Rubate Teachers' Training College in Tharaka Nithi County, who are seated in the Public Gallery.

(Applause)

**BILLS***Second Reading*

## THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

*(Hon. A.B. Duale on 18.2.2015)**(Resumption of Debate interrupted on 19.2.2014)*

**Hon. Speaker:** Hon. Members, for avoidance of doubt, a total of 14 Members have contributed. These are the Leader of the Majority Party, the Minority Whip who seconded, hon. Gumbo, hon. Kimani Ngunjiri, hon. Francis Nyenze, who is the Leader of the Minority Party, hon. Priscilla Nyokabi, hon. Robert Pukose, hon. Abdikadir Aden, hon. Chris Wamalwa, hon. David Gikaria, hon. Simon Ogari and hon. Sunjeev Birdi. Those are the Members who have so far contributed to this Bill.

It is good for me to remind you that you resolved that the following is the order of debate on the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014): the Mover is limited in moving to 60 minutes and 30 minutes in replying; the Leader of the Minority Party is limited to a maximum of 45 minutes; and any other Member speaking is limited to a maximum of 30 minutes.

However, hon. Members, remember your own Standing Orders. Do not be repetitive. Do not repeat either yourself or arguments and points that have been made by others. If you become tedious, you will be out of order. So, for those that may be seeing the Bill for the first time, if you get a chance and you have nothing to say for 30 minutes, you can speak for only five minutes. That is still a contribution because that is what you have prepared for. If you are prepared for 30 minutes, well and good. The hon. Gumbo moved the House, and the House agreed with him that you be limited to a maximum of 30 minutes.

Hon. Members, let me understand these Members who have put interventions. Is it on the business before the House? Hon. David Kangongo, what is your intervention?

**Hon. Bowen:** Thank you, hon. Speaker. We are trying to find where hon. Lessonet, who is the Chairman of the Committee on Constituencies Development Fund (CDF) is in this House; we are not seeing him. We are worried that he is held up somewhere. We wanted him to move a Motion for adjournment of the House, so that we discuss the issue of CDF.

*(Applause)*

This is very important to us. It should even have been the first business this afternoon.

**Hon. Speaker:** Hon. Kangongo, with tremendous respect, look at your Standing Order No. 33. Those are not some of the issues on which you rise in your place and purport to move the House. Hon. Lessonet is aware that if he wanted to do that, he would have made that known to me two hours before now. Now that he has not, I suppose he

must still be doing something useful in that regard. I hope by now every Member who claims to know something about the CDF, apart from appearing on TV shows, has made efforts to obtain the judgment. It is available in soft copy. Read and internalise it, so that if we were to make that Motion available to Members, you would discuss it from a point of knowledge.

I do not think the issue is whether CDF has achieved or not. Let us move away from there, hon. Members. Those of you who like appearing on TV shows, move away from there because you are not saying anything new. Seventy to 80 per cent, or even more, of Kenyans are aware of what the CDF has achieved. I have not even seen you say it, yet it is a fact that CDF has been used to even construct law courts.

*(Applause)*

I thought that was important; you can show those others that they have also benefitted from CDF. Do not just talk about bursary. Sometimes when you have to do certain things you must also take the fight to some people. should you not?

**Hon. Members:** Yes.

**Hon. Speaker:** Yes. It is a fact that even police stations have been constructed through CDF, let alone other projects which are much closer to Members' hearts. Hon. Wandayi, I am sure we know all those things. People need to be given some of these facts. We have had law courts constructed through CDF.

However, now we better move away from what CDF can achieve or has achieved. Let us go to addressing the key issues which have been raised relating to the principle of separation of powers, and the principle of devolution as pertains to CDF operations and the issues around the provisions of Articles 201 to 206, which have been raised. I am assuming that any of you, and not just hon. Lessonet, can move the House to rise. Had that come to my attention, I would have approved it. Hon. Kangongo wants to raise it through the backdoor. Even before that happens, we better get hold of the judgment, so that we look at all issues which have been raised. Some of us have thoroughly read that judgment, and we think that there are many ways through which it can be addressed. However, that is a discussion for another day.

I would want to welcome hon. Midiwo to this session.

*(Applause)*

Hon. Ekomwa, you had also indicated an intervention.

**Hon. Ekomwa:** Thank you, hon. Speaker. I have just gone through the Order Paper of today. Order Nos. 9 and 10 talk about County Governments (Amendment) Bill from the Senate. Is it in order for us to discuss issues of the county governments yet our own business of CDF is unconstitutional?

*(Laughter)*

We better put this business aside and discuss issues which are constitutional for us. These others are unconstitutional, hon. Speaker.

(Laughter)

**Hon Speaker:** Hon. Ekomwa, these are Bills that emanate from the Senate under our Constitution. Remember, it is only the National Assembly under Article 109 that can originate Bills, whether they concern counties or not. But when Bills originate from the other House, they have to come here. So, we cannot, in fairness, say that we will not discuss them. Let us discuss them and make whatever decision we wish to make on them. It is fair. In any event, once you conclude debate on the Public Procurement and Assets Disposal Bill, and as you did with the Public Audit Bill, they all have to go to the Senate for its input because they are Bills that fall under the provisions of Article 110(3). Let us just debate them. There is nothing wrong. Hon. Ekomwa, you may be very passionate about what has been done to the CDF, but still you have a window of 12 months, which is more than enough for us to make amends. There is intervention from hon. Midiwo.

**Hon. Midiwo:** Thank you, hon. Speaker for welcoming me back. Let me also thank everybody and wish my colleagues a Happy New Year. I was a bit unwell, but I am now healthy.

When I was away---

(Laughter)

When I was away, the courts declared the CDF unconstitutional in some form. I want to agree with you that this matter needs to come to this House procedurally. I am in total agreement with your sentiments. You have even said that this is not a simplistic argument. I remember being in a meeting at the Norfolk Hotel that was called by the World Bank. In that meeting were hon. Muite and the late hon. Otieno Kajwang'. The World Bank was against the CDF and thought that it was unconstitutional, because it was against the principle of separation of powers. I remember hon. Muite telling Mr. Mukhtar Diop that if that was his problem, we would make it constitutional by evening. These Members of Parliament need to address themselves to that. The CDF is here to stay and we have the power to make it constitutional.

(Applause)

Let us ready ourselves. This is a game of chess. Whichever way it will be constitutional, guide us to make sure it is constitutional as soon as yesterday. I would buy the idea because the Constitution, in its transitional clauses, provides somewhere that all existing devolved funds shall remain as they were. Either we had half-baked lawyers or the courts are belligerent in some way and not mindful of the plight of the citizens of Kenya. The way forward must be decided by these Members. Even if it were to be wound up in 20 years, that would make sense because there is something called a "transitional period" in the Constitution.

If you go to the counties – this is my main point - most of the 47 governors are misusing funds. What is working for this country is the CDF.



(Applause)

It is the only fund that is working for this country. I saw a governor chest-thumping, and saying that the courts have spoken. The courts have spoken, but the same courts are a creation of this Assembly. We fund them. So, let us speak louder than the courts. My county is probably the most corrupt in the country. A Member is talking about Kitui, but it is all over.

The only fund which is regulated - the national Government checks it - and is regularly audited is the CDF. What the CDF has done, the counties will not do in 20 years, if things remain the same. I want to plead with the Members to apply themselves to the judgement as you have advised. All the laws including the Constitution, originated from here. Let us assure Kenyans that nothing will change because this House has the powers.

**Hon. Speaker:** I do not want to open up debate. I want us to apply our minds, so that when we talk of separation of powers, hon. Priscilla Nyokabi and hon. Millie Odhiambo will be saying what they understand about it; we will understand what it means when we say that Members of Parliament, as ex-officio members--- This seems to be anathema to many people. This House gives budget to many people. I do not want to say who they are. They even go to implement things they call “development”. In their budgets, they have items they call “development”. How do they implement it? How is it? Members of Parliament sitting merely to guide--- I do not understand.

We have the Executive proposing legislation here. Sometimes the Executive returns legislation here and if we do not get the numbers, that becomes law. People must be made to understand that this principle of separation of powers is not something that must operate in abstract. There are certain things that must be taken on board as a reality. People bring development budgets and say that they want to construct court houses and buy some things. That is implementation; an Executive function. Let us take our time and go through that judgment, so that we are able to pick some of its salient features.

Hon. Members, debate is on the Public Procurement and Asset Disposal Bill. There is no Member who has a balance of time. So, I will go straight to the list here, which shows hon. Daniel Maanzo.

**Hon. Maanzo:** Thank you, hon. Speaker for giving me an opportunity to contribute to this constitutional Bill, which also has a timeline. As you have advised in relation to this Bill, a lot has already been contributed. It is a straight forward Bill. I did not hear Members previously say that the procurement and asset disposal law as it is currently constituted needs to be put under a new law. This is a very important law for the country, because it provides for how the country acquires assets and disposes of them. One of the major concerns in procurement in Kenya is collusion. People do not procure properly despite the existing laws. Therefore, a proper legal framework will be very important for the country, so that procurement is streamlined to deal with corruption, as the main problem.

Therefore, my biggest concern on this clause is the punishment provided in the event that somebody breaches the procurement law, especially the criminal element of it. During the Committee Stage, I will be making proposals on the offences and punishment prescribed in this Bill. Part of the penalties prescribed in Clause 177 is that anybody

found guilty of any of the offences is supposed to be fined Kshs4 million or serve a jail term of 10 years. I will be proposing amendments to this area, so that we can have strict penalties for people who will commit offences under this Bill. Such offences deprive Kenyans of the money meant for developing this country. They are very closely related to corrupt practices. Therefore, I will move amendments to provide for strict penalties, depending on the seriousness of the offences committed and the amounts of money involved.

What I am saying is that if somebody breaches the Act and in the process a sum of, say Kshs100 million, is unaccounted for. and such a person is fined a paltry Kshs4 million, he can even opt to plead guilty before a court of law and get away with the offence very easily. On the other hand, if the gain to that particular person is very small and you fine them Kshs4 million, it will not balance. It is, therefore, important that we provide for strict penalties to protect public resources.

Resources in Kenya are very minimal; therefore, penalties that we are providing should scare people from colluding to breach the procurement procedures in order to benefit unfairly from the process. That way, the law that we are enacting here will serve the intended purpose.

Hon. Speaker, as you directed, many of my colleagues would like to contribute to this Bill. I thank you for giving me the opportunity. I support the Bill but I will be proposing amendments during the Committee Stage.

Thank you.

**Hon. Speaker:** Let us hear hon. Oyoo.

**Hon. Oyoo:** Thank you very much, hon. Speaker, for giving me the opportunity to add my voice to this important debate.

This Bill has come at a time when it is being reported in the media that big-time corruption is trying to reinvent itself in this country. Even in our own Parliament, there is fear that the departmental committees are not able to submit their reports in good time because big-time corruption has crept in and, in fact, it is getting deeper into the bone marrow of our chairpersons, and so things are not working properly.

Hon. Speaker, the spirit of the Bill is very good. I am happy that public procurement entities are being put in order, but I would advise that certain mechanisms be put in place. This is because all major scandals that have happened before have emanated from improper procurement. I was at a loss last week when my good friend, hon. Katoo, was contributing to this Bill. If it were not for the respect I have for him, because of his massive contribution to this country, I would have asked him whether he was making the contribution with a clear conscience. There are proponents of government-to-government procurement system; but having gone through the Bill, I have not seen that provided for anywhere.

We have several government projects which are being frustrated because procedure is not being followed. We have some rules of engagement being changed as and when it is convenient to the “big boys” in the Jubilee Government. As a result, we have lots of claims in respect of the ongoing Standard Gauge Railway project. The much coveted laptop project for school children has stalled because modalities were not checked by the public procurement authorities. There are very many other things which

are not going right. There is hue and cry regarding all the major projects that the Jubilee Government has intended to undertake.

Hon. Speaker, unlike the Public Audit Bill, the Public Procurement and Asset Disposal Bill is not being properly insulated from interference by the “big boys”. The Bill does not have any mechanisms for shielding the Public Procurement Oversight Authority (PPOA) from those who will be interested in pushing through mega deals and procurement scams. Some funny characters are slipping in and finding their way into getting their cronies appointed to serve on PPOA right from the outset. These are people with untoward character, who are being passed as being of toward character. In keeping with the spirit of this Bill, we need to provide for more powers for the Public Procurement and Asset Disposal Authority and make sure that we will have transparency in the future.

The one thing that is spoiling this country is impunity. We have leaders who do not know that we are operating under a new Constitution. They still believe that the big man’s word is final and as a result, all the transactions that are adjudicated by procurement entities within the Government and the quasi-government institutions are done with a lot of impunity. Telephone calls still emanate from above, directing subordinate officers on what to do. Procurement officers within the Authority say that whenever a proper procurement deal is underway, and somebody is going to win genuinely, they are called from ‘above’ and instructed to look at the other side because of vested interest. We thought that with the new constitutional dispensation, these would remain things of the past; but they are slowly coming in. This is because when we have an opportunity, as a House, we do not take time to critically look at Bills and put more emphasis on certain aspects.

