

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 29th April, 2015

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell again.*(The Quorum Bell was rung)*

Hon. Speaker: Hon. Keynan, tell the lady if she wants to talk to you, she can. You are not injurious; she can sit next to you. It is good for people to take seats. Hon. Members making your way, could you take your seats? It is not possible for the Chair to wait. Just remain where you are, do not run like that.

COMMUNICATION FROM THE CHAIR

CONDOLENCES FOR THE GARISSA UNIVERSITY TERRORIST ATTACK

Hon. Speaker: Hon. Members, you will recall that on Tuesday, 14th April, 2015, the Deputy Speaker delivered messages of goodwill and condolences from other Parliaments and Inter-Parliamentary bodies regarding the terrorist attack at Garissa University College on 2nd April, 2015.

Hon. Members, I wish to inform you that I have since received other messages of benevolence and goodwill from leaderships of other Parliaments including the House of Representatives of Japan, Legislative Assembly of the Northern Territory of Australia and the Assembly of the Republic of Kosovo. In their messages, they wish to remind the House that their hearts are with the affected families, friends and relatives. They also strongly condemn the acts of terrorism and express their continued resolve to stand in solidarity with our country in overcoming terrorism. On behalf of this House and on my own behalf, I wish to sincerely thank them for their exceptional gesture of goodwill to our country.

Thank you.

INTRODUCTION OF DELEGATION FROM PARLIAMENT OF TANZANIA

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation that is concerned with HIV/AIDS and narcotic drugs issues from the Parliament of Tanzania. They are seated at the Speaker's Row. The delegation comprises of the following Members: -

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|--|---|--------|----|
| 1. The Hon. Lediana Mafuru Mn'gon'go MP | - | Leader | of |
| delegation | | | |
| 2. The Hon. Saidi Suleiman Saidi, MP | - | Member | |
| 3. The Hon. Anna Mary Stella John Mallac, MP | - | Member | |
| 4. The Hon. Rev. Luckson Ndaga Mwanjale, MP | - | Member | |
| 5. The Hon. Ignatus Aloyce Malocha, MP | - | Member | |
| 6. The Hon. Maulida Anna Valerian Komu, MP | - | Member | |
| 7. The Hon. Ahmed Ali Salim, MP | - | Member | |
| 8. The Hon. Mbarouk Salim Ali, MP | - | Member | |
| 9. The Hon. Maria Ibeshi Itewa, MP | - | Member | |
| 10. The Hon. Ignatius Maluche, MP | - | Member | |

The delegation is accompanied by Mr. Theonest Ruhilabake, Assistant Director of Committee and Clerk and Mr. Amam Msami, the Principal Pharmacist, Drug and Control Commission.

The delegation arrived on Sunday, 26th April, 2015. They are here to share with and draw lessons on best practices on the role and functions of the Committee responsible for HIV/AIDS and narcotic drugs. They have already interacted with the national institutions responsible for fighting HIV/AIDS and the use of narcotic drugs. They will be meeting Members of the Health Committee tomorrow morning and are scheduled to leave the country on Saturday, 2nd May 2015.

On my behalf and that of the House, I wish to welcome them to Kenya and I request that we all accord them the necessary support they may require in their engagements.

Thank you.

PETITIONS

RELOCATION OF MATANGINI PRIMARY SCHOOL

Hon. (Ms.) Mbalu: Hon. Speaker. I have a petition by parents and stakeholders of Matangini Primary School on impending relocation to sub-standard temporary structures.

I, the undersigned, on behalf of parents, teachers, pupils and stakeholders of Matangini Primary School in Ivingoni/Nzambani Ward in Kibwezi East Constituency, draw the attention of the House to the following:

THAT, aware that the residents of Matangini are among development-conscious Kenyans who paved way for construction of the flagship Standard Gauge Railway across their land;

THAT, the railway line, which is being laid by the China Road and Bridge Company (CRBC) is earmarked to pass next to Matangini Primary School in Kibwezi East Constituency;

THAT, the CRBC has since put up a crusher within a distance of one kilometre from the school, contrary to National Environment Management Authority (NEMA) regulations;

THAT, CRBC had agreed to relocate the school to a quiet place nearby, only for the company to put up temporary *mabati* structures instead of constructing modern permanent structures that are habitable to pupils and teachers;

THAT, the temporary structures to which CRBC intends to have the school relocated are not conducive for learning since the region experiences extremely high temperatures, which may interfere with learning in the *mabati* classrooms;

THAT, this is an infringement on the rights of Matangini Primary School fraternity to enjoy a quiet and conducive learning environment as granted under Article 42 of the Constitution;

THAT, parents and stakeholders of Matangini Primary School, whose goodwill caused them to allow the railway to traverse their land for public good, are now at a risk of having the education of their children disrupted;

THAT, if the planned relocation of Matangini Primary School proceeds without safeguarding the rights of the pupils, teachers, parents and stakeholders, there is the risk of losing their well-built facilities and being condemned to poor structures that are not conducive for learning;

THAT, the pupils' inalienable right to education in a conducive environment can only be protected when CRBC relocates the school to good structures or moves the crusher to another site;

THAT, to the best of my knowledge, there is no pending case before any court of law in respect to this matter.

Therefore, your humble Petitioner prays that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing intervenes with relevant authorities to ensure that the setting up and operations of a crusher less than a kilometre away from Matangini Primary School is halted until CRBC constructs permanent and quality structures to which the school will be relocated.

Your Petitioners will ever pray.

Thank you.

Hon. Speaker: The petition is committed to the relevant Departmental Committee, namely; the Departmental Committee on Transport, Public Works and Housing.

Next is hon. Alois Lentoimaga.

RESTORATION OF SECURITY IN NORTH RIFT REGION

Hon. Lentoimaga: Hon. Speaker, I present this petition on behalf of the residents of Samburu North.

I, the undersigned, on behalf of residents of Samburu North Constituency, draw the attention of the House to the following:

THAT, aware that security is a key component for growth and development;

Noting, that security incidences have risen in the recent past in the Northern Rift Region, and in specifically Samburu County, leading to loss of lives and livestock and forcing a large number of residents to relocate,

THAT, in the past 24 months, there have been numerous attacks, including an attack in Suguta Valley, where more than 40 security personnel were slain and their firearms stolen;

THAT, aware that the situation has been made worse by the large number of illegal firearms in the hands of civilians, and that the firearms stolen from the police may be among those being used by bandits to terrorise residents;

THAT, the presence of sophisticated Government firearms in the hands of bandits has led to fear and heightened tension among residents, leading to despondency;

THAT, efforts to have the matter addressed, including formation of peace committees and Government-led negotiations have borne no fruits;

THAT, the matter in respect of which this petition is made is not pending before any court of law or tribunal.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:-

(i) intervenes to have the National Government conduct continuous, forceful disarmament in the North Rift Region in a bid to recover the stolen Government firearms and other illegal firearms currently in the hands of bandits, and put in place measures to recover all stolen livestock in Samburu North; and,

(ii) compels the Government to put in place mechanisms that ensure that disarmament is conducted in adherence to the Bills of Rights as provided for in the Constitution.

Your Petitioners will ever pray.

Thank you, hon. Speaker.

Hon. Speaker: That petition is committed to the relevant Departmental Committee, namely; the Departmental Committee on Administration and National Security. Of course, the Committee is aware of the requirements under Standing Order 227. The Departmental Committee on Transport, Public Works and Housing, and the Departmental Committee on Administration and National Security, must report back to the House on the petitions within 60 days from today.

Next Order!

PAPERS LAID

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

The Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission (PSC) for the year ending 30th June, 2016 and the Projections for the years 2016 to 2018.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, hon. Keynan has laid the Estimates of the PSC. It is important that you go through them and acquaint yourselves with the contents therein.

Hon. A.B. Duale: Hon. Speaker, we will also lay financial statements for the other two arms of Government; the Executive and Judiciary tomorrow in the afternoon. Hon. Members might think that they have no budgets.

Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 29th April, 2015:-

The Report of the Auditor-General on the Financial Statements of the Kenya Plant Health Inspectorate Service for the year ended 30th June, 2014, and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on Kenya Sisal Board for a thirteen-months period ended 31st July, 2014, and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Sugar Development Fund for a thirteen-months period ended 31st July, 2014, and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Machakos University College for the year ended 30th June, 2013, and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Consolidated Bank of Kenya for the year ended 31st December, 2014, and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Ministry of Defence for the year ended 30th June, 2014.

Thank you, hon. Speaker.

(Hon. A. B. Duale laid the documents on the Table)

Hon. Speaker: The Chairlady of the Committee on Regional Integration, hon. Florence Kajuju.

Hon. (Ms.) Kajuju: Hon. Speaker, I beg to lay the following Paper on the Table of the House today Wednesday, 29th April, 2015:-

The Report of the Committee on Regional Integration on the East African Community (EAC) Peace and Security Protocol and the Mutual Peace and Security Pact.

(Hon. (Ms.) Kajuju laid the document on the Table)

Hon. Speaker: Very well. Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON PEACE AND SECURITY PROTOCOL

Hon. (Ms.) Kajuju Hon. Speaker, I beg to give notice of the following Motion:-
THAT, this House adopts the Report of the Committee on Regional Integration on the East African Community (EAC) Peace and Security Protocol and the Mutual Peace and Security Pact laid on the Table of the House on Wednesday, 29th April, 2015.

Hon. Speaker: Very well. There is an hon. member on a point of order. What is your point of order?

Hon. Kaluma: Thank you, hon. Speaker. I sought a statement from the Leader of the Majority Party about ten months ago concerning appointment of Judges of the High Court. I have been waiting for communication from the Leader of the Majority Party to date despite the promise he gave that it would take two weeks for that response to come. Can I request to know when that information will come to be in the House?

Hon. Speaker: Why do you not ask a question to the Attorney-General (AG)?

Hon. Kaluma: It is a long time now if you remember, hon. Speaker.

Hon. Speaker: But you can ask a question to the Attorney-General. It will be the easiest thing. He will come and respond.

Hon. Kaluma: It was addressed to the Leader of the Majority Party as our link to the Attorney-General.

Hon. Speaker: You can file it as a Question because you will get the response from the Attorney-General and you will be able to interrogate him. You will get an opportunity to interrogate the Attorney-General himself who is a member of the Judicial Service Commission (JSC).

Hon. Kaluma: I understand you, hon. Speaker. My concern is the length of time it takes when we bring matters to the House and promises are given and then you sit back. I take your advice now but it was not the direction the hon. Chairperson gave then. The direction then was that Hon. Duale was responding within two weeks. Whether he was getting that response from the Attorney-General or wherever, that was to be his business that time. I am bothered it takes too long for us to get these responses.

Hon. Speaker: Leader of the Majority Party, do you want to respond? Give chance to the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, you have partly responded on my behalf. We now have a new system where hon. Members can file Questions. They can even file Private Members' Questions that can be answered within 24 hours. I will consult with my friend, Hon. Kaluma later so that we draft the same Question and ask the Attorney-General of the Republic of Kenya to be here next Tuesday so that he can answer it.

Hon. Speaker, ten months and he had not reminded me! Hon. Kaluma is my very good friend but he should know we have other serious matters to deal with. It is only last night when he realised that there was something to be brought from the Attorney-General. I want to assure the House that we will draft the Question and the Attorney-General will be

among the Cabinet Secretaries who will come before the House Committees. The Chairman of the Departmental Committee on Justice and Legal Affairs is here. We will ask the Attorney-General to appear before the Departmental Committee on Justice and Legal to answer that pertinent Question on the fate of the judges. I ask for his indulgence. It was not deliberate, it is only that there are too many things happening.

Hon. Speaker: Let us go that route. Let your Statement be turned into a question which the Attorney-General will respond to. We have since discouraged that matter of statements being read here. I thought you were part of the House then.

Hon. Kaluma: Hon. Speaker, I stand directed save that it should be clear to hon. Members that, that is the only procedure to go by as of now because this is a matter affecting so many statements sought by Members.

Hon. Speaker: It is not to be clear to Members, it is unclear to you.

(Laughter)

Hon. Kaluma: It may not be that clear, hon. Speaker.

Hon. Speaker: No, Members have been asking Questions and they have been responded to by Cabinet Secretaries every Tuesday. It is only that you have perhaps not been following that procedure.

Hon. Kaluma: Hon. Speaker, I have asked Questions also. In fact, I was the first Member to ask a Cabinet Secretary a Question when the system came. However, this one was directed differently. May I seek your directions on a matter tied to it? This is was a Question directed at the presidency. That is why I sought it from the Leader of the Majority Party. How do we approach a matter such as that? Is it still the Attorney-General?

Hon. Speaker: It is not even complicated. Just file your Question and it will be directed to the relevant Cabinet Secretary.

Hon. Clement Wambugu.

Hon. Wambugu: Thank you, hon. Speaker. Mine is a statement which is also of a very advisory nature. Sometimes last week, you made a Communication to this House concerning the Kenya National Prayer Breakfast which is coming up on 28th May, 2015. It is good to advise that it has been a tradition of this House to have this event every year. That is on the last Thursday of May every year.

(Loud consultations)

Hon. Speaker: Order, Hon. Members! I doubt that there is anybody who can repeat even a word of what Hon. Clement Wambugu has said. He is the Chairman of the Parliamentary National Prayer Breakfast. He is reminding those of you who have forgotten that the event will happen on the morning of 28th May, 2015 at the Safari Park Hotel. I think he wanted to include that there are certain things required of you. Among other things, he is saying that it has become a national tradition. This is for those who are doing other things and not listening.

Hon. Wambugu, you can finish whatever else you wanted to communicate.

Hon. Wambugu: Thank you, hon. Speaker for intervening in that. I think hon. Members are consulting a bit too loudly. Though this event is spearheaded by Members of

Parliament, we also get a lot of support from various stakeholders from outside. You are aware that about three weeks ago we were on recess and the time for planning has been very short since we came back last week. Though I do not want to anticipate any debate, we expect to be going on recess from tomorrow. This was to remind hon. Members of Parliament that you are very much invited and welcome. The cards for the same event are ready at the reception. You are required to pick them before then so that we can all congregate at the Safari Park Hotel on 28th May, 2015.

In addition, because of the numbers this event is attracting these days, our budget has gone to approximately Kshs5.5 million. We are asking Members of Parliament to assist this event to be able to succeed.

Thank you, hon. Speaker.

Hon. Speaker: Did you say that you have invitation cards for them? From where I sit, I can see there is very little concentration, nobody is following. Are you saying you have cards for them because I think the ones seated next to you like Hon. Muthomi Njuki and Hon. Priscilla Nyokabi, do not appear to have heard what you have said about the invitation cards?

Hon. Wambugu: Hon. Speaker, I want to confirm to hon. Members that we have your invitation cards ready and have to be picked at the reception. I know Hon. Muthomi wants to talk about it because he is a very active member of the same group. If you can give him a chance, I think he can expound better.

Hon. Speaker: There is no debate about that. Hon. Members you are being invited to the function and that your invitation cards are there. That is sufficient.

(Several hon. Members stood up in the gangway)

Hon. Members, those who are standing, there is a long communication, I intend to make.

Hon. Members before we go to the next Business, allow me to recognise the following visitors seated in the Speaker's Gallery, they are officers from the Office of the Serjeant-At-Arms Department of Kajiado County Assembly.

(Applause)

They are; Dickson Ndemo; Benjamin Rapaine; Thomas Muraya; Ann Musangu and Wilson Mancha.

COMMUNICATION FROM THE CHAIR

CONSIDERED RULING ON EXPUNGING PROCEEDINGS /WORDS FROM HANSARD

Hon. Speaker: I hope the Member for Ol Jorok is present?

Hon. Member: He is not in.

Hon. Speaker: Anyhow, it is for the House.

On 23rd April, 2015, the Member for Ol Jorok, Hon. John Waiganjo, rose on a point of order seeking the Speaker's direction on the matter of expunging of information from the Official Report of the House, popularly referred to as HANSARD.

Among the issues canvassed for determination by Hon. Waiganjo were:-

- (i) The extent to which a HANSARD report can be edited;
- (ii) The privileges and immunities in law enjoyed by the HANSARD;
- (iii) Whether expunging of information from the HANSARD is an affront to the proceedings of the House or not;
- (iv) Where the Speaker derives authority to direct the expunging of information from the HANSARD;
- (v) In whose interest would such expunging be done;
- (vi) What the Speaker intends to accomplish by directing the expunging of information from the Official Report of parliamentary proceedings.

The hon. Member argued that Standing Order No. 248 does not make any reference to the expunging of information from the record of the House. He added that the HANSARD is a vital component of parliamentary democracy in that it captures the speeches, the votes and the debates in the House and is the only complete, accurate and permanent record of the House, and is a sacrosanct document.

Hon. Members, Hon. Waiganjo's contention is that nothing at all should be removed or added to what an hon. Member says so that the expression and intention of the Member changes because of any alteration to the HANSARD record, and that any change to the HANSARD should only be to ensure the readability of the text but not to change or remove anything. He is also of the opinion that the Speaker or any presiding officer should not expunge any record merely because it is "unpalatable, ignominious, archaic or it is not good enough".

Lastly, the Hon. Member contends that "expunging of information from the HANSARD is an affront to the culture of openness which ought to be entrenched by subjecting parliamentary proceedings to public scrutiny" and suggests that if any expunging were to happen, "it ought to be with the Leave of the House and not the Speaker's personal prerogative." He contends that since the matter is not directly provided for under the Standing Orders, the common practice of invoking Standing Order No.1 (giving discretion to the Speaker to decide on matters not provided for) may result in not capturing the spirit of the hon. Member's contribution;

I wish to respond to those various issues as follows:-

What is HANSARD? First, I agree with Hon. Waiganjo that the HANSARD is an authoritative document particularly for ascertaining accuracy of law as passed among other proceedings, and to the courts of law when interpreting law. The name "HANSARD" has been used for two centuries. This was due to the fact that T.C. HANSARD was the first printer, and later the publisher of the official series of Parliamentary debates way back in 1803. The HANSARD - the Official Report as rightly put by Hon. Waiganjo, is the edited verbatim report of proceedings of Parliament. It is the traditional name of the transcripts of Parliamentary debates in Britain and many Commonwealth countries.

To quote *Erskine May*, a Treatise on Parliamentary Practice (23 Edition, p. 260), HANSARD is "a full report, in the first person, of all speakers alike, a full report being

defined as one which, though not strictly verbatim, is substantially the verbatim report, with repetitions and redundancies omitted and with obvious mistakes corrected, but which on the other hand leaves out nothing that adds to the meaning of the speech or illustrates the argument.”

The Canadian Parliament defines the House of Commons Debates, commonly known as the *Debates* or as HANSARD, as “the report *in extenso* of the debates which take place in the House and in a Committee of the Whole, with due regard to necessary grammatical, vocabulary and editorial changes”.

To what extent can a HANSARD Report be edited? That was Hon. Waiganjo’s second question. In most jurisdictions, each Member of Parliament is given an opportunity to read the transcript prepared of what he or she said and, if necessary, to make minor corrections. Indeed, our own Standing Order No. 248(2) states and I quote; “Every member shall have an opportunity to correct the draft verbatim report of his or her contribution, but not so as to alter the substance of what the Hon. Member actually said.”

In most jurisdictions members are allowed to suggest corrections to errors and minor alterations to the transcription but may not make material changes in the meaning of what was said in the House. This is a long standing practice of the House that editors of the HANSARD may exercise judgment as to whether or not changes suggested by Members constitute the correction of an error or a minor alteration. The editors may likewise alter a sentence to render it more readable but may not go so far as to change its meaning. Editors must ensure that the HANSARD is a faithful reflection of what was said; any changes made, whether by hon. Members or editors, are for the sole purpose of improving the readability of the text, given the difference between the spoken and written word.

And as Speaker Cameron, from the Australian South Wales State Legislature would aptly put it, and I quote, “If we get to the stage where speeches are recorded precisely as they are delivered, without the help of those benevolent corrections in matters of detail made by the staff, it may well be the source of embarrassment to many Hon. Members.” In order for corrections and alterations to be considered, the Members’ corrections must be returned within stipulated deadlines. Returned corrections must be clearly approved by the Member or an authorised delegate. Where a Member does not forward corrections within the stipulated time, it is assumed there are no suggested modifications to be made.

In Canada, substantial errors in the HANSARD, as opposed to editorial changes, must be brought to the attention of the House by means of a point of order, as soon as possible after the sitting, if a Member wishes to have the verbatim record changed. Such mishaps may be attributed to a misstatement on the part of the Member, or to a transcription error. A Member may correct the record of his or her own statement, but may not correct that of any other Member. When a question arises in the House as to the accuracy of the record, it is the responsibility of the Speaker to look into the matter. On occasion, the Speaker has seen fit to order the printing of a corrigendum to the HANSARD.

It is therefore evident that a HANSARD report may be edited but only to the extent to which there is no deviation to the substance of what actually happened. In the House of Representatives of the Parliament of Australia, very much like our practice

here, Members are allowed to peruse and revise the drafts of their speeches in a long established practice. However, even though this is a long held tradition, this right to make corrections to their remarks is limited and any changes which alter the sense of the words used in a debate or introduce new matters are not admissible.

It is therefore proper and desirable that minor alterations be made by the Member who makes the statements in the House or by the Parliamentary staff who prepares the report but only in so far as it is only limited to the construction and grammatical flow of the sentence. The Speaker may also direct that a HANSARD report be corrected or altered for different reasons. The very obvious ones are expletives or hate speeches which escape the attention of the Presiding Officer as uttered at the spur of the moment.

Hon. Members, I can stop there and allow those Members to make their way in quickly.

Hon. Members, Hon. Waiganjo went on to ask a question: “Is expunging information from the record or HANSARD Report an affront to the proceedings of the House? On whether this is an affront to the proceedings of the House, it should be noted that while Members have the freedom of speech as protected in the privileges and immunities accorded to the speeches, the speeches have to be within a dignified, decorous and acceptable code.

Under Rule 380 of the Rules of Procedure and Conduct of Business of the Indian Lok Sabha, the Speaker is vested with the power to order expunction of words, which in the opinion of the Speaker are defamatory or indecent or unparliamentary or undignified from the proceedings of the House. Similarly, the Speaker may order expunction of words which are defamatory or insinuatory in nature or levels allegations against a high dignitary or authority or organisation. Beside indecent and defamatory words, there are phrases that have over time been considered unparliamentary in various Parliaments. In cases where a Member uses the phrase or words and fails to withdraw, the Speaker can order that they be expunged from the records of proceedings. In most cases, the Speaker will issue an order to expunge any information immediately the words are uttered. The text form of those speeches is equally privileged. The removal of otherwise undignified phrases would therefore not be considered as injurious to the freedoms and privileges of the House.

He asked: “What privileges and immunities in law does the HANSARD Report enjoy?” Since Members’ speeches in the House are privileged, it is corollary that the text form of those speeches be equally privileged. The National Assembly (Powers and Privileges) Act, Section 4 states that no civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to the National Assembly or a Committee, or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise. However, once words or certain statements have been expunged, they are no longer privileged and shall not be used or quoted elsewhere.

Where does the Speaker derive the authority to determine that proceedings stand expunged from the records now that it is not provided for in the Standing Orders? Different jurisdictions have developed different practices, with some allowing the Speaker some discretion to expunge while others require a resolution of the House for any matter to be expunged. In the Lok Sabha of India, the Speaker has a direct authority

from the House Rules. In our case, Standing Order 1 allows the Speaker to determine all matters in all cases where there is no express provision in the Standing Orders.

In the Parliament of New South Wales, the Speaker cannot personally expunge any matter. A Motion to expunge a question and answer from the records could be put, by concurrence, without notice. But benevolent corrections must be made. Speaker Brown in ruling he made in New South Wales Legislature, held that a Speaker could not alter HANSARD records. Quite similar to the New South Wales practice is the Parliament of Western Australia where the Speaker has no authority to expunge any matter from the record except with the House resolution.

