

NATIONAL ASSEMBLY

OFFICIAL REPORT

SPECIAL SITTING

Tuesday, 26th May, 2015

The House met at 2.30 p.m.

*[The Deputy Speaker
(Hon. (Dr.) Laboso) in the Chair]*

PRAYERS

QUORUM

Hon. Deputy Speaker: Can the Quorum Bell be rung please?

(The Quorum Bell was rung)

Hon. Members, we are now properly constituted. We can continue with business.

ADMINISTRATION OF OATH

Hon. Deputy Speaker: Hon. Members, can those at the back please allow Mr. Waititu to come and take the oath?

(Applause)

Hon. A.B. Duale: *Baba Yao.*

Hon. Deputy Speaker: Okay. Who is before us?

Hon. Chepkong'a: Hon. Deputy Speaker, I wish to introduce the new Member for Kabete Constituency, the authentic Waititu Ferdinand Ndung'u who overwhelmingly won the Kabete seat with 96 per cent of the votes cast.

Hon. Deputy Speaker: Welcome. Which religion do you subscribe to?

Mr. Ferdinand Waititu Ndung'u: Christianity.

Hon. Deputy Speaker: Okay. We can give you the Bible.

The Oath of Allegiance was administered to the following Member:-

Mr. Ferdinand Waititu Ndung'u.

Welcome. You may now sign. We may continue with the business of today.

PAPERS LAID

Hon. A.B. Duale: Thank you, hon. Deputy Speaker. I beg to lay the following Papers on the Table of the House today Tuesday, 26th March, 2015:-

The Annual Report and Financial Statements of the Cooperative University College of Kenya for the year ended 30th June, 2013 and the certificate of the Auditor General therein.

The Annual Report and Financial Statements of the Dedan Kimathi University of Technology 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 Cooperative University College of Kenya for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of the Judges and Magistrates Vetting Board for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Commission on Administrative Justice Annual Report for the year 2014 pursuant to Article 254(1) of the Constitution and Section 53(1) of the Commission on Administrative Justice Act, 2011.

The National Treasury Quarterly Economic and Budgetary Review (QEBR) for the Third Quarter, Financial Year 2014/2015, period ending 31st March 2015.

Thank you.

Hon. Deputy Speaker: Let us have the Chairman of the Departmental Committee on Transport, Public Works and Housing.

Hon. Kamanda: Thank you, I beg to lay the following Paper on the Table of this House today Tuesday, 26th May, 2015:-

The Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of protocol on development and operation of Standard Gauge Railway (SGR) within the framework of Northern Corridor Integration Project (NCIP).

Thank you.

Hon. Deputy Speaker: Okay. Let us have the Chairman of the Budget and Appropriations Committee. Is he ready? We will give them permission whenever they are ready because of the urgency of the matter. What about the Chairman of the Departmental Committee on Justice and Legal Affairs?

Hon. Chepkong'a: Thank you. I beg to lay the following Paper on the Table of the House this Tuesday, 26th May, 2015:-

The Report of the Departmental Committee on Justice and Legal Affairs on the Senate Amendments to the Fair Administrative Action, Bill No. 10 of 2015.

Thank you.

Hon. Deputy Speaker: The Departmental Committee on Finance, Planning and Trade has already indicated that it will come in the course of our proceedings today. Let us have the next Order.

NOTICE OF MOTION

Hon. Deputy Speaker: We have several notices of Motion. Let us have Hon. Kamanda.

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ADOPTION OF REPORT ON STANDARD GAUGE RAILWAY PROJECT

Hon. Kamanda: Thank you, hon. Deputy Speaker. I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of Protocol on Development and Operation of the SGR within the Framework of Northern Corridor Integration Project laid on the Table of this House today Tuesday, May 26th 2015. Pursuant to Section 8 of the Treaty Making and Ratification Act 2012, it approves the ratification of the Protocol on Development and Operation of the SGR within the framework of the Northern Corridor Integration Project.

I would like to add that this matter be treated with urgency by the House Business Committee (HBC) and be given priority. This is because the Heads of State of this region are meeting in Kampala, Uganda on 2nd June. It is also important to note that other countries have already ratified the Protocol. This matter was brought to the attention of the Committee the last week when we were going on recess and---

Hon. Deputy Speaker: Hon. Kamanda, I was just waiting to see where you were going with it. You have already given notice. You will do the debate and moving of the Motion when it is on the Order Paper. As the hon. Member has indicated, Hon. Mutava Musyimi will be given an opportunity at the time that the Committee will be ready in the course of the proceedings today.