Some time back, I complained about bad things being done by Cabinet Secretaries, who have no capacity to run Ministries. An example is the Ministry of Labour, Social Security and Services. I am a member of an oversight authority. We have a Cabinet Secretary who has no capacity to run a Ministry. When I complained somewhere, my colleagues, and people from outside, laughed at me and told me: “You cannot blame the appointing authority, because all such public appointments passed through the National Assembly, specifically your departmental committee”. Since corruption is deep-rooted, even within Parliament, we have made flagrant mistakes and allowed inconceivable things to just pass through the House.

Therefore, I urge hon. Members that this is an opportunity for us to critically look at this Bill, and ensure that we factor into it provisions that will help curb corruption.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. Makali Mulu!

**Hon. Mulu:** Thank you, hon. Speaker for giving me this chance to add my voice to debate on this important piece of legislation. This Bill is very important to this country, and it is also one of the Bills which the Constitution requires to be cleared by a specified date. It is important because it is supposed to provide the legal framework for effective and efficient implementation of procurement and disposal of our assets.

Procurement in this country has been associated with a number of challenges. One of them is inefficiency where the Kenyan public does not get value for money in procurement processes. The second challenge is what I will call unnecessary delays in the

process. These delays have led to very low absorption rates of the budget, and serious challenges in budget implementation. The third one is the high level of corruption associated with procurement processes.

What has, therefore, happened over time is having a lot of resources leaking out of the Treasury as a result of procurement. When I was reading through this Bill, I was trying to analyse and see how and to what extent this Bill will help this country address some of these challenges. There are some clauses in this Bill which are very important, and are going to go a long way in addressing some of these challenges.

When you look at Clause 3 of this Bill, you will realise that it is grounded on very important national values and principles. One of the values and principles is the whole issue of equality. This makes sure that all Kenyans participate in this important exercise as we procure goods and services in this country. The other thing is the principle of integrity. As Kenyans, through this Bill, we must ensure that this principle is adhered to. The other very important principle is ensuring that the procurement process is manned by professionals – people who appreciate the process and have expertise in this field. The other one is to ensure we promote our local suppliers and the economy as we procure goods and services.

When you look at Clause 52 (2) of this Bill, as a way of ensuring that inefficiencies are also addressed, the Bill provides for preparation of an annual procurement plan. I have been a member of the Budget and Appropriations Committee, and some of the challenges that we have is that we appropriated resources to different agencies, departments, Ministries and agencies, which were not even clear on what they were going to procure. It will make a lot of sense if we have procurement plans being prepared on time. This Bill provides for that situation by demanding that procurement plans be prepared on time.

The other thing that is going to address inefficiency in this country is Clause 45, which makes provision for consortium procurement or buying. This Bill encourages agencies to procure as consortiums, so that they can pool resources together; they should procure as consortiums whenever they are procuring the same item. In this case, agencies will automatically enjoy economies of scale. In that way, we are likely to get more benefits as a result of this bulk procurement.

Another thing which is important to promote in order to reduce inefficiencies is the idea of issuing what they are calling “quarterly market price index (QMPI). After every quarter, Treasury can release the QMPI through the Authority which has been proposed here. The QMPI will provide guidelines in terms of what needs to be procured. For this reason, Clause 53 (3) is very important and will go a long way in reducing inefficiencies.

When it comes to addressing the unnecessary delays which are very common in the procurement process, and owing to the fact that these delays have really cost this country a lot of resources, there are some interesting and important clauses in this Bill. One of them is Clause 109 which talks about e-procurement; we are saying that we can actually promote electronic procurement. By doing so, we will be reducing what we call “contact between one person and another”. It has been proved over time that when people do not get into contact things like corruption are reduced.

When we read this Bill, the only unfortunate thing is that the so called e-procurement has not been articulated properly. In terms of the details, these do not come out clearly how we are going to make sure that this is carried out properly. If it is not clearly articulated then we are likely to lose in this process. As we move forward, this is an area to which we will be proposing some amendments, so that it comes out clearly how it will be conducted.

Another important item in terms of reducing unnecessary delays is what is found in Clause 43 (2). It is what we are calling “board reviews”. After some time, we will have a board which will review the process. The whole idea for reviewing this process is to fast-track implementation. This reviewing is going to help this country to ensure that there is timely implementation of procurement matters.

The other important item for reducing unnecessary delays is Clause 46 (7), which talks about what we call “evaluation committees”. These committees have been given the mandate to even outsource when they do not have internal capacity. If we are procuring a very complicated item for, example, and the committee does not have internal capacity, then this Bill provides for external assistance. They can go out there, and use the required expertise so that value for money is gotten and the process facilitated. This is very important because it will avoid a situation where people take a lot of time discussing and trying to process a procurement which they might not understand.

The other important thing is Clause 50(6). It talks about giving preferential treatment to local agents. This is very important because it is the only way we can grow our economy; we should ensure that we have local investors who are promoted by our Government through procurement processes. This clause is, therefore, very important to me and it is good that it is clearly stated in this Bill.

The third area which I want to conclude with is about how this Bill is going to address reduction of corruption practices. As I read through this Bill, there are some clauses which might help, although this has really been a serious problem in this country. When you look at Clause 43(2), the Bill provides for what we are calling “procurement audits” during procurement. This is so that at any stage of procurement, we can conduct audits of the process. This will make sure that corruption practices in procurement are minimised. We might not really eradicate corruption but we can minimise it. That way, this country will benefit.

The other important thing in reducing corrupt practices is the idea of empowering investigators. If you look at Clause 36, the Bill talks about investigators who will be empowered. They will be given the mandate to go into the process and check any institution to make sure that corrupt practices are non-existent.

The other thing in this Bill which is likely to reduce corruption is found in Clause 45(5). It says:-

“For the avoidance of doubt, all public officers or State officers involved in procurement or asset disposal processes shall bear responsibility for their actions or omissions.”

What does this clause do? It ensures that there is personal responsibility by the procurement officers. Therefore, if you are in charge of a procurement process, this clause will ensure that if any mistake is committed which leads to corruption in the

process, then you will be held responsible as an individual. I think that is very important to me.

The other thing which is very important is in Clause 9. It says there will be an Authority; this procurement Authority will be required by this law to co-operate with State and non-State actors on how to improve procurement. Many times in the past, public officers did not listen to private officers because they got to their offices and procured without any consultation. Right now the Bill requires that if you are a public officer and you are involved in procurement, you will ensure that you also consult non-State actors. This will ensure that the process is actually improved. I think this is very important because by doing so, we will be likely to ensure that we seal the loopholes which result in corruption.

The other thing is Clause 67 (1), which is very important for corruption reduction. This Clause talks about having procurement records kept for at least six years. What this Bill says is that if you procure supplies, be it goods, services or works, you will be required to make sure that records, or the documentation relating to that procurement, are kept for at least six good years. This is very important as it will allow auditors to be able to go through the process, look at the documentation and confirm that the process was overboard. So, this clause is going to help this country in terms of ensuring that corruption, which is really a big problem in this country is reduced.

When you look at Clause 60(4), it talks about tender security, which has been a thorny issue in this country. It has been a reality that the poor, the middle class and the low income earners cannot access procurement contracts. This clause provides for the disadvantaged groups, what we call “the marginalised groups”, namely the youth, women and disabled; they will not be required to offer tender security. What this Bill proposes is that you will be required to sign the tender securing declaration form.

To me, this is very important because through this Bill we will see the majority of our disadvantaged groups such as women, youth and the disabled bid for supply of goods and services like anybody else. If they get the chance to win the tender, then they will be able to supply goods and be paid; this will be unlike the situation in the past when you had to provide tender security; if you were not able to provide a tender security, then you could not get any contract. Therefore, I think this law is long overdue. That is why I really support the idea of having this law in place; most of the issues which we have been talking about all along are going to be sorted out.

We are just about to embark on next year’s Budget. That is the national and county governments budgets. Any time you look at the absorption rates of the Budget, every year we are being told that we were not able to use 70 per cent of the Budget. The other day we had a mid-term review and we were informed that we had achieved 50 per cent absorption in six months in Recurrent Expenditure. On the other hand, in Development Expenditure we are doing very badly; any time you ask a question as to why we are not able to use funds allocated for development activities in this country, one of the reasons and a major contributing factor to this is the fact that the procurement process has been causing long delays.

So, with this law, I see a situation where we will be able to do timely procurement. As a result of that we will be able to absorb the budgets. The end result will be a situation where we will grow our economy and as a result we will have fair

distribution of wealth. Kenyans will have improved standards of living. So, I want to support this Bill and say it is a good law. I urge hon Members, my colleagues, to support this law despite the fact that some amendments will be coming. Let us look at the most important amendments, prepare them and then we have this law in place.

With those remarks, I say thank you very much for giving me the chance.

**Hon. Speaker:** Let us have hon. Joseph Limo.

**Hon. Limo:** Thank you, hon. Speaker for giving me this chance to contribute to this important Bill. Procurement is one of the very key processes in any Government or any institution. This is because one of the worst enemies of any production in any country is the cost of production. The main source of this cost of production is procurement. To make it very clear, this procurement Bill basically deals with public procurement, which is basically consumption. Procurement will either provide or deny Kenyans services depending on how it is designed and managed.

Therefore, as we go through this Bill which is required to operationalise Article 227 of the Constitution, it is very important that we pay special attention to areas where it will make our procurement very simple, efficient and cost effective. This Bill is setting up regulatory bodies which are going to operate or regulate the procurement process. One of them is the Public Procurement Regulatory Authority (PPRA), whose board has seven members. On the formation of this board, I want to state very clearly that this Bill, according to me, gives excessive powers to the Cabinet Secretary. It tries to remove powers that were vested in this Parliament. They are being taken away by this Bill. So, we need to ensure that amendments which we will bring in will ensure that nomination of the Director-General is done by the Cabinet Secretary and brought to Parliament. This is a very important board, which is going to make Kenya progress.

If you look at the qualifications which are stated for forming the board, a key concern which I have is the requirement to have 10 years' experience. This is discriminatory, especially against the youth, women and people with disability. I believe in line with the Constitution these requirements should specifically mention that there should be some reservations for disadvantaged groups, that is the youth, women and people with disability. This is to ensure that they are not locked out by virtue of failure to have the 10 years' experience as required.

Hon. Speaker, again, on the same there is establishment of a review board. One of the biggest problems we have had in this country, in procurement processes, is complaining. People complain even when there is no genuine complaint. They just want to delay the process, or make sure that the process is not implemented. We should not, in any legislation, form a lot of oversight and review bodies which are going to become counterproductive as they compete for space when operating. So, if we want to succeed in this country, we must ensure that complaints which are brought after the procurement process has been finalised are very genuine. They must also be cleared as fast as possible.

We are very deeply concerned that the Jubilee Government had a very good manifesto; it had promises which were given to our children. I was surprised that at one time my own child approached and asked me: "Now that the Government promised us laptops, what will the President say in 2017 because the laptops will not be there"? Then I answered him, "They will be there". The child was then relieved that, at least, the laptops will be there. What assurance do we have in this country? It is basically the case

that when one is not able to secure a tender one simply goes to court. From my experience, I can say that the courts have suddenly been taken over by activists. We will never get any justice if that trend continues. So, to ensure that posterity in this country will benefit, we must make laws which will ensure that nobody, including the courts, has the leeway to ensure that everything stands still.

Therefore, we must be careful about this procurement administrative body, which is going to hear disputes arising from procurement processes. I am deeply concerned about the formation of this body. It is even stated here that the establishment of regional panels is to be done to ensure that the functions and powers of the review board are implemented. We have to be very careful here because this particular clause is too general; it is not stating which region. Remember that when you become petty, you can even set up a board at the district level. Such boards will be subject to misuse. They could be abused by people if they are founded at the district level. In my opinion, for these boards to be effective, they must be very high level, so that you do not just complain because you want to derail the process. Through amendments, we should actually try to make it very difficult for people to just complain without any justification. At the same time, we need to be fair to the people who are complaining.

This Bill, hon. Speaker, is also proposing to set aside some portion of tenders for the people who are disadvantaged, that is the youth, women and people with disabilities. In the current Act, there is no provision on the percentage the youth are allocated. However, this was done in regulations, which were developed by the Cabinet Secretary. We found that was a very dangerous trend because there was no law to back them. These amendments went through in the last Session. However, now that the Act is being repealed by this new Bill, we have to make it very clear. Under Clause 158 (4), we must specify that 30 per cent of the value of tenders which are given by either national Government or the county government are given to the people with disabilities, youth and women.