Allow me to also quote: "*The Hansard Style Guide of the Bermuda House of Assembly and Senate*" which, while it allows HANSARD to record expletives, the offending words can be formally withdrawn, but that does not strike them from the record—unless the Presiding Officer orders them to be expunged. If words are ordered to be removed from the record (expunged) by the Presiding Officer, HANSARD removes those words and inserts an editorial comment in square brackets and bolded where the text has been removed that reads: "Certain words were ordered expunged from the record."

Honourable Members, while our Standing Orders do not directly provide for expunction of HANSARD records, our traditions, precedents and practice do. Virtually all Speakers have had to expunge objectionable or reckless utterances, inaccurate votes or records when the need has arisen. Our practice has never required a resolution of the House for the Speaker to expunge any matter from record. The discretion has largely been left to the Presiding Officer, and particularly the substantive Speaker.

On October 11, 1995 the Speaker ordered the expunction of two documents earlier in the day laid by Hon. James Orengo purportedly from some Presidential Escort Officers blowing the whistle on the killing of the late Dr. Robert Ouko. He ordered the expunction because the documents were not signed. On October 4, 2007 Speaker Francis ole Kaparo ordered that adverse remarks made by Members against Hon. Gideon Moi, and without a substantive Motion, during debate on the 15th Public Investments Committee Report to be expunged.

On 25th November, 2010, the Speaker, Hon. Kenneth Marende, ordered the expunction from the records of the House, the mentioning of Dr. Kilemi Mwiria as Hon. Bahari instead of referring to him as the Member for Bahari. On 13th March, 2012, when Hon. Shebesh questioned the authenticity of a document earlier presented to the House by Hon. Charles Kilonzo on an International Criminal Court matter (ICC), Hon. Njuguna made unsubstantiated remarks about the British Government and the Kapenguria Six. He was ordered by the Speaker to withdraw the remarks which he did. Consequently, the Speaker ordered the offending remarks to be expunged from the record of the House. From the foregoing, it is clear that the Speaker, being the custodian of the Standing Orders and under the powers conferred upon him by the provisions of the Standing Order No.1, may order for expunging of words that are unparliamentary or are of expletive nature. This long-held practice still stands and I hereby affirm it as elucidated above.

PROCEDURAL MOTION

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APPROVAL OF THURSDAY MORNING SITTING

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of the Standing Order 30(3)(b), this House resolves to hold a Sitting on Thursday, 30th April, 2015 between 9.30 a.m. and 1.00 p.m.

This is a decision of the House Business Committee last night. Without anticipating debate, the House is scheduled to proceed for a long recess tomorrow in accordance with the Calendar of the House. This has occasioned the need to have a Morning Sitting tomorrow to conclude a number of pending businesses, which are scheduled for the Third Session. These include:-

(i) The consideration of the Committee of the whole House on the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013 and debate on the Alcoholics Drink Control (Amendment) Bill, 2014, both of which were deferred this morning to tomorrow morning by the Speaker.

(ii) The continuation of the Second Reading of the Fisheries Management and Development Bill, 2014; The Private Security Regulation Bill, 2014 and the Transfer of the Prisoners Bill, 2014.

(iii) The consideration of the Report of the Departmental Committee on Education, Research and Technology regarding unpaid pension dues for retired teachers which has been with the House for too long.

(iv) The consideration of a Special Report of the Public Investments Committee on the Procurement Process of the Kenya Pipeline Company Limited Line 1 Capacity Enhancement Project.

We have a number of both public and private Bills in the First Reading Stage, Second Reading Stage and the Committee of the whole House stage. We have close to about 30 public Bills and over 15 Private Members' Bills. On top of that, we have a huge backlog on Committee Reports and Motions by individual Members of Parliament. In the House Business Committee that you Chair, we have agreed to sit tomorrow in the morning and in the afternoon to reduce the backlog, so that when we come back on 8th June, 2015, if the House agrees to the Calendar tomorrow, we will begin with the most urgent business that is before us.

Secondly, we also have a number of Bills emanating from the Senate some of which have gone through the mediation stage. We expect the mediation process on the Division of Revenue Bill, the Fertilisers and Food Stuffs Bill and the Environmental Management Bill, 2014, to be completed in the shortest time possible and then we consider them in the Committee of the whole House.

Following the business lined up, I propose a Morning Sitting for tomorrow, 30th April, 2015 to complete the business that I have read out.

I will ask the Leader of the Minority Party, Hon. Francis Nyenze, to second.

Hon. Nyenze: Thank you, hon. Speaker. I rise to second. There are so many Bills lined up and we have a lot of work, which we have to complete. It is good for the Members to convene tomorrow morning, so that we can try as much as possible to finish

the business before the House. It is for the good of this House, so that we are ahead of time. We need to pass as many Bills as possible and the workload that is left behind is addressed. We may not finish in one or two Sessions, but I am sure that with the co-operation of the Members, we can cover a lot of ground.

I beg to second.

(Question proposed)

(Question put and agreed to)

MOTION

REPORT OF THE BUDGET AND APPROPRIATIONS COMMITTEE

Hon. Musyimi: Hon. Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Budget and Appropriations Committee on the First Supplementary Budget for the 2014/2015 Financial Year, laid on the Table of the House on Thursday, 23rd April, 2015.

The First Supplementary Estimates for the 2014/2015 Financial Year were submitted to the National Assembly in line with Article 223 of our Constitution. These Estimates gave latitude for introduction of supplementary appropriations for the national Government to appropriate funds in cases of inadequacies or where emergencies have arisen.

From the outset, let me begin by thanking all the representatives from the Executive arm of the Government who appeared before the Committee and also acknowledge the insightful contribution made by all the stakeholders not least, the Committees of this House and the Members of Parliament in their discussions in these Committees. I also wish to thank the offices of the Speaker, the Clerk of the National Assembly as well as the Parliamentary Budget Office for the support received as it discharged its mandate of examining the Supplementary Budget Estimates for the 2014/2015 Financial Year.

Hon. Speaker, before I proceed, allow me to thank you for allowing the mediation team to meet this morning. We met together with our colleagues from the Senate. We had taken the liberty to invite the National Treasury that was represented by the Principal Secretary, Dr. Kamau. We had a lengthy and very fruitful meeting with respect to the Division of Revenue Bill. We were not able to conclude our deliberations. I, therefore, wish to take this opportunity to ask you to kindly consider indulging us tomorrow morning so that we can meet at 8.30 a.m. Hopefully, we shall conclude our issues and I would also like to use this opportunity to ask that we put it on the Order Paper.

I notice you are busy hon. Speaker, I do not know whether you can hear me. We request the issue to be put on the Order Paper in the afternoon for the simple reason that if this matter is not settled before we go for recess, we all know the consequences with respect to the budget-making of the county governments. I am therefore requesting that

you allow us to meet in the morning and also that this matter be put on the Order Paper in the afternoon.

They have asked me to be the Chairperson and I can assure you I shall use my position to make sure that we arrive at a decision by 11 O'clock tomorrow morning. May I also request---

Hon. Speaker: As you proceed, permission with regard to that one is hereby granted. The Director of Committee Services is instructed accordingly to allow and facilitate the mediation team to meet.

Hon. Musyimi: I thank you, hon. Speaker. Can I also request that the Retirement Benefits Bill be put on the Order Paper in the afternoon for the simple reason that we shall be busy dealing with the Division of Revenue Bill matters in the morning? If you can indulge us as the Budget and Appropriations Committee so that we can prosecute both issues in the afternoon, we would be greatly obliged.

That said, the Supplementary Estimates for 2014/2015 show that the total additional resources being requested amount to Kshs57 billion. This comprises Kshs41,516 million for Recurrent Expenditure and Kshs15,554 million for Development Expenditure. The Supplementary Estimates do not propose any new sources of revenue to fund the additional expenditures. They do not also indicate any new commitments from development partners. Therefore, even as we consider these estimates, we are likely to increase the nation's indebtedness.

I want to raise a number of concerns from my Committee. As much as the Supplementary Budget is provided for in the Constitution, it should be applied sparingly, with a rider that only expenditures of an emergency nature or insufficient allocations in the Appropriations Act will be catered for under the supplementary appropriations. There are explicit instances which do not warrant any additional spending. The National Treasury has been consistently introducing more than one supplementary budget mid-year. This practice is prone to abuse and poor planning as the MDAs may from time to time fail to capture the totality of resource requirements in anticipation of due consideration in subsequent supplementary budgets.

The Committee notes with concern that personnel-related costs are a recurring feature in the first supplementary estimates across many of the MDAs. Indeed, a total of Kshs4 billion in the supplementary estimates has been requested for to fund salaries. Given the ongoing debate on the growing public sector wage bill, any salary increments are likely to spill over to all sectors agitating for salary increments and further exacerbate labour unrest and disputes. Additionally, it sets an environment that is not exactly conducive to investment. This may cause capital flight as investors could consider relocating to more investment-friendly destinations with low labour costs. This in the long run will hurt our economy and make us not exactly competitive. This is a deep concern for my Committee.

My Committee perceives unsatisfactory expenditures relating to recurrent pending bills and tax obligations. The supplementary estimates contain substantial resources to offset pending bills and tax arrears obligations to the Kenya Revenue Authority (KRA) and other contracting agencies. From analysis, a total of Kshs7.477 million is being set aside to settle outstanding bills relating to pending bills and tax arrears obligations. This

in itself is a sign of poor planning and non-adherence to policy circulars that restrict pending bills and tax obligations as a first charge in any ensuing financial year.

My Committee, while deliberating these supplementary estimates, observed that there is a lacuna in the procedure on discussion and review of the supplementary estimates in the National Assembly. The role of Departmental Committees and timelines for considering the estimates are not explicitly provided for in the Standing Orders. This may be something to look at in future.

The Supplementary Budget expands the fiscal framework by Kshs57 billion. It is not clear from the information submitted to Parliament where the new funding will come from. The recurrent performance of ordinary revenue is projected to be less than expected. It therefore means that this supplementary budget may lead to further reductions in the budget during a future supplementary or a rise in actual commitments if the Exchequer issues are not made on time.

A careful review of the budget exchequer issues for the first half of the year indicates that some of the Ministries being considered for additional funding have low absorption capacity. This raises concerns as to whether any review was done on the absorption capacity before the proposed additional resources were suggested. Indeed, the details of this supplementary should have indicated the actual spending for some of these programmes to date.

The purpose of a supplementary budget is to consider areas where the funding was too low and only emergency areas should be allowed as new programmes and projects. Introduction of new projects during the year that is ongoing is an indication of poor budgeting and poor planning and eventually erodes the credibility of the budget itself. A case in point is the lighting of the Nairobi City County.

This supplementary budget requests for additional funds for outstanding bills and other pending contractual obligations, is an indication that Ministries are not complying with the National Treasury circular on preparation of the annual estimates. That is a matter of great concern. It is also an indication of poor budget planning and costing of the projects. The cost of all uncompleted projects and pending bills should be a first charge on ensuing budgetary allocations and should have been catered for within the estimates approved at the commencement of the financial year. Likewise, the allocation of payment of tax obligations is also a sign of poor budgeting as all these levies are known in advance by the Government.

The Public Finance Management Act (PFMA) of 2012 stipulates that supplementary estimates should demonstrate how the proposed supplementary expenditure relates to fiscal responsibility principles and financial objectives. This Supplementary Budget fails to comply with this provision as there is no such statement. This gives the impression that the PFM Act 2012 is a document of the willing and negates the very core intention of setting a fiscal framework. We went to great length to get the Treasury to understand our concern with respect to the point that I have just made.

As I close, the annual budget was presented in a programme-based format but the Supplementary Budget is presented at item level. It is an uphill task to deduce which programmes are being affected with these increases and also what the expected outcomes are likely to be. This makes measuring performance targets difficult and vague as the performance indicators are not explicitly shown. Unlike in the past, the Supplementary

Budget lacks basic details especially the purpose for which the additional funding is being sought. When an allocation is given and it is indicated as operational and maintenance, how would it be justified and for what purpose is this money being set aside?

Hon. Speaker these are some of our concerns and I therefore beg to move. I wish to request hon. (Prof.) Nyikal, the Member of Parliament for the great people of Seme, to kindly second the Motion.

I thank you, hon. Speaker.

Hon. (Prof.) Nyikal: Thank you, hon. Speaker. I rise to second the Motion that has been proposed by the Chair of the Budget and Appropriations Committee. As our able Chairman has indicated, we found that there were some expenditure that were being proposed as extra expenditure that did not indicate where the source of the funding would come from. As we indicated, this is a great concern because obviously if there is no source of funding within the country, the only possible way is debts. This is a way of actually increasing the debts within the limits that we accept but they were not anticipated before. This is definitely not good for our economy and our planning.

New expenditure in operation indicates that there is deficiency in planning. As our Chairman has indicated, we do expect that we have programme-based budgeting and with this, we expect that we will only allocate money for programmes that have been worked on, and are ready for implementation. Therefore, later on to come and spend more money on programmes that are new is actually not good. To this extent, the Committee stressed very much that, even the simple budget should be programme-based, complete with outputs and targets that were placed before. Therefore we can negotiate the good use of money. In fact, we are proposing in the ongoing amendment to the Financial Management Act that we should take this further, not only to programmes but even to work plans and procurement plans. If these are known in advance, it will make it easy for money to be spent as soon as it is allocated so that we do not have a problem of not using it.

That relates to another issue of absorptive capacity. This has been spoken to before. I think this time as a Committee, we have gone on to look at another aspect of absorptive capacity; that is, what the Exchequer releases from the Treasury. Many times the absorptive capacity is based on the money spent as a numerator and the denominator being the estimates. The estimates do not indicate in any way whether the money came actually out of Treasury to go to the MDAs. So, we are now insisting that we also know when we are working on or discussing the issue of absorptive capacity, how much money was actually released. That has been very informative. Sometimes failure is actually on release. Sometimes it may be even possible that the MDAs did not make requests. So, we want to know whether the requests were made, or whether the release was made and how the money was spent. That is an important part that we are going to look at.

The issue of salaries again; the human resource should actually be planned in advance. There is never an emergency. When we have to look for money midway because of human resource, then there is a problem. We did notice particularly in the health department what is happening with the changes that have occurred with devolution. There has not been very good appreciation of the complexity of the human resource and the various cadres; how they move, how they are paid and promoted. This

has created a problem where some staff members were viewed as school children while they were working and providing services.

Going forward, I think there is need in such areas to look very carefully at what the changes mean to the human resource. You have noticed it is the same thing that is causing all these problems even at the county level, with strikes everywhere. That is an area that those concerned at the national and county level should look at. They should look at the movement of these people, recruitment and training. That is important.

As I end, we noticed that in some cases you find pending Bills that are at the national level, but relate to functions that have now been devolved. That means that the process of devolution has not been taken into consideration. What about commitments that were made before the devolution and were made by the national Government and now the functions have been transferred? Have the debts been transferred? This is an area that we should look at broadly. We need to look at all these debts and ask who is going to pay them. Are they going to be paid at the national level or country level and is there appropriate funding made for that?

With that, I do second the Motion.

(Question proposed)

Hon. Bowen: Thank you, hon. Speaker. I stand to support the Report of the Committee. I just want to make one or two observations. It is the right time that we passed this Supplementary Budget given that most of it, from what I am seeing, is a recurrent budget which is basically the salaries for the employees in various Ministries and some little development money for departments and Ministries.

Let me dwell on the issue of security. I have seen quite a good amount of money being placed on security, which is a very sensitive area. For the last few days we have seen a series of insecurity incidences in the country.

I want to speak on the allocations made for repatriation of refugees. This is a very important allocation the Committee has done. We have got information from the intelligence that refugee camps in northern Kenya are breeding grounds for those involved in terrorism. I hope the Khs500 million will help in repatriation of the refugees. It is not enough to just repatriate, we also want to see that money meant for security is used wisely. As we speak, there are questions in the Public Accounts Committee (PAC) on imprudent use of money meant for security. We want to see the Ministry reducing wastage as much as possible, so that we can have money for buying security equipment for our policemen and also improve their welfare. There is also need to reduce wastage in Government. We have seen one department in Government taking another Government department to court. For example, we have the case of the Independent Policing Oversight Authority (IPOA). There is quite an amount of money allocated to IPOA.

We have seen IPOA taking the National Police Service Commission to court. These are Government departments and they need to work together because the legal fees paid by them to lawyers, I can say, is a waste. When a misunderstanding arises, there is need for the different arms of the Government to sit down and harmonise their differences without necessarily incurring unnecessary expenses through litigations.

On the case of Ministry of Environment, Water and Natural Resource I can say there are some departments which need not to be given money. If possible the Acts forming them need to be repealed. One of them is NEMA. It is a department in this Government which just uses taxpayers' money without giving us results.

(Applause)

What we saw in KTN's *JichoPevu*, that is, an inside story about a metal factory in Mombasa was very disheartening. It is very sad that the people of Owino Uhuru Slums in Mombasa are living-dead. They are dying one after the other because of the effects of chemicals emanating from that factory. As we speak, there is now blame game between the Ministry of Public Health and NEMA. We know that whenever a factory is set up, there is NEMA Report and authority which is given before the factories are given licence to operate. We were shown women who are unable to bear children because they miscarry. We were shown festering wounds on the bodies of young children. It is very sad that NEMA is surviving on taxpayers' money. Those residents of Owino Uhuru Slums pay taxes! What I saw was very sad. I am not impressed about what NEMA and the Ministry of Public Health are doing. There is need for this House to demand to know what exactly happened in that metal factory in Mombasa.

I would also like to talk about the IFMIS system. In the previous financial years, the allocation of money that this House gave to IFMIS in Treasury was huge. All of us know that IFMIS stands for Integrated Financial Management Information System and it is software which is used by Treasury to manage the public finance and procurement. In software practice, one of the characteristics of software is software re-use. Software is just developed once and it is used several times. However, the budget which this system has been given for the last three years is questionable. You cannot have software costing Kshs500 million last year and then this year you use a different language to describe the same system. In software development, it is only about upgrading the new fashion which is in the market. It is about scaling up the system to meet some certain modifications in the Ministry. Last year, this House allocated over Kshs1billion to the Ministry of Devolution in order to roll out IFMIS to counties. This year, again, they are describing it with some complex terminologies, "Hardware Support". We know that that means the server. You can only purchase a server once. All they need is to add one or two servers. They really do not need all these billions.

I guess that these are some of the loopholes and terminologies used for corruption given that software is not tangible and quantifiable. This is where the corrupt hide in order to make money. I do not want to say a lot because this is just a Supplementary Budget. I would have also touched on the Judiciary because we want to see money meant for development in the Judiciary being taken to the Ministry of Public Works and Housing because the work of Judiciary is just to interpret the law and not to build courts. If they need coats, let them go to the Public Works and Housing otherwise they will be infringing the doctrine of separation of powers.

Hon. Nyenze: Thank you, hon. Speaker for giving me this chance to contribute to this very important Motion.

I want to support the Report at the outset. This Supplementary Budget of 2014/2015 is good although they have not said where the additional Kshs70.07 billion will come from. We have not seen any sources of funding whether it will come from re-allocation from other departments or savings from the wastage that we have been having or could be the donor funding. There are good things that I feel I should support this budget.

I have seen that over Kshs700 million has been allocated for developing infrastructure for 24 new universities. This will be very good because it will train our young people into the work force. My appeal to the Budget and Appropriations Committee is that in the next financial year and the subsequent years, they should allocate more money to education. That is what will propel this country to the status of a developed country. Once you put education first, you transform so many things. I have also seen that Kshs1 billion has been allocated for the construction of Thwake Dam in Makueni. This will help in irrigating over 3000 hectares of land. It will generate jobs. It is good that this House allocates more money to build dams in dry areas where land is available. This will help the people living there and who depend on rain-fed agriculture. I have also seen that Kshs200 million has been allocated for drought management. My appeal is that this food should be distributed equitably. I have seen on national television clips of starving people in Turkana, Pokot and some parts of Kitui County where I come from. They should be given priority in the distribution of this food. I agree with the Budget and Appropriations Committee that we should not be allocating more money to salaries. There is so much money spent on recurrent expenditure. If we keep on spending more money on salaries, there will be little for development. I am sure we can re-adjust salaries so that nobody is paid so much yet the minimum wage is Kshs13,000 only.

There is no justification why someone should earn Kshs2 million per month while another person earns Kshs13,000 irrespective of how well educated one is. It is unfair because we buy things from the same shops and use the same things for sustenance. The gap between our salaries is so wide. This House should take some time to harmonise that.

Hon. Speaker, the Report talks about harmonisation of parastatals and State corporations. It has taken time since the President announced that these reforms are on the way. The reorganisation should be done because most of these parastatals consume a lot of money. They do not generate any money. All parastatals that do not generate money, cannot pay their workers and depend on the Exchequer should be done away with. This harmonisation should look into that, so that the parastatals that generate income and can stand on their own without gobbling the little resources in the Government coffers are the only ones that should be allowed to operate. Otherwise, parastatals are very good in spurring economic growth if only they do not become a drain to the Exchequer.

The Kshs493 million that has been allocated to infrastructure in schools is not enough, but it is something. I thank the Budget and Appropriations Committee for this. We need to build better facilities for our children. In poor rural areas, we have grass thatched classrooms. They cannot afford iron sheets. Others learn under trees. Priority should be given to those areas especially in northern Kenya, some parts of the North Rift, Kitui where I come from and the Coast Province where schools are in dire need of refurbishment, so that they can build the schools to better learning institutions.

An amount of Kshs1 billion has been allocated to the Kenya Wildlife Services (KWS). It was a surprise to see a lot of ivory being seized in Thailand which had passed through our airports. Our security personnel do not catch the poachers who kill our elephants and sell their tusks and ivory in Asia. These items pass through our ports and airports. The Kshs1 billion that has been allocated to the KWS should be utilised properly to take care of our wildlife. If we allow our lions, elephants and all our game to be killed by poachers, we should not expect tourism to grow. Today, tourism is tottering at the brink of collapse because of insecurity. The other thing that will kill tourism, which is a big foreign exchange earner, is the destruction of our wildlife. So, the KWS should utilise this Kshs1 billion to enforce the law, so that our elephants are taken care of in the parks.

On Page 28, there is a recommendation for better funding of the Department of Immigration. This year they have been allocated a small amount. I am appealing to the Budget and Appropriations Committee that whenever we allocate funds, we must make sure that all Kenyans and not Kenyans in certain parts in this country, are issued with identity cards. Before the next elections, the Members of Parliament should not beg the registration officers to take IDs to their people. It should be a Government policy. This House has a responsibility to appropriate the Budget through the Budget and Appropriations Committee. More money should be allocated to this department, so that all Kenyans above the age of 18 years are issued with ID cards. In many areas, it is very difficult to get an ID. In other areas in Kenya, by the time you leave school, the registration clerks are waiting to give you IDs. This should not be seen in the modern Kenya under the new Constitution. It will be read as a political mischief to deny people their voting rights. Let IDs be distributed equally in every part of this country.

A total of Kshs225 million has been allocated to the Kenyatta National Hospital Cancer Centre. This is a drop in the ocean, but for a good purpose. Cancer patients have suffered so much at the Kenyatta National Hospital. There is only one machine and once it breaks, they suffer.

Hon. Speaker: What is your point of order?

Hon. Sakaja: On a point of order, hon. Speaker. With all due respect to the Leader of the Minority, he has said something that people like saying. He needs to substantiate so that he does not mislead this House that there are certain areas where it takes extremely long for the people to get IDs, but in certain places, immediately they finish school, the IDs are out there. Can he list for us these areas? This is just for clarity, so that we are clear that what he is talking about is a matter of fact.

(Loud consultations)

Hon. Speaker: Hon. Members, none of you has been asked. You are now out of order. That was asked to the Leader of the Minority Party and not the rest of you. The rest of you are not leaders. He is the leader. Allow him to respond. You are the junior and he is the leader and that is why he has precedence over all of you.