Next Order.

Hon. Members, as you have seen, we have three Bills before us. We will proceed in the order in which they have been tabled. What has been tabled before us right now is Order No. 10. We will reorder our Order Paper starting with Order No. 10 and we will proceed as they come in. I said that because of the urgency of the matter we will need to be flexible in the way we handle business. I, therefore, call upon the hon. Leader of the Majority Party to move the Motion on Order No. 10 on Fair Administration Action Bill.

MOTIONS

THE FAIR ADMINISTRATIVE ACTION BILL

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

THAT, the Senate Amendments to the Fair Administrative Bill (National Assembly No.10 of 2015) be now considered.

At the outset, I thank the Members of the National Assembly for agreeing to this Special Sitting because of the matters before us today which have constitutional deadlines. One of them is the Fair Administrative Action Bill which today we need to consider the amendments from the Senate. As I beg to move, the Senate Amendments to the Fair Administrative Action Bill will now be considered. This Bill was passed with amendments by the National Assembly on 23rd April 2015. Being a Bill concerning

county governments in terms of Article 110 of the Constitution, it was referred to the Senate for concurrence.

The Bill has 14 clauses and the Senate has proposed amendments to 10 out of the 14 clauses. I am informed that most of the new provisions proposed by the Senate are aimed at safeguarding both the interest of the institutions and their employers while considering administrative actions. Looking at Clause 4 of the Senate Amendments for instance, it provides more clarity once the words “decision making authority” are deleted and substituted with the words “Administrator”. I am sure that the Chairman of the Departmental Committee on Justice and Legal Affairs will speak to the Report of the Committee but I support the Senate recommendations and agree with the amendments.

I beg to move and ask its Chairman, Hon. Chepkong’a to second.

Thank you.

Hon. Deputy Speaker: Let us have Hon. Chepkong’a.

Hon. Chepkong’a: Thank you. As you directed in the morning, the Departmental Committee on Justice and Legal Affairs met at 11 O’clock to consider the amendments of the Senate. As you know, this Bill had been exhaustively debated and passed in the Third Reading.

When we recessed as a Committee we considered the ten proposed amendments by the Senate. What we found are mainly corrections of typographical errors and replacement of some words which they did not like. For instance, we had proposed that instead of calling the person who makes the decisions an “administrator”, they wanted him to be called “decision maker”. The Senate in their wisdom decided that we should still call the person who makes decisions an “administrator”. As far as we are concerned, those are not substantive amendments and we can live with them because it is just a question of semantics as opposed to matters of principle. As someone has said: “On matters of opinion you swim with the wave, but on matters of principle you stand as a rock.”

On this one here, we feel that these are matters of opinion. They do not go into the substance of the Bill. We accepted the word “administrator” instead of the “decision maker”.

The other anomaly that we noted from the Senate is on Clause 3. While they were debating this Bill in the Senate, the Mover together with the Seconder decided that they do not intend to move that amendment, instead they proposed to drop it.

When it came to the Bill being submitted to the National Assembly, the amendment that was said to have been dropped still appears in the proposed amendments that were sent to the National Assembly. So, we just wondered what to do with it. On the Floor of the House, it was withdrawn. However, as the Bill was referred to the National Assembly, it was retained. So, in terms of procedure, what do we do with a matter that was dropped at the Floor of the Senate but which was subsequently forwarded to the National Assembly? In our view, it is not something that is inimical. We can live with it if procedurally, it is unacceptable. As a Committee, we agreed that if it goes through, we will move an amendment to delete it because it is unnecessary for it to be in the Bill. It does not add any value. I guess that is the reason as to why the Senate decided, in their wisdom, that it should not remain in the Bill.

The other inconsistency that we noted is contained in Clause 10. In Clause 10, the Senate made attempts to introduce clauses they thought were new but instead, they reproduced the same clauses which were contained in Clause 10. We hope that the final version of the Bill will not contain those clauses. For instance, in Article 10(1) (d), amendments were introduced under paragraph (g) and (h) yet the same provisions are already contained in paragraphs (d) and (e). So, we are asking that when the Bill is re-printed, those repetitions be removed.

Otherwise, we agree with all the other amendments. They are not substantive. Some of them are corrections like adding words like ‘and’, which we left out. So, it is just a matter of removing typographical errors and making the Bill look better.