We will also try to propose that this law be made more specific, because we know that the youth and the people with disabilities, in one way or the other, are not aggressive. They are actually faced with many challenges, including the fact that some of them are still pursuing their careers and, therefore, they do not get access to real information and capital. So, given that they are challenged in those respects, we want to propose that we go further and divide this 30 per cent, so that 10 per cent goes to the youth, 10 per cent to the people with disabilities and another 10 per cent to the women. In so doing, we will be helping our youth and people with disability. When we group those marginalised groups together they are likely to be marginalised further. This is because women have the advantage of being aggressive and at the same time they are helped by their husbands to raise capital. In the process the youth are actually put in a corner and they can easily drift into oblivion.

Hon. Speaker, one other thing that is not very good for this country is variation. It is one of the things that have brought our country to its knees. Some of the projects go for a very long time without commencing. There are unscrupulous contractors, or business people, who capitalise on the 90 days period within which you can introduce variations. Any price variation which is significant in a contract can only be effected within 12 months of the contract. We are aware that some people who specialise in heavy



machinery, which does not even work, when they get contracts they just move the machinery to a site with the purpose of getting the mobilisation fee. After that they disappear from the site, and wait for the 90 days period. Then, they revise the price, and even if you do not agree to the new price, they are still okay because they have already got their money. So, it is good for variation to take place only after 12 months. It will be very good if we ensure that the commencement period is shortened. That way, this country will develop very fast.

Clause 158(8) is very good for this country. It is going to promote our own business people. This clause requires that preference must be given to Kenyan firms. In this country, tenders are given to foreigners from China and Japan. They have actually reduced our people to mere brokers. One has to travel to China to look for a Chinese, so that when he wins a contract you ask him to give you a paltry three per cent commission. You can then say that you are in business.

If you look at Clause 158(8), it is a very important. We must perfect it further. It reads:-

“In applying the preferences and reservations in this section-

(a) exclusive preference should be given to citizens of Kenya

where-

(i) the funding is 100% cent from the national Government or county government or a Kenyan body; and---

That will remove the notion where people argue that it is a donor-funded project to the extent that we even forget when it is funded by the Government.

This clause will ensure that any funding to projects by the national Government or the county governments must give preference to Kenyan firms. When the amounts are below the prescribed threshold, that threshold is the one that we need to look at. In this law, we should not put thresholds to discriminate, regardless of whether a Kenyan is given the tender or not. In fact, in (b), it also says:-

“a prescribed margin of preference shall be given-

(i) in the evaluation of tenders to candidates offering goods manufactured, assembled, mined, extracted or grown in Kenya; or

(ii) works, goods and services where preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed”.

What this clause is trying to achieve - and it can still be perfected - is the fact that most of the contracts should be given to Kenyans. I am happy because it is very specific. Even the people who have doubts in the counties and thinking that this House is making laws for the national Government only, should note that it is very specific now. It should apply to both. They should not be travelling out looking for contractors when things can be done in Kenya.

We should perfect it to require that in a case where a firm which is not owned by Kenyans is given a contract, everything that they are using, including spare parts and materials, should be procured from firms which manufacture those items in Kenya, even if they are donor-funded. We should give this country a competitive edge. That is how we are going to ensure that our youths get jobs. If we require, for instance, that when the Chinese will be building the Standard Gauge Railway, materials like bolts can be

manufactured in Kenya. Any other such construction projects should get materials and spare parts from Kenya. Along the railway line, many factories will be built. In fact, along the railway line, we want to see many factories which manufacture materials which are required for the construction of the Standard Gauge Railway. That is going to help our country to industrialise. Other than providing materials during the construction period, they are also going to provide materials for maintenance in future.

This Bill also requires that when certain thresholds are exceeded in any contract, for instance, when a contract exceeds Kshs5 billion, all those contracts should be reviewed by the Attorney-General. We should even be looking for a way of ensuring that, that figure is lowered, so that it reduces this country's exposure to risks from contracts. We should reduce this even to Kshs1 billion so that any contract beyond that, regardless of whether it is done by Ministries or by county governments, is reviewed by the Attorney-General. In so doing, the exposure to risk is reduced. Therefore, we should perfect Clause 135 and make it more applicable to the local situation.

Another good clause is the one on the issue of requiring that the procurement boards are formed by people who are qualified. This Bill has specifically stated that the people who will be appointed to sit on that Board are people who have either accounting knowledge or law. We should expand this further in the amendments because Kenyans are widely read. They have a lot of knowledge. We have accountants, lawyers and engineers who are widely read. You will find an engineer who is also an accountant. Therefore, we should widen this requirement to include people who can take this country to the required level of competency.

This Bill is very important. We have to look at it thoroughly and ensure that it is amended properly and implemented, so that our Constitution is fully implemented within the required timeline.

With those remarks, I beg to support the Bill.

**Hon. Onyura:** Thank you, hon. Speaker, for giving me this opportunity to contribute to this important Bill. It is one of the Bills for which the Constitution has placed a heavy responsibility on this House. It is one of those Bills which must be done within a certain framework. In fact, the seriousness of it is underscored by the fact that if we do not look at it and pass it within that period, any Kenyan could go to court and cause this House to be dissolved.

I have looked at the Bill and it is a good law. It is fairly elaborate and detailed. I have looked at the descriptions, the areas it has covered and it is fairly detailed. In my view, it is a very good law. Unfortunately, that has not always been the problem. The problem is not lack of a good law. The problems we have been having in some areas, including the procurement area, is the enforcement of the law. What is going to be important at the end of the day, even with a good law, is whether we are able to enforce the law. We should look into the issue of whether the structures that are meant to oversee and ensure that this law is enforced are doing their work as they are supposed to do. That is where we fail many times even when we have a very good law. I am just hoping that in this particular case, the structures will be effective and make sure that the law, the principles, the spirit and the values are properly observed.

Those who fail to do so; appropriate action should be taken against them as provided within the law itself. There have been a lot of concerns regarding procurement

in this country. Many of them have already been mentioned. There have been concerns regarding corruption, lack of transparency and collusion by those who are involved in procurement. There have also been concerns about undue delays and a lot of bureaucracy. I hope that, through the law that we are enacting, some of the loopholes can be sealed and the concerns raised are properly addressed. If we get the enactment of this law right, in terms of content and application, we will address very many issues. If we get it wrong, the kind of wastage that we have been having will continue. The net effect is that our programmes will be delayed and eventually become more expensive. Therefore, we need to watch out.

The area of procurement in this country is rampant with wastage. Those who are involved somehow have perfected ways of creating loopholes, which they use to their advantage. Somehow, loopholes are created every now and then, even with the presence of the law. I hope that through the enforcement of this law, some of the loopholes that have been used by unscrupulous players will be sealed to ensure that the Government does not lose money. In fact, many of us usually wonder why Government procurement is usually very expensive. The market price of any commodity is clearly known to everybody as it is displayed on the supermarket stands. However, when Government entities seek to procure, the market prices of goods and services are quoted at almost 100 times. Those are some of the loopholes that need to be sealed, so that Government programmes can run faster to completion. Of course, the law seeks to provide for efficient and speedy implementation of Government programmes.

There is the area of disposal, where the Government is usually short-changed. When it comes to disposal of stores and other properties, including Government land, they are usually disposed at throw-away prices. There are a number of loopholes within Government entities, which are exploited by people who are not committed to provision of service – people who are inherently corrupt. This law should be able to tame them to some extent.

I would also like to mention the fact that this Bill provides for the setting up of boards and monitoring bodies. I urge that when it comes to recruitment of staff for such bodies, the exercise should be based on merit and nothing else. One way of ensuring that we have properly qualified people to serve in such bodies is encouraging professionalism and merit during recruitment. That way, we can have people who are committed to work, and who know what they are doing. We can get value for money as implementation of Government programmes will become less costly.

One of the areas I was looking at, through which the public loses a lot of money, is where those involved in procurement collude at various levels. There should be some ways of recognizing and even encouraging whistle-blowers. Some mega scandals come into the public domain as a result of deals that went sour. If there could be a way of encouraging whistle-blowers to raise the red flag whenever they smell corruption, it would help in reducing corruption. Maybe, there should be a way of encouraging and even rewarding whistle-blowers who assist the public in minimising losses of money through corruption.

With regard to capacity building, I urge that the procurement profession be taken very seriously and developed, just like other professions. That is in terms of structures, professional programmes and the laws governing their practice. I feel that procurement officers and other procurement professionals should have a strong professional body that

can assist with regulating, developing and addressing some of the challenges within the procurement profession.

May I also point out something I have noticed in our procurement system – delays in paying contractors? I have come across suppliers whose bills have been pending in Government offices for a long time. This appears to happen a lot more in the county governments. There are people who have gone out of their way to either use their savings or have gotten loans from banks to participate in Government procurement. However, the Government takes so long to pay such supplies. Sometimes, it even takes years for one to be paid for goods or services that he or she supplied to a Government entity. There are people whose businesses have collapsed because of such delays. There should be penalties for unwarranted delays in payment for goods and services rendered.

Another area which needs to be looked into carefully, which has been used gainfully by corrupt people, is that of revision of tenders and variation of the contract sums of such tenders. This provision was misused so much in the past. This is an area which needs to be looked into more carefully, so that it is not used to fleece the public.

Finally, the area of affirmative action needs a lot of attention. As we all know, opportunities for employment, particularly for our youth, are not forthcoming. The youth can be empowered through award of contracts, so that they can earn their living since we know that the unemployment rate is high.

With those comments, I beg to support the Bill.

**Hon. Kamau:** Thank you, hon. Speaker, for giving me this opportunity to also contribute to this Bill. By and large, I support this Bill. It is a good Bill, save for some few clauses that I am sure we can rectify during the Committee Stage. Basically, the Bill is good. If you look at Clause 173, it talks about the dismissal of frivolous appeals. In most cases, tenderers normally go to the Appeal Tribunal with very frivolous requests. Indeed, those are very time consuming. For us to do those things in the right way, it is important for us to make sure that there is a provision for costs for those frivolous appeals. This Bill takes care of that. Clause 173 is very clear that if somebody brings a frivolous appeal, the Board can slap some costs on that person. Therefore, that is the right way to go. I also know very well that we have been having serious problems with matters procurement in this country for quite some time. What is worse now is that corruption has been devolved to the counties. In the counties, we have a culture of doing bad things. It is important for us to pass this Bill that will address most of those things. I am happy because there are some counties which simply give out contracts to the people who supported them in the elections and the henchmen of the people who are in power there, oblivious of the simple fact that all those people in the county need to compete and make sure that service delivery is done to the counties. With this Bill, I am sure that everything will be done according to the law. The people who will be going against the law will face it.

When I look at Clause 176, it provides for the right to judicial review to procurement. Indeed, it is the right of every tenderer to appeal even after the Appeals Board has made a decision. Previously, when somebody lost a case at the Appeals Tribunal, they rushed to the courts and the courts could stay for a very long time before they make a determination of that appeal. That has not been provided for. There is no time limit as to when the courts should make a decision once somebody makes an appeal.

If we look at it critically, if somebody wants to frustrate the process and goes to court to appeal a decision by the Appeals Tribunal, it is possible that the courts may take even up to one year before they conclude that matter. In the process, things would have been overtaken by events. That would be a clear frustration of the process. I will be coming with some amendments during the Committee stage to cap some time limit for the courts to make a decision, one way or another, after an appeal has been made at the High Court. If, for example, we say that we will give 30 days, 60 days or 45 days for the courts to make a decision one way or another after an appeal has been made, this will fast-track everything and make sure that the process continues un-hindered. The process will go on in the right way.

Finally, because I do not want to take a lot of time, I know this Bill is going to address issues about corruption big time and I support it 100 per cent. Kenyans always complain about corruption but, sometimes, those corruption allegations are just allegations against people simply because of other ulterior motives. It is important for us, as a nation, to be extremely sober when we are talking about corruption. You can easily soil somebody's name by accusing them for things they do not even know and things they have never done. At the end of the day, once it gets out of the bag, to return it will be very difficult.

Therefore, I support this Bill. It will go a long way in making sure that procurement in this country is taken care of. I know this will even take us further in the development of this country.

With those few remarks, I support.

**Hon. G.W. Omondi:** Thank you, hon. Speaker for giving me this opportunity to talk to this important Bill - the Public Procurement and Assets Disposal Bill. Historically speaking, we can trace the problems of the current Procurement and Asset Disposal Act from the fact that it was introduced to us by the World Bank, International Monetary Fund (IMF) and other donors. We, in return, took it and implemented it without thinking much about it. The reasons for its introduction by the donors were to control corruption and check abuse of office, which was considered to be anti-development. When we failed to think too much about this when we adopted it, local conditionalities were not taken into account. There was, as other speakers have said, increased corruption and discrimination of new entrants into business. In some cases, local businessmen were completely left out.