Hon. Nyenze: Thank you, hon. Speaker for protecting me even from the leader of the National Party (TNA).

I was saying that Kshs225 million is a small amount of money. Patients at the Kenyatta National Hospital are suffering and everywhere else. Many cancer patients are suffering

and cannot get attention because we have not invested more in machines to screen and treat them. I wish to appeal to this National Assembly to look at the plight of Kenyans who are suffering from cancer and appropriate more money for the treatment of cancer in all the counties. We should allocate more money to health towards this.

The Kshs548 million that has been allocated for distribution of water in Nairobi City will reduce the suffering of Kenyans. Residents in many estates in this City do not have storage tanks. So long as water does not flow every time in our taps, the residents of Nairobi City will keep suffering. I wish to appeal to the National Assembly to appropriate more money next time for the residents of Nairobi to get sufficient water.

Over Kshs3 billion has been allocated for police modernisation. This should be used to fight terrorism. When I came in, I came to you, hon. Speaker and told you that we have just got in and we are very few Members. I asked you whether the Members of the National Assembly are scared of terrorism and whether they have not come to the House because we have been threatened. You assured me that it is not terrorism because yesterday we were full. I am sure from the look on their faces, they are a bit scared. Therefore, this money should be used properly to protect Kenyans from terrorism because Kenyans of all statuses are scared of terrorism. Besides the University of Nairobi, Parliament has been named as one of the institutions that are targeted by terrorists. We do not want to experience such things. While I am on terrorism, I just want to put the record straight. Members of the National Assembly know that whenever there is a terrorist attack, Somalis are the ones who suffer more than even other Kenyans. This is because when it happens in their areas, they lose teachers, doctors and everything else. So, let us not see it as emanating from one community. We do not want to blame anybody for terror attacks.

As I wind up, there are people who are called “village elders” in all constituencies. They work but they are not paid anything. Whenever we appropriate budgets, let us make sure that village elders are paid something because they do a lot of work. They are not sub-chiefs; they are elders.

Last but not least---

Hon. Speaker: Hon. Mary Emasse!

Hon. (Ms.) Oticho: Thank you, hon. Speaker, for giving me this opportunity to contribute to the debate on the Supplementary Budget.

I want to go straight to the satisfactory conditions that we looked at, as a Committee. I support the Motion as moved by the Committee Chair. In particular, I want to touch on the issue of operations and maintenance. The total amount of Kshs10,421 million which has been allocated for operations and maintenance, is too much. The Supplementary Budget is basically meant to address unforeseen expenses that had not been budgeted for. When we have such a huge allocation for operations and maintenance, it raises questions as to what costs of operations and maintenance actually relate to emergency functions that need urgent funding. That is an area that the Ministries, departments and agencies need to look into.

Hon. Speaker, I also want to look at the issue of pending bills. I wonder why the issue of pending bills has persistently continued to feature in almost every Budget, including the item appearing in the Supplementary Budget yet we have IFMIS, which is a control system that is supposed to manage Government expenditure. In any case,

expenses relating to pending bills are supposed to have been budgeted for. If a function is budgeted for, funds should be available for it. Therefore, we should not continue having pending bills in our budgets. For example, if you are paying an employee, you should remit the PAYE component of that payment directly to the Kenya Revenue Authority (KRA). If you are paying a supplier, you should be able to remit the corresponding portion of the tax to KRA. So, why do we continue to see pending bills in our budgets? The accounting officers should be answerable.

This House has to come up with measures to ensure that this issue does not recur, even if it means legislating. The Public Finance Management Act is very clear. It should be a first charge, if you have pending bills. However, that is not the case. There is a deliberate attempt not to comply with the regulation that actually guides the processing of these payments. This is a concern. We hope that in the next financial year, we will be seeing pending bills appearing again.

On salaries and remunerations, again every organisation has an establishment. This should appear as an item of expenditure in the Budget when the year begins. Every institution has a strategic plan. You know that you will have certain tasks, and that you require certain numbers of personnel, and that this needs to be done within a certain period of time. So, why does this not appear in the main Budget? Why does it have to appear in the Supplementary Budget? This is a sign of poor planning. We should not even be having Supplementary Budget if we had proper planning in the way we do our budgets. If it is as a result of increments, again, we should be wary. This should be a concern because if it spills over, it means that we are paying too much. The Government is giving too many increments, and this spills over to the private sector. It will not be very conducive to investment. Already, there are companies and investors who are packing their bags and moving to other countries because of high labour costs. That is an issue which needs to be looked into.

Looking at other areas, the transfer to the Agricultural Finance Corporation (AFC) to cushion farmers is a good allocation because that is an important sector.

With those remarks, I beg to support.

Hon. Nyamweya: Hon. Speaker, thank you for giving me a chance. I support this Report. I thank the Committee, under their able Chair. They have done a good job. They have interrogated what the National Treasury has given them. However, there are a few things I want to comment on.

We have a problem with the Budget cycle. We will approve the Supplementary Budget now and then the Government will go on a spending spree in May to clear the money. They close the books in June after incurring heavy and rushed expenditure. This needs to be changed. The National Treasury needs to tell us what the problem is and why they cannot avail the funds earlier. They will close the books in June and no money will be released in July, August, September and October. This problem needs to be addressed. We want to know exactly what the problem is. We have talked about how this money is being absorbed. As a Committee, we have come out very clearly. We need to know whether it is the National Treasury which does not give the money or whether the money was requested for and given. That is a good way to go.

In general, I support the Report but there are issues I have realised. There is the issue of refunds. Some refunds in respect of Value Added Tax (VAT) have been asked

from the Ministry for Defence. What it means is that there is an officer who paid suppliers, retained the VAT due but did not remit the money to KRA. The question that one asks is: What happens in that office? What happens with the guys in the accounts department? What happens with the Chief Executive Officer (CEO) in that organisation? Why do they not demand that the funds be remitted to KRA? The worst body that we have in this regard is the Independent Electoral and Boundaries Commission (IEBC), a body entrusted with presiding over our elections. It is a body which is supposed to work according to the guidelines, obey the rules and ensure that there is fairness. We are told that this organisation did not refund Kshs263 million in respect of VAT, which means that the suppliers were paid but VAT was not remitted to KRA. We want to know what measures the CEO took to discipline the officers who failed to remit VAT to KRA? I can see that the Budget and Appropriations Committee has approved this payment. Let them be paid but we need to know exactly why the money was not paid in the first place. That money must be remitted on a monthly basis, when it is due. It should not delay for even a single day. So, there is a challenge of indiscipline. The electoral body is not disciplined, in terms of managing public funds and remitting VAT to KRA. How can they ask for money when they were given the money? What happened is that suppliers were paid and, as a Government, the electoral body retained the VAT, which they were supposed to remit to KRA. However, they did not remit the money to KRA. That shows the level of indiscipline in financial management in as far as this organization is concerned. It clearly reflects how they are running the organization.

Another issue is about funds which have been allocated to Treasury. There is something they call IFMIS licences for Kshs400 million. Just because you have given somebody a business he is going to do for many years to come, the Government is spending more money on IFMIS. How can they agree to spend Kshs400 million just for a mere renewal of a licence? They do nothing. Treasury says that they are getting more security on IFMIS. That is okay but the amount of money being allocated is a lot of money. Then there is another amount of Kshs80 million for hardware support.

When you go on you will find that they are trying to bring a pre-payment procedure. We already have a payment procedure. They are also going to spend Kshs125 million. Again if you look at that issue of IFMIS, digital payment, payment procedure, I do not understand all that. It is the same thing and the same language. There is a rip off. This IFMIS system needs to be investigated and a thorough audit done because the amount of money going through IFMIs is over Kshs1 billion. This is software which has been developed and it is there. It is an issue which needs to be looked at.

In as much as I am supporting the budgetary allocation and what they are doing to TSC - increasing the funds -there are Ministries whose allocation raise questions. A question has been raised here about supplementary budget for Nairobi City Council by the Ministry of Energy. What is the hurry for? Why are you bringing supplementary budgets? Is it because you have found some money falling somewhere and you want to pick it? It raises serious concerns on how the planning for development projects is being carried out in this country. The project about Nairobi City Council is big and it has taken two or three years to programme. It did not come yesterday. Why should you say you want to bring supplementary budget at this time? The amount involved here is over Kshs900 million which is close to Kshs.1 billion. It is a big project. This is a case where

the name “supplementary” is being misused because that should not be the case. Supplementary budgets should be about emergency situations.

Another issue I have observed here is about the Kenya Seed Company and the National Board. These farmers should be given the money. The Kenya Seed Company should be funded more because we need the seeds. If we do not get enough seeds and the money does not reach the farmers early enough, it is not good. It is a pathetic situation that farmers who feed this nation go without payment for long. They queue to deliver maize and even toil for eight months. It is sad when they deliver maize, we do not pay them. Who do we care for if we do not care for the farmer who makes us get food to eat? I support and wish that you could give more money to the farmers. There should be no cases of paying Kshs1 billion today and then make another payment later. We are not realistic. As leaders, we represent these people who toil and make us get food. The Government promised to subsidise the Kenya Seed Company. It should not wait. If you talk to the company even today as we speak, they will tell you that they are going to be paid. They need their money so that they can pay farmers. These are basic sectors which we should give priority to in terms of funding. If we are not going to have food here, we will not be respected anywhere.

Let me talk about health. We have heard of doctors who complete university and go to stay at home. They cannot get jobs because hospitals are waiting for funds from the Treasury. It is pathetic and should not happen because the country does not have enough doctors. In the past, you were guaranteed of a job immediately you completed your training as a doctor. Immediately you completed school, you would go for your internship and become a doctor. That is not the case today. There is a big disconnect here and the Ministry needs to connect with all institutions that are training doctors.

With those few remarks, I support the Motion. The Committee, I thank you for a job well-done.

Hon. Lati: Thank you, hon. Speaker. I am part of the Committee and I also rise to support this Motion. First, I commend the Committee for a job well-done. They interrogated this Supplementary Budget very well. However, even if we support this Motion, there are things that do not look right. A supplementary budget as clearly stated in Article 223 of the Constitution, basically addresses emergencies or unforeseen circumstances. The basic reason for any budgeting is so that we can estimate what we do almost clearly and we do not divert so much. An amount of Kshs57 billion is a lot of money. Just to put it into perspective, relative to CDF money which is one item which is well known in this House, CDF is about Kshs36 billion a year. We all know the kind of work CDF does for Kenyans each year. We know the magnitude of development which is CDF-related across our nation. However, CDF is only Kshs36 billion. I understand the diversity and the weight of Government but Kshs57 billion, particularly Kshs41 billion just for recurrent expenditure surpasses CDF and is something to consider. It is something which the Committee and this House should consider in subsequent years so that the Government does not so much digress from the budget that is planned. This House and the Committee spend the whole year drafting, considering and debating and for it to be more than the amount for CDF of all the 290 constituencies of this country particularly on the recurrent side, we are not being fair to ourselves as a country.

It even gets worse if you consider the items that are brought in for supplementary. You would imagine that somebody who has done budgeting in a Ministry or in Government and has been running these things year in, year out, would still have some experience to know the kind of maintenance they would need for a year. For somebody to bring a supplementary budget for maintenance, it raises a lot of questions. You should have at least estimated what you maintain in a year and allocate some money.

If you look at things like salaries, these are straightforward issues. You should know who you are employing at the moment and who you intend to employ during the year so that you do not bring us as a Committee, House or country things like salaries. It is embarrassing for anyone who has done budgeting to come at the middle of the year requesting additional funds for salaries. It just shows how reckless we tend to be in terms of our budgeting. This is important particularly if you consider today that our GDP did contract last year. We are living in tough times if you consider the whole scenario of Kenya today.

Pending Bills and taxes are obvious things which should appear in any budget at the beginning of the year and should not be in the supplementary budget. There are things which tend to serve the people of Kenya in the basic way that we want though they are supplementary. I happened to visit a Huduma Centre a few days ago and found something that is very useful to the Kenyan people. I hope this money will be used to expand Huduma Centres to far-flung places of our country like Samburu where Government services are things that are probably unknown in many aspects.

I also saw the issue of security operations in this supplementary budget. It brings a lot of sympathy when you consider that we are under terrorism threat and this is one area that I will take as a supplementary item anytime anywhere. This is because we need to make sure that we are safe. We do not foresee these things and it is necessary that we make our security forces functional to deal with these terrorists.

This money should be used well. I have seen cases where security operations are planned, particularly in cattle rustling areas like Samburu and Baragoi. Money is sent to carry out operations but it is exhausted by people who are taking allowances and many other things without any operation taking place. People of Samburu North today, for instance, do not have their cattle back and the money that was allocated for operations is gone. Although sympathetic on security operations, I think it is one area we should consider as Kenyans all the time and every time because of the kind of situation and times that we are living in.

Hon. Speaker, I have also seen emergency funds on relief food. There is need because of the long drought. It is very sad for those of us whose areas are recipients of relief food, this food ends up in the management of District Commissioners (DCs) who are thieves, if I may say. They steal all the food and people remain hungry. The Government keeps pumping food into those areas for no reason and the beneficiaries are Government officers. It is very sad for us to keep sending money on emergency relief food thinking we are helping a victim of drought in Turkana or Samburu, but we are actually feeding a very big stomach of a DC.

I have also seen a supplementary budget on livestock. As a country, livestock is a very important part of our economy but we always tend to lose track that the only livestock is the grade cows in some parts of our country, the zero-grazed cows in down

country Kenya. Artificial insemination and research are some of the things we tend to fund as a country. The biggest element and the biggest contributor of our livestock Gross Domestic Product (GDP) today is the livestock kept by the pastoralists in northern Kenya, but we put nothing in terms of research and marketing. We tend to forget that all the meat we eat in all these markets, up market restaurants and small markets in Nairobi come from some places like Samburu. It is time we started considering those marginalised areas in terms of livestock funding because that is where most of our livestock come from.

Hon. Speaker, it is also important to note that for any budget, we should state clearly where we are getting money to fund it. The Supplementary Budget we have in front of us does not in any way state where the money is coming from. We tend to think that money will fall from the skies and it does not. We either get money by taxing Kenyans which is revenue or we get money by asking for debts from other sources, for example, external funding by partners. I suspect that without the partners and without revenue, the Supplementary Budget is taking us a hole deeper into the death of this Kenya. We know that is something we will pay for many years as Kenyans and our children will continue to pay.

Hon. Speaker, what the Ministry needs to take into account is look at the absorption rate. As we talk today on the Supplementary Budget, yes there are Ministries that require money and that is very important. We need to fund them because if you consider things like security operations, they need money. But as we talk today, there are Ministries that are sitting with money and budgets that they cannot absorb. We should find a way as Kenyans to move this money around. If you are not absorbing money, why would we bring a Supplementary Budget? We should take away money from you and give it to someone within the same Government serving the same people of Kenya who need it, particularly on areas of security.

There is also another element in this Supplementary Budget that is tiring to Kenyans-the issue of restructuring of Government corporations. I am a free marketer and I have always had this idea that Government should get out of business and let the private sector do the business. As things are now, the Government is in business in some areas that are not even strategic in any sense. We are still funding things like Telkom and for so many years, we keep pumping money into these corporations. The people concerned need to fast track privatisation and restructuring so that Government corporations become profitable and stop being liabilities to the people of Kenya.

Thank you, hon. Speaker.

Hon. Mulu: Thank you, hon. Speaker, for giving me the chance to also---

Hon. Speaker: Hon. Mulu, sorry. There is an intervention from Hon. Kiptanui.

Hon. Kiptanui: Thank you, hon. Speaker. Reading from the mood of the House and owing to the fact that we have the Committee of the whole House on the Public Procurement and Asset Disposal Bill which we were not able to finish yesterday, could I be in order to ask that you call upon the Mover to reply?

(Applause)

Hon. Speaker: Order, hon. Members! I can hear even people who claim to be lawyers to be saying five minutes. If you wanted that, Standing Order No. 97 is very clear. I do not understand. Some of these people forget too quickly. I have always reminded you that if you want the five minutes or any shorter period, it should be before the Business commences, just familiarize yourself with that Standing Order No. 97.

Hon. Members, but it is also a fact that business listed as No. 10 is one of those ones you very well know you spent almost the whole afternoon and you did not finish and it is one of the Bills which have constitutional deadlines. It has to go to the Senate and indeed, you must address it. Of course, I appreciate the place of Supplementary Budget in the current dispensation. And more particularly, if you familiarize yourselves again with Article 223, then you may see that even those who claim to have read the Constitution forward and backward do not seem to appreciate the place of the Supplementary Budget in this current dispensation.

Hon. Makali, proceed and then I will proceed to take---

Hon. Mulu: Thank you, hon. Speaker, for giving me this chance to add my voice to this discussion on Supplementary Budget.

Hon. Speaker, the Supplementary Budget is a very important portion of the budget-making process of this country. The reason it is allowed in our Constitution is because it allows for flexibility into our budget-making process. What is important is that the Supplementary Budget will allow the Executive to bring in things which have not been planned for to the House for approval. Even as I comment on this report, I want to draw to the attention of this House that the Report we are discussing today was received in this House on 18th December, 2014. From December to date, it has taken a very long time for this House to discuss this Supplementary Budget. When you look at the Constitution, it clearly states that the Executive has the authority to withdraw from the Consolidated Fund but that withdrawal must be regularized by this House within two months. Even as we debate, I am asking myself, to what extent are the figures we are seeing here--- Could there be some which have gone beyond the two months? And if some have gone beyond that, are we within the Constitution? Does that not call for a situation where as we discuss the Supplementary Budget in future, that we have some details in terms of what has been spent and what is planned to be spent so that as we discuss as a House, we are in the picture of what is happening? Having said, that as we support the Report of the Budget and Appropriations Committee, being a member, there are critical things we need to agree on as a House. Some of the things mentioned by the hon. Members were also mentioned last year when we were discussing the Supplementary Budget and I can tell you we will be getting another Supplementary Budget possibly before the end of the year. The question is, anytime we discuss the Supplementary in this House, we more so raise the same issues, for example, we are saying Supplementary Budget should only factor in unforeseen expenditures which had not been planned for and they are also like emergency in nature.

When you look at this Supplementary Budget, you realize that there are quite a number of new programmes and one has just been mentioned now. To what extent is a programme like lighting up of Nairobi City an emergency in this country? Why can we not agree that this kind of expenditure can easily go into the normal budget-making

process which we are currently involved in and which is supposed to start in July? So, Treasury needs to be a bit serious about some of these things.

With regard to transfer to State corporations, this Supplementary Budget is proposing that this House approves Kshs.500 million to the National Bank of Kenya, Kshs.500 million to Agricultural Finance Corporation and Kshs.500 million to Consolidated Bank in terms of assisting these institutions. The parastatal reforms in the 1990s were informed by the fact that the Government wanted some of these parastatals to stand on their own and stop draining the National Treasury or the Consolidated Fund in terms of getting money which could be used for other activities.

We are now in a situation, again, where we are being told to bail out these parastatals. Going this way, we will not be helping his country. Even though I support this, for the future, it will be very bad to see any additional proposals to give funds to parastatals. We have seen what has happened. We are still engaged in parastatal reforms. The whole idea is very good. Kenyans were really hopeful that these parastatal reforms now headed by Hon. Abdikadir would help this country. The reforms are very well documented, but when you look at what has happened in terms of the champions of these reforms, you realize that we are going back to the 1990s again. When you look at the people who have been given the mandate to champion these reforms, I have no doubt as I stand here to say that I do not see these reforms going far. This is because we have recycled people whom I do not think will drive these reforms. If we are serious as a country to have these parastatal reforms then we need to mix the youth and the old – the youth for their energy and the old for their experience.

The other thing I want to talk about is the issue of a pragmatic budget and an itemised budget. As a country, we have made a decision that we are going to go programme budgeting. It means that at the end of the day, we should be able to say what we are achieving out of the money this House is giving to Kenyans. However, look at what is happening. From the main Budget, we get a programme budget and from the Supplementary Budget, we get an itemised budget. So, we lose that connection. There is a disconnect in terms of asking ourselves what we get in terms of additional outputs. What do Kenyans get out of this itemised Budget? In future, we would want Supplementary Budgets to be aligned to annual budget sums of programme budgeting.

The other thing which is also important is the issue that the Chairman talked about on observational rights. Some Ministries and Managing Directors are requesting for more money from this House while we know very well that even the money we gave them has not been used. It is like giving somebody Kshs1million and before they spend Ksh400,000 out of that Kshs1million, they are asking for another Kshs1million. It does not make any sense. As we move forward, this House must demand for Budget monitoring. We should get a report saying, “Out of the money that you gave us, this is the far we have gone and then based on these figures we want more money.” If we go that way, then this House will be making decisions which are fully informed by what is happening out there. We have debated the issue of observational rights in this House so many times that I do not think that we are being taken seriously by the Executive. This House now needs to start biting. In a situation where a Ministry has not spent the money it was given by this House, in the next budget, the amount given to that Ministry should

be reduced till they prove that they have the capacity to use more money. That will help Kenyans.

My last contribution is on the issue of revenue. We all know that anytime we talk about expenditure, simple common sense demands that you must say where you are getting the money from. Look at what has happened. This House is being requested to approve over Ksh57 billion and nobody even takes a minute to tell us where the money will come from. Automatically, there are high chances that either we are going to borrow domestically, which will crowd out the private sector, or we borrow externally which is going to make our debt position worse. This is an analysis that we are missing in some of these Supplementary Budgets. Because we really need to support the Executive to implement their programmes, I support this Supplementary Budget. However, for the future, if some of these things we are raising are not addressed, we will be forced to oppose some of these Supplementary Budgets.

(Question, that the Mover be called upon to reply, put and agreed to)

Hon. Musyimi: Hon. Speaker, I beg to reply. I wish to take this opportunity to thank the honourable colleagues for the concerns that they have raised. We have raised these concerns with the National Treasury and we must just keep raising these concerns. Let me also just remind my colleagues who are Chairpersons for Departmental Committees of Parliament that one of the responsibilities we have is to oversight. You will agree with me that the best platform of overseeing the national Government is through the Departmental Committees. So, all the things that we have raised--- I would like to submit that, that work of overseeing is best done by the Committees. I hope that the concerns that we have raised today will find expression as we seek to do the work of overseeing the national Executive through the Committees that we sit in. All of us sit in Committees and that is role that we ought to take very seriously.

Hon. Speaker, I thank you for giving me this opportunity to table these Estimates with all the questions that they raise. As I have said before, we have raised the same with the Treasury. We will continue to expect the Committees of the House to do their work in playing oversight.

With those few remarks, I beg to reply.

(Hon. (Ms.) Nyamunga walked into the Chamber while the Speaker was on his feet)

Hon. Speaker: Just remain where you are. You can see what Hon. Nyamunga has done. Yes, that is the way it is.

(Laughter)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Speaker left the Chair]

IN THE COMMITTEE

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

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

*(Resumption of consideration
in Committee interrupted on 28.4.2015)*

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are resuming the Committee of the whole House on the Public Procurement and Asset Disposal Bill, 2014, National Assembly Bill No.40 of 2014. As at yesterday, we were at Clause 104 and that is where we will start.

(Clauses 104, 105 and 106 agreed to)

Clause 107

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 107 of the Bill be amended by inserting the words
“in the Regulations” immediately after the word “prescribed”.
This is just to further clarify that section.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see the hon. Member for Kiminini.

Hon. Member: Put the Question!

The Temporary Deputy Chairman (Hon. Cheboi): Even though it is straightforward, I see some interest. Hon. Mbalu, you want to speak to that?

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, this is just to align it with the regulations in this Bill.

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

(Clause 107 as amended agreed to)

Clause 108

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 108 of the Bill be amended in subclause (4) by inserting the words “in the Regulations” immediately after the word “prescribed”;
This is just for clarification.