With those remarks, I beg to second.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, I see no person interested in debate. I seem to have a problem. Why are names not coming up on the screen? Hon. Makali has a burning issue.

Hon. Mulu: Thank you, hon. Deputy Speaker. Listening to the Chair of the Justice and Legal Affairs Committee, it looks like the amendments by the Senate are actually more of semantics than serious amendments. I want to repeat what I said this morning about the procedures of this House. I am sure that they are also applicable to the Senate. One of them is that every time a Bill is presented to the House, it is normally referred to the relevant Departmental Committee. It is the work of the Committee to look at the Bill before it comes to the House for debate. I still insist that the two Houses of Parliament need to come up with a mechanism for consultation on some of these small matters to avoid wasting our time. Even though this is a serious Bill, it is very unfortunate that we are just going to discuss amendments on the words ‘administrator’ and ‘decision maker’. I am saying that such a small amendment would have been sorted out if the Chair of the Committee that looked at this Bill in the Senate and their counterpart in the National Assembly had informal consultations to agree on it. I am sure that consultations would have helped us. This is a situation where issues of semantics have been brought to this House to be discussed. However, since the Committee seems to have supported, I also want to support.

With those comments, I support the use of the word “administrator”.

Hon. Deputy Speaker: Yes, Hon Chris Wamalwa! There seems to be a problem with the system.

Hon. Wakhungu: Thank you, hon. Deputy Speaker. I rise to support the amendment but before I do so, let me say that it is indeed embarrassing that we are wasting so much time dealing with matters of semantics. It is important that when the Senate brings some amendments, they be substantive. These Bills have a constitutional timeframe within which they should be passed. We should not be wasting time on semantics.

Regarding Clause 3, in respect of which an amendment was dropped on the Floor of the House of the Senate, but which re-appeared in the amendments that have been forwarded to this House, that is something which is against the procedures of this House.

As you have always said, this is a House of records and traditions. What is going to happen, if indeed this clause was dropped on the Floor of the Senate and is here erroneously? Do we have to debate it or what are we supposed to do? We also need your guidance. My humble request is for the two Houses to work together as a team. We should not try to purport to be showing that we are probably more powerful than the other House, because such supremacy wars really waste time. From these amendments, there is nothing of substance. As they propose amendments, it is important for them to ensure that such amendments add value to the Bill, as opposed to dwelling on issues of semantics or whatever the case.

With those remarks, I beg to support.

Hon. Deputy Speaker: Hon. Kathuri Murungi.

Hon. Murungi: Thank you, hon. Deputy Speaker, for giving me this opportunity. I do not want to overemphasise the sentiments of my colleagues but the leadership of both Houses of Parliament should craft a way of ensuring that at some point relevant Committees from both Houses meet so that they can iron out some of the little issues that keep coming up. During the law making process, we waste a considerable amount of time, trying to take Bills to both Houses. If the leadership from both Houses can sit down, they can come up with a mechanism for relevant Committees from both Houses to meet at some point and agree on issues like the ones we are dealing with here, so that we can make progress in terms of making laws for this country.

With those remarks, I beg to support.

Hon. Deputy Speaker: Yes, Hon. Anthony Kimaru.

Hon. Kimaru: Thank you, hon. Deputy Speaker. I stand to support the amendment, although the matters raised are mostly of language rather than substance.

The good thing with the comments that have come from the Senate is an assurance that indeed they went through the Bill and largely concurred with this august House. I do not see much danger in their bringing their amendments here because we can easily tackle them in the shortest time possible.

With those comments, I beg to support.

Hon. Deputy Speaker: Yes, Hon. Joseph M'eruaki.

Hon. M'uthari: Thank you, hon. Deputy Speaker. I rise to support the amendments but it is important that, as we spend time making laws in both the Senate and the National Assembly, we look at issues critically, and not just for the sake of presenting them or checking grammar. Amendments brought to this House by the Senate should be for purposes of the prosperity of this administration. It is important that issues highlighted are within the Bill. The amendments that have been brought to this House are not on serious issues. They have caused us to suspend our recess and spend time. This kind of approach to issues may not be helpful in taking the country forward.

With those remarks, I support the amendment so that we may move forward.

Hon. Deputy Speaker: Hon. Members, seeing there are no more contributions---

(Question put and agreed to)

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

Hon. Deputy Speaker: Next Order!

We have not yet got the full report but I think we will proceed as we have done. It is setting precedent.

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

THAT, the Senate Amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014), be now considered.