The other problem that the existing law has brought about is the low absorption of development resources and delays in project implementation, which is one of the factors that has hindered development and has concerned many leaders of this country. Attempts to correct those anomalies have been piecemeal. For example, the 30 per cent youth procurement business, women and people with disability was introduced to take into account some of those failures. The Bill as composed tries to address those shortcomings. It also tries to take into account our current system of devolved governance, which was introduced by the new Constitution in 2010.

Briefly speaking, there are several clauses that have tried to address the anomalies that I have just talked about. Clause 3(a), (b), (c) and (i) addresses some of the shortcomings which were not taken into account during the implementation of the existing law. This clause addresses national values, equity and freedom from

discrimination. It entrenches the affirmative action which the previous law did not take into account. It also promotes the local industries which were not taken care of in the previous Act.

In addition, Clause 60(4), which should actually be 60(5) because it is a typo, adequately addresses the issue of tender securities. One of the biggest problems has been requiring new entrants in the business world to come up with tender securities, margins and so on. Clause 60(4) now addresses that matter. The disadvantaged are now exempted and are not expected to provide those securities.

I have talked about the disadvantaged groups, including the Small and Medium Enterprises (SMEs). At the county level, this is now taken care of by Clause 33(f). The establishment of the Public Procurement Regulatory Authority and the Board under Clause 8(1) provides checks and balances and will control corruption which has been rampant. Under Clause 27(1), the functions assigned to them are a move in the right direction. This, as I said, will check corruption and abuse of office which was not adequately catered for in the old Act. In the same vein, Clause 27(2) goes a long way to address the issue of corrupt deals which have been rampant. One of the biggest problems has been over-buying and overstocking at exorbitant prices. Under this Bill, we now have controls being provided for under Clauses 52(3), 53(2), 53(3) and 53(4).

Finally, Clause 54(1) (b), as is currently worded, should be amended. The Clause states thus:-

“The person is not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to foregoing.”

I do not think the mere fact that somebody has been taken to court and is being sued for purposes of being wound up or to be put under receivership should be excluded from tendering. I am going to bring an amendment to cut out the requirement that somebody who has been sued should be debarred from participating in tendering.

With those few amendments, I support the Bill.

**Hon. Dido:** Thank you, hon. Speaker for giving me this opportunity. Right from the onset, I would like to say that I support this Bill. I would, however, like to pose a few generalities. First, this is a technical Bill. As we look through this Bill, we must do so with a tooth-comb because it is about the future of Kenya. It is about safeguarding the resources of Kenya. If this Bill is done well and it gets enacted, we will be able to tame the public debt. There is a lot of collusion between procurement officers in public service and contractors. This is where the Government is losing a lot of money. This Bill is about prudent management of public resources. The various sections in this Bill must be seen to protect the public good. I know that 60 per cent of public money is lost through the procurement process. This simply means that only 40 per cent of public resources go to development or public good in terms of providing the necessary services to the people of Kenya.

Hon. Speaker, any law that is enacted by the National Assembly of Kenya is only good to the extent of its enforcement. The Public Procurement and Disposal Act, No.3 of 2005 and this particular one we are debating of 2014 seem to be the same. The question I want to pose is this: What are the changes? What are the amendments? What are the improvements to the existing law which was also passed by this House? Through this

Bill, I expect that we will be in a position to increase transparency, accountability, public confidence and procedures that the Government uses in providing services.

This Bill also highlights the issue of facilitation and promotion of the local industry and economic development in general. We need to be fair to this Bill. In the current times, we have seen international companies get contracts to do major projects in this country. The question that we must pose as a House is this: Are we walking the talk of empowering local Kenyans in terms of improving both the country and self?

Part of the terms defined in this Bill include, “complex contracts” and “specialized contracts”. I think there must be a clear differentiation from the standard commercial terms. What do we mean by “complex”? What do we mean by “specialized”? If we define those terms, the mandarins in the contracting profession will not hoodwink the individuals who are keen on doing general contracting.

There are categories of preference. Here, the Bill must clearly define and set standards. We are now creating categories and, indeed, in our laws, we have stated that 30 per cent of the contracts must go to the youth, women and persons with disabilities. Whereas the law states so, how is that enforced so that the disadvantaged groups are able to access procurement just like any other Kenyan? That 30 per cent is actually anchored in the Constitution of this country.

Therefore, we should alter the enforcement of this law, so that those disadvantaged groups can access Government contracts just like any other Kenyans. The 30 per cent requirement is anchored in the Constitution of Kenya.

Hon. Speaker, the other thing is about road contractors. What sanctions have been provided against them? Most of the contractors register many companies. As soon as the Government de-registers one company, they move on with another company. Every time they tender, they win the contracts.

Hon. Speaker, within this Bill, the term ‘corruption’ has not been defined. The Bill alludes to the meaning assigned to it by Ethics and Anti-Corruption Act, 2003. The Bill must clearly define corruption. The definition of corruption does not have to be just in this Bill. Any Bill must define corruption. One may not have access to the Anti-corruption and Ethics Bill.

We have a lot of problems in this country, particularly in the area of corruption, pilferage and outright theft of public resources. Many of our youngsters who complete university education would want to work as procurement officers as their first jobs. They are told that working in that area is an easier route to making money and getting rich. For that reason, it must be clearly stated in this Bill that all public entities must have a standard procurement procedure so that theft, corruption, pilferage and insider-trading can be discouraged. There should be appropriate punitive measures to be taken against people who steal public funds.

Hon. Speaker, another area of concern in this Bill is about reservation tender. This is one of the most abused contracting processes. The individuals concerned with the tendering processes know who to give a particular contract. In the process, family members and friends are rewarded. One is told: “This is a reserved tender”.

I would now like to talk about the National Treasury, whose role has been cleared stipulated in this Bill. The National Treasury is supposed to develop policy guidelines for efficient procurement management, design and prescribe an efficient procurement

management system for National and county governments. However, what must come out clearly is the technical assistance that the National Treasury must provide to both levels of Government as well as public institutions.

*[Hon. Speaker left the Chair]*

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

Hon. Temporary Deputy Speaker, the Public Procurement Regulatory Authority is a very important body being established through this Bill. The Bill provides for a mode of presenting complaints, keeping a record of those prohibited to undertake contracts, market prices and benchmarked prices. One of the difficulties we experience in this country, particularly in the area of procurement, is lack of a common database that could quickly be accessed, so that you can know the value of a particular item with a view to assessing whether a particular individual is worthy of undertaking that contract. Lack of such common standards or stipulations causes individuals to buy big contracts through insider-trading. In the process, they sell such contracts to a third or fourth party. That is how some Kenyans make money illegally.

On the Public Procurement Regulatory Board, the Bill talks about nomination of members by the Cabinet Secretary and approval by the President. I suggest that we amend this particular provision during the Committee Stage to provide that the Board must be approved by Parliament because the import of this Bill is bigger than the institution of the Cabinet Secretary and the National Treasury. By approving the Board, this House will have a clear oversight role in terms of even identifying areas of failure. The Bill says that one of the members of the Board could have a law degree or accounts credentials. I believe that the best way forward is to have lawyers and accountants manning the Board because both professions are relevant. What has not been defined is the term of office of the Board. It must be stated in the Bill - how long the Board members will serve.

On the Director-General, the Bill is superfluous. It says that the Director-General shall not be employed in any gainful employment, work or do business during his tenure. It is important for us to understand how that provision will be enforced.

Hon. Speaker, the Board will provide quarterly reports and annual reports within the third month of each calendar year. This Bill should go further and propose the provision of other reports like forensic audit reports to ensure that those responsible for public procurement entities do not sleep on the job or steal public resources, simply because there is no oversight or policing authority.

Hon. Temporary Deputy Speaker, finally, I want to talk about the responsibilities of the county government. Currently, we provide billions of shillings to the 47 counties of this Country. Already, one of the areas that have presented a problem to the county governments is building their human capacity to effectively manage the billions of shillings that we allocate to them. Clearly, there must be placing of responsibilities. Do we place responsibilities of theft and corruption in junior procurement officers or senior



public officers within the counties, including the governors, the chief officers and the county executives?

The other problems that my colleagues have alluded to are insider-trading and disposal of assets. We must help to provide for a smooth procurement process and proper administration of public funds, if this Bill should be seen to be of public good.

Hon. Temporary Deputy Speaker, the Bill provides for basic procurement rules. That is good in itself because all and sundry can know that if they break those rules, they can face the law.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members we are going to follow the queue as it exists on the monitor machine. I will dissuade some of the Members who may want to ask the hon. Speaker to do otherwise. But the way it reads here is how we will follow. The first one is the hon. Member for Vihiga Constituency and, as we were doing last week, we did a lot of work. We know you have a lot to say but within ten minutes, you must have disposed on what you must really say so that others can also have a chance. There are those who will take thirty minutes while many will just take ten or below. Therefore, do not die to finish the whole thirty minutes. Proceed

**Hon. Chanzu:** Thank you, hon. Temporary Deputy Speaker for giving me the opportunity to support this important Bill. This Bill comes in as a process where we started off much earlier when we had supplies offices and, later on, because of the complexities of the nature of procurement or purchases, we had to have in place the 2005, Act - that is now being repealed by this one.

It is a process of trying to perfect what has already been in place. The Public Procurement and Asset Disposal Bill, 2014 looks fairly detailed. That is the best way. There are many aspects by various procurement entities - particularly public entities which are covered by the Bill.

Procurement is the beginning of the process of execution of projects or purchases or supplies. It is, therefore, important that we get it right from the first step. If we do it from the onset, we shall have achieved more than 90 per cent of what we want to achieve. That is because in this Bill, apart from depending on what procurement method we use to get value for money, there is also the aspect of fairness and equity on the categories of the people or groups that we have in our midst.

The role of National Treasury in public procurement and asset disposal is clearly stated. It is an important point so that, at least, we have a central place where we can make it a point of reference. The principle purpose of this Bill is to give effect to Article 227 of the Constitution which requires the establishment of a legal framework within which the policy relating to procurement and asset disposal is to be implemented and provide procedures for efficient public procurement and for asset disposal by public entities. This is very important because it now puts some kind of control and guidelines to come from one place. We have the regulatory authority which is going to take care of the regulation processes of procurement. It is supposed to streamline the law and seal the loopholes that may have been noticed or existed before. One thing that we had a problem with the law and which we are repealing now has been the time within which the procurement is supposed to be done, even if there are disputes. It is not that we were doing this because we had our own local procurement supply laws which would require a

very short time. For example, you would give notice seven days and within fourteen days, you are awarded. However, because we are dealing with international tenders, we had to combine and look at both the local situation and the time it would take if you advertise internationally, for the procurement entities to go through with the process because of communication. However, with the way communication has now been made much easier through digital communication and so on, it should, therefore, be easier for us to even shorten the time. That is because you can communicate digitally and the information is gotten within time. The only thing that you need to allow is time for documents preparation

There is another aspect that we have covered in both levels of governments - the county and the National Government. I notice that it is good because right now, most of the counties do not seem to have any format in which they are doing the procurement. Sometimes, a Governor and his people just sit down and say: "We are going to award this job to so and so." For example, in Vihiga County, you find that roads are being done all over the place, but they were not advertised. Rather, they were given on friendly basis and yet, no tendering was done. With this law in place, it would be easier for us to get some of those things organized, especially those awards which involve huge sums of money. When you make a mistake with the huge sums that are involved, for example, at the county level, where you give while spending Kshs3 - 6 billion, if you make a mistake there, the losses are so colossal. Therefore, the law here is soon going to remove ambiguity wherever there is and make it much easier for all those who are participating in the tender process to get information through the adverts that are necessary and are specified in this law.

The mode of procurement - open tender to stage tendering and many others - is specified here. They are going to make it easier for procuring entities to choose what they want based on what they want to achieve at the end.

The aspect of corruption, which we have talked about severally, is also covered here in Section 61 of the Bill.

Hon. Temporary Deputy Speaker, it is very precise here. The only thing that I expect is penalties for Clauses 61 and 62. They should have come immediately after the provisions of the clauses. However, what has happened is that they have been covered under the general penalties in Clause 178. On the issue of corruption which we really want to combat, apart from proper management of the procurement process, Clause 61 of the Bill says that:

"A tender, proposal or quotation submitted by a person shall include a declaration that the person will not engage in any corrupt practice and a declaration that the person or his or her sub-contractors are not debarred from participating in procurement proceedings."

This is very important because it has to come out very clearly so that those who are participating in the tenders will know very well that there is a penalty for that. The penalties for that have been put under Clause 178. Maybe, we will bring some amendments to say that the penalties should be proportional to the kind of offences committed because Clause 178 talks about a penalty of about Kshs4 million. It says:-

"A person convicted of an offence under this Act for which no penalty is provided shall be liable upon conviction—

- (a) if the person is a natural person, to a fine not exceeding Kshs4 million or to imprisonment for a term not exceeding ten years or to both;
- (b) if the person is a body corporate, to a fine not exceeding Kshs10 million.”