(Question of the amendment proposed)

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

(Clause 108 as amended agreed to)

(Clauses 109, 110, 111 and 112 agreed to)

Clause 113

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 113 of the Bill be amended in subclause (1), paragraph (b), by inserting the word, “of” immediately after the word “quantity”.

This is just to clean up the Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Member for Muhoroni, you want to say something on that?

Hon. Oyoo: Hon. Temporary Deputy Chairman, you can just put it to the vote. I would advise that this particular amendment be reinforced in the law, so that the word “quantity” means quantity and not just by word.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I can also see the Member for Kibwezi East.

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, this is just a matter of English and grammar. Such an amendment is welcome.

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

(Clause 113 as amended agreed to)

Clause 114

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 114 of the Bill be deleted.

If you look at this Bill, it has provided for all the available possible methods of procurement.

The Temporary Deputy Chairman (Hon. Cheboi): You must be clear, is it a deletion that you are proposing?

Hon. Langat: Yes.

The Temporary Deputy Chairman (Hon. Cheboi): You are sure it is a deletion, Hon. Langat? Proceed.

Hon. Langat: The Bill has already provided for all the possible procurement methods which you can imagine. However, when you go to Clause 114, that section seems to again open the whole chapter on the type of procurement methods. It says that you can come up with another method and it is specifically allowed by the Authority, so that you can use it to procure certain types of goods. The Committee felt that this might open up room for corruption. We decided not to open it, but have all the methods which have been prescribed. In case of anything else, we can do amendments in future.

(Question of the amendment proposed)

Hon. Dido: On a point of order, hon. Temporary Deputy Chairman. If this section was in the Bill, then it must have been designed to safeguard something. If it is deleted, and the Chair is saying that it has been covered elsewhere, then are we not hiding corruption which we are trying to get rid of by deleting this clause? The Chair has more explaining to do.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Rasso, are you opposing the deletion? It is easier that way and, of course, you give your reasons for opposing it. I take it that you are opposing it.

Hon. Dido: I am opposing it on the grounds that the Chair has not provided sufficient information as to why we are deleting the clause.

The Temporary Deputy Chairman (Hon. Cheboi): Let me have Hon. Sakaja.

Hon. Sakaja: Hon. Temporary Deputy Chairman, you have not proposed the Question.

The Temporary Deputy Chairman (Hon. Cheboi): The Question has already been proposed, Hon. Sakaja.

Hon. Sakaja: I did not hear that. I am sorry, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): You were very busy. I could see you were discussing something very animatedly with the Member for Igembe North. Let us hear your opinion.

Hon. Sakaja: Hon. Temporary Deputy Chairman, he was giving me some insights on the *miraa* economy.

Clause 114 gives a lot of latitude to the procuring entity to choose a specially permitted method that is beyond what is provided in the Act in exceptional circumstances. These exceptional circumstances are to be determined by the Authority as might be or should be prescribed by the Regulations, but the window is too big for them to decide on where exceptional requirements make it impossible, impractical or uneconomical to comply with the Act and the Regulations. We have provided for all the methods of procurement that are known. As a Committee, we saw that this will open a

window for a lot of corruption to come in. If a procuring entity just colludes with the Authority to say that a tender is a specially permitted one so that they do not tender for it and they directly give to somebody, we will be opening great loopholes in this Act.

I would like to make it known to the Members that the National Treasury agreed with our proposal to delete it and so did the procurement Authority. It is not that the Committee was doing something that was beyond the drafters of this Bill. It is just to make sure that all the methods of procurement are as prescribed because this is giving them latitude to ignore all the provisions of the Act and Regulations as stated in 114(2)(a). So, that is why we need to delete it.

I support that.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I gave you the latitude because I expected you to especially address the concerns of Hon. Rasso. I do not know if he is convinced. That will be known when we are taking the vote on it. I will give three more Members. The Member for Kiminini.

Hon. Wakhungu: Thank, hon. Temporary Deputy Chairman. I was listening to the Chairman in terms of justification; we know that at times when we have extraordinary circumstances, we need extraordinary measures. I am trying to imagine a situation where there is an emergency case or you are procuring an item - issues of security are sensitivity. How is it going to be addressed? Initially, I thought this provision is going to help in addressing such a matter, but after listening to Hon. Sakaja I am not convinced how this clause is going to encourage abuse or cases of corruption. I am trying to listen but this does not make sense. We have extraordinary circumstances which might arise which we may not know. In such a situation we need extraordinary measures. So, I thought that provision was there to take care of that.

The Temporary Deputy Chairman (Hon. Cheboi): I see the concern. Two Members have raised concern and I will eventually give an opportunity to the Chairman to probably clarify before the Members make a decision. Let us have Hon. Mulu.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I support this deletion because when you look at this Bill it has in a very comprehensive manner explained all the possible methods of procurement. If you are procuring things like security items, it is clear what you need to do. If it is normal procurement, it is also clearly stated. What we are saying is in a situation where you have a very comprehensive listing of what you need to procure and then you open a small window for individual decision-making. You will open room for corruption. That is why I am supporting this deletion.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have one other Member.

Hon. (Prof.) Nyikal: Thank you, hon. Temporary Deputy Chairman. I support this deletion because once you open a window and you give it to the Authority then it will make decisions and there are no criteria. Therefore, I support this. But I would like clarification on Clause 114(d) and (e) because those two areas are very specific situations. Otherwise, I support the deletion.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Then I will give opportunity to Hon. M'eruaki.

Hon. M’uthari: Thank you, hon. Temporary Deputy Chairman. I oppose the deletion. If you look at Clause 114(3), it talks about procedure for specially permitted procurement. Although it is giving that window, at least it is giving an opportunity for that sort of procurement to be done. So, we may make it difficult for some procurement to be done.

The Temporary Deputy Chairman (Hon. Cheboi): I will give probably the last one to the Member for Gatanga.

Hon. H.K. Njuguna: Thank you, hon. Temporary Deputy Chairman. I would like to support that deletion because I happened to be in that meeting where the Treasury, the Committee and some of us who were very keen on this Bill were present. There was a big debate. If you look at the Bill, all other methods of procurement are provided even for restricted tendering, single sourcing and quotations. So, when you now open the latitude and allow the Authority to permit other procedures as it may deem fit, it opens doors for abuse. After that debate from all concerned parties, we agreed the best way possible to avoid this abuse was deletion.

I support the deletion.

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Langat the opportunity just so that you can see there is a real division between both sides.

Hon. Langat: Hon. Temporary Deputy Chairman, when I started proposing the amendment I said this Bill has already provided for all the imaginable ways of doing procurement. It has described all of them. In fact, I would refer Hon. Wamalwa, on emergencies, to direct procurement method under Clause 102. Direct procurement is allowed under emergencies. So, when you come again and say “specifically permitted”, that means you are going to negotiate with the Authority. Some people will be very creative and come up with fraudulent ways of avoiding competition. I see Hon. Wamalwa is now properly convinced and he is now supporting my amendment.

The Temporary Deputy Chairman (Hon. Cheboi): The Members can now have their say.

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

(Clause 114 deleted)

We have a proposal from the Chairman that the heading be deleted. This is because there are several amendments that have been made and therefore the heading of Part IX should be changed. I would like the Chairman to pronounce himself on this one then we will proceed. In this one we will not be putting any Question. So, it is for the Chairman to tell us what he has. Do you have it there, Hon. Langat? This is as a consequence of the several amendments that have been done between clauses 90 to 114. So, probably just for record purposes, Hon. Langat it is important that you get to that one.

Heading of PART IX

Hon. Langat: Hon. Temporary Deputy Chairman, I wish to move an amendment to the heading of PART IX by deleting---

The Temporary Deputy Chairman (Hon. Cheboi): You are actually not moving any amendment, you are simply stating that you want to delete and replace it with the one that you have proposed.

Hon. Langat: Hon. Temporary Deputy Chairman, I wish to move that we change the heading of---

The Temporary Deputy Chairman (Hon. Cheboi): You have just repeated it, but proceed anyway.

Hon. Langat: Hon. Temporary Deputy Chairman, I wish to move that we change the heading of PART IX from what it is in the Bill; "Procurement of Goods, Works and Non-Consultancy Services" to read "Methods of Procurement of Goods, Works and Services". This is just to make it clearer. That section deals with methods of procurement of goods, works and services.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Members, what the Chairman is proposing is to put a new heading to PART IX which will read as follows: "Methods of Procurement of Goods, Works and Services." That is as a result of the several amendments that have been made and therefore that will be the more appropriate heading as far as the Chairman of the Committee is concerned. So, we will proceed.

(New Heading to PART IX agreed to)

(Clauses 115, 116 and 117 agreed to)

Clause 118

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 118 of the Bill be amended in subclause (1), paragraph (b), by deleting the expression "section 77" and substituting therefor the expression "section 56".

This is just correction of error. That section was supposed to refer to Clause 56, and not 77.

(Question of the amendment proposed)

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, Clause 118 is meant to align the right section to the right clause.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. So, you support?

Hon. (Ms.) Mbalu: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): I see. Hon. Makali, do you want to speak to this one?

Hon. Mulu: This is just a simple editorial action and I see a lot of these changes coming. So, I support.

The Temporary Deputy Chairman (Hon. Cheboi): We can therefore proceed.

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

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

(Clause 118 as amended agreed to)

Clause 119

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 119 of the Bill be amended in subclause (3), by deleting the word “or” appearing immediately after the words “tender’s portal” and substituting therefor the word “and”.

This is just to clean up the Bill.

(Question of the amendment proposed)

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

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

(Clause 119 as amended agreed to)

(Clause 120 agreed to)

Clause 121

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 121 be amended by deleting subclause (2) and substituting therefor the following new subclause—

“(2) The evaluation and comparison shall be done using the procedures and criteria set out in the expression of interest documents and shall, in the case of expression of interest for professional services, have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered”.

This amendment is meant to further enhance that section in case of expression of interest, or to provide for results of evaluation.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see the hon. Member for BomachogeChache.

Hon. Ogari: Thank you very much, hon. Temporary Deputy Chairman. This clause is meant to recognise and respect the existence of other laws governing procurement or professional services and payment of fees. That is why it came in.

I support.

Hon. Nderitu: Hon. Temporary Deputy Chairman, I would also like to support the amendment mainly because I know that professional bodies take a lot of time regulating themselves. Acts like the Estate Agent Act and the Valuation Act should be recognised.

I support the amendment for professional cases.

Hon. Dido: Hon. Temporary Deputy Chairman, I support this amendment with a lot of reservations, because I believe that this particular Act should apply across the board to cover all professions and institutions in Kenya. If we are going to have lacunas or to say that these professional entities have a way of procuring, then we will appear to be sidestepping the Act, as we may wish to favour certain professions. I believe that is not the intention of the Committee. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Finally, let us hear hon. Sakaja.

Hon. Sakaja: Hon. Temporary Deputy Chairman, I would like to support and explain to the Member for Saku that what this provision does in the Bill as it was, is that either the evaluation and comparison will be done using the procedure or the criteria set out in the expression of interest document. No other criteria shall be used. We have to take cognisance of the fact that there are professional services which are being procured and when you are doing the comparisons, for example for the lawyers, there is a way lawyers are supposed to charge. For doctors, there are certain things that need to be looked at. The same applies to architects and other professionals.

What we are saying is that evaluation should have regard to the principles governing specific professional bodies. We are not saying that the provisions of other laws take precedence, but when the evaluation and comparison is being done, it shall have regard to the provisions of this Act and the statutory instruments issued by the relevant professional associations only regarding the regulation of fees chargeable. So, when somebody is charging fees off the mark from what should be charged, that should be noted and that person cannot get it.

So, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. The House can have its say now.

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

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

(Clause 121 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order Hon. Wanga?

Hon. (Ms.) Nyasuna: It is a point of clarification, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): On the one we have just dealt with?

Hon. (Ms.) Nyasuna: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): We have finished with it. If there is anything that is totally burning, you could discuss it with the Departmental Committee Chair for clarification.

(Clause 122 agreed to)

Clause 123

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 123 of the Bill be deleted.

If you look at the Bill, the text on Clause 177 is repeated word by word. So, we are just deleting to avoid repetition.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see hon. Member for Kibwezi East.

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, this is direct. I was willing to contribute to it, but we can spare ink and space in the Bill, since it is a repetition.

The Temporary Deputy Chairman (Hon. Cheboi): I see the Member for Turkana, hon. Joyce Emanikor

Hon. (Ms.) Emanikor: Thank you, hon. Temporary Deputy Chairman. I have actually checked Clause 177 and it is exactly the same. It is kind of repeated.

I support.

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

(Clause 123 deleted)

(Clause 124 agreed to)

Clause 125

Hon. Langat: Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 125 of the Bill be amended in—

(a) subclause (6), by inserting the following new paragraph immediately after paragraph (c) —

“(ca) assignments and professional services which are regulated by Acts of Parliament which stipulates fees and charges applicable for such assignments;

(b) subclause (11), by deleting the word “appropriate” appearing immediately after the words “may be”;

(c) subclause (13), by deleting the word “advert” and substituting therefor the word

“advertisement”

This particular clause deals with selection methods with regard to requests for proposals. We are amending Clause 125(6) which deals with quality-based selection and not cost. It includes assignments and professional services. We can only select those services by using the quality approach because fees have already been prescribed in the Acts of Parliament. For example, with regard to lawyers the fees are already provided for.

Hon. Gumbo could explain further.

The Temporary Deputy Speaker (Hon. Cheboi): I notice that hon. Eng. Gumbo is now in the House.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, that amendment is actually part of the amendments that I brought, but were taken over by the Committee. You will notice that this is a very long clause. This clause has subclauses up to 14. Within those subclauses we noticed a lot of typos, for example, in sub-clause 11 the word “appropriate” is repeated twice. We propose to delete that. Under subclause 13, you being a lawyer, you understand that “advert” is a colloquial and the correct English word is “advertisement”. So, we are deleting the word “advert” and replacing it with “advertisement”.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I wish to take this opportunity to seek clarification. When we talk about fees and charges that have already been stipulated, what is the place, in this Bill, of engineers estimates? Are they part of what is considered the stipulated fees or charges? I know that it is a problem. At times you are told that if your quotation varies from the engineers’ estimates to a certain percentage you could get disqualified.

Hon. Wakhungu: Hon. Temporary Deputy Chairman, this is a very critical point. You could get professional services, say, medical or pharmaceutical services. The pharmacists have their own professional body. Those who have a diploma in pharmacy are pharmaceutical technologists and they too have their professional body. So, what discretion are you going to use in this case? I am saying this with due respect to Eng. Gumbo. We know that there is a Bill coming which is controversial in nature in that it stipulates that an engineer must be a graduate. We have engineers who have diplomas say, from the former Kenya Polytechnic. I am talking about protection. When it comes to procurement, it does not only have to be of quality, but there must be cost effectiveness. This is in line with the demand and supply law. Much as we have provided for this in different professional associations, we have cases where professional associations can compete. So, the cost effectiveness should apply. We should not just base it on the aspect

of quality. In line with the PFM Act, we are going to negate the issue of quality. I am looking at this amendment as one which is going to disadvantage other professionals. I do not know how the Chairman or Eng. Gumbo are going to address this concern.

Hon. (Ms.) Emanikor: Hon. Temporary Deputy Chairman, I want to support the amendment because the additional paragraph increases clarity and makes it more explicit and specific. If we leave it as it was, “assignments that can be carried out in substantially different ways” it would remain ambiguous and open to misinterpretation and abuse.

Hon. Mwaurya: Hon. Temporary Deputy Chairman, we are living in an era where there is a willing buyer and a willing seller where the pricing of services and goods is not determined by a guideline by a certain profession, but by the procuring entity and the one who is providing these services. This is already being experienced in the legal profession. Even when you have LSK giving the guidelines of how much one is supposed to charge as legal fees, people still negotiate. What would be the impact of such a clause in such a regime? In my opinion it does not serve right. It could disadvantage young and upcoming professionals at the expense of older ones who have already made a name for themselves.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I do not know where the difficulty is coming from. I am not a lawyer like you, hon. Temporary Deputy Chairman, but recently I heard of an advisory where the LSK was actually cautioning those lawyers who are charging below the stipulated fees.

The architects and quantity surveyors are covered by the Architects and Quantity Surveyors Act, Cap.530 of the Laws of Kenya. The engineers are covered by the Engineers Act which was passed in 2011. Section 58 of the Engineers Act says that professional services--- This is something that has been observed over a long period of time. It has been proven over time that where people come and start negotiating fees that have clear guidelines on how to go about them that undercutting sometimes is only a mirage and not an undercutting. We are only recognizing that they are all professional services already being regulated by Acts of Parliament which have been passed by this House.

I understand hon. Wamalwa’s argument. However, if we start to make laws which we do not recognize, then we shall be legislating in vain. I think this is what this amendment is trying to do.

Hon. Sakaja: Hon. Temporary Deputy Chairman, the concerns of the Members are understandable given that there are certain professions that are not regulated. There are also cases where you are looking at technologists versus those who are regulated by an Act of Parliament.

It clearly says here that, that particular profession has agreed to be regulated by an Act of Parliament in terms of the fees they charge. If that profession’s charges are not regulated by an Act of Parliament, then they are not using quality- based standards even if that profession was created by an Act of Parliament. There are certain professions whose fees have been determined. If you want to change that, for example, if lawyers want to stop being regulated in terms of the fees that they charge, they should amend the Law Society of Kenya Act. Each profession should amend their Acts, but you cannot create a law that negates other laws that currently exist. If we do so, we will be legislating in vain, which is why we were just recognising that, that law exists.

The Temporary Deputy Chairman (Hon. Cheboi): That has been clarified. Hon. Duba, are you a Member of the Committee? I am only giving a chance to Members who are going to clarify for the purposes of other Members to understand.

Hon. Duba: No, I am not.

The Temporary Deputy Chairman (Hon. Cheboi): I am not going to give you a second chance, Hon. Wamalwa unless you are on a point of order. Let me hear Hon. Duba.

Hon. Duba: Hon. Temporary Deputy Chairman, I am not a Member of the Committee, but I felt that in the course of the clarification, Hon. Gumbo has not made reference to what Hon. Wanga has alluded to in terms of engineers' estimates.

The Temporary Deputy Chairman (Hon. Cheboi): That should have been a point of order. But it is okay. Let me hear Hon. Ogari. Before Hon. Ogari, what is your point of order, Hon. Wamalwa? If it will be cured, that will be easier.

Hon. Wakhungu: On a point of order, hon. Temporary Deputy Chairman. When you look at the current regulations of public procurement based on the evaluation, we have a section on technical evaluation and financial evaluation. Unless you meet the minimum threshold of the technical evaluation, you will not be allowed to proceed to the financial evaluation. So, bearing this in mind, and these are the existing regulations for the procurement experts, if we emphasise the issue of the minimum professional fees, are we not going to negate the financial evaluation?

The Temporary Deputy Chairman (Hon. Cheboi): I can see Hon. Bunyasi wants to contribute. Are you a Member of the Committee? Let me have Hon. Ogari quickly. Let it be brief, so that we can have other Members.

Hon. Ogari: Thank you, hon. Temporary Deputy Chairman for the opportunity. It is important to understand that most of the main amendments were mainly Hon. Gumbo's, hon. Njuguna's and mine. We sat with the Departmental Committee on Finance, Planning and Trade and became part of the Committee for two continuous days to harmonise our amendments with theirs. That is why we thought it is important to make some clarifications. I can clarify on the engineer's estimates.

The Temporary Deputy Chairman (Hon. Cheboi): That is what I have just done Hon. Ogari. Proceed and clarify.

Hon. Ogari: When Hon. Wamalwa talks about technical evaluation, all professionals are in agreement with this Bill and in their Acts that we compete in the technical evaluation. Technical competition is what is being called quality in this Bill. The words "quality" and "technical" are the same. So, it is only in fees where professionals cannot compete because there is a regulation in another law as Hon. Sakaja has explained.

Hon. Wanga talked about engineer's estimates. We dealt with that earlier on in another clause and it deals with open tendering. This is open tendering where tenders are compared with the engineer's estimates. That is an estimate to do with the tenders and not the engineer's fees. The engineer's fee is separate and regulated.

Hon. Wamalwa also talked about professionals. We have so many professionals in this country including sweeping, cleaning and guard services. The key word here is "regulated", which means that they are created by an Act of Parliament. So, if professionals out there including cleaners can get an Act of Parliament which regulates

their conduct, fees and everything, they will qualify under this category. That is what I wanted to clarify.

The Temporary Deputy Chairman (Hon. Cheboi): I will give the chance to Hon. Bunyasi.

Hon. Bunyasi: Hon. Temporary Deputy Chairman, Hon. Ogari has said what I would have said. Since I have a bad voice, I will not bother to add to it. He has put it quite well. However, in the case of engineer's estimates, they would state the structural designs and the quantum of the inputs to be used so that you know pretty much what the quantities are going to look like based on the designs. So, you trust that. Anything else that comes from the tenderers is then compared with that. That is a legitimate way of getting an objective stand.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, I could see Hon. Wanga nodding.

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

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

(Clause 125 as amended agreed to)

(Clauses 126, 127 and 128 agreed to)

Clause 129

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 129 of the Bill be amended in subclause (3) by deleting the words "be a better offer than" and substituting therefor the words "have any price advantages over".

This is basically to make the intentions of that clause clearer. The interest we have is in the pricing. So, we are changing the words.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Njuguna, do you want to speak on that one?

Hon. H.K. Njuguna: Not on this one.

Hon. Ogalo: Thank you, hon. Temporary Deputy Chairman. The proposed amendment is in order. Anybody doing business with the Government is interested in the money they will be paid. So, putting the price as the underlying term is better than the vague term "offer".

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

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

(Clause 129 as amended agreed to)

(Clauses 130, 131, 132, 133 and 134 agreed to)

Clause 135

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 135 of the Bill be amended by—

- (a) deleting subclause (2) and substituting therefor the following new subclause—
“(2) An accounting officer of a procuring entity shall ensure that all complex and specialised contracts of a value exceeding Kenya shillings five billion are cleared by the Attorney-General before they are signed”.
- (b) deleting subclause (3) and substituting therefor the following new subclause—
“(3) Each Cabinet Secretary shall regularly inform the Cabinet and national treasury of all government contracts exceeding Kenya shillings five billion”.
- (c) inserting a new subclause immediately after subclause (3)—
“(4) Notwithstanding the provision of subsection (3) above, any Cabinet Secretary may brief Cabinet on any other project of national importance irrespective of its value”.

We are saying that all tenders exceeding Kshs5 billion are supposed to be cleared by the Attorney-General and the Cabinet Secretary responsible for that Ministry. The Committee felt that since it comes from the Ministry, it can only be cleared by the Attorney-General to avoid bureaucracy. That section also says that any contract cleared under subsection 2 shall be approved by the Cabinet before it is signed. After the contracts which are worth Kshs5 billion have been taken to the Attorney-General, they are then taken to the Cabinet for approval. Since the Attorney-General will look at the legality of the contracts, we can delete that subsection and provide that each Cabinet Secretary shall brief the Cabinet on such tenders as and when they occur. If we say that the Cabinet should sit and approve the contracts, that would cause a lot of bureaucracy. That is the thinking of the Committee.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see quite a lot of interest. I do not know if it is on this particular one. Let us start with the Leader of the Majority Party.

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Chairman. In my opinion, these are serious reforms of our procurement laws. If the value of a contract reaches Kshs5 billion, it is good for the Cabinet and the Chief Executive Officer (CEO) of the country to be aware. We have seen situations where Cabinet Secretaries are impeached

for something done at the lower level, which they may not even be aware of; like in respect of contracts of Kshs10 billion. Their names come here and they are taken to the Ethics and Anti-Corruption Commission (EACC). This law gives them more responsibilities. They can never again say that they are not aware of a particular contract.