Hon. Deputy Speaker, the Public Procurement and Asset Disposal Bill, 2014 was passed by this House on 29th April, 2015. Being a Bill that concerns county governments in terms of Article 110 of the Constitution, this Bill was forwarded to the Senate for concurrence. I am generally agreeable to all the Senate Amendments to the Bill. I particularly laud the amendment proposed in Clause 176 which is to allow procurement entities like the Parliamentary Service Commission (PSC) to lodge complaints with professional bodies against contractors who contravene the provisions of this Act or those who conduct themselves in unprofessional manner in doing their work.

Looking at this Bill in totality, I am aware that some of the amendments that this House passed may require further amendments at a later time particularly those relating to the audit of security contracts as provided for in the Bill. On the amendments to clauses 33, 51, 31, 124 and 165, I am guided that the Departmental Committee on Finance, Planning and Trade has also considered them. I am sure the Chairperson of the Departmental Committee on Finance, Planning and Trade will be talking to these proposed amendments at a later stage when he gets the opportunity. I am sure the report that the Committee will table will guide the House in agreeing with the amendments that the Senate - our colleagues - has provided.

In that regard, I beg to move and ask Hon. Benjamin Langat, the Chairman of the Departmental Committee on Finance, Planning and Trade, if he is in the House, to second.

Hon. Deputy Speaker: Hon. Benjamin Langat is in the House but before he seconds the Motion, I would like to ask him to table the report that he has. I had indicated that we would allow it to be tabled when they are ready to table.

PAPER LAID

Hon. Langat: Thank you, hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House today, Tuesday, 26th May, 2015:-

The Report of the Departmental Committee on Finance, Planning and Trade on its consideration of the Senate Amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and the Public Audit Bill (National Assembly Bill No. 38 of 2014)

(Hon. Langat laid the documents on the Table)

Hon. Deputy Speaker: We are waiting for you to second the Motion.

Hon. Langat: Thank you, hon. Deputy Speaker.

I wish to second the Leader of the Majority Party in saying that overall the Committee agreed on the Senate Amendments to the Public Procurement and Asset

Disposal Bill (National Assembly Bill No. 40 of 2014). We agreed on the basis that the amendments are improving the Bill and some were very minor amendments.

Hon. Deputy Speaker, Clause 33 talks about the functions of the county treasury with regard to procurement. The Senate made the amendment to say that the functions of the county treasury is to ensure that they promote preferences and reservation schemes for residents of the county to ensure a minimum of 20 per cent in public procurement at the county. That is to say that, at least, 20 per cent of the procurement from that county shall go to the county residents of that region. This is to ensure that many people in Kenya are given more opportunities to do business with the government. The Committee agreed on that since we will reach many Kenyans in their respective counties.

The other amendment was on Clause 51 which was simply deleting the word “unlicensed” and it is just like a cleanup. The other amendment was under Clause 24. We had a bit of debate there because what the Senate amendment provided for was under the requests for proposals as a method of procurement. The Senate said that in the evaluation of those tenders, there will be 50 per cent on quality or technical performance and 50 per cent in terms of the financial capability. After debate, we however agreed with the Senate that we can proceed. It does not affect much but we had some debate.

The other clause that we considered was 165 which the Senate is proposing a deletion of sub-section (1)(d). This is about the methods of disposing assets. That clause states that a procurement entity or a State organ may dispose assets to the members of staff. The Senate said that we should not allow staff who are working there to buy any of the assets. But if you look at that sub-clause and that is where the debate was, Clause 165 had a provision that in some circumstances, they can sell to the staff. Even in this House at the end of the last Parliament, Parliament allowed us to purchase the computers that we were using. I think most of the Members purchased at some price they had agreed. Anyway, we agreed to it but if you look at Clause 166, it gives further guidance. Overall, we agreed with the Senate Amendments but, of course, we had some reservations.

The final amendment which they recommended was to Clause 176 which deals with offences and sanctions under the procurement law. What the Senate proposed was that if you commit a procurement malpractice, if you are a professional, for example an engineer or an accountant who is registered, then in addition to the other sanctions, the procuring entity may lodge a complaint to your professional body that can further sanction you. We agreed on that and said that it actually promotes professionalism so that if you are a professional engineer you must abide by the code of ethics of that professional body.

I second and urge the House to agree with us to support the Senate on the amendments under Public Procurement and Asset Disposal Bill, 2014.

Thank you, hon. Deputy Speaker.