I was thinking that this should have been pro-rata, where we can quantify the kind of offence. For instance, if somebody cheats in a tender of Kshs10,000 and another one cheats in a tender of Kshs10 million or Kshs100 million, the penalties should be different. That is probably what we need to look at and see whether we can use some kind of proportionality.

Sometimes, we have got very good laws, but the problem is enforcement and what those who want to report those offences have to go through in order for them to report so that it can be followed up. Before that, the Bill says that there must be utmost good faith which is very important. That means that there must be a lot of honesty when we are doing procurement. Generally, the law that we are trying to create through this Bill is comprehensive enough. We should put it in place in good time. We do not want to get into a lot of situations like what we have had with the Public Accounts Committee (PAC) and the Public Investments Committee (PIC), where we are chasing air on things that have already happened. We want the law to be in place quickly so that we can use it to manage the funds that we are giving out to Government institutions and the county governments.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you. Member for Seme.

**Hon. (Prof.) Nyikal:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this important Bill. Procurement is, perhaps, the single most important function in Government, particularly as it refers to development. We often cry and make a lot of noise that there is lack of absorption of funds that are provided for development in this country. The single most important function that is responsible for that is procurement. In development, there is no other means through which development is carried out using Government funds except through procurement. Whatever we want to do, whether it is services, goods or consultancy, the means is procurement. It is, therefore, important that we have a Bill that seeks to regulate that. That has also been the single most abused function in Government. I dare say here that if there is one function in Government that has been responsible for corruption in this country and everywhere else, it is the function of procurement. It is the vehicle of corruption. All the big corruption scandals we hear about, starting from KenRen, Anglo Leasing, Goldenberg and the ongoing ‘chicken’ affair, are procurement related. So, it is important that, as recognized in the Constitution, we seek to bring in a new Act. The Public Procurement and Disposal Act, 2005 has been useful to us. However, we have learnt enough to seek another law.

All the delays in Government projects are procurement issues. Some are designed at the beginning of the procurement process so that the delays take place and people corruptly get paid. All the stalled projects have their root issues in procurement. Again, some are done on purpose. All the big losses are because of procurement issues. Not long ago, this House very painfully approved some payment for Anglo-Leasing projects. The

whole procurement process was, perhaps, deliberately intended to benefit some people. However, there you are. That is what happened.

On the other side of the coin, the procurement process has also been used to bankrupt businesses, sometimes, purposely. So, this Bill has come at the right time. Being a Bill that is time-limited in terms of the implementation of the Constitution, I find it appropriate.

I like this Bill because, for example, in Clause 2, it defines what a procurement entity is. From my past life, just the definition of who should do procurement and, therefore, spend public money was a big issue. This Bill gives over ten entities in Public Service that can be described as procurement entities. It also gives a very nice definition of “public entity”. That is included in Clause 2(t) as:-

“Any other entity or a prescribed class of public entities or particular public entities that use public money for purposes of procurement or any other entity as declared under Sections 4 and 5 of the Public Finance and Management Act, 2012.”

I think we are covered. We will no longer have an issue or debate whether the entity that got involved in the procurement or disposal of goods had the power and the right to do so. It will all be clear.

Hon. Temporary Deputy Speaker, I am very happy that this Bill, in Clause 7, provides for the National Treasury to give general guidelines, policies and structures for both the National Government and the county governments. As much as we say that the counties are full of corruption, we must also realize that the implementation of the Constitution was done in such a hurried manner that time was not given for county governments to put in place structures. The most important structures that they needed, other than financial structures, were procurement structures. I am, therefore, not surprised, as some Members have said, that in some counties, the governors are dishing out procurement opportunities to friends, relatives and sycophants. This is because there is no law. Now we have a law. In the 47 counties, the National Government retains its policy and standards function through this Bill.

This Bill also provides for the realization of the constitutional right of preference. In the Constitution, we have those entities and persons that should be given preference. Prior to this, we were talking of the one-third gender rule and the youth rule. Now we have that in this Bill. So, the target groups can be well served.

I am happy with the structures that have put in place like the Public Procurement Regulatory Authority that defines clearly what needs to be done in the whole process of procurement.

Clause 10 gives it a board. I am happy that board has some element of independence in the appointment of the director and the professional standards that are required, except that I do not see why the director should be appointed by the secretary with the advice of the board. The board should be independent and appoint its director. The Review Board that has been put in place under Clause 27 is really needed. There has been a review process in the current Act that will be repealed by this, but again, this is an area that has been misused. I have had the experience of frivolous appeals. Suppliers and bidders know very well that they lost fairly, but they will wait until the last day of an award and then they put an appeal. Then you have to wait for, sometimes, months for the

procurement to go on. Sometimes it is so painful. Those people know that what is being procured is needed. In my experience, it was the procurement of drugs. They knew that there were no drugs and they put those frivolous appeals. They knew that it was going to hold you back for months without getting the supplies that you need. Therefore, Clause 27 that takes care of those frivolous appeals is quite acceptable. I am happy the Review Board will have regional appeals, so that you do not have to depend on a central system that will result in delays.

Clause 33 empowers the county treasuries to provide guidelines. Once again, this is long overdue. The Bill also provides for training and capacity building. This country needs that more than anything else if the counties are to be of any use. I like the power that Clause 34 gives for investigation and provides that the Authority can investigate. It gives, particularly, the power to seek documents. It is sometimes painful when you have procurement processes that have gone wrong with colossal sums of money at stake and there is no authority to seek those documents. Sometimes, the documents are lost purposely. Clause 67 of this Bill empowers the accounting officers to keep the documents for up to six years.

I like the fact that some people can be barred from taking part in the process. The list is actually fair. We may need one amendment here, but there are people who have constantly messed the public procurement and development and they continue to participate in procurement in Government departments and agencies. This Bill gives a clear reason why one should be barred. That is really acceptable. This law also allows accounting officers or procurement entities to establish structures and procedures. Nothing can be better than that. It is not that the officers and the governors are sitting with those and dispensing. What is required of them is to put in place the structures that will make it possible for procurement to take place. Here, I want to quote a bit. They can constitute all procurement and asset disposal committees within a procurement entity in accordance with this Act and ensure procurement plans are prepared in conformity with the medium-term fiscal framework. Let me apply myself to that. There is nothing worse than having funds to a Government entity which has a plan and when you see their procurement, it bears no resemblance at all to the development plans that they have.

With this law, agencies will now be forced to have a procurement plan that can be scrutinised and be in line with what you intend to do. It has not been unusual in the Government to hear that money was set aside to put up a structure, but was used to buy a vehicle. If you have a procurement plan, as now clearly indicated here, it will go a long way in helping us so long as we implement the law.

I am happy that basic procurement rules have been put in place. They are very clear. I do not have to go into all that. I am happy that we have put in place the procurement process of classified items. I agree that some items in the Government may have to be procured in a classified manner. The Bill provides the list. Again, this is something that will be available to us. People cannot say that those funds cannot be audited because they procured certain security items. We can then look at that.

I am happy the procedure is quite clear whether you do the open procurement or the two stage procurement if you have very complex items that you cannot procure at once or whether you have design competition. This is probably one of the most difficult procurement procedures, but it is good that it is there. There is restricted tendering,

consultancy services and the power to prepare contracts. I had an experience when a Government officer was involved in preparing a contract and you ask: “Are you with us on this side as the Government or you are preparing the contract for the bidder?” It is important for us to have that stated clearly in law.

There may be a few areas - like in the area of appointments to certain offices - that we will have to amend. All in all, this is an extremely good law. I like the sanctions that are in place which distinguish whether it is a person or a corporate body. There is no small crime in procurement. In fact, corruption is that bad in this country that - as I have said before - if we could have a death penalty for all the corruption crimes, probably we would get somewhere. The sanctions are acceptable. I like the addition that apart from committing an offence according to this Act in procurement, if a person is also a public officer, then other disciplinary measures are put here. Many times, people commit those offences, put the money in the banks and continue to work. That is extremely important.

Finally, I like the transition process; the realisation that the current Act will be repealed and that a Schedule has been put in place. It is extremely important that when you are transiting from one piece of legislation to another, there must be clear transition clauses that preserve the processes that are going on. If I may digress a bit, this has been the greatest failure in our attempt to devolve. Devolution is something we like, but failing to plan and go by the transition clauses that we have put in place has given us very many problems. Some processes that were in place just disappeared and some Government assets will probably disappear. This has taken care of that.

I support the Bill and I know that we are going to make some amendments when the time comes.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Mbita!

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, Temporary Deputy Speaker for giving me this opportunity.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Hon. Members, I have tried to press all of you so that you can willingly reduce your minutes from 30 to whatever number, without success. If you are able to summarise, please do so because from where I sit I hear repetition of issues which I have heard other hon. Members debate.

Member for Mbita, without discouraging you, if you could willingly take fewer minutes other hon. Members can also have a chance to contribute to this debate, it would be good.

Thank you.

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Speaker, I will try to do as directed. Let me first thank you for giving me the opportunity to contribute to this Bill.

From the outset, I want to say that I support this very good Bill. The main aim of this Bill is to enhance the core principles of governance, which include transparency, accountability, prudent utilisation of public resources, public participation and inclusion of disadvantaged groups in the economy, with the ultimate aim being poverty alleviation. It comes at a good time, especially when we are dealing with the issue of devolved government; which is a new creature under our new Constitution, and the Constituencies Development Fund (CDF), which is also seen as a devolved fund.

Hon. Temporary Deputy Speaker, as you know there have been a lot of misconceptions, especially in relation to CDF funds. That is why I am really happy that this Bill has come at this time. I have heard and seen the public discussing this issue of CDF. I see people saying that for the first time Members of Parliament will not have any money to dip their hands into. A lot of people do not realise that there is a CDF national board and a committee at the local level. There is also a whole Act that regulates how CDF is managed. Part of that process includes procurement, which is governed by this Bill. I know that we will have sufficient time to ventilate the issue of CDF but I want to say that other than the fact that we need to tighten some issues, the CDF is one of those funds which have been extremely helpful indeed. Even though the CDF kitty has much less funds than the funds given to the county governments, it definitely has more benefits to the public. In fact, if CDF was to be removed we would not have support for our primary and secondary schools. Therefore, I see this Bill as having come at a very timely point in time, at which we can also allay the fears that people have that MPs can just wake up one morning and say “do this and that”. There are very clear laws that govern how tenders are awarded.

The other reason why this Bill is timely is because of the issue of devolution, as I have indicated. Our governors receive a lot of money. One of the things I have noticed, which is a very common characteristic of a lot of the counties, is that most of the people who are employed are people who have never worked in government before. They may be qualified but because they do not know how Government works, we have a lot of challenges in many counties. I know a lot of people have complained about the Transition Authority but I know it also did not have sufficient capability to deal with the transitional issues in relation to the counties. I want to urge both the county governments and the national Government that they need to take these issues seriously because some of us would have absolutely and completely supported the scrapping of CDF and have it transferred to the county governments, if we had faith in them. However, we have not reached the level where we have faith in the county governments, especially on issues of procurement.

We have county governments which are very good on paper. They can even write for you and tell you that they went through such and such process but when you go to the ground to find out whether those goods or services that were said to have been supplied are there, you find that they are non-existent. You wonder where this money goes. So, that is why I am very happy that this Bill seeks to tie the loose ends by providing that, as part of procurement, you can actually go to the ground and assess whether the work has been done. Part of it is verification of purchase of goods and services. That is one of the reasons as to why I support this Bill.

I want to pick on some salient issues in this Bill. I want to note my concern that even as we are debating this Bill, I do not see the Chairman of the relevant Committee. As much as I know that they may be able to read the HANSARD, I know that sometimes because of lack of time, they may not be able to get everything that hon. Members said. I want to encourage the House leadership to encourage---

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Mbita, that is a very important point. We wrestled with that issue. Even as you debate this Bill, we do not have a Report from the Departmental Committee to help you zero into some of the issues

you want to bring up. We had expected that the Committee would take notes as you debate so that by the time you are done, there is a comprehensive report that can help you in the Committee. So, it is an issue of concern but your own Standing Orders leaves the Speaker with very little to do. Under your Standing Orders, all I am supposed to do is to note it to the Liaison Committee but even that is not very effective. I hope that the Mover of the Bill, whom I also do not see in the House, will take up that matter so that we have an Act which has got a lot of support from Members.

Anyway, Member for Mbita, that is the problem we were with last week. Go on but you have made a very important point.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Temporary Deputy Speaker. I want to thank you for noting that you are taking it up with the Liaison Committee. One of the things that is of concern to me is that in the past, I have known in the House that whenever we have put contributions and suggestions of Members by way of procedure, when we raise concerns, we do not have to bring individual amendments. However, because I have seen that the chairs of committees do not take that role seriously, we are forced to bring individual amendments, as I am going to be forced to bring mine. I hope once you take it up with the Liaison Committee, it will be sorted out.