Secondly, if a particular contract has gone through the Cabinet, chaired by the President, and serious corruption issues are raised, then that will also have an effect on the entire Government. I am sure that when people realise that a contract is going to the Cabinet, then a lot of the dealers will be very careful. This is to show that now Cabinet Secretaries have a serious responsibility on this matter. Some of them will tell you that they are not even aware of what procurement officers have done.

The Temporary Deputy Chairman (Hon. Cheboi): I see quite a few Members who have not spoken this afternoon. I will start with the Member for Kaiti. I do not understand why hon. Suleiman Murunga is putting up his hand. I cannot see his card here.

Hon. Makenga: Thank you, hon. Temporary Deputy Chairman. I rise to support this important amendment. The Attorney-General will be signing the contracts. It will be very important for the Attorney-General to look at mouth-watering contracts and contracts involving huge sums of money. Also the Cabinet Secretaries in charge of the particular Ministry should have a look at the contract documents.

I therefore support.

The Temporary Deputy Chairman (Hon. Cheboi): That is fine. We have to be brief, hon. Makenga. I see hon. (Eng.) Kiragu.

Hon. J.K. Chege: Thank you, hon. Temporary Deputy Chairman. I stand to support the amendment. If we were to make sure that every contract above Kshs5 billion goes to the Cabinet, this country would not even move. For example, road projects of like 30 kilometres or so will fall in this category. I believe that the projects of the value we are talking about are first approved at the Cabinet level. However, when it comes to implementation, I suggest that the Attorney-General can use various avenues for consultation, but not necessarily to send them over for approval.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear hon. Jamleck Kamau.

Hon. Kamau: Thank you, hon. Temporary Deputy Chairman. Indeed, I also support this amendment. However, I only have one query and the Chairman of the Committee can perhaps explain to us. Why specifically complex and specialised contracts? Why can we not say all contracts with a value exceeding Kshs5 billion? That might actually create some confusion. However, in essence, it is a good one.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have hon. Murunga. Approach the Dispatch Box. I am sure you are aware of the communication by hon. Speaker – that in the very near future, you will neither speak nor vote without your cards. That is communication that was given by hon. Speaker.

(Hon. Kasuti spoke off record)

The Temporary Deputy Chairman (Hon. Cheboi): Since you do not have a microphone, use hon. Wamalwa's then he will speak after you.

Hon. Kasuti: Thank you, hon. Temporary Deputy Chairman, for giving me the opportunity to support the amendment. This will help the Government, or the officers in the Government, to stop passing the buck for anything that they have been committing, in terms of amounts reaching Kshs5 billion. This is a huge amount, and the CEO of the country should know about it. It will help the procurement officers to desist from doing things which are not correct and ensure that when they engage themselves in any procurement issues, they do not make blunders which will commit the country to unnecessary loses in terms of money which is being spent unnecessarily. This amendment will help because procurement officers will be scared of sending to the Cabinet contracts that are not properly done.

Hon. Wakhungu: Thank you, hon. Temporary Deputy Chairman. Indeed, this is a good amendment. I sit in the Public Investments Committee (PIC) and we have seen a lot of issues, especially with parastatals. They come up with an amount of more than Kshs5 billion and yet the Attorney-General is not aware of anything. This is a good issue. However, my worry is that we should not do this, only for Cabinet Secretaries to take advantage of the situation and then we end up having a lot of bureaucracies, as hon. (Eng.) Kiragu said. My concern is on the county governments. I want the Leader of the Majority Party to listen. We are talking about the Cabinet and the Attorney-General. How are we going to handle this issue? This is because we see county governments coming up with projects beyond Kshs5 billion, maybe going within two or three years. We need to bring a further amendment. A lot of corruption has been devolved to the county government level. We need to address this issue.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I really think we have spoken on this matter. We cannot have everybody speaking on it. Everybody wants to speak, and I know it is important. Let me hear hon. Wanga. It has to be brief because there is a further amendment that has been proposed. We also want to clear it before 6.00 p.m. because there is a Procedural Motion coming up at that time. So, it has to be brief.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Speaker, I will be brief. The Leader of the Majority Party has already taken that aspect into account. If we subject every procurement entity to Cabinet approval, then we will also be subjecting the Parliamentary Service Commission and the Judicial Service Commission to the Cabinet. What will happen is---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Wanga, that is captured. I have seen the further amendment. It will probably cure your concerns.

I am going to give the chance to hon. Rasso.

Hon. Dido: Thank you, hon. Temporary Deputy Chairman. There are two amendments in that particular section. I support the first part but I do not entirely support the second one. This is because I still believe that the Cabinet has a very important role. There is the area of collective responsibility and prudent use of national resources, where all the Ministries are aware of the big projects that are going on. In this particular case we have made the Cabinet Secretary to just inform unlike what we had in the original section of the Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I am going to give the last one on this to Hon. Oburu Odinga before we move to the Procedural Motion and then we will resume.

Hon. (Dr.) Oginga: Thank you, hon. Temporary Deputy Chairman. This amendment was meant to take this matter to the Attorney-General for a legal advice. This is because we sometimes come across very many projects where the AG's opinion is not sought at all and the Government ends up losing a lot of money. Before any project, especially one of the magnitude of Kshs5 billion and above, there is always a Cabinet Paper presented to the Cabinet by the Cabinet Secretary concerned. So, there is no fear that the Cabinet will not have had a say on this matter.

The amendment is proper and I support it as it is.

PROGRESS REPORTED

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we will have to report progress at this point in time because there are some issues that need to be decided by the House. Therefore, in the light of our own Standing Orders where we have to do it 30 minutes before the end of the day, we will proceed and report progress.

Let us have the Mover then we can proceed to the next step. Hon. Mover, please.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee of the whole House doth Report to the House its consideration of the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and its approval thereof and seek leave to sit again today.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu) in the Chair]*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, hon. Members! Let us have the hon. Temporary Deputy Chairman report progress to the House.

Hon. Cheboi: Thank you, hon. Temporary Deputy Speaker. I beg to report that the Committee of the whole House has considered the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and approved the same with amendments and seeks leave to sit again today.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Can the Mover of the Bill move for the agreement with the Report?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report and also request Hon. Jamleck Kamau

to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Kamau: I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next Order!
Leader of the Majority Party.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.30(3)(a), this House resolves to extend the sitting time of the House until conclusion of business appearing under Order No.10 on today's Order Paper.

Hon. Temporary Deputy Speaker, we are remaining with very few clauses and this is a constitutional Bill. We want to send it to the Senate before we go on recess. I want to ask my colleagues that let us spare another 20 minutes after 6.30 p.m. so that we conclude and send the Bill to the Senate and wash our hands. I ask Hon. Jamleck to second.

Hon. Kamau: Thank you, hon. Temporary Deputy Speaker. This is a very important Motion before us and I think it is important for us to make sure that we finish everything today so that we can send this Bill to where it belongs.

Hon. Temporary Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, you are breaking to go to the Committee of the whole House as resolved by the House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

*(Resumption of consideration
in Committee interrupted today)*

The Temporary Deputy Chairman (Hon.) Cheboi: Order, hon. Members! We resume from where we left and that was at Clause 135. We were proceeding well. We can get the further amendment from the hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, we had concern on two amendments. I will move one and the other will be moved by Hon. Jamleck. We want to take care of the interest of Hon. Gladys Wanga who represents the Parliamentary Service Commission (PSC).

I beg to move a further amendment to subclause 2.

THAT, subclause 2 be further amended by deleting the words---

The Temporary Deputy Chairman (Hon.) Cheboi: Which clause Hon. A.B. Duale?

Hon. A. B. Duale: It is Clause 135 subclause 2.

THAT, subclause 2 be further amended by deleting the words “complex and specialized”. All projects and contracts above Kenya shillings five billion should have Cabinet approval with concurrence.

I beg to move.

The Temporary Deputy Chairman (Hon.) Cheboi: Well, who is seconding you?

Hon. A. B. Duale: The new Chairman of the reconstituted Public Accounts Committee.

The Temporary Deputy Chairman (Hon.) Cheboi: I give the Floor to Hon. Gumbo.

Hon. (Eng. Gumbo): Thank you, hon. Temporary Deputy Chairman. I wish to second the proposed further amendment by the Leader of the Majority Party. This is because it is a very clever amendment. You realise that if you say “complex and specialized” then you start getting into issues of measuring quality, and quality measurements can be rendered victims of subjective considerations. I think it is a very clever amendment. Even as I second, the Chair of the Committee is aware that my view had been that we should have lowered threshold to Kshs3 billion and not Kshs5 billion. However, it is expressing an opinion. We argued about it and it was informed because we looked at the schedule of Public Procurement and Disposal Bill and you will notice that procurements that are over Kshs3 billion are not that many.

Nevertheless, I wish to second the further amendment by the Leader of the Majority Party.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): We will have two Members to contribute and then we will make the decision.

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

We have another further amendment by Hon. JamleckKamau. Let us hear what your further amendment is.

Hon. Kamau: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 135 be further amended by inserting a new Subclause 4 that says “This section shall not apply to contracts by Parliament and the Judiciary”.

This is simply because of the doctrine of separation of powers. It is important for this only to be on the part of the Executive such that the Judiciary and Parliament will be on its own. That should be the way to go. I ask Hon. Wanga to second.

Hon.(Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I have already canvassed the position. I second.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear from a Member who has not spoken this afternoon. Hon. Member for Suna East.

Hon. Nuh: Hon. Temporary Deputy Chairman, I support the further amendment. However, I am also requesting the county governments to be included because they are also separate from the national Government. They want to do their own procurement.

The Temporary Deputy Chairman (Hon. Cheboi): I hear your point, but unfortunately the further amendment is specific. Therefore, we will deal with it. What is it Hon. A.B. Duale?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, very few counties receive over Kshs5billion. I do not think there will be a county that will spend Kshs5billion. If they do that, then they will have no salaries for---

The Temporary Deputy Chairman (Hon. Cheboi): The only concern I have and I do not want get into that--- We are not so sure. Supposing in future, there will be more funding to the counties, what will happen?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, there is what we call the intergovernmental relations. There is also the Cabinet Secretary for Devolution who can represent them in the Cabinet. There is a summit too. My only worry is that if we are bringing that reform to the national Executive who is going to prefect this Kshs5billion contract in the Judiciary and in this Parliament? Even the national Executive is overseen by--- We are talking about a contract and the general Parliament cannot do--- We must find another Cabinet that will deal with the Judiciary and Parliamentary Service Commissioners who are basically five people.

The Temporary Deputy Chairman (Hon. Cheboi): You have elicited a lot of points of order. What is it, Hon. Savula?

Hon. Angatia: Just a point of information, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): There is a way you approach the House when you want information. Whom are you informing and is he willing?

Hon. Angatia: Clarification, sorry.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Savula, you are now a very seasoned Member of the House. If Hon. A.B. Duale is not interested in the information, there is little we can do.

Hon. Angatia: I said clarification but not on Hon. A.B. Duale's issue.

The Temporary Deputy Chairman (Hon. Cheboi): Are you seeking clarification or you want to clarify yourself?

Hon. Angatia: I am seeking clarification from the Chairman here.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, let us hear it.

Hon. Angatia: The clarification is that we cannot have different procurement laws governing different governments; that is the county and the national Government. The procurement law in all democratic setups is one in the entire country. We have the county government of Nairobi City which has already advertised a Kshs6 billion hospital project. Shall we wait for the county government to misuse money from the Treasury and money that they have collected from the taxpayers and loans they will access so that we can make another law?

We bring it now then we clear it.

The Temporary Deputy Chairman (Hon. Cheboi): There is difficulty because I am only handling a further amendment that is before the House. Let me go first to Hon. Njomo and hear what he has to say. We will eventually come to you, Hon. Jamleck.

Hon. Njomo: Thank you, hon. Temporary Deputy Chairman. When we make this procurement law, it covers both the national Government and the county governments. There are no separate rules for the national Government and county governments. If it is a procurement rule and it requires "a", "b", "c", "d" to be done before any procurement is done, that applies to the county governments and the national Government. It is for all public procurements. We do not even have to make that amendment because it is already taken care of. This law will govern both the national Government and the county governments. Even parastatals will follow these same public procurement laws.

The Temporary Deputy Chairman (Hon. Cheboi): In my opinion, that is a very convincing argument. That is why Hon. Gumbo was saying that it should have been lower. Let us leave it at that. Let me hear the Chair of the Committee.

Hon. Langat: Hon. Temporary Deputy Chairman, if you look at what the Bill is providing, it covers the counties. It says that "an accounting officer of a procuring entity". A procuring entity has been defined and it includes county governments and all State organs. That is already covered.

The Temporary Deputy Chairman (Hon. Cheboi): You have clarified that bit. Let me hear Hon. Jamleck.

Hon. Langat: Hon. Jamleck's amendment talks about contracts by Parliament. Part of that clause says that they will be reported to the Cabinet. It is just that bit of reporting to the Cabinet that we feel should not be done that way. The Judicial Service Commission and Parliament are independent. There are many other ways of capping corruption issues.

The Temporary Deputy Chairman (Hon. Cheboi): We will have Hon. Jamleck and that will be it.

Hon. Kamau: Hon. Temporary Deputy Chairman, without belabouring the whole issue, it is clear that the only two arms of the Government that are excluded from this law are the Legislature and the Judiciary. All procurement agencies including the counties are part and parcel of this law.

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

The Temporary Deputy Chairman (Hon. Cheboi): Now, let us go back to the amendment itself. We have dealt with two further amendments. We had exhausted the discussion on the amendment. So, we will proceed and put the Question.

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

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

(Clause 135 as amended agreed to)

Clause 136

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 136 of the Bill be amended by deleting paragraph (c) of subclause (6) and substituting therefor the following new paragraph—

“(c) price schedule or bills of quantities submitted by the tenderer”.

This is to further clarify subclause 6(c).

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to Hon. Ogalo. Sorry, he has removed his card. Hon. Nicholas Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I wish to support the proposed amendment by the Committee Chair.

Clause 136 talks of creation of procurement contracts and this addition of price schedules or bills of quantities submitted by the tenderer is an important inclusion into where we are looking at subclause (6). The clause says the tender document shall be the basis of all procurement and shall constitute as a minimum--- If you look at what has been provided, it basically talks of notification of award, but if you leave out price schedule or bills of quantities submitted by the tenderer then you are talking of an incomplete tender document. So this is a very good amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Hon. Njomo. Do you want to speak to this one?

Hon. Njomo: No.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Savula, are you speaking to this one?

Hon. Angatia: No, I am not ready for this one.

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

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

(Clause 136 as amended agreed to)

Clause 137

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 137 of the Bill be amended by—

(a) deleting the words “the accounting officer of a procuring entity may notify, under section 86(1), the person who submitted the second lowest evaluated tender” appearing in subclause (1) and substituting therefor the words “he or she shall forfeit his or her tender security and the procurement process shall proceed with the next lowest evaluated tenderer”;

(b) deleting subclause (2);

(c) deleting subclause (3)

(d) deleting subclause (4).

This section deals with a case where the procurement process has proceeded and the person who has won has refused to sign the contract. What the Committee felt was that if he refuses then the next person who was evaluated to be the lowest should be given the job and that process ends there. The other amendment which I am proposing is once we have amended that section to say we give to the second evaluated tender then the other subclauses become irrelevant. That is why we are deleting them.

The Temporary Deputy Chairman (Hon. Cheboi): very well.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see only the Member for Kaiti.

Hon. Makenga: Thank you, hon. Temporary Deputy Chairman. I support the amendment. If the tenderer refuses to sign the contract, the second best tenderer should be awarded. That would enable the procuring entity not to subject the process to retendering. So, if the second best would be given the opportunity that would be okay.

So, I support.

The Temporary Deputy Chairman (Hon. Cheboi): very well.

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

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

(Clause 137 as amended agreed to)

(Clause 138 agreed to)

Clause 139

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 139 be amended by inserting the following new subclause immediately after subclause (4)—

(5) This section shall not apply to procurement contracts awarded by the national security organs.

Hon. Temporary Chairman, these are the same issues that we discussed yesterday. Clause 139 says that all this information should be publicised and put on notice boards. My problem is, for example, if we want to procure a specific number of guns with particular specifications, or even aircraft for use by our defence forces. If we put it on all the notice boards and make it public, that will give leeway to our enemies. That is why I said that for this particular item, they should not be put on notice boards so as to safeguard our national security interest. That is what my amendment is saying.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. (Eng.) Kiragu. I will give chance to a few Members on this one.

Hon. J.K. Chege: Hon. Temporary Deputy Chairman, I support because I do not think we can overexpose ourselves on matters of security. It will not be in the national interest to do so.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I support the amendment by hon. Duale for the reasons that he has given. We cannot be exposing our national security issues. This concern was also raised yesterday when he brought the other amendments. However, the responsible procurement entities should be very careful not to misuse the privacy that we are giving to our national security organs. I know rangers say that their guns are too heavy and long. Such things have been misused in the past. You will find that items with wrong specifications have been procured because there was no scrutiny of security tenders. This is an important amendment but we must guard against misuse.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Wanga has really dramatised this matter, especially on the weight bit. Let us hear the Member for Migori, Hon. Danita Ghati.

Hon. (Ms.) Ghati: Thank you, hon. Temporary Deputy Speaker. I have been quietly sitting here. As a Member of the Committee on Defence and Foreign Relations, I want to support the amendment by hon. Duale. That is part of the issues that have been coming up in our Committee as regards matters of security. It is common practice that any country should not publicise their security issues.

I highly support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Ngunjiri.

Hon. Ngunjiri: Thank you, hon. Temporary Deputy Chairman. I support the amendment because when it comes to security, all of us are involved. We would, therefore, like to support anything that is intended to help us and the community as far as security is concerned.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, I have to put the Question.

Let us hear Hon. Junet.

Hon. Nuh: Hon. Temporary Deputy Chairman, I oppose the amendment. The issue of security has been misused many times. Even if it is something that concerns security, it should be listed down. If it is guns or gumboots and you do not publish them--

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(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order! Order, hon. Members! Hon. Junet will be heard in silence. This is a debating chamber, hon. Members. Even if it is not time to go into details, hon. Junet should be heard in silence.

Hon. Nuh: I am not saying that issues of security should be exposed but we should know them. We have seen cases where clothes and sugar have been disguised as security items. We want to know if it is guns. We should categorize the issues of security so that we know these are security items and should not be published.

The Temporary Deputy Chairman (Hon. Cheboi): Let me allow hon. Gaichuhie because I can see he is also very animated there.

Hon. Gaichuhie: I support the amendment by hon. Duale but I think it should have been clearer in saying "specified security items" and not just "security items." We can talk of goods and anything else but we should be specific or classify them.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear from somebody who has probably been a beneficiary. Hon. Rasso, the Floor is yours.

Hon. Dido: Thank you very much, hon. Temporary Deputy Chairman. I rise to support that amendment. I think it is international best practice hence we are not doing anything new as Kenya. Internationally this is what happens.

Secondly, that is one reason why we have the Committee on Defence and Foreign Relations. It is supposed to oversee the area where they are buying specialized

equipment. Before the equipment is bought, the Cabinet is fully versed with what is being purchased and not necessarily in terms of quantity.

The Temporary Deputy Chairman (Hon. Cheboi): Members, it is time we took a decision on this.

(Question of the amendment proposed)

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

Hon. Members, the nominated Member here has just walked in. I do not know if you had the benefit of ---The “Ayes” was very loud. That is with a light touch.

(Clause 139 as amended agreed to)

Clause 140

Hon. Langat: Hon. Temporary Deputy Chairman, I wish to move:-

THAT, clause 140 of the Bill be amended—

(a) in subclause (2) by deleting the words “ a tender committee” appearing immediately after the words “ recommendation of” and substituting therefor the words “evaluation committee”;

(b) by deleting subclause (3) and substituting therefor the following new subclause (3)—

“(3) No contract price shall be varied within 12 months from the date of the signing of the contract.”

(c) in subclause (4) —

(i) by deleting the word “ten” appearing in paragraph (b), and substituting therefor the word “fifteen”

(ii) by deleting the word “fifteen” appearing in paragraph (c) and substituting therefor the word “twenty”;

(d) by inserting the following new subclause immediately after subclause (5) —

“(6) Where variations result in an increment of the contract price by more than twenty-five percent, such variations shall be tendered for separately”.

This Clause deals with amendments or variations to contracts. One of the amendments there seeks to make the Bill consistent. In the Bill, we only have one Committee which is the Evaluation Committee. However, that section at some point refers to tender committee. So, we are actually aligning it to the other sections of the Bill.

Hon. Gumbo and hon. Ogari were there. In Clause 3, they are saying no tenderer shall vary a contract. They said variations are done by the procuring entity and not the tenderer himself. We are just making sure that the English is correct.

The other amendment to subclause (4) is about the extent to which we can vary. Hon. Gumbo felt that for goods and services to say 10 per cent is a bit low. We can allow variation to increase by maximum of 15 per cent as opposed to 10 per cent. Subclause (c)

is also about the same thing. We are increasing variation of works from what is provided. We said it can be varied up to 20 per cent without necessarily going through tender.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, what is your point of order?

Hon. (Eng.) Gumbo: On a point of order. This amendment looks small but we had a big argument about it.

If you read clearly the amendment that is proposed under subclause (3), it says that no contract shall be varied within 12 months from the date of signing of the contract. For me, it is like putting handcuffs around the hands of procuring entities. We explained with hon. Ogari that variation does not necessarily mean increase in price. Sometimes it means moving downwards. It can be up or down. Most fundamentally, what happens to contracts that last shorter than one year? There are contracts for supply of good which are shorter than one year. Before I came here, I used to be an ICT consultant. I know there are active elements like switches that within the supply period from the time you procure to the time you supply, it is usually about six months. Within that time the specifications will have changed. Sometimes because it is an electronic item it gets cheaper. So, when you put this clause, are you not uncovering the procurement entity?

The Temporary Deputy Chairman (Hon. Cheboi): You have just said that you were in the Committee and you discussed it with the Chair. I was trying to see whether you are supporting or opposing because you said that you had made agreements with the Committee. Are you opposing or supporting? It is good to be clear.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, with all due respect to the Chair of the Committee, this is not what we agreed. My amendment was proposing a total deletion of that clause because it is superfluous. It does not make a difference at all. I agree with those other amendments that he spoke about like increasing the quantum of variations.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat, did you flout the gentleman's agreement?

Hon. Langat: Hon. Temporary Deputy Chairman, when we go to the harmonisation process, we look at what has been proposed and the Committee decides and agrees. We may not have agreed with him as a Committee, but I am stating what the Committee finally agreed.

If we were to go Hon. Gumbo's route, it is very dangerous. Some of the price competitions are usually on less than 10 per cent. The next one may be less by 5 per cent or higher by 10 per cent and one is excluded. So, if we allow variations before 12 months are over, people will collude, win the tender and then say that there are issues and they want to vary the tender. Then they will increase the price by 10 per cent. In the next clause, we are allowing them to vary from 10 per cent to 15 per cent. If we allow this to happen, it will mean that people will collude, technically knock others on price and then before two months are over, come back and say that there is a variation. You will

increase the price higher than the price by the second person who was knocked out. If you were to vary a price before 12 months are over, then it means that the process was not serious enough.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Ogari.

Hon. Ogari: Thank you, hon. Temporary Deputy Chairman. We had a very heated argument on the issue of breaching a gentleman's argument and actually, it was my amendment. It was based on some of our experiences in the works which last long. I totally dispute what Members think that we do not have variations which go down. I have been a consultant for many years and most of the times, I return money to the clients.

For example, when we measure foundations when doing a building, we declare the saving early to the client or warn him of an impending over-expenditure because the foundations went further than before. That is done within three months.

I propose that we delete this clause. Because of the pressure that we had, we had agreed with the Chairman that if we did not agree with the Committee on some of the amendments that we were trying to harmonise, they were then supposed to appear on the Order Paper on their own, so that we could argue our case on the Floor. But they did not appear. That is what I would have presented. I am not sure whether I can commit my support or not.

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to three Members. I will start with Hon. Gaichuhie.