(Question proposed)

Hon. Deputy Speaker: Hon. Cyprian Iringo, remember to confine yourself to the amendments. Let us not go to the main Bill. We had already debated the main Bill.

Hon. Kubai Iringo: Thank you, hon. Deputy Speaker, for giving me this opportunity to support the Senate Amendments to the Public Procurement and Asset

Disposal Bill. As a Member of the Committee, we sat and looked at all the amendments which the Senate brought. In essence, as the Chairman has said, we found that most of the amendments were enhancing the Bill and others were just adding some semantics. As far as Clause 165 is concerned, despite protracted debate on it, we came to a consensus that we should agree with the Senate. I believe the Bill now is in order and it can be passed.

I beg to support.

Hon. (Ms.) Tuya: Thank you, hon. Deputy Speaker. I stand to support the amendments by the Senate to the Public Procurement and Asset Disposal Bill, 2014. I support the Motion for two very critical reasons. The amendment to effect the need for preference and reservation schemes for residents of counties to ensure that a certain percentage of procurement remains with the residents of a county is a very important amendment which supports the core objective of devolution as enshrined in the Constitution. It is going to promote the taking of services and even benefits of devolution to the residents of a particular county.

Two, I support the amendment to ensure that we have accountability within the contractors. The amendment to make sure that there is a complaints mechanism to make sure that contractors are brought to account for the way they spend public funds is very progressive and very critical. It is an area which we have seen various projects where billions of monies have been spent within our counties with very little to show for it. This is going to take us to the next step of ensuring that there is value for money in all public projects within our counties.

Thank you.

Hon. Kimaru: Hon. Deputy Speaker, my button remained on but I am in support of the amendments.

Hon. Wakhungu: Thank you, hon. Deputy Speaker. As much as I support the amendments, it is a critical concern that we are not giving it the quality time it deserves. For instance, we are debating this yet the report has just been tabled and we have not seen it, more importantly, on clause 176. The amendment says that in case of procurement malpractice, the procuring entity is supposed to raise a complaint with the professional body. In this case, any professional body must be a body created by an Act of Parliament. I am imagining in this House, these things that we are using were done by carpenters who are professionals in their own right and yet they do not have an association or a professional body that is recognized. In this case, how are we going to justify this issue of the professional body? To me, I find professions are still emerging. There are established disciplines like accountancy, medicine, engineering and law. Now I am imagining carpenters or plumbers, which professional body do they have in case of a procurement malpractice? In terms of value addition, it is just because of the issues of the timeframe but we need time to critique and look at the legislation properly so that we can make laws for purposes of value addition.

Again, I would support the issue of the residents of a particular county for instance. It adds value to the spirit of devolution but there are other critical matters which I think maybe after six months we need to come and do amendments. Otherwise, we are just rubber stamping; we are not giving it the quality time that it deserves. We have not

seen the Committee report and I do not think it is fair for us to pass laws that have just come from the Senate.

Thank you. I support.

Hon. Gikaria: Thank you, hon. Deputy Speaker. I want to agree with the last point that Hon. Chris Wamalwa has just raised. I know in the same Act, we agreed that the items that can be procured or made in the country should be procured in this country. We should not import something like furniture from abroad. With what Chris is saying then we need to look at it in a more critical way, where professional bodies are concerned because most of the people who will go into procurement might be members of any body. I totally agree with what Chris is saying.

That notwithstanding the amendments by the Senate, especially to Clause 176 on relevant professional bodies, that a procurement entity can complain to a professional body where that contractor has been under is important. If you go to counties, there are so many projects which have been started and they have not been completed by the contractor. On this one I want to agree that it has been raised by what has been looked into under Clause 124. You will find that as you are filling in the tender bids, most of the contractors are corrupt in the sense that they put a lot of money for the initial process. For instance, if you are building a house, they put a lot of money under the foundation, structural work and the roofing. Then they put very little money for finishing. So when it comes to finishing, they do not have money and they have already been paid over 90 per cent. So we need, as it has been indicated under Clause 124, evaluation on the financial and technical capacity of the contractors. We need to look at that and even put a law because most of the projects have stalled because the contractors have put 90 per cent at the initial stages and only 10 per cent for the finishing. You cannot clear that.