I will be proposing amendments on Clause 2, on the definition of ‘contract administration’. This is because from a legislative perspective, if you provide terminologies such as this one among others, it is actually subject to abuse because somebody else who will be reading the law, be it the Cabinet Secretary or someone else, will bring up all manner of terms into that definition.

Another place where I want to propose an amendment is still in Clause 2 on the definition of ‘disadvantaged groups’. This is because it does not define what ‘disadvantaged groups’ are yet we know from the spirit from Government policy that disadvantaged groups include women, the youth and persons with disabilities. So, even if you want to leave it open-ended, it is good to leave it open-ended while you have already recognised the groups you want to include.

Another thing that I hope the Committee will take up, as an issue of concern, is the issue of tender box which is defined to include virtual box. Even though we know that Information and Communication Technology (ICT) is a very progressive thing and that the country is going digital, my concern is how to secure a virtual tender. It means that you only have a few Kenyans who are ICT knowledgeable. Therefore, it means that you are giving them some sort of monopoly over the tendering process, which then goes counter to governance principles.

I will not talk to the issue of Cabinet Secretary and the powers they are given on appointments of regulatory board members and other appointive positions, which members have spoken to at length. Personally, I have proposed amendments to that area because it is not a good governance practise. One of the things I am proposing consistently is to make the process open, transparent and competitive where appointments are concerned. That is in tandem with even previous laws we have passed. An example is Clause 10. In order to save time, I will not go into the details.

The other issue that I would like to speak to is one that hon. Ogari spoke to last week. I respect the fact that he is a professional. I am not a professional in this area and a lot of times I stay in this House to be persuaded especially by the professionals in this



area. He did not persuade me especially on the issue of benchmarking, and more so on prices. Those of us who are managing CDF know that we have average costs, for instance, in terms of development of classrooms, depending on topography and transportation costs. However, the cost of a classroom can never go beyond Kshs1 million yet we know that in county government tendering, constructing a classroom can cost up to Kshs14 million.

That is why it is important to provide for benchmarking and standardising costs for different goods and services. Of course, I know that we must be doing that in respect of professions that have set those standards including law. However, for the general ones especially for supply of goods, I think it is important that we standardise them.

Another issue of concern to me, and which I want to appreciate in this Bill, is that it provides for the issue of blacklisting agencies and persons that have not complied with the law in the past. I do not want to pre-empt debate because I know that the Committee on Agriculture, Livestock and Cooperatives is dealing with the report from Mumias Sugar Company (MSC). The kind of rot that we have seen and the kind of things that people have done in public institutions in the past is amazing. In Mumias Sugar Company you find that we had companies that were blacklisted yet they were still being contracted to do work for it. Mumias Sugar Company still goes ahead and gives them more money and tenders even after they are blacklisted and have failed to deliver. I am glad that this is now being made a criminal offence.

I would also want us to be consistent in language so that we use the same language as the one used in the Constitution. I have just noticed that in Clause 23 we talk about regional balance yet the Constitution talks about regional and ethnic balance. I was one of the members in the Parliamentary Select Committee on Constitution and this is one of those things that we discussed at length and Members were a bit hesitant at using the word “ethnicity”. We said that we will always marginalise small communities if we do not use it.

I am half Luo and half Suba. I am happy because I am partly a majority and partly a minority. If we said we want to balance for instance appointments in Homa Bay County, we can actually give an appointment in Mbita to a Luo and we would have satisfied the regional balancing but we would not have done ethnic balancing. Because of that, we provided regional and ethnic balancing in the Constitution so that we do not have main tribes always taking every slot against the minority tribes.

Therefore, I am also proposing amendments that bring in the issue of ethnic balancing.

**The Temporary Deputy Speaker** (Hon. Kajwang’): While I appreciate your logic, how do you want to achieve it? The tribes as I understand are now 43 including the Abasuba, is it not? Here we are talking about the review panels which should be regionally balanced. How do you want to achieve 43 tribes in all these panels?

**Hon. (Ms.) Odhiambo-Mabona:** Hon. Temporary Deputy Speaker, the balancing does not have to take into account all tribes at once. It is a debate we have had at length in the National Cohesion and Integration Act. In the Constitutional Implementation Oversight Committee (CIOC) where I was the Vice Chairperson in the last Parliament, we agreed that in constitutional appointments or those of other bodies, you look at them as a whole.

I will give you an example of the Kurias. If you look at them as a whole, and supposing we said we are taking into account regional balancing and positions are given consistently to one tribe in Migori, we would have taken regional balancing into account when you look at the commissions or committees as a whole. It is something that cannot be satisfied at once but one which we must be conscious of all the time as a country in order to take into account minority interests. That is one way of redressing the minority issues.

I am the one, as Vice Chair of the Legal Committee, who moved major amendments to the National Cohesion and Integration Act. Indeed, one of my concerns with that Act is that the Commission is not doing its work. If you go to counties like Homa Bay where I come from, three quarters of the people employed in the county are Luos. We were not trying to balkanise the country when we were bringing devolution. The counties must do something to integrate other tribes. It is not just Homa Bay. The same applies to Nairobi as it applies to Mombasa and other counties. I want to encourage the Chairman of the Commission to do an audit of the counties to see whether they are complying with the National Cohesion and Integration Act, which I do not think they are doing.

Though I have a lot, I do not want to take much more time. We had agreed that I would let go of the time. I want to finalise by saying that I would want to urge that part of the work the regulatory authority is doing should include mandatory report of compliance to this law by each county government to Parliament and county assemblies.

That means county governments, in compliance with the law on Public Procurement and Asset Disposal, are going to tell us how they have included the minorities, women, youth and persons with disabilities. Right now it is not obligatory in the Act that they must give a report specifically relating to each county. What is provided for is that they can bring some sort of an overall report on policy issues and implementation. I would want the report to be more specific. In order to zero in on counties, we must hold them accountable the same way we are holding constituencies accountable.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you. It is fair enough. Hon. Member for Ugenya.

**Hon. Ochieng:** Thank you very much, hon. Temporary Deputy Speaker. I also wish to contribute to this very important Bill that is not just a Bill but one brought pursuant to a requirement of the Constitution.

The reason we are doing this is because it was long decided by the experts dealing in this area that for you to have a sound procurement system that helps the country, a number of issues are imperative. One, you must have a sound legislative and institutional framework. Two, you must have a sound institutional and management system of procurement; three, you must have serious procurement operations and market practices in your procurement system and finally, you must ensure that there is integrity in the procurement systems.

So much has been said about this Bill. The Bill reads "Public Procurement and Asset Disposal Bill", but you will agree with me - I have been listening keenly - you have hardly heard contributions relating to asset disposal. This is where we lose more money.

Public assets are bought today and disposed the following day and you just do it for a song. I will, therefore, start my contribution from the back. I will first talk to the issue of asset disposal which is a very important matter.

Sometime back before I came to Parliament, there was a policy that Ministers must only be driven in Volkswagen Passat cars and we bought very many of them. Nowadays, you do not see Cabinet Secretaries or Principal Secretaries driving in them. You hardly even see directors driving in them and we do not know where they are. When you ask, you will be told that some of them have already been disposed of or sold to private persons. This is a scandal for a country, that we buy things at very expensive prices and we throw them back into the market and sell them cheaply. We dispose of in thousands of Kenya Shillings things we buy in billions of Kenya shillings. This is an area where I thought this Bill needed to have given more serious treatment. It is just talking about three or four clauses and we are leaving it all to the Cabinet Secretary and a procurement board.

We are not regulating how we are going to dispose our assets in a manner that disciplines that area and ensures that we sell Government property at market price. We need to give every Kenyan an opportunity to buy Government property that is being sold.

We have so many Government properties that are sold. First of all, before they are sold they are left to lie for three to five years since someone is planning for them. If it is a car, before it is sold someone had long tampered with the engine, and some tyres and parts of the car have been removed. A small accident involving a new car happens on Uhuru Highway and it is declared a wreck. They say, "Let us keep it somewhere and we will sell it one day." In terms of disposal of public assets, you must have talked about how to manage them so that they will one day sell. Must we sell all public assets that can be repaired for use? This is something that I really would want to see in this Bill. That is how we will treat public assets that we deem are available for disposal. Also, we need to discuss how we will preserve these assets and ensure that when we sell them finally, the Government gets value for money. I would like to see more of such disciplines. I will bring amendments to ensure that public assets are disposed in a manner that saves money for the country. Instead of disposing motor vehicles or *pikipikis*, probably we could donate them to public training institutions. This is an area that policy makers must think about very soundly.

Procurement planning should and, indeed, will be mandatory for any public entity that is going to procure. I dare say that these plans that are prepared probably should be submitted just for noting to the oversight authorities. This is so that we are able to hold somebody to account. If you prepared a procurement plan, did you follow it? Did you procure on time? Did you follow what is required? That is why I want to support what hon. Millie just said, that there must be some level of reporting not just on this Bill as a whole but on the aspect that will make procurement and disposal of public assets worthwhile.

There are a couple of things which are very important. We have talked about allowing youth, women and groups that are disadvantaged to have some leverage. However, we do not see it in the Bill. I have been looking through the Bill and I have not been able to get a particular provision that talks about procurement opportunities being availed. This should be in another Bill or another Act but this should be the home for

those kinds of provisions. This should be the best place to put it and repeal any of those provisions, if they are in another Bill. This should be the home of provisions that talk about women, youth and disabled persons if they are going to be given opportunities.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Are you planning to assist the National Assembly in doing that?

**Hon. Ochieng’**: Most definitely, hon. Temporary Deputy Speaker. I am going to bring a particular amendment to ensure that is done. You have heard Members contributing. They are confusing provisions relating to preferences in this Bill. If you look at how they are defining “preferences,” they are not talking about young people, women or disabled persons. Preferences are areas where for example you will prefer to use one method of tendering to another. It is not talking about disadvantaged groups. It is talking about you deciding to buy Kenyan products first where they are available before you move to buy something outside the country. Therefore, preferences in terms of the way they appear in this Bill are not related to disadvantaged groups. I agree with you. I am going to bring amendments to entrench the rights of these young people in this particular Bill.

There are very curious provisions in this Bill. These are provisions that appear currently in Clause 83 which relate to professional opinion that is offered by the procurement expert within the procurement entity. When submitting the evaluation report for award - Here an evaluation has been done and it is being submitted to the body that will award the tender. We are saying that the procurement professional in that body will give an opinion which we are calling professional opinion to the awarding authority. The awarding authority will, while looking at the report of the evaluation committee, consider the professional opinion of the expert. I would like to read it, if you allow me, because it is curious that what is so professional is what this person could not bring on board during evaluation. Why must it come outside the normal framework of evaluation? It says this: “The head of procurement function of a procurement---”

**The Temporary Deputy Speaker** (Hon. Kajwang’): Which clause are you reading?

**Hon. Ochieng’**: I am reading section Clause 83. It says:

“The head of procurement function of a procuring entity shall, alongside to the report to the evaluation committee as secretariat comments, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings.”

Unless we limit the bounds and the extent to which this opinion is to be given, it is very probable that this opinion could easily override any recommendations made by the evaluation committee. This is something that must be avoided. We cannot leave room to an opinion of a head of procurement function to override what possibly might have been decided or done by the evaluation committee. I will be moving amendments to ensure that this happens.

In most public functions there is always a risk of regulatory capture. We have in this particular Bill created so many institutions that you wonder whether there will not be duplication of roles and functions. The one that worries me most is the Procurement Regulatory Authority. It could easily be “*kaput*” if the functions given to it are not performed. We need to insulate the body from political interference, wheeler dealers and

people who may not want to follow due process. I will be bringing amendments to ensure that the bodies set up within this particular Bill are immune from regulatory capture.

Devolution of the services of the institutions set up under this law is very important. It will be important that the services of the regulatory authority, the review board and all other bodies set up here are devolved to the county level. What we have now as the review board is very important. However, the way the Bill is crafted would seem that we are going to be incapacitating it. We have put a limit on the membership of that board and we are still hoping that this membership will be able to travel the whole country and give service. I think we will need board members *in situ* within the counties. Procurement goes on within the counties and constituencies every day. So, I do not see why if there is a procurement issue in Ugenya, someone should want to come to Nairobi. If there is a procurement review board in Siaya County, then this board should be able to handle these functions other than have someone travel to Nairobi. The cost involved is huge.

There is very serious innovation in Clause 55 of the Bill. This is the capacity of a procuring entity to use the list of suppliers of another State organ. This is very important because where time is of essence and where it will take a long time or where a body procuring may not have developed enough capacity to be able to identify these kind of services--- Here I am talking about bodies working in the same areas like energy, agriculture or infrastructure.