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. We looked at that clause and we decided to delete it. It provides that anybody can be awarded a tender today and out of other various reasons, within even a week, they come and say that things have changed. We thought that when people quote, the prices are normally very high. The difference in the quoted prices is between 5 to 10 per cent. We thought that if we allowed people to vary prices within a week, a month or two months, it means that if I tendered just below by just 3 per cent and the tender is given to somebody else, tomorrow they may come and vary prices to 10 per cent. They will justify why they are varying their prices. If we allow him, we shall have disadvantaged the other person.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have other Members also contributing to it. Let me have Hon. Junet.

Hon. Nuh: Hon. Temporary Deputy Chairman, this amendment should be deleted. This is because when somebody comes to vary a tender that he has won, he will justify the reasons for varying. On the contrary, you may be given a tender and circumstances which are beyond your reach affect that tender. The circumstances can be monetary, market, money exchanges and other international markets. If you lock that amount to 12 months and the monetary market changes, that person will be in big problems with that tender.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us hear Hon. Wanga before I come to Hon. Rasso. Okay, I will give chance to two more Members. Let us be brief so that we can have time for all.

Hon. (Ms.) Nyasuna: Thank you, hon. Temporary Deputy Chairman. The reasons given by the Chairman of the Committee for this clause do make sense. However, I do not think they are matters to be controlled by law. That is why you have an evaluation committee or the accounting officer and that whole team that looks at the

variations and sees whether it is justified or not and can either reject or accept it. When you limit it to 12 months, that you should have been in the contract for 12 months then the issues raised by Hon. Gumbo arise: “What of contracts that are less than 12 months in themselves?” Then you come to other issues where there is a pressing issue that requires you. For example, you are ordering goods and then you discover that the numbers have gone higher. That is not a 12-months affair but you may want to vary it within that time so that you say: “Okay. We now have the Senate as well. Can you add a certain number of things there?” You are limiting people by law on matters that can very well be dealt with administratively. We are also trusting the entities that we are giving the power to look at variations, whether they make sense or not.

The Temporary Deputy Chairman (Hon. Cheboi): I am just wondering aloud as I sit here: “If something can be dealt with administratively, what would be the harm with also dealing with it legally?” That is my thought and I do not want to be part of the argument. Let me give an opportunity to Hon. Savula and finalise with Hon. Rasso.

Hon. Angatia: Thank you, hon. Temporary Deputy Chairman. I would like to support the Chairman of the Committee on this issue of variation to be done within 12 months. Business is a risky venture. When you are investing in business, you have to insure your business. If there happens to be a downfall in monetary valuation, a disaster or a calamity, the insurance company will cater for that if you insure a project. What has been happening in towns especially Nairobi is a problem of middlemen, brokers and briefcase businessmen. They canvass for these deals and make cuts out of a project variation. A foreign company is awarded a tender in this country, but there are idlers in this town who canvass and say they can do a project variation the second or third month so that they make a cut of 10 or 20 per cent and they share. We want to protect Kenya’s money from brokers.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, Hon. Savula. Please allow another Member because I want to give more chances. I can see this is something you need to speak to. Hon. Rasso, then I probably will look at gender.

Hon. Dido: Thank you, hon. Temporary Deputy Chairman. I rise to support this amendment on the grounds that it is one of the means of safeguarding public funds. Secondly, this variation of contracts is the most abused process in this country. This is because even before a project has started, somebody knows that the price will be varied. The Committee in its wisdom has built in some form of safeguards. It may not necessarily be the best but it is a safeguard.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly and for gender, let us have Hon. Nyokabi.

Hon. (Ms.) Kanyua: Thank you, hon. Temporary Deputy Chairman. We need to consider certain things. The Government is notorious for ensuring that contracts run out, last and go over a year. When a contract has ended and they are supposed to retender, the award letters will come a year later. So, there is a price difference for one full year? We need to take into account certain blockages that have been in the system that prevent people from ensuring that they are awarded their contracts on time. If we are not going to legislate that if a tender is put in the newspaper it must be awarded within three months, it will not be proper. Tendering normally goes on for a year or even a year-and-a-half. So

when the person is awarded with the prices you gave a year ago, of course, things will have changed, so what happens then?

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, I have been approached by the Chair of the Committee and I think there seems to be some further amendment which is as a result of some consensus. He wants to move and I will allow him.

Hon. Langat, move your further amendment please. It has to be clear and brief.

Hon. Langat: Hon. Temporary Chairman, I wish to move a further amendment to subclause 3 by inserting the word “upwards” between “varied” and “within.” So that it reads “no contract price should be varied--

The Temporary Deputy Speaker (Hon. Cheboi): Let it be clear, what did you say?

Hon. Langat: Hon. Temporary Deputy Chairman, I am saying, I wish to move a further amendment to sub-clause 140(3) by inserting the word “upwards” between “varied” and “within”. So that it reads “no contract price shall be varied upwards within 12 months from the date of signing of the contract”.

The Temporary Deputy Speaker (Hon. Cheboi): I am wondering, what is the difference between what you are moving and what you had?

Hon. Langat: Hon. Temporary Deputy Chairman, that means if the procuring entity is making a saving, you can vary downwards.

The Temporary Deputy Speaker (Hon. Cheboi): I have understood. Who is seconding you?

Hon. Langat: I request Hon. Gumbo to second me on that.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I think that inclusion gives us the flexibility we needed because it goes to address the fears I had and what hon. Ogari said, that variation does not necessarily mean upwards only but variation can be a saving and most times it is a saving. So, by putting the word “upwards,” we are saying that as long as you are saving money, because if we left it that way, it would mean even where the client has an opportunity to save money, their hands are in handcuffs and they cannot do it. I think it is really a good amendment.

The Temporary Deputy Chairman (Hon. Cheboi): I really wanted to be clear on this. It is obviously good when there is a saving, but is there a company which would win a tender and then vary to come downwards? But since we might be having it in future, I think it would be a good one. The issue is you have already won the tender, but it is up to you hon. Members, I only preside here.

(Question of the further amendment proposed)

I will give an opportunity to only two hon. Members.

Hon. Member: Give an opportunity to Hon. Gumbo.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, Hon. Gumbo has just seconded. Hon. Gumbo, I am not going to give you that opportunity. These are issues of semantics, when you rose, you were rising to second. I think that is out of order. You cannot take 10 minutes seconding and then you leave the last bit.

I will give an opportunity to Hon. Dalmas Otieno and one other member and we will dispose of.

Hon. Anyango: Hon. Temporary Deputy Chairman, honestly, we do not need the word “upwards” because the tenderer is always in battle with the procurement agency. The more money he makes, the better. So, if the tender is valid, we expect it to go higher. The reason I support the 12 months is because we are also increasing the limit from 10 to 15. Variation is always used in the technique of tendering. Somebody deliberately tenders low to win knowing what clauses he will use in the Engineering, Procurement and Construction policy (EPC) to vary it upwards. Now, if you lock in for 12 months, they have to be careful that there is a law on sustained period before they can bring the variation. They would have to be assessed in some other ways if they really deserve that variation. So, I support but there is no need to add the word “upwards” because if it is downwards, it must have been a tender subject to evaluation.

The Temporary Deputy Chairman (Hon. Cheboi): I will give one last Member on that one and then we dispose it. Hon. Jamleck.

Hon. Kamau: Hon. Temporary Deputy Chairman, I also want to ask my colleague, the Chairman of this Committee to think of that further amendment because what is good for the gander is good for the goose. The minute you deny an upward trajectory, the same case would not be a downward trajectory. Therefore, the best thing to do is to say that there will be no variation whatsoever for the next 12 months. Forget about upwards or downwards. I would appeal that you just leave it the way it is.

The Temporary Deputy Chairman (Hon. Cheboi): What is it Hon. Langat? You have moved your further amendment with all its comings. Let me not say---

Hon. Langat: My amendment was prompted by the comment from the Members. There may be cases where variations are done downwards. In the unlikely event that such a thing occurs, we must have the provision in law to allow it to happen. In the unlikely event that it occurs, there must be a law that provides for that but if it does not occur, again there is no harm.

The Temporary Deputy Chairman (Hon. Cheboi): It is up to you Members to legislate.

*(Question, that the word to be inserted
be inserted, put and agreed to)*

We will go back to the original clause which I will now proceed and put the Question. We had canvassed that one, Members.

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

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

(Clause 140 as amended agreed to)

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Let me congratulate the hon. Temporary Deputy Chairman for leading us so proficiently. We are in Clause 141.

Clause 141

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 141 of the Bill be amended by inserting a new paragraph immediately after paragraph(c)-

“(ca) the methods of computing interest and liquidated damages shall be as prescribed in the Regulations.”

The amendment seeks to say that the methods of paying interest in case of delays in payment shall be provided for in the regulations because some of them are detailed. Let us leave it to the regulations.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I have no opposition to this amendment. I support it. We agreed with the Chair, but maybe the Chair was running low on sugar because we did it very late. He said he was running short on sugar. Hon. Ogari had proposed that we will put “the methods of computing interest and liquidated and ascertained damages” and the Chair agreed. I would request the Chair of the Committee that we add the term “the methods of computing interest and liquidated and ascertained damages”. That is a contractual term. You cannot just have liquidated damages. It is “liquidated and ascertained damages.” Can I move a further amendment?

The Temporary Deputy Chairman (Hon. Kajwang'): You want to move a further amendment?

Hon. (Eng.) Gumbo: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): What is the text? You have not shown us your text. Whose amendment is this? Is this the Chair's amendment?

Hon. (Eng.) Gumbo: It is owned by the Chair, but it is ours.

The Temporary Chairman (Hon. Kajwang'): Chair, is that the position?

Hon. Langat: I have no objection.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move a further amendment:-

THAT, Clause 141 of the Bill be further amended by inserting the words “and ascertained” between “liquidated” and “damages”. So that it reads, “the methods of computing interest and liquidated and ascertained damages shall be as prescribed in the Regulations.”

The Temporary Deputy Chairman (Hon. Kajwang’): You are using the word “and”. Could I have this amendment in written form, so that I get you properly? You are pronouncing “and” as “an” and I do not know which one you are talking about.

Hon. (Eng.) Gumbo: It should read, “the method of computing interest, liquidated and ascertained damages shall be as prescribed in the Regulation”.

I ask Hon. Ogari to second.

Hon. Ogari: Hon. Temporary Deputy Chairman, I beg to second.

I wish to draw the attention of the House that this was my amendment. We had discussed it with the Committee. My idea was different and I had given them the systems of calculating this, but the National Treasury found it to be too long. We agreed to transfer the whole of this to the---

The Temporary Deputy Chairman (Hon. Kajwang’): What are you trying to do here, Hon. Ogari? My understanding of liquidated damages is that they are ascertained damages. Once you mention the word “liquidated” in English and in law, it means that those damages have crystallized. They are known. They are ascertained. Why are you adding an English word which repeats the same thing?

Hon. Ogari: The technical term that we use in construction works is “L and A”, which means “liquidated and ascertained damages.” We are basically bringing in the technical term as used in the contract document for works. They could mean the same legally because I know you are a lawyer.

The Temporary Deputy Chairman (Hon. Kajwang’): I have no problem in making legislation clear although the word “liquidated” comprises that word that you are adding. You are just making it clear.

Hon. Ogari: I support.

The Temporary Chairman (Hon. Kajwang’): You support. Let us deal with the further amendment first.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Shall I put the Question?

Hon. Members: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): Do you understand where we are going?

Hon. Members: Yes.

(Hon. (Eng.) Gumbo spoke off the record)

The Temporary Deputy Chairman (Hon. Kajwang’): Can I have you on the microphone?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, you are deleting interest but we did not delete it.

The Temporary Deputy Chairman (Hon. Kajwang’): No, you were not listening. You have spoken to this and you have just improved the language.

Hon. (Eng.) Gumbo: I beg your pardon---

The Temporary Deputy Chairman (Hon. Kajwang’): You have brought a variable and so you are putting a comma somewhere and removing “and”.

Hon. (Eng.) Gumbo: I beg your pardon, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): So you understand where we are going?

Hon. (Eng.) Gumbo: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): So, shall I put the Question?

Hon. Members: Yes.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Let us go back to the Chairman’s amendment. Who had it? That was well discussed, is it not? So we now put the Question on paragraph (c).

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

(Clause 141 as amended agreed to)

(Clause 142 agreed to)

Clause 143

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 143 of the Bill be amended—

(a) by deleting subclause (1) and substituting therefor the following new subclause—

(1) Subject to the regulations, a successful tenderer shall submit a performance security equivalent to no more than ten per cent of the contract amount before signing of the contract”

(b) in subclause (3) by inserting the words “or works and supplies reserved for women, youth, persons with disabilities and other disadvantages groups and for these categories, the performance securities that may be waived or fixed at no more than one per cent of the contract price immediately after the word “Regulations”;

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kaiti, are you speaking to this?

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

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

(Clause 143 as amended agreed to)

Clause 144

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-
THAT, Clause 144 of the Bill be amended by deleting the word “shall” appearing immediately after the words “and it shall” and substituting therefor the word “may”.

(Question of the amendment proposed)

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

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

(Clause 144 as amended agreed to)

Clause 145

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-
THAT, Clause 145 of the Bill be amended—
(a) in subclause (1) by deleting the word “of” appearing immediately after the word “performance”;
(b) by inserting a new subclause immediately after subclause (4) —
(5) The Cabinet Secretary shall make regulations for the better carrying out of this section.

(Question of the amendment proposed)

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

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

(Clause 145 as amended agreed to)

Clause 146

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, clause 146 be amended in subclause (2) by inserting the words “except in cases of procurement for works where the period shall commence from the date of practical completion or handover, whichever is earlier “immediately after the words “retention period”.

(Question of the amendment proposed)

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

(Clause 146 as amended agreed to)

(Clause 147 agreed to)

Clause 148

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, clause 148 of the Bill be amended by—

- (a) renumbering the existing provision as subclause (1);
- (b) by inserting a new subclause immediately after the renumbered subclause (1)

—
“(2) The Cabinet Secretary shall make regulations for the better carrying out of this section.”

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Limuru, you are on my screen throughout. Is there something out of order?

Hon. J.K. Chege: No.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay, that is just your way of showing the Chair that you are around.

(Question of the amendment proposed)

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

(Clause 148 as amended agreed to)

(Clauses 149 and 150 agreed to)

Clause 151

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 151 of the Bill be amended in—

- (a) subclause (1), by inserting the words “or his or her appointed representative” immediately after the word “officer”;
- (b) subclause (2), by inserting the words “or professionals engaged to work on behalf of the accounting officer” immediately after the word “department”;
- (c) subclause (3), by inserting the words “or professionals engaged to work on behalf of the accounting officer” immediately after the word “department” wherever it occurs.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman that was my amendment. If you look at Clause 151, where goods and services in sub-section 2 are of technical nature, we have the words “professionals engaged” to work on behalf of the accounting officer. I support that amendment.

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

(Clause 151 as amended agreed to)

Clause 152

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 152 of the Bill be amended in subclause (2) by deleting the word “act” appearing in paragraph (j) and substituting therefor the word “acts”.

(Question of the amendment proposed)

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

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

(Clause 152 as amended agreed to)

*(Clauses 153,154,155 agreed to)
Clause 156*

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 156(4) of the Bill be amended by deleting the words “as prescribed” appearing immediately before the words “shall be” and substituting therefor the words “above fifty-one percent of Kenyan shareholders”.

(Question of the amendment proposed)

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

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

(Clause 156 as amended agreed to)

(Clause 157 agreed to)

Clause 158

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, clause 158 of the Bill be amended—

(a) by deleting subclause 4 and substituting therefor the following new sub clause —

“(4) For the purpose of protecting and ensuring the advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination, reservations, preferences and shall apply to —

- (a) candidates such as disadvantaged groups;
- (b) micro, small and medium enterprises;
- (c) works, services and goods, or any combination thereof;
- (d) identified regions; and
- (e) such other categories as may be prescribed”

(b) in subclause (5) by inserting the words “which shall not be less than thirty per cent” immediately after the words “procurement budget”;

(c) in subclause (8) by inserting a new subparagraph immediately after subparagraph (ii) —

“(iia) the prescribed threshold for exclusive preference shall be above five hundred million shillings.”

(d) by inserting the following new subsections immediately after subsection (9)—

(10) Despite subsection (2) or any other provisions of this Act, every procuring entity shall ensure that at least thirty percent of its procurement value in every financial year is allocated to the youth, women and persons with disability”.

(11) Every procuring entity shall ensure that all money paid out to an enterprise owned by youth, women or persons with disability is paid into an account where the mandatory signatory is a youth, woman or a person with disability”.

(12) The procuring entities at the national and county level shall make a report after every six months to the Authority”.

(13) A report under subsection (12) shall—

(a) certify compliance with the provisions of this section; and

(b) provide data disaggregated to indicate the number of youth, women and persons with disability whose goods and services have been procured by the procuring entity.

(14) The Authority shall make a report to Parliament after every six months for consideration by the relevant committee responsible for equalization of opportunities for youth, women and persons with disability, which report shall contain details of the procuring entities and how they have complied with the provisions of this section”.

(15) The Cabinet Secretary shall prescribe the preferences that shall facilitate the attainment of the quota specified in subsection (10) in order for the State to achieve the objectives of Articles 55 and 227(2) of the Constitution”.

(16) The preferences referred to in subsection (15) shall—

(a) be prescribed within ninety days after commencement of this Act;

(b) be subject to such conditions as the Cabinet Secretary may specify therein but such conditions shall not pose any unnecessary impediment to the youth from participating in public procurement.

(17) The national treasury shall operationalize a preference and reservations secretariat to be responsible for the implementation of the preferences and reservations under this Act which shall be responsible for—

(a) registration, prequalification and certification of the persons, categories of persons or groups as provided in for under Part XII;

(b) training and capacity building of the above target groups;

(c) providing technical and advisory assistance to procuring entities in the implementation of the preferences and reservations under this Act; and

(d) monitoring and evaluating the implementation of the preferences and reservations under this Act.

(18) The national treasury shall provide adequate staff and resources for the operations of the secretariat”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Nominated Member hon. Sakaja you are on my list.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman. Kindly indulge me just a little bit because this is really very key clause. This is a clause we have tried to amend for the last two years. It is part of what I had brought earlier which this House passed. Quickly, the amendment in Clause 4 is to prescribe and differentiate---

The Temporary Deputy Chairman(Hon. Kajwang’): Are you in support of the amendment?

Hon. Sakaja: I am in support.

The Temporary Deputy Chairman (Hon. Kajwang’): You are explaining the text of the amendment?

Hon. Sakaja: Yes. Just very quickly so that Members can understand what this amendment is all about because this is key one for some of us.

Clause 4 differentiates between disadvantaged groups, micro, small and medium enterprises as it was earlier by specifying that candidates as disadvantaged groups must be protected. This is a clause that deals with preferences and reservations.

Clause 5 provides that instead of just saying that procuring entity shall deserve a prescribed percentage of its procurement budget of the disadvantaged group, it is prescribing that it is 30 per cent. This goes hand in hand with Clause 10 which states that every financial year, every procuring entity shall ensure 30 per cent of the procurement value of every financial year is allocated to youth, women and persons with disability. It is specific in terms of saying its value. Not the number of contracts or just the disadvantaged groups generally as the Senate did last time, rather it is youth, women and people with disability.

Clause 8(iia) has given a preference of above Kshs 500 million where the Cabinet Secretary is mandated to set a threshold where only Kenyan contractors can compete for tenders. That threshold that she or he will set cannot be more the half a billion. We hope that it goes higher so that the Cabinet Secretary can prescribe that every contract that is above Kshs 600 million, it can only be bided for by Kenyan contractors. This is to protect Kenya and to buy Kenyan.

On Clause 11, we have seen that with these preferences of 30 per cent for youth, women and people with disability, some people have been misusing it and registering businesses purporting to be youth. Every procurement entity will ensure that the money they pay out to a youth, women or people with disability business it is paid into an account where the mandatory signatory is a youth, woman or a person with disability. If beyond that the youth goes to take that money and gives it to the sponsor, they will be on their own because we have done as much as we can.

Clause 12 is the issue of monitoring and evaluation. Instead of just stating that these entities from the national to the county level must give 30 per cent, there must also be monitoring and evaluation. After every six months, each and every entity must give a report to PPOA stating how many contracts and of what value they have given to the youth, women and persons with disability. After that PPOA gives a report to the committee in Parliament charged with equalisation of opportunities, which incidentally I happen to chair, and thereafter we bring a report to this House to show which governors

are not giving youth contracts, which Cabinet Secretary is not giving women contracts and which entities are not abiding by this provision.

Clause 14 bases itself on the issue of a Parliamentary report every six months. This is a report that we shall be taking very seriously.

Clause 15 talks about preferences to facilitate attainment of the quota in order for the State to achieve. This is just stating the principle which is actually enshrined in our Constitution in Articles 55 and 227(2).

Clause 17 is also fundamental because the Constitution provides for a secretariat within the National Treasury that will actually operationalize a preference and reservations register for this young people. We know they have been registered but there is nothing that protects them. For instance, there is only one lady, Mrs. Otunga who has been handling this alone. Many young people in far-flung areas across this country are not able to get registration. Women are not able to register but this is providing for them a secretariat that will monitor and evaluate implementation of the preferences, provide training and capacity building for the target groups. This is meant to show our young people, women or people with disability how to tender for this contract and how to compete so that ultimately this will not just be provisions on paper but they will be able to be implemented.

Finally, we state that the National Treasury shall provide adequate staff and resources for the operation of this secretariat so that it is not frustrated. I have given an overview and I urge you, Chair, as I support it, to also give an ear to the Chairman of the Public Accounts Committee because he was also very instrumental in this session.

I support.

The Temporary Deputy Chairman (Hon. Kajwang’): If you are in support, I will not take some more unless you are in objection to it; unless you want to speak to something new that he has not spoken to.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, what Hon. Sakaja has done is commendable. For a long time, we have been even embarrassed to accept that in Kenya, Kenyans should come first. When we were doing the National Construction Authority Act, one of the most embarrassing moments that I have had is when a senior Government official called me in the middle of the night to tell me that if we did what Hon. Sakaja is trying to do, we were going to chase away foreigners from Kenya. Honestly, I felt so ashamed. Through what we did jointly with Hon. Sakaja, we are now reaffirming that this country is for the people of Kenya. The people of Kenya must do business without being embarrassed that they are working in their country. This is the first place where they have a duty as given by God to earn a living. There is nothing to be embarrassed about.

I thank Hon. Sakaja.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Kiambu, you are fairly agitated. Do you want to oppose this or support.

Hon. Njomo: Hon. Temporary Deputy Chairman, I do not want to oppose. I support it. It is a very important move. Our contractors have been forced to be beggars. People come from outside the country, get lucrative contracts from our Government, they subcontract the same contracts to our contractors and pay them peanuts. We must protect our contractors. We must protect indigenous Kenyans.

Secondly, there is the 30 per cent of our contracts that we have secured for our youth, women and people with disabilities. We need to divide this further because our people with disabilities are not able to move as fast as our women or our youth. They are disadvantaged in that way. Eventually, you find that the 30 per cent that has been reserved for the three groups ends up being done by two groups. We need to divide it further, so that each of the three groups gets its own section of the percentage. Our persons with disabilities, may not be able to move as fast as the other groups, but they should get their share.

I support this very important amendment.

The Temporary Deputy Chairman (Hon. Kajwang³): Yes, Member for Homa Bay, you are on your feet. I know that you fall among the disadvantaged. I also suspect that you are a youth.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, you know this is historic. I want to go on record also on this matter. This is a historic day. This has been talked about for long. I know we passed it in Hon. Sakaja's Bill, but this is going to be the Bill where we have it. I thank Hon. Sakaja and Hon. Gumbo for working so hard on this.