Regarding the disposal to staff, I did not agree with what Hon. Langat, the Chairman of the Departmental Committee on Finance, Trade and Planning was saying. It is unacceptable for an individual or two to buy all the items. It was important for us to give the staff an opportunity to buy items when they are sold. If we leave it, we will just leave to an individual because they have money. I witnessed that just a week ago in a public auction where the Government was involved and only two individuals bought almost 90 per cent of the items that were listed for disposal. That needs to be looked into. I hope much as we might not be able to raise the numbers to stop this because of the law and the requirements, I just hope that the President on this one can---

Lastly, I will talk about preference and reservations. Hon. Deputy Speaker, it is very true. If you come to Nakuru County, you will find that all the tenders have been given to outsiders and nothing is left in Nakuru. So, how do we grow Nakuru County under the aspect of devolution? The 20 per cent reservation was even a small percentage. I was thinking they would have increased it to, at least, 40 per cent so that the locals can participate in tendering and be given the contract. I have said it in the past that registration of companies has been made difficult. This is because what the National Construction Authority (NCA) is charging for one to qualify as a contractor is prohibitive, especially for the youth. The charges demanded by the National Construction Authority (NCA), and especially for the youth, are so huge that most of them will be denied an opportunity to participate in the procurement process. We were told that we could bring some amendments and more so regarding registration of companies. We need

to propose that we decentralise registration of companies from Nairobi. We should have the registration of companies being undertaken at every county.

Secondly, we also need to reduce the charges that the youth, women and the disabled persons are being charged. When you ask a company formed by the youth to pay over Kshs60,000 to the NCA, then that is impossible. As much as I support a few amendments which were done by the Senate, I do not agree with the clause on the staff and the percentage even though it has been raised to 20 per cent. I would have liked it moved to, at least, 40 per cent.

With those few remarks, I support.

Hon. Ganya: Thank you, hon. Deputy Speaker for giving me this opportunity to support the Senate Amendments to the Public Procurement and Asset Disposal Bill of 2014. I really want to commend the Senate for proposing some very substantive amendments according to me. Among all the amendments, I want to focus on just three. By ensuring that the county-based contractors will be given special preference up to a minimum of 25 per cent for all contracts within the county, that is the way to go. Devolution is about devolving resources and ensuring that we build all our 47 counties. This will go a long way in ensuring that all our 47 counties grow. I hope that the people making decisions at the county level will not just limit it to the minimum of 25 per cent; rather they should even go further and ensure that more and more contractors in our counties get opportunities to build our counties and the nation at large.

Secondly, the amendment by the Senate in ensuring that when tenders are evaluated, the exercise is not only based on financial capabilities of the tenderers; rather that equal weight is given to technical capability, that is the way to go. The reason why many Kenyan contractors are not able to win whenever they are competing with Chinese and other foreign contractors is because of limited resources. The foreigners tend to score highly when it comes to the financial aspects of the assessment while the technical capabilities of our contractors are not equally valued. Through this amendment, the Senate has ensured that both financial and technical capabilities of the tenderers will be given equal weight. This will enable many Kenyan contractors to compete favourably with foreign contractors. This is the way to go.

Finally, the Senate also through the amendments, especially in Clause 176, is trying to enhance professionalism among our contractors by ensuring that contractors who are not able to adhere to their professional expertise are sanctioned or even fined. This will ensure that our engineers, architects and all other contractors, especially in construction industry do quality work and ensure they compete favourably with other contractors even globally. This will ensure professionalism in the construction industry. That is what we really demand for. Were it not for the kind of unprofessional work that was done by engineers and others involved in the construction of Badasa Dam work in my county, the people of Marsabit would be having water today. President Kibaki invested billions of money in that county, but simply because of irresponsible professionalism by contractors, today our people of Marsabit County are suffering. Those are the kind of problems that the Senate was trying to cure by bringing this very useful amendment. For all those reasons, I support the Bill.

Hon. Sakaja: Hon. Deputy Speaker, I would like take this opportunity to congratulate the Senate for having expedited the amendments to the Public Procurement

and Asset Disposal Bill. This is a Bill with more than 185 clauses. It took us quite a lot of time as the Departmental Committee on Finance, Planning and Trade to go through. So, I congratulate them, one, for having expedited this Bill and, two, for having made sure that the gains that the National Assembly had put in for women, youth and people with disability to access 30 per cent procurement opportunities have been locked in.

If you look at the amendments, and they have only done five key amendments, none of them is out of the blues. I would like to speak particularly on Clause 33. It is important that the county governments actually implement the reservations and preferences to make sure that 20 per cent of the procurement goes to the locals. This is indeed a very welcome move because devolution was supposed to enhance