In Kenya today if, for example, the Kenya National Highways Authority has pre-qualified an institution and the Kenya Rural Roads Authority thinks that the list of Kenya National Highways Authority is good for it, it can go for that. If the Kenya Roads Board thinks that the list done by the Kenya National Highways Authority is good enough, then it can go for those lists instead of having to go through its own process for purposes of saving time and ensuring that things are done in the right way. This also helps the suppliers develop capacity. What does it help a supplier in a specialised area who only supplies an energy sector related project once in ten years while for example the services supplied could be used by the same bodies in the sector severally and develop expertise and probably reduce cost? I would request Government entities concerned that when this law passes, they should be able to use what we provide now in Clause 55 to enable them save time in this regard.

There is also another provision which I wanted to talk about and it relates to the fact that where Kenya enters agreements, or signs treaties which have superior provisions, or that the Kenyan law that we are passing this month makes provisions that are not in tandem with those international agreements, then those international agreements supersede. This is all well and good. However, this is an area where we must have caution. I happen to be a trade lawyer and I know, for example, that Kenya is a member of the World Trade Organisation (WTO), but it has never signed onto the law called Government Procurement Agreement at the WTO. Members will then persuade you that since you are a member of WTO then you should be able to implement this. This would definitely limit your capacity to do things, for example, to promote something like the one we are doing now, that is, "Buy Kenya, build Kenya." Now, if we have provisions in our law that talk about "Buy Kenya, build Kenya" and then we have signed

an international agreement that restricts us from doing this, we must be able to strike the balance even as we have those kind of provisions in our laws.

Hon. Speaker, I have seen a very curious provision also in Clause 176 of this Bill. It tries to limit the ability of a Kenyan to access our courts under judicial review. First of all, judicial review is a preserve of the High Court. Once you choose to go to the High Court, you should not be allowed to go to any other place. Secondly, accessing the High Court for judicial review should not be conditioned--- I want to read that one also because this is one area we may need to amend. It states that before you can access the High Court for judicial review, you must make payment which shall be a percentage of-- - It says that the application for a judicial review shall be accepted only after the aggrieved party pays a percentage of the contract value as security fee as shall be prescribed in the regulations. So, before you can move to the courts on judicial review, you must pay a percentage. You have not won the tender and you think that you are aggrieved then for you to access the court you are required to pay some money which is a percentage of the contract. Will we have people accessing the courts for this kind of a remedy? This is a Clause that is being used, of course, to discourage people from going to court to review decisions. However, it should not be done in a way that kills the enjoyment of that particular right. Indeed, it is one of the clauses that we may need to amend.

**The Temporary Deputy Speaker** (Hon. Kajwang'): This percentage could be 0.1!

**Hon. Ochieng'**: Hon. Temporary Deputy Speaker, they say that this percentage shall be prescribed in regulations.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Which will be prescribed in the regulations.

**Hon. Ochieng'**: So, it is not named here. So, somebody could put it at ten or 50 per cent.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Probably, therefore, it is a regulation that one would have to find out---

**Hon. Ochieng'**: This is a matter that should not go to regulations, hon. Temporary Deputy Speaker. It is a matter that must be settled within the main Bill. That is why I will move an amendment to ensure that it gets totally removed. If the courts want security for costs, let the courts set that, but the law cannot purport to say that before you approach the courts, then you must pay some money over and above what you are going to pay.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Then, it talks about what happens after the aggrieved party pays a percentage. How about where the person applying for judicial review is not necessarily an aggrieved party in the sense of being a party to that tender, but who thinks that there has been some administrative malfeasance?

**Hon. Ochieng'**: Hon. Temporary Deputy Speaker, you are spot on. In that case, you will be disadvantaging the participants to the tendering process. You are now telling them that some money must be paid. Really, what I am trying to avoid is this: Why would you want to limit the capacity of a person to approach a court on a matter not quite of a civil nature, but a matter of judicial review of a decision made, probably, by a

procurement body? This is a matter that should be allowed to proceed without such kind of hindrance.

The major issue about this procurement law is the fact that we want to have an effective system that can help us do this. For us to be able to have that, timeliness is an important matter. Bodies charged to procure public assets and dispose of them must always bear in mind that we are doing this to ease doing business. Kenya has been ranked severally. This year, I saw we have been ranked very low. One of the reasons for the low ranking is our procurement law. We take so much time to do this. Even in terms of the way we solve our disputes, it takes so long that even the person who was interested easily loses interest in our process. I do not want to belabour much the point. Going forward, we must be able to ensure that Government institutions, be they parastatals or Ministries are not held hostage by the National Treasury. Once they second officials to these Ministries, they must be allowed to do their job. Procurement function is just part of what a Ministry or a parastatal does. So, we should not use procurement laws to hold these institutions hostage in whatever they do.

Hon. Temporary Deputy Speaker, as I end this, I want to appeal to those concerned that these procurement rules are meant to make business easy. They are not meant to help you fester corruption or do tender rigging. They are meant to help Kenyans who wish to do business with the country do it easily, transparently, in an accountable manner, and in a manner that gets value for money for the country.

Hon. Temporary Deputy Speaker, I support the Bill, but with the amendments that I have proposed. Thank you so much.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members, as always, I have told you that at the end of the day you determine your destiny whether or not you want to sit here discussing one Bill for a long time. We are not going to change the time available for an individual Member. However, there is a point at which Members would want to make a decision whether you have chewed the pie long enough so that we move to some other business of the Assembly. The next person is Member for Narok South. You are not compelled, but you are strongly advised to take as few minutes as you can to be able to release some other minutes to other Members.

**Hon. ole Lemein:** Thank you, hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill. This Bill is very important for this country. I believe that is why it is a constitutional requirement Bill as is stated in Article 261(1) of the Constitution. Most of the audit queries facing organisations or companies revolve around procurement. One of the most beautiful clauses of this Bill is, perhaps, the maximisation of value for money, promotion of local industries, sustainable development and protection of the environment. When you look at it, a number of queries are being raised in relation to environmental impact and value for money. This Bill has actually addressed most of the areas that were not addressed earlier on. Because of time, I want to heed your call.

I am more concerned with Clause 11 which gives the qualifications of a member of the Board. When you look at the number of years, I believe 10 years is a lot of time. It will lock out very many people. Again, when you look at the requirement in terms of courses where it is talking about finance, law and accounts, I think there are other very

important professions like engineering and actuarial sciences which are very important to the functioning of this Board.

The major challenge that the county government is facing in terms of development is arising from this issue of procurement. Perhaps, if you look at the World Bank report where they were showing the percentages in terms of what the county government is using or has used in terms of development *vis a vis* the Recurrent Expenditure, it was actually alarming. I believe one of the biggest challenges in that area was procurement. This Bill will go a long way in assisting both the national government and the county Government in ensuring that resources are well managed and utilized to improve the development of this country. It will also go a long way in bringing a lot of innovativeness and creativity in procuring of goods and services.

Because of your advice, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you for being so loyal to advice. Member for Cherangany.

**Hon. Korir:** Thank you, hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this Bill. I will also follow your advice of taking as short time as possible. I will not go into much detail about the Bill. I have only two concerns that I want to raise today with regard to the issues that we are facing as a country through procurement.

There is a reason why Kenya is not moving forward as we are supposed to. One issue that I am very concerned about since I became a Member of Parliament is the influx of foreign companies working in this country. That is because we have opened up our procurement laws whereby they favour foreign entities over our local companies. There is a reason why the Webuye Pan-Paper Mill is not there anymore. There is a reason why we are not making matches in this country anymore. There is a reason why we are importing goods from China that can be made in this country. We hope to make a law that will protect our Kenyan interests so that we can move forward.

I also want to bring into question one more issue that my friend raised; treaties. If we do not watch out, we will be giving treaties that we have entered as a country more preference than our own law that we are making. This law should have power over everything else. The law of this country should have power over any other laws of this world. We are the people of this country and we need to put the interests of Kenyans first. The reason why I am saying that is because of the issue of agriculture. As we are talking about the issue of procurement, we should not be talking only about Government money, procurement funds, Kenya Rural Roads Authority (KERRA) issues or all these issues of development and construction in this country. We should be talking about protecting what is ours first.

The issue of maize procurement is very urgent to me and my constituency. Nowadays, because of the treaty we have entered into that encourages free market within East Africa, people are going to import maize from Uganda and Tanzania and yet this country produces the most and the best maize. We are giving advantage to Ugandan and Tanzanian farmers and yet our farmers are suffering because they cannot compete with those people due to the cost of production.

The same thing happens with the contracts we give to Chinese companies. A company in this country cannot compete with a Chinese company because the Chinese



companies can borrow money from China at a lower interest rate than our companies who borrow from Kenyan banks. If a company in Kenya goes to a bank and borrows money, they are charged 18 per cent interest rate. If a Chinese company goes to China and borrows the same amount, they are charged five per cent interest rate. They come here and bid. According to our procurement laws, they end up being the lowest bidders and they get the contract. If you leave it like that, Kenyans will not be getting contracts. It will be for people from outside because they can borrow at a lower rate. Those are the issues that we must be focusing on to make sure that we protect the interests of Kenyans. As we move forward, I would like to see those things envisioned in this Bill. If they are not, then we need to bring good amendments to protect our Kenyan people. By doing that we will be protecting the economy. If a Kenyan is given a contract, that money remains in this country. If a Chinese is given a contract, be assured that that money does not stay in this country; it goes out of this country. If we do that we will be empowering and building other countries rather than ours.

Another issue I have is government to government tendering. It is a matter that we faced a lot when we were doing the Standard Gauge Railway. A company from China can come here and single source because it is a government to government tendering. If any company is doing work in this country, I propose that it should abide by the laws of this country. They are working in this country and using our money. Even if it is a loan from another country, rest assured that it is the taxpayers of this country who are paying for it. There is no way we can say that those people are excluded from the laws that we create in this country. They should follow the procurement law like any other company doing business in this country.

**Hon. J.K. Bett:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to contribute on this important Bill. From the outset, I would like to say that this is an important Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): A tradition has been set where Members are taking as short time as possible. I hope you will also be persuaded to follow suit.

**Hon. J. K. Bett:** I will be very brief. This Bill is very important because it has been synchronized to the current Constitution of 2010 as per Article 227 where it says that a public entity or organ shall procure goods and services in a manner that is fair, equitable and transparent. This Bill in itself will be a game changer in terms of the way procurement will be done both at the national and county governments.

In the past, procurement has been a leaking pipe and there has been a lot of corruption around procurement. However, going by the new law, many leaking pipes will be sealed and there will be a lot of savings in terms of what will be procured for goods and services.

I am impressed by Clause 3 (1) whereby this procurement law intends to promote local industry by giving preferences and reservation to disabled people, youth and women. I agree with the establishment of Public Procurement Regulatory Authority which is going to succeed the Public Procurement Oversight Authority (PPOA).

I concur with Clause 61 where the tender security has been maintained so that those companies which participate in tender are required to give at least a minimum of

two per cent of the tender sum so that we do not have every other Tom, Dick and Harry participating in the same.

Clause 62(3)(d) talks about the market prices of goods to be procured. I am impressed that a procuring entity can terminate a procuring proceeding if the prices quoted are far above the prescribed market prices. In the past, public procuring entities insisted on the lowest evaluated bidder but going by the new law that we are making, a procuring entity can terminate procurement proceeding if it deems that the prices quoted by the lowest bidder are far much above the market prices.

Hon. Temporary Deputy Speaker, Clause 149 talks about advance payments. Although advance payments are not allowed, in extreme cases, they could be allowed to a maximum of 20 per cent. This Clause goes ahead to say that if a bidder who has been advanced payment to prosecute some payments applies the funds in activities not related to the procurement; the amount advanced will be deemed to be a debt recoverable with some interest.

This Bill is good but we will be introducing some amendments during the Committee Stage to enrich it further. One of the amendments I intend to introduce is with regard to the definition of 'procurement' as well as the scope of procurement. In both the definition and the scope, the drafters of this Bill have omitted the component of contract management. All of us know that procurement starts from need identification, on the basis of which requisition is made. Contract management is an important stage in procurement because it touches on the implementation stage. If you do not include the aspect of contract management in both the definition and the scope of procurement, certain portions of the procurement remain incomplete. My attention is drawn to Clause 94 where it says that an evaluation committee shall present its evaluation to itself. I intend to introduce an amendment to this Clause so that an evaluation committee can forward its findings to the Accounting Officer, through the head of procurement. An evaluation committee should not forward recommendation to itself.

Hon. Temporary Deputy Speaker, I also intend to introduce amendments to Clause 125, regarding circumstances under which single-sourcing can be used. Clause 125(11) (b) says that a procuring entity can use single-sourcing where there is a natural cause. The amendment that I intend to bring on this Clause will seek to qualify natural causes.

With those remarks, I beg to support this important Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Diriye, I understand that you do not have a card. How can a man who is conscientious like you come to the Chamber without a card?

Address us from the Dispatch Box.

**Hon. Mohamed Diriye:** Hon. Temporary Deputy Speaker, could the Mover be called upon to reply to this debate? It seems that hon. Members have sufficiently ventilated on the Bill.

Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members, you have the right to decide how to handle your agenda today.