When we say that 30 per cent of the total financial value is going to be for women, the youth and people with disabilities, the message that we are sending to procurement entities is that those contracts of supplying flowers and bush clearing should be forgotten. We should start thinking about serious contracts because by the time you get to the 30 per cent, you would truly have sweated if you went the flower and the bush clearing way. This is going to ensure that women and the youth will not only get the flower contracts, but will also get serious contracts. This will make a big difference. The fact that this is going to be reported in this Parliament to the Sakaja's Committee on Equalisation, is also very important. This operationalises this perfectly.

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

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

(Clause 158 as amended agreed to)

Clause 159

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 159 be amended in subclause (3) by inserting the words "with disaggregated data" immediately after the words "reported".

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang³): Are you in objection to it? Let us have a gentleman's agreement that it will be half a minute.

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Hon. Sakaja: Hon. Temporary Deputy Chairman, what this provides for is, on top of just saying that 30 per cent of the procurement at the end will be for these groups, they should also put it in at the procurement plan. When they are giving the procurement plans, they should demonstrate how they intend to make sure that 30 per cent goes to those groups.

I support.

The Temporary Deputy Chairman (Hon. Kajwang’): While you are still on your feet, I seem not to understand this big word here. You must know it more than I do. What does the word “disaggregated” mean?

Hon. Sakaja: Instead of just saying Kshs30 million will go to the youth, women and people with disabilities, they must break down in terms of the target. They should say what they expect to give women. Instead of just saying that this blanket amount will go to youth and women, we must disaggregate to give more detail of that data in categories that are going to be prescribed; that we will give this kind of works to youths, this will be reserved for women and this for people with disabilities. If that is done, we will have something to audit and to measure their compliance with in this section.

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

(Clause 159 as amended agreed to)

(Clauses 160, 161 and 162 agreed to)

Clause 163

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, clause 163 of the Bill be amended in subclause (2) by deleting the word “twice” and substituting therefor the word “quarterly”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the nominated Member, hon. SunjeevBirdi.

Hon. (Ms.) Sunjeev: Thank you, hon. Temporary Deputy Chairman. It is pronounced as SunjeevKaurBirdi. I have this problem every time. Whenever I go to hospitals---

The Temporary Deputy Chairman (Hon. Kajwang’): I do not have that middle name. What is it?

Hon. (Ms.) Sunjeev: It is Kaur.

The Temporary Deputy Chairman (Hon. Kajwang’): I advise you to pass by the IT department so that we can also reflect that “Kaur”.

Hon. (Ms.) Sunjeev: I shall. In fact, when we were being sworn in in March 2013, I remember coming to the bench at least four times because my middle name, which

represents where I come from, that is Punjab--- My heritage is Punjab. People mispronounce “Kaur”.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you for those light moments. Please proceed.

Hon. (Ms.) Sunjeev: Going back to what I was going to discuss, I agree that it should be thrice and not twice, because a quarter is discussed in 3 months’ time. If we just say twice in a calendar year, we are giving a lot of room for corruption. If we do it as it has been stated, I think we are giving ourselves justice.

Thank you.

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

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

(Clause 163 as amended agreed to)

Clause 164

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 164(1) of the Bill be amended by inserting the words “and when” immediately after the words “disposal committee as”.

(Question of the amendment proposed)

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

(Clause 164 as amended agreed to)

(Clause 165 agreed to)

Clause 166

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 166 be amended by inserting the following subclause immediately after subclause (1)—

“(2) Despite subsection (1) or any other provisions of this Act, radioactive or electronic waste shall be disposed of only to persons licensed to handle the respective waste under section 88 of the Environmental Management and Co-ordination Act, 1999.”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Member for Homa Bay.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, this could not be more important in terms of disposal, particularly of radioactive materials. Going by what we have seen exposed in the programme “*JichoPevu*” about the OwinoUhuru Village, this is very important because we have seen the damages that a carelessly done disposal can cause.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, hon. Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, this is a very important amendment because we have seen the carelessness with which some of the practitioners in this country treat our people. If somebody has followed what my good sister has said about the series about Owino Uhuru, you sometimes want to ask yourself if we are truly independent. What that series has portrayed is actually a premeditated murder. Somebody is just killing our people in the name of pursuing profit.

I support.

Hon. J. K. Bett: Thank you, hon. Temporary Deputy Chairman. Just to agree with my colleagues, the issue of Owino Uhuru Estate is just one of the examples. We have many other industries which carelessly dispose effluent. We really must comply with the Environmental Act as stated.

I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay, Hon. Sunjeev. I am still learning to keep pace.

Hon. (Ms.) Sunjeev: Thank you, hon. Temporary Deputy Chairman. Being a member of the Environment and Natural Resources Committee, I understand and completely agree with this section of the Bill. I want to put forth some evidence as justification for this clause. I will not take a lot of time. There was a moment when there were some “Asians” from a particular company who were disposing of materials not in an ocean but a river. I detest that because it is very bad. I hope that we can make those people accountable for the wrong actions even as we take this clause forward.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Nominated hon. Member Johnson Sakaja, as you rise because I can see you were very active in the preparation of this Bill, there is something I would have wished to see in this Bill. I am not debating but I would have wished to see something to protect public assets from being disposed unfairly, if I was on the Chamber on the other side. You know the debates we have been having in the House where public assets have been disposed unfairly against public interest. The information we are dealing with right now is that the Integrity Centre may have gone for a song. Disposal can easily be procurement also. How do you preserve the interests of Kenyans?

Hon. Temporary Deputy Chairman, thank you for that. I just want to say that this Act has extensive provisions around disposal as well and this one was just adding the issue of radioactive in terms of allowing the methods of disposal.

When you look at Clause 167 it states that an accounting officer shall not dispose off assets to an employee of the public entity or a member of the Board or Committee of the public entity except as expressly provided for. Clause 165 as well is one of those provisions that talk about the procedure that must be followed and it had no contention. So, that is taken care of.

The Temporary Deputy Chairman (Hon. Kajwang’): How do you arrive at the reserved prices, for example?

Hon. Sakaja: It talks about the bidders for the disposal where there is no responsive bidder.

The Temporary Deputy Chairman (Hon. Kajwang’): As a result of some technical committee that ---

Hon. Sakaja: It is actually a bidding process for you to dispose of those assets. It has similar committee just as you are acquiring assets. If you go through from Clause 164 to Clause 165, the whole of section part 14, Clause 165 talks about technical report by the relevant expert of the subject items for disposal that takes into account the real market price. In so doing the technical expert will set up a reserve price which shall be the minimum acceptable price below real market value of the---

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I think you have stated your case.

Hon. Sakaja: So, there is valuation. What I really want to point out is that this particular amendment was originally part of my Bill and it had been introduced by Hon. Amina Abdalla who is the Chair of the Departmental Committee on Environment and Natural Resources. I just want to give her credit for following it through to this Bill. When we were doing the amendments to this Bill she was actually out of the country but she ensured that she called me to make sure that it still comes in this legislation. So, I just want to laud her for her consistency and persistency in making sure that this is taken care of.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Compliments received.

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

(Clause 166 as amended agreed to)

Clause 167

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-
THAT, clause 167 of the Bill be amended by—
(a) renumbering the existing provision as subclause (1);
(b) inserting the following new subclause immediately after the renumbered subclause (1)—

“(2) An accounting officer who, pursuant to artificial valuation, disposes off assets to an employee of the public entity or a member of a board or committee of the public entity commits an offence.

(Question of the amendment proposed)

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

(Clause 167 as amended agreed to)

Clause 168

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 168 of the Bill be amended—

(a) in subclause (1) by inserting the word “or” appearing immediately after the words “this Act”;

(b) by inserting the following new subclause immediately after subclause(1)

“(1A) A request for review shall be accompanied by such fees as may be prescribed in the regulations, and such fees shall not be less than ten per cent of the cost of the contract”;

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rongai, you are in the Chamber and I must recognize you.

Hon. Moi: Thank you, hon. Temporary Deputy Chairman. The 10 per cent that is to be levied on a review is extremely punitive. For example, if you have a contract of Kshs40 million and you are asked to put down 10 per cent of that, it should be Kshs4 million and if the review finds your case has no merit then you lose that Kshs4 million. I think the intention was noble and that it was intended to lock out those that were frivolous but at the same time it would lock out those that had genuine request. The fear of losing the 10 per cent is very great.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Hon. Member for Rarieda, proceed.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I tend to disagree with the Member for Rongai. Tender processing in Kenya has been brought to disrepute by buccaneers and brokers whose main aim is to frustrate the process. A lot of them go there with frivolous excuses.

In fact, in one of his addresses recently, the President had suggested that people who try to delay the tender process merely for purposes of frustrating the process should be permanently barred. There are a lot of brokers who run around in town and they do not even have the capacity to do the project. They run to the Public Procurement Oversight Authority (PPOA) and block the tendering process and then no one moves, especially

with Government projects. So, unless we make this process so that somebody sees that he has merit---This was my amendment. I will plead with the Member for Rongai to allow this thing to go through so that we get rid of these jokers who lock down tendering processes just for the purposes of trying to delay the process.

Hon. Kamau: Hon. Temporary Deputy Chairman, I just want a clarification from the Chairman of the Committee because when we talk about 10 per cent as fees, are these fees refundable?

Hon. Member: They are refundable.

Hon. Kamau: There is no provision that says that here. Otherwise, the review board will take it as their fees. So, you have to be very careful about that.

Hon. J.K. Bett: Hon. Temporary Deputy Chairman, I support so that not every Tom, Dick and Harry can participate in a tender or take it to a Review Board and delay the process. Look at the tender for laptops from the Ministry of Education, it is now three years down the line and people are taking this tender in circles. So, we need to make it punitive so that not every other person can just stop it for the sake of it. I support.

The Temporary Deputy Chairman (Hon. Kajwang’): The Member for Rongai is speaking to the Constitution on fair administrative action. Administrative review must also be fair whichever way, both sides as a constitutional principle. Do not forget that there is also an economic right which is a human right in the Constitution for which all Kenyans are entitled. So, you do not want to deny anybody the chance of making money in Kenya because it is a constitutional right. This is a judicial process and you do not want to make it unduly difficult for people to investigate the probity of those issues. So, 10 per cent or no 10 per cent is not for me. I will put it to vote so that you take what you think. Did somebody ask a question? Member for Kigumo, did you ask a question?

Hon. Kamau: I just want to find out because what---

The Temporary Deputy Chairman (Hon. Kajwang’): That is a legitimate issue, Member for Kigumo. He asked whether these are fees.

Hon. Kamau: Correct, because if they are fees---

The Temporary Deputy Chairman (Hon. Kajwang’): If they are fees, they are not refundable. The terminology of whether they are fees or whether it is a deposit needs to be clear.

Hon. Kamau: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): Fees are also described in other legislation as money to the Government. So, if the fellow has paid it across the counter, he cannot get it back. So, who has this amendment? Do you want to change this language so that it is not fees; it is rather a deposit because then a deposit can be refundable. You can even say: “A refundable deposit of so much.”

Give the Member for Ainamoi the microphone.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 168(1)(a) be further amended by deleting the word “fees” and substituting therefor with the words “refundable deposit” and also deleting the word “fees” appearing between “such” and “shall” and substituting therefor with the words “refundable deposit” so that it reads “ A request for review shall be accompanied by such refundable deposit as may be prescribed in the regulations and such refundable deposits shall not be less than 10 per cent of the cost of the contract.”

Hon. (Eng.) Gumbo will---

The Temporary Deputy Chairman (Hon. Kajwang’): Resume your seat Member for Rarieda. In a shorter way, and in future Chairman and those of you who are active in this legislation, if you are giving us further amendments, can we have them in writing so that it comes from you so that we do not propose it from the Table? So, you are saying that you propose to delete the word “fees” wherever it arises in Clause (1A) and substituting therefor the words “refundable deposits”. That is the further amendment. Let us deal with that further amendment first.

(Question of the further amendment proposed)

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

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

We have amended it and it reads “refundable deposits.” Now, let us go back to the discussion. Shall I put the Question now?

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

(Clause 168 as amended agreed to)

(Clauses 169, 170, 171 and 172 agreed to)

Clause 173

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 173 of the Bill be amended by inserting the words “and the applicant shall forfeit the fees paid” immediately after the word “contract”;

By virtue of what has happened right now, I feel that this Clause 173 needs to be further amended.

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry, what did you say you were doing?

Hon. Gaichuhie: I wish to move that Clause 173 be amended as proposed in the Order Paper.

The Temporary Deputy Chairman (Hon. Kajwang’): Chair, why can you not just drop this amendment instead of taking us round? I am sure we are going to have arguments on this, arising from what we have done in the other clause?

(Question of the amendment proposed)

Hon. Langat: Hon. Temporary Deputy Chairman, that amendment is in line with what we have passed. If the case was frivolous, then you lose the refundable deposit. If you follow what we have passed earlier, it will require further amendment to align it with the earlier amendment to replace the word “fees” with the words “refundable deposit”.

The Temporary Deputy Chairman (Hon. Kajwang’): First of all, move the further amendment.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 173 be further amended by deleting the word “fees” appearing therein and substituting therefor the words “refundable deposit”.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): I have proposed it. Shall I put the Question?

Hon. Members: Yes.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Let us get back to that discussion on Clause 173. Can I put the Question?

Hon. Members: Yes.

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

(Clause 173 as amended agreed to)

Clause 174

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:- THAT, Clause 174 of the Bill be amended by inserting the following new paragraph immediately after paragraph (d)—

(da) order termination of the procurement process and commencement of a new procurement process;”

(Question of the amendment proposed)

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

(Clause 174 as amended agreed to)

(Clause 175 agreed to)

Clause 176

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:- THAT, Clause 176 of the Bill be amended by inserting a new subclause immediately after subclause (3) —

(4) Where a decision of the Review Board has been quashed, the High Court shall not impose costs on either party.”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kigumo, we are trying to accommodate you. Next time you need to give us a notice which is approved by the Speaker because yours can now be easily a Floor amendment. We are trying to accommodate you, seeing that you have been very steadfast in the Chamber. The only way we can accommodate you is to do a further amendment to what the Chairman has done. So, can you move your further amendment? When you are done, come and sign this so that you own it. Have you signed it?

Hon. Kamau: It is signed on the back.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. You have signed it.

Hon. Kamau: Hon. Temporary Deputy Chairman, I had moved this earlier and it was part of the amendments that were there but unfortunately the Committee was not able to look at it. But then we talked to the Chair and agreed that we are going to do a further amendment, which I want to move.

Hon. Temporary Deputy Speaker, I beg to move:-

THAT, Clause 176 be amended by:-

(a) inserting the following new sub-clauses immediately after sub-clause 2-

(3) The High Court shall determine the Judicial Review application within 30 days after such applications

(4) A person aggrieved by the decision of the High Court may appeal to the Court of Appeal within seven days of such decisions and the Court of Appeal shall make a decision within 14 days, which decisions should be final.

(5) If either the High Court or the Court of Appeal fails to make a decision within the prescribed timeline under Sections 3 and 4, the decision of the review board shall be final and binding to all parties.

(b) renumbering sub-clauses 3 and sub-clause 6 and inserting the words “Court of Appeal” after the words “High Court” as they appear in sub-clause 6.

The reason I came up with this further amendment--- The Chair should listen to me. I am waiting for the Chair to listen to me.

The Temporary Deputy Chairman (Hon. Kajwang’): No, I am. The Chair has more than one ear.

Hon. Kamau: I want to explain why I am coming up with this further amendment. You find that there are people who like going to court to frustrate the procurement process. When matters go to court, they stay for one year before they are determined. We want to have a timeline where courts also must make a decision. If somebody goes to court and the court stays for one year before they make a decision, then the whole purpose of the procurement process is not gotten properly. That is why we came up with this further amendment.

I have talked to the Chair and I think he is in agreement.

(Question of further amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kigumo, in principle, what you are dealing with here is very laudable, and a correct issue of principle. People who go to IPOA, all manner of things do not delay contracts. People also get to know their decisions as early as possible. But you need to be careful about these timelines. They appear too strict that they may be unachievable. For example, the 30 days may or may not work. I suspect they may work. To tell the Court of Appeal that they will have disposed of that matter within 14 days will be very strict. What we will turn back to is that you will make IPOA some kind of a big creature. When they make decision they know, invariably it is not easy to overturn what they are saying. The answer lies in relaxing and putting a realistic timeline knowing the burdens they have at the courts. If you talk about 60 days, you are talking about something that is achievable. Let me hear other Members. Member for Bondo.

Hon. Ogolla: I think hon. Temporary Deputy Chairman, you are at it. It is just a matter of the advantage of having timelines is very necessary but not in a manner that they are strict to an extent that you cannot bear with them.

The Temporary Deputy Chairman (Hon. Kajwang’): You run the risk of making IPOA bigger than you because now they know that invariably it is achievable and whatever they decide becomes what it is. We need to protect both sides though.

Member for Homa Bay.

Hon. (Ms.) Nyasuna: Chair, my thoughts were in line with what you were raising. I agree with the Member for Kigumo that we need to have timelines. But my question which you can guide on is, is Judiciary being a separate and independent arm? I know that the Constitution does provide timelines for the Supreme Court to reach certain decisions. I was wondering if we can use this legislation to control the timelines of the Judiciary.

The Temporary Deputy Chairman (Hon. Kajwang’): That is personal. Legislation can control their timing.

Hon. (Ms.) Nyasuna: In that case I have heard the chorus of answers, I am well advised. I agree with you that the institution is the Public Procurement Oversight Authority (PPOA) and not IPOA.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kigumo, you may want to think about 60 days, it is more achievable for many of these institutions depending on the workload that they have and so on.

Member for Kaiti, the Floor is yours.

Hon. Makenga: I support the amendment as proposed by hon. Jamleck.

The Temporary Deputy Chairman (Hon. Kajwang’): Before you support the amendments, since the Member for Kigumo is thinking of how to word his days, can we just have him first of all propose a further amendment to his further amendment on the question of the days and then we come back to you to see then how you can support him?

Hon. Kamau: Hon. Temporary Deputy Chairman, I was thinking we have a combined 45 days in the High Court and then 45 days in the Court of Appeal so that he can get a total of 90 days. That might be perhaps more appropriate.

The Temporary Deputy Chairman (Hon. Kajwang’): Can you pronounce yourself if you have your text in your hand so that you can be in HANSARD proposing a further amendment to a further amendment. Please start with Clause 3 because you have subclause 3 then we go to Clause 4. That is how it should be.

Hon. Kamau: I beg to move:-

THAT, Clause 176 be amended by inserting the following new sub-clauses immediately after sub-clause 2-

(3) The High Court shall determine the Judicial Review application within 45 days after such applications

(4) A person aggrieved by the decision of the High Court may appeal to the Court of Appeal within 14 days of such decisions and the Court of Appeal shall make a decision within 45 days, which decisions shall be final.

(Question of further amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Let us go to the original amendment now.

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

(Clause 176 as amended agreed to)

Clause 177

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 177 of the Bill be amended –
 (a) by renumbering the existing provision as subclause (1)
 (b) in subclause (1), by inserting the following new paragraphs immediately after paragraph (i) —

“(ia) knowingly withholds the notification of award to a successful tenderer;”

“(ib) knowingly withholds notification to unsuccessful tenderer;”

(Question of the amendment proposed)

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

(Clause 177 as amended agreed to)

(Clauses 178, 179 and 180 agreed to)

Clause 181

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 181 of the Bill be amended by inserting the words “and such regulations shall not take effect unless approved by Parliament pursuant to the Statutory Instruments Act, 2013”.

(Question of the amendment proposed)

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

(Clause 181 as amended agreed to)

(Clauses 182 and 183 agreed to)

New Clause 47 (A)

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 47:

Inspection and
Acceptance committee

47A. (1) An accounting officer of a procuring entity may establish an ad hoc committee known as the inspection and acceptance committee.

(2) The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.

(3) The inspection and acceptance committee shall immediately after the delivery of the goods, works or services-

(a) inspect and where necessary ,test the goods received;

(b) inspect and review the goods ,works or services in order to ensure compliance with the terms and specifications of the contract; and

(c) accept or reject , on behalf of the procuring entity , the delivered goods, works or services.

(4)The inspection and acceptance committee shall-

(a) ensure that the correct quantity of the goods is received;

(b) ensure that the goods, works or services meet the technical standards defined in the contract;

(c) ensure that the goods, works or services have been delivered or completed on time ,or that any delay has been noted;

(d) ensure that all required manuals or documentation has been received; and

(e) issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.”

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ainamoi, explain your amendment within half a minute.

Hon. Langat: Hon. Temporary Deputy Chairman, what we have done there is that we have given the accounting officer power. He may choose to have a committee called the Inspection and Acceptance Committee. This came in the realisation that sometimes the quantities of some of the goods being received are so huge and they need a team to inspect them and ascertain that the qualities are correct. They can even test them. That is just an ad hoc committee to help in ascertaining that the goods delivered actually meet the quality and the quantity in the requirements.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Let us have Member for Bomachoge Chache.

Hon. Ogari: Thank you, hon. Temporary Deputy Chairman. I was first hesitant to support the new clause but I have realised what it is after. It is really more like separation from the Evaluation Committee so that they do not take part in the tendering and contracting process and also check themselves at the end. I have also noted that they are becoming a committee after the delivery. That is very key because I was worried that they are going to take over the project management role and administer the contract even

where engineers and the rest are involved. This is a good clause. It does not step on anybody's toes. It is okay. It adds value to the Bill.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Homa Bay, your smile seems to suggest that you are in support of this new clause. Is that so?

Hon. (Ms.) Nyasuna: Hon. Kaur is laughing. I was also smiling because I am in support. This inspection committee is so important. They should also take responsibility for the work they do. This is because if they go and accept substandard goods, then the accounting officer will administratively take serious disciplinary action against them.

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

(The new clause was read a Second Time)

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

New Clause 150 A

The Temporary Deputy Chairman (Hon. Kajwang'): Who has this clause? Member for Rarieda, do you want your notes? Is it on the Order Paper?

Hon. (Eng.) Gumbo: Yes, it is. Hon. Temporary Deputy Chairman, please let me explain. I know the sugar levels are down. When I did this amendment, actually---

The Temporary Deputy Chairman (Hon. Kajwang'): Move it formally first.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, let me first explain before I move.

The Temporary Deputy Chairman (Hon. Kajwang'): No. First of all move it then you can explain.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the following new clause be inserted immediately after clause 150-

Engagement of
sub-contractors 150A.

(1) Where the works to be undertaken under a procurement—

(a) require greater skill than that of the contractor;

(b) require specialization; or

(c) are of a general complexity of skills and specialization that may be lost if undertaken by the contractor;

that contractor may engage a domestic sub-contractor or a domestic subcontractor to undertake those works.

(2) Where a nominated sub-contractor is engaged under subsection (1), the selection process shall be undertaken directly by the procuring entity.

(3) A nominated subcontractor may only be engaged on a necessity basis whereby the works to be undertaken by the nominated subcontractor require greater skills and specialization than the contractor's or main contractor's or where the general complexity of the skills and specialization required are such that the form and function may be lost if the works were undertaken by the contractor or main contractor.

(4) The procuring entity shall prepare separate and distinct tender documents for engagement of a nominated sub-contractor.

The reason I wanted to explain this is because when I completed doing this New Clause 150A, it was in the very early hours of the morning. It was around 4.00 a.m. and my brain capacity was down to less than ten per cent. However, I have just read Clause 150(1) and (2) as provided and I am confident of it because it says:

“If the tender documents do not prohibit subcontracting, the successful tenderer my subcontract part of the tender but only if the person to be subcontracted has not been debarred from procurement proceedings in accordance with this Act or has participated in the procurement of goods, works or services related to that contract.

The successful tenderer shall be responsible towards the procuring entity for the obligations of the sub-contractor”

The Temporary Deputy Chairman (Hon. Kajwang’): So, you are moving it in the text that appears on the Order Paper?

Hon. (Eng.) Gumbo: What I want to say is that, having read and now that I am more awake than when I wrote it, I think what I wanted to achieve is largely achieved by Clause 150 and I, therefore, want to drop my New Clause 150 A.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Express again and use the word “withdraw”.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman that is what I was trying to do in very many words. I withdraw my proposed New Clause 150A because I think it is sufficiently covered.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay, thank you very much. The proposed amendment is withdrawn.

(Proposed amendment by Hon. (Eng.) Gumbo withdrawn)
First Schedule

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:- THAT, the First Schedule of the Bill be amended in paragraph 3(2), by deleting the word “his” and substituting therefor the word “their”.

The Temporary Deputy Chairman (Hon. Kajwang’): No. “THAT, the First Schedule be part of the Bill”. That is the text of what you should say. Are we amending it?

Hon. Members: Yes. We are amending it.

The Temporary Deputy Chairman (Hon. Kajwang’): It is an amendment. All right, say “be amended” as you already have. Thank you very much.

(Question of the amendment proposed)

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

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

(First Schedule as amended agreed to)

Next Clause.

Second Schedule

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-
THAT, the Second Schedule of the Bill be amended in paragraph 3(2), by deleting the word “his” and substituting therefor the word “their”.

(Question of the amendment proposed)

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

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

(Second Schedule as amended agreed to)

Third Schedule

Hon. Gaichuhie: Yes, hon. Temporary Deputy Chairman. I beg to move:-
THAT, the Third Schedule of the Bill be amended by inserting a new paragraph immediately after paragraph 10—

*Time specification for
the Regulations.*

10A. Regulations contemplated under this Act shall be made within a period of one year immediately after the effective date of the Act.

(Question of the amendment proposed)

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

(Third Schedule as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Next Clause.

Clause 2

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, clause 2 be amended—

- (a) in the definition of the expression “consultancy services” by inserting the words “and includes services offered by all professionals” immediately after the word “nature”;
- (b) in the definition of “design competition” by deleting the words “ and fine arts, and graphic designs” and substituting therefor the words, “fine arts, interior design, marketing, advertising and graphic designs”;
- (c) in the definition of the term “disadvantaged group” by inserting the words, “enterprises in which a majority of the members or shareholders are youth, women, persons with disability or” immediately after the words “and includes”;
- (d) in the definition of the term “procurement professional” by deleting the words “, or a recognized institute of purchasing and supply” appearing immediately after the words “Practitioners Management Act”;
- (e) in the definition of the term “standard” by deleting the word “generally” appearing immediately after the words “ other products is”;
- (f) in the definition of the term “supply chain management” by inserting the words “contract management” immediately after the words “stock control”;
- (g) in the definition of the term “works” by deleting the words “ and commissioning” appearing in paragraph (a) and substituting therefor the words “, commissioning and setting up” ;
- (h) in the definition of “writing” by inserting the word “facsimile,” immediately after the word “photography”;
- (i) by inserting the following new definitions in the proper alphabetical sequence—

“corruption” has the meaning assigned to it under section 2 of the Anti-corruption and Economic Crimes Act, 2009;

“professional” means a person who has professional qualifications in a specialized field and who is engaged in the practice of a skill or trade, having undertaken the relevant formal academic and professional training including undertaking practical learning in the form of apprenticeship or tutelage under the guidance of a suitably qualified and experienced person in the field of training or tutelage;

“professional body” means a body representing members of a profession, which is regulated by statute, code of conduct or rules as may be amended from time to time.

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

the shareholders, members or persons and a majority of the directors are persons with disability;

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

“youth” means a person who has attained the age of eighteen years and has not attained the age of thirty-five years and includes a company, association or body of persons, corporate or unincorporated in which, at least, seventy percent of shareholders are persons who have attained the age of eighteen years and have not attained the age of thirty-five years.

(Question of the amendment proposed)

Hon. Sakaja: Hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Kajwang’): Just a minute, there is a way in which I will recognize you because you have to be in my screen to know that you are intending to contribute. So, being the Chair of the ruling party let me try to find out how to get you. I am giving you the microphone in a minute.

Hon. Sakaja: Thank you, Temporary Deputy Chairman for your gracious indulgence. I just want to point out two things that are significant. The definitions for “youth”, “women” and “people with disability, initially in the earlier Bill, we had defined youth on enterprises as those young people who own 100 per cent of the entity in terms of shareholding. For women, it was a bit lower. But we have agreed to reduce that threshold because we have found out that women have this habit, and I think Hon. Wanga and Hon. Kour will agree with me, of leaving certain shareholding to their husbands, children or donors or rather people supporting their enterprises. So, we have lowered the threshold to 70 per cent. I just wanted to point that out.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda.

Hon. (Eng.) Gumbo: You have put the Question, hon. Temporary Deputy Chairman, so am I not---

The Temporary Deputy Chairman (Hon. Kajwang’): No, I was just putting the Question on the amendment of the Chair. I see you have amendments. Those are

independent amendments. Can you just move yours and do it as short as the Chair has done it?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I was basically talking about definition of “consultancy services:

The Temporary Deputy Chairman (Hon. Kajwang’): Can you just do it according to the Order Paper because we have seen it?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, that is what I am doing.

The Temporary Deputy Chairman (Hon. Kajwang’): No, just express yourself in one sentence that you are moving it in terms of the Order Paper.

Hon. (Eng.) Gumbo: I am moving it but---

The Temporary Deputy Chairman (Hon. Kajwang’): First of all, when you have moved it, I propose it and then now you can have that discussion.

(Hon. (Eng.) Gumbo spoke off record)

You need to move.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended—

(a) in the definition of the term “contractor” by inserting the words “and includes the main contractor” immediately after the words “procuring entity”;

(b) by inserting the following definitions in the proper alphabetical sequence—

“domestic sub-contractor” means a person selected by the contractor or main contractor to carry out part of the works;

“nominated sub-contractor” means a person selected directly by the procuring entity through a tender process to carry out an element of the works;

Hon. Temporary Deputy Chairman, I was basically talking about the definitions of “consultancy services”, “design competition”, “disadvantaged group”, “works”, “commissioning”, then “writing” where I am introducing “writing” to include facsimile. That was all.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Bomachoge Chache, anything making you uncomfortable?

Hon. Ogari: Hon. Temporary Deputy Chairman, not that I am uncomfortable, I always support my alumni because---

The Temporary Deputy Chairman (Hon. Kajwang’): Are you birds of the same feather? You seem to be agreeing on so many things.

Hon. Ogari: But now the issue he is talking about is not on the Order Paper but the one we are seeing is about the contractor---

The Temporary Deputy Chairman (Hon. Kajwang’): No, the one I have here is about the contractor, sub-contractor and the nominated sub-contractor.

Hon. Ogari: They are not on this Order Paper. Which ones hon. Temporary Deputy Chairman? I am sure I will urge him to withdraw these ones because when we withdrew---

The Temporary Deputy Chairman (Hon. Kajwang’): I will help you hon. Member for Bomachoge. Member for Rarieda, as far I am able to see, your amendments are contained on Page 422 of the Order Paper. Unless you are using the Order Paper for yesterday or am I holding a wrong Order Paper, your definitions are for “contractors”, “domestic sub-contractor” and “nominated sub-contractor.” Your amendments should be limited to those issues that I see there.

Hon. (Eng.) Gumbo: Can I have the microphone?

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, give him the microphone.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, you know it is a long time since we had lunch so that means the sugar levels are down. The consequence of my withdrawal of New Clause 150A deletes the definition of “domestic sub-contractor” and “nominated sub-contractor” but it leaves the definition of “contractor.”

The Temporary Deputy Chairman (Hon. Kajwang’): So, then why do you not speak to the microphone and say that you are withdrawing some parts or portions of your amendment?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I am withdrawing part (b) of my proposed amendment to Clause 2.

The Temporary Deputy Chairman (Hon. Kajwang’): So, the entire amendments that I see in part (b) are withdrawn. I order them to be withdrawn.

(Proposed amendment by Hon. (Eng.) Gumbo to part (b) withdrawn)

Hon. (Eng.) Gumbo: Part (a) remains.

The Temporary Deputy Chairman (Hon. Kajwang’): So, your amendment refers only to the term “contractor”

Hon. (Eng.) Gumbo: Yes.

(Question of the further amendment proposed)

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I am sorry that the Member for Rarieda has withdrawn this amendment and has had to now withdraw very important definitions within this law. I just wanted to note that. It was very important to define “domestic sub-contractor” and “nominated sub-contractor” and how they operate within the context of procurement because it creates a very big problem within the procurement law.

The Temporary Deputy Chairman (Hon. Kajwang’): I feel your frustration but it is now water under the bridge. He has explained that the New Subclause 150A which contained those terms was superfluous.

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

(Clause 2 as amended agreed to)

(Clause 1 agreed to)

(Title agreed to)

The drafters or the Chairmen of Committees must be very watchful for Clause 1 and the title. That is when your vote should be resoundingly clear because you can lose Clause 1 and the title and therefore you lose the entire Bill. So, you need to be very careful when you are handling those two clauses.

I can see the Chairman’s intervention. Give the Member for Ainamoi the microphone.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Public Procurement and Asset Disposal Bill, 2014 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Kajwang’) in the Chair]*

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

Hon. Langat: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Procurement and Asset Disposal Bill, 2014 and approved the same with amendments.

Hon. Langat: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Nelson Gaichuhie to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Gaichuhie: I second.

(Question proposed)

(Question put and agreed to)

Hon. Langat: Hon. Temporary Deputy Speaker, I beg to move that the Public Procurement and Assets Disposal Bill be now read the Third Time. I request Hon. Nelson Gaichuhie to second.

Hon. Gaichuhie: Hon. Temporary Deputy Speaker, I rise to second. I thank every Member who has taken his or her time to look through the Bill. We took a lot of time. I thank Hon. Gumbo.

The Temporary Deputy Speaker (Hon. Kajwang’): Just second it. We will come back to that.

(Question proposed)

Member for Subukia, this is when now you can give those valedictory messages this late in the night. Give him the microphone.

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Speaker. I want to thank all the Members who are present here and even the ones who have left. More so, I want to thank Hon. Gumbo, Hon. Ogari, Hon. Humphrey Njuguna and everybody who took their time to come to the Committee. I also thank the Treasury and the Departmental Committee on Finance, Planning and Trade. We sat down and looked at all the amendments in the Bill and it took us almost four days. Even if this Chamber is not full, we have thoroughly looked at the Bill. I want to thank everybody for participating. I hope we are going to make a law that is going to help this country. If we need any amendments, we can always do so. We have made a very good law.

With those few remarks, I thank everybody.

The Temporary Deputy Speaker (Hon. Kajwang’): I have many of you on my list. I am sympathetic because you have been in the Chamber for long. Again, you also need to do your constituency work soon after this. So, I want to release you to do your constituency work. Member for Homa Bay, within one minute.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Speaker, it is a historic day today particularly a big win for women, youth and people with disabilities in this country because the law is now in place to propel them to economic prosperity. I want to urge them to make good use of this law. I want to urge procuring entities to also follow this law with fidelity so that we can empower our women, young people and people with disabilities and other disadvantaged groups.

We now have a law that will ensure that pilferage and corruption are controlled while at the same time reducing the bureaucracies that make procurement processes take for ever.

Thank you very much, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Someone who has not spoken. Member for Likuyani.

Hon. (Dr.) Kibunguchy: Thank you, hon. Temporary Deputy Speaker. I also join my colleagues in thanking the Committee and everybody who has spent hours in putting this law together. It is a law that is going to move this country forward. I especially love the idea of local contractors. We really need to protect our own at this stage. I also laud the aspect of the youth, women and people living with disabilities. This is a law that has looked at the people who have always lived in the peripheries of the communities.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): All right. Member for Bondo.

Hon. Ogolla: Thank you, hon. Temporary Deputy Speaker. The law now really fills in the lacuna that was there in terms of procurement. The country has lost quite a big way in terms of procurement processes and procedures that have been there before. The law gives us a good start for purposes of reducing corruption in the issues of procurement. If one looks at it thoroughly, you realise that in the country we have where a biro pen that costs Kshs.10 is bought by the Government at Kshs30. So, this law will now have to protect against these kinds of things.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Member for Kesses.

Hon. J. K. Bett: Thank you, hon. Temporary Deputy Speaker. This is a landmark Bill that now synchronises the Bill with the new Constitution. This Bill will be a game-changer for this country because there is a direct linkage between economic growth and a good procurement system. So, the economic growth of this country is bound to grow at double digits, particularly in the clause regarding promotion of local contractors. I support.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you very much. Member for Kiambu.

Hon. (Ms.) Gathecha: Thank you, hon. Temporary Deputy Speaker. This is truly a landmark ruling in this country and a bill that eventually will allow the bottom of the pyramid to ensure that wealth distribution in this country takes place equitably and that we also recognise that we have local Kenyan contractors, people who are engaged in business who should be given priority and whom we should as a country continue to take pride in. We have an 11 million youth population, a time bomb that is ready to explode if it is not taken care of. So, the opportunities that are presented in this Bill will ensure that finally we are able not only for them to get access to opportunities but we are also able to get true data that is a reflection that this country is committed to ensure that opportunities are given to all. While we are at it, we should ensure that when we start taking pride and ownership as Kenyans in this country then we will own our country and we will not

continue to do the activities that continue to happen within organisations like KRA. The police are used to victimise organisations, for example Guarana beer which is locally manufactured but they are constantly harassed in this country by Kenya Breweries as they look to lock out locals.

The Temporary Deputy Speaker (Hon. Kajwang'): No, Order! Do not drop names when we are at the end of this. I will have problems with people who are not able to defend themselves.

Hon. (Ms.) Gathecha: Noted.

The Temporary Deputy Speaker (Hon. Kajwang'): So, withdraw the statement that there are some people who are harassing others.

Hon. (Ms.) Gathecha: I agree. They just happen to be my constituents and I am aware of the seriousness of the issues. When you close down a manufacturing production for two weeks because of victimisation, it is completely unfair. But that is noted. I stand to support and agree that finally we have come of age in this country to ensure that we equitably distribute wealth to the youth of this country.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Sunjeev, nominated Member.

Hon. (Ms.) Sunjeev: Thank you, hon. Temporary Deputy Speaker for giving me this chance. At the outset, I would like to thank the Committee on Finance, Planning and Trade on the Bill. Imagine having more than 100 amendments to a Bill, the problems it can bring to a Committee. I particularly had an amendment which was in the definition of "marketing" and "advertising", which they very well and happily accepted, I gave them my justification. I want to say that at the outset, if there is any Kenyan today who says that Members of Parliament do not do any work, let them look at the time right now, and see that we are burning the midnight oil, trying to pass a very important Bill not only for the private sector but for every human being in this country. Therefore, I want to thank you and the Chairman of this Committee.

Thank you very much.

(Applause)

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Kapenguria, can you give this Member, he tells me that where he comes from, people are used to cattle rustling. His card may have been a victim of cattle rustling.

(Laughter)

Hon. Chumel: Thank you very much hon. Temporary Deputy Speaker for giving me this opportunity to thank the Committee on Finance, Planning and Trade. For the first time as the other Members have expressed, this is a milestone and Kenyans of the lower cadre are going to be saved. The poor, I will say, their God is rising and is now going to support them. Like in West Pokot where I come from, most of the people who have been

taking good jobs at the local level were brought from Nairobi and other urban areas. But now, I know that from this Bill, they will be supported and their lifestyle will improve.

I want to thank the Committee once more. Thank you very much.

The Temporary Deputy Speaker (Hon. Kajwang’): Did I hear you saying that cattle will be procured?

(Laughter)

Hon. Chumel: Down there, there is nothing like cattle rustling. We always say, when a child cries you go to the neighbour and pick one, the next day the neighbor comes along. So, there is nothing to do with cattle rustling. But I know this Bill is good.

Thank you.

Hon. Sakaja: Thank you very much, hon. Temporary Deputy Speaker. This is one of those days that you feel proud not just to be a legislator but to be a Kenyan. The might of a country is not just by how it provides for the rich and the mighty but it equalizes opportunities for even the downtrodden, the poor and its young people. This Bill has radically changed the landscape of doing business in this country. It changes the landscape of public procurement. We must all be able to applaud ourselves for the effort that we have put in coming up with this legislation; the endless hours.

I would like to specially mention the leadership of the Finance, Planning and Trade Committee led by the very able hon. Benjamin Langat, deputized by the indomitable tallest man in the House from Subukia, hon. Gaichuhie for their endless efforts, consistency and their hard work. I would also like to make special mention of our Committee Clerks, Evans Owanda, Maluki and the young lady who sat with us for endless hours from the legal team, Ms. Brigid. We thank them for the work they have done and the advice they have given us. We cannot forget the Budget Office.

Hon. Temporary Deputy Chairman, this Bill equalizes the playing field not just for the Government but also protects the bidder and the Government. We will be able to achieve the promises within the manifesto, the promises that we have given to Kenyans by fast-tracking and removing all the bottlenecks that have been there in procurement.

The Temporary Deputy Chairman (Hon. Kajwang’): Are you now able to deliver the laptops?

Hon. Sakaja: Laptops will come. There is now a time limit even on the court cases. The laptop issue which has been embroiled in court cases for so long must be sorted out. In fact, I must congratulate Hon. Gumbo, Hon. Ogari and Hon. Humphrey of Gatanga. These Members exemplified what to legislate is. They sat down for long hours and brought more than 100 amendments. Not just to make it hard for us to pass these but to change a lot of the issues that have been overlooked.

For the first time, we are provided with something you can stand tall and be proud of across the world. Women and the youth have an equal opportunity to be mainstreamed in the economic life of this country. The young people are the trustees of its posterity. Our young people do not want a favour; they do not want handouts. They just want an equal opportunity to do business which will change the entire landscape of this country. This is because the greatest threat of our security has been disillusioned, unemployed, disengaged young people and our women who have been disfranchised over time. I am so

proud because some of the amendments I brought have been pending for more than two years since the first day I came into this House. For me, it is a proud moment. I am sure if there were lights in the other room we would have converged at the caucus room where refreshments are usually found to just consult more about what we have done today.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Homabay, never worry about the talk city of those refreshments--- However, give a round of applause to hon. Sakaja for remaining steadfast to the youth agenda. Member for Bomachoge Chache, will you please do it in half a minute?

Hon. Ogari: Thank you, hon. Temporary Deputy Chairman. My colleagues have said what I wanted to say. Today, I will sleep a very proud and happy Kenyan. This is my second term in Parliament. I can confess that there is no single time in any Bill or any law-making that I have taken full part. This is the only Bill I can quote from the title up to the end because I have taken a lot of interest. I do not want to go too much into lauding the goodness of the Bill which is becoming law shortly. On behalf of the many groups including professionals who contributed to this Bill I say thank you. I had 170 proposed amendments. My brother will say how many he had but in total we had more than 400 combined amendments. We were all worried however, I can assure you that even the professionals especially those involved in the construction and infrastructure industry have realized that this thing is for all of us. We have toned down where there are overtures on some issues. When we went for a meeting, I went there as a combatant because I thought some rights were being taken away from professionals and the rest of the people, I being one of the consultants. I want to take special opportunity to make special recognition to the Committee on Finance, Planning and Trade because what they did all of us should emulate. This is because if those amendments had come to the House the way they were, it could have taken two weeks. However, this Committee convinced us. At the end of the day we managed to condense everything. Even those who are combatant like hon. Gumbo, Humphery and others, by the time we all came out we were softened and humbled because those who were hard against us also worked.

The Temporary Deputy Chairman (Hon. Kajwang’): Those are very good messages and it should be in the HANSARD that these Members have distinguished themselves.

Hon. Ogari: That is a fantastic job and I wish you well. I wish all the other Committees could adopt the same instead of wasting a lot of time on the Floor of the House.

With those few remarks, I support.

Hon. Temporary Deputy Chairman (Hon. Kajwang’): They are not exactly few but I thank you so much.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I will make it very brief. I start by thanking my good friend Member for Ainamoi Hon. Benjamin Langat, my good friend Hon. Nelson Gaichuhie, the leaders of this distinguished Committee and of course my good friend Hon. Johnson Sakaja. I want to go on record that Hon. Sakaja, you are the Chairman of TNA.

The Temporary Deputy Speaker (Hon. Kajwang’): Through the Speaker.

Hon. (Eng.) Gumbo: Please tell the President that instead of giving national honours to people with questionable characters, these two gentlemen, yourself and myself deserve those honours for the work we have done.

(Applause)

As the late Lee Kuan Yew, my hero in governance of Singapore said, countries that attain meaningful progress strive for a fair and not a welfare society. This is what this Bill has attained today. As professionals of Kenya and you are a professional yourself, we have always complained that we cannot use the same law to procure a toothpick as you use for technical services. This is what has been distinguished and it has come out very clearly.

Most importantly, for a long time our country had become a mere playground for foreigners even people with seriously questionable qualifications. In my practice life, I remember as a young engineer, I saw somebody who was a dairy supervisor in Europe coming here as an adviser. He was in fact a milking line supervisor coming here as a professional yet we have veterinarians in this country. This law has---

The Temporary Deputy Speaker (Hon. Kajwang’): Are you saying that milkmen are not professionals in the work that they do?

Hon. (Eng.) Gumbo: If your job is mainly to look at how you *chuna the matiti* of a cow, surely! Anyway, let us not go there. This law has eliminated all that.

I want to specifically thank Hon. Sakaja. This country wants warriors like him who believe in the Kenyan dream and the potential of Kenya and its people. This is what this law has done. We must bring back the wealth into the hands of Kenyans. There is no country in the world which will grow through the infiltration of foreigners. The more money we put into the hands of our people, the richer this country will grow.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Rarieda, is that the correct time now to rest your points.

Hon. (Eng.) Gumbo: Yes, it is the correct time. Like everyone else, I am thankful. I thank the Chair as I conclude. They were very tolerant. Of course, there were few cases when we had issues but the Chair, the Vice Chair and Members of the Committee sat for over three days. The result is something we as Members of this honourable Assembly can be proud of as a law we can give to our people.

The Temporary Deputy Speaker (Hon. Kajwang’): Lastly, Member for Ainamoi.

Hon. Langat: Hon. Temporary Deputy Speaker, today I am a very happy Member of Parliament and a Chairperson of a committee. This Bill is going to be a game changer for the youth, the women and the marginalised. We have now provided them the opportunities within the law.

I am very happy that the economy of this country will grow because we have done the right thing by ensuring that people get procurement opportunities in this country. It is spread in the whole country not only in one region.

I want to thank the Members, Hon. Gumbo in particular, Hon. Ogari and Hon. Humphrey Njuguna. They worked very hard and produced almost 1,000 amendments. I want to thank them in particular because they did not say they must move the

amendments themselves. We agreed that whatever we had agreed with them, the Committee would take over. We have saved this House five days. We would have been here five days if we were to continue with the way every Member was proposing the amendment. However, the action we took saved days of precious time.

I thank those Members, Members of my Committee including my Vice Chair. We sat for many hours but they never complained. At some time we sat up to 9.00 p.m. I thank them because they were very useful and resilient. We came up with serious and uncompromised amendments that have seen the Bill passed today.

I only remind the Members that this Bill is going to the Senate because it has clauses touching on the counties. Most likely we may have to go on mediation. We are ready because we want to give this country the best. I am very proud. We have done a very good Bill. I want the youth of this country to take note and prepare to take advantages which this Bill will provide them in procurement.

Thank you very much everybody. I also want to thank my clerks, Evans Owanda, Maluki and legal counsel Brigid. They have done a lot of work to bring this Bill. Thank you very much.

The Temporary Deputy Speaker (Hon. Kajwang’): I now order that the business appearing in the Order Paper as number 10 be listed tomorrow in the Order Paper in the afternoon for the purpose of taking a vote.

It is so ordered.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, the time being 8.43p.m., this House stands adjourned until tomorrow, Thursday, 30th April 2015 at 9.30 a.m.

The House rose at 8.43p.m.