**Hon. M'uthari:** Hon. Temporary Deputy Speaker, I want to speak on the Bill

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Igembe North, you may want to speak but you know that we are more than 390 of us. You have just come into the Chamber. I have seen very old and seasoned hon. Members who have been lining up to speak from very early, and they have not got a chance to contribute. So, you may not want to hold that you must contribute, sometimes you let go. We want to start some other business.

Member for Wajir East, before I put the Question there is a very exciting point you want to make. Are you able to cover it in three minutes?

**Hon. Mohamed Abass:** Hon. Temporary Deputy Speaker, mine will be very short. Thank you for giving me the opportunity to support this very timely Bill.

This Bill has checks and balances but there are some gaps. As a former public officer, I know that the Government loses a lot of money, especially through public procurement. About 36 per cent of the goods and services procured are overcharged.

Hon. Temporary Deputy Speaker, this Bill does not give proper opportunity to the youth. The Government policy of setting aside 30 per cent of contracts to the youth and women has not been implemented. So, we need to revise the Bill to provide for that policy.

The Government loses a lot of money through the restricted tendering system, especially in secretive military and other security agencies equipment. There should be a timeframe for making procurement public, so that Kenyans can know what has been procured through restricted tendering.

Hon. Temporary Deputy Speaker, this Bill does not take care of the Monitoring and Evaluation systems. It takes too long for a body like the Public Procurement Oversight Authority (PPOA) to know how much money has been lost and what has been procured. The Bill seeks to only deal with those who will contravene the Act by providing a penalty of Kshs4million. However, there is penalty for those who will collude with those people who will contravene the Act. We need to bring an amendment to introduce a penalty for collusion.

Most of the rich people in this country are public officers and contractors. That shows how much this country is losing to cowboy contractors through unscrupulous tendering deals. Therefore, we need to amend this Bill and introduce penalties for collusion to deter the habit of some people getting money through unscrupulous means, so that we can close all the loopholes for stealing.

With those few remarks, I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you.

Member of Kisii, are you able to make your point in two minutes?

**Hon. (Ms.) Keraa:** Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this very good Bill.

The enactment of this law is intended to give effect to Article 227 of the Constitution. It seeks to provide a procedure for efficient public procurement and assets disposal by public entities and for connected purposes. Article 227 talks about procurement of public goods and services. Please, allow me to read it out.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Kisii County, you will probably do better if you summarise some two very important issues that you want to bring across.

**Hon. (Ms) Keraa:** Hon. Temporary Deputy Speaker, Article 227(2) provides for categories of preference in the allocation of contracts, the protection or advancement of persons; categories of persons or groups previously advantaged by unfair competition or discrimination, sanctions against dishonesty, contractors who have not performed according to professionally regulated procedures, contractors who have breached contractual agreements and registration or have been guilty of corrupt practices or serious violation of fair employment, laws and practices.

Hon. Temporary Deputy Speaker, the Kenya Constitution requires prudent use of taxpayers' funds so as to ensure there is value for money to achieve in all public spending decisions. Accountability in public procurement system in Kenya in the past decade has undergone significant changes, from a system without regulations in 1960s to a system regulated by the Treasury circulars in 1970s, 1980s and 1990s. Finally, there was the introduction of the Public Procurement and Asset Disposal Act of 2005 and 2006 setting new standards for procurement procedures in Kenya.

Therefore, I want to support this Bill; it is a good Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you very much. Hon. Member for Vihiga, can you say something within two minutes or so?

**Hon. (Ms.) Kedogo:** Yes. Thank you, hon. Temporary Deputy Speaker. I note that this Bill has a constitutional deadline of 26<sup>th</sup> May, 2015 as per Article 261 of the Constitution. That is why I support it but with amendments. As we know, this Bill is important because public procurement plays an important social, economic and political function. Socially, public procurement can be used to uplift previously marginalized groups by giving them preferential access to tenders especially women, youth and even persons with disabilities. If we have an example of India, the Government of India encourages each village to produce a single product which it can sell to the Government. This has been addressed by Part XII of the Bill especially when, as Kenyans, instead of importing we would like to be supported so that we can export. Even in counties, that is what should be happening where the marginalized like women, people with disabilities and the youth should be given the tenders to come up with products which they can sell to the county governments or sell in Kenya.

Politically, public procurement can be a major issue because it can be used to marginalize or uplift specific regions. Sometimes you find that if I did not vote for you, then you will not give me tenders. But if there is this board and if it will be in place, it will curb that.

With the amendments to clause 15, I would wish that the Director-General of Procurement be appointed by the Cabinet Secretary the way it is but with approval of the National Assembly because some people may take advantage of just picking any person. With Clause 10, I wish that there would be members of professional bodies in that Board so that they know what they are doing or discussing. Sometimes, somebody may be appointed who does not even know what is supposed to be done in the process of procurement. Those are the amendments that I would come up with.

On Clause 33, this Bill is part of the reforms and specifically includes new areas. The new areas are the county treasury where they will co-ordinate administration and do monitoring and evaluation according to those points that are there.

Thank you, hon. Temporary Deputy Speaker. Let me give my two minutes to hon. (Ms.) Rachel.

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right. Thank you very much. Hon. Member for Baringo Central, take two minutes.

**Hon. Mwaita:** Thank you, hon. Temporary Deputy Speaker, I will only take one-and-a-half minutes because I obey advice from the Chair.

One point I wanted to raise in support of this Bill is that in procurement, the major problem has always been the evaluation committees. It is not the tender committee. The tender committee prepares and opens the tender having been processed by the procurement managers and when they form evaluation committees, this is where Accounting Officers manipulate the procurement process by appointing cronies to those evaluation committees.

Clause 46(1) says that an Accounting Officer shall appoint, *ad hoc - ad hoc* is the operative word - evaluation committee comprising of experts; people with expertise among the members of staff within the procuring entity. This is the snake which I would hope before this Bill is finalized, an amendment is brought so that this is made very explicit that the evaluation committee will have certain criteria. I note also that the Bill talks about regulations on how that can be done.

Secondly, because I do not want to take a lot of time, is that the Bill should also stress about the procurement audit; how audit can be done for the whole process in order to safeguard public funds.

Finally is the tenure; the time it will take for a tender committee. It should be strictly two years; less than the three years for that review board. Review board takes three years but for tender committees it should be strictly two years and no more. That way the question of procurement, loss and pilferage will be overcome. Thank you and I support.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Thank you. Member for Kajiado North; you now see the trend that we have set, please keep to it.

**Hon. Manje:** Hon. Temporary Deputy Speaker, I will take less than five minutes.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Three minutes are available.

**Hon. Manje:** Thank you, hon. Temporary Deputy Speaker.

Let me also contribute to this Bill on procurement and disposal by the Government and say it is a good document from the word go and I support it. In clause 45, it advocates where the Accounting Officer identifies different officers in the process of procurement. For example, when it comes to initiation of the process, it will be a different person. When it comes to the process and reception of goods, they will be different personalities. Then when it comes to disposal, it is well advocated that the person who will identify the items to be disposed will be different from the people in charge of the disposal plan and also different from the people doing the pricing. So this is a good take. It separates and it might reduce corruption in the process.

In clause 44(2), it advocates where the Accounting Officer has to procure goods within the approved budget especially by Parliament. This is slightly different from where an Accounting Officer will spend and later try to justify using post-dated approvals.

Hon. Temporary Deputy Speaker, it really advocates that any Accounting Officer has to put his signature in the entire contract. This one will make sure that the Accounting Officer is held responsible in case of any contravention of the contract.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you very much. Member for Kakamega, make your contribution in two minutes.

**Hon. (Ms.) Amolo:** Thank you, Temporary Deputy Speaker. I stand to support this Bill. It is a rich Bill. I will just touch on a few issues. This Bill will really help the suppliers and the contractors in this country especially once we come up with the regulations of how to regulate this Bill through the Public Procurement Regulatory Authority because everything will be streamlined. It will also help us to know what is supposed to be disposed. It will also come up with a way of how to investigate and a board that will be listening to those who have complaints from the tenderers and the contractors.

When we look at Clause 143, where it says that we will be required to sign a performance security and it will be 5 or 10 percent of the contract value, I feel this will be another issue that will not allow some other suppliers and contractors to be able to win contracts. For instance, if a contract is about Kshs30 million, it will be very hard for some people to get the Kshs3 million to put down as their security. I will come up with amendments on that.

When it comes to foreign contractors, I was looking at it that maybe before we give a contract to a foreigner, he or she will need to partner with a local contractor or supplier so that Kenyans can also benefit from this.

With those short remarks, I say thank you, hon. Temporary Deputy Speaker. I support this Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you for being obedient. Member for Igembe North.

**Hon. M'uthari:** Thank you, Temporary Deputy Speaker. I rise from the outset to support this Bill. It is an important Bill because it is aligning the procurement and disposal of assets to the Constitution. This Bill is important as we know procurement is important as it creates opportunities for many. As we pass this Bill, it is important to take clauses that involve provision of service and especially those that say that goods that are purchased should be from within the country. We have seen ourselves exporting most of our jobs to foreign land especially China. Even things that can be procured locally are imported. We are exporting jobs to other countries. This law should be able to have preferential treatment for our own manufacturers or makers of goods without compromising the quality. We can also create competition within. Even those countries that have goods with high value, it is because they have been facilitated. This is an area, as a government, we must have investment in. In cases where local and foreign companies are competing, our local company should have preferential treatment otherwise, we have no possibility of reaching the level of other people.

Within this law, we have to look at the services being procured like professional services. If there are things like consultancy, do they do the same as the purchase of goods? These are the things we may need to look at. We need to bring amendments to areas that are not friendly to the Kenyan people or Kenyan manufacturers. At the end of

the day we need to create laws that can enable our local people create wealth. It should not be a law that favours outside agencies at the expense of our local people.

In the interest of time, I support this Bill. Thank you, Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you very much.

There being no Member requesting to speak, I hereby call the Mover to reply. Leader of the Majority Party, the Floor is yours. Although you have 45 minutes, I am sure you are looking at the clock and you will do justice.

**Hon. A.B. Duale:** Thank you, hon. Temporary Deputy Speaker.

From the outset, I want to thank all the Members who have contributed to this Bill. It is a very important Bill that draws effect from Article 227 of the Constitution. It is one of the constitutional Bills that we must pass as a House before 27<sup>th</sup> May, 2015 after our nine-month extension. The principal purpose of this Bill is to give effect to Article 227. Secondly, it is to create a legal framework for the establishment of policies so that we have a sound, efficient, effective public procurement and disposal system in our country. It has to be a procurement system that is transparent and in line with international standards.

Procurement is a serious matter in our country. I want to say that at the Third Reading of the Bill, Members of this House must bring serious amendments because the word is 'procurement'. A tender is put on the newspaper, but by the time it is published the people who are going to win those tenders are already known. In fact, they have been selected and taken through the system. Therefore, in my view, this Bill is going to assist us in creating a good system. Clause 3 of the Bill is very fundamental. What does it say? It states that in procurement and asset disposal, Article 10 of the Constitution must be followed. We must adhere to national values, equity and all those principles. Nobody should be discriminated in procurement of goods and services and the disposal of assets. Articles 35 and 56 are on affirmative action. They cover people with disabilities, women and youth. Finally, Clause 3 of this Bill draws from the principles of integrity as enshrined in Chapter 6 on leadership and integrity.

I am sure that the Committee on Finance, Planning and Trade will bring the necessary amendments. I want to tell my colleagues that the key function of Members of Parliament is to legislate. I hope that the day we will be doing the Third Reading, the House will not be as empty as it is now. I want to thank Members who have remained here because as much as the CDF Act is having issues; Article 95 of the Constitution says that we must legislate.

I want to thank the Committee and all the Members who contributed, raised concerns, and critiqued this Bill. I am sure, in due time, they will come up with a raft of amendments. However, I want to raise a red flag that the amendments you are going to bring must not fundamentally alter this Bill. They must be based on Article 227. This is a Constitutional Bill and whatever you are going to bring must be within the Constitution. This is not a normal Bill since it has constitutional provisions. It is drawn from Article 227. I am sure that the Legal Department of Parliament will advise Members of Parliament in as far as their amendments are concerned.

With those many remarks, I beg to move.

**The Temporary Deputy Speaker** (Hon. Kajwang'): I actually understand that the Report to this Bill is ready with the Clerk Assistant to the relevant Departmental

Committee, I hereby order the Clerk to liaise with that Clerk Assistant so that this Report is available to Members in the Table Office so that as you do your amendments you are well informed by what the Committee has decided.

I, therefore, order that the item appearing as Order No. 8 on the Order Paper; The Public Procurement and Asset Disposal Bill, National Assembly Bill, No. 40, 2014 appears on the Order Paper for Wednesday afternoon at 2.30 p.m. for the purposes of voting.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow, Wednesday, 25<sup>th</sup> February, 2015 at 9.30 a.m.

The House rose at 6.30 p.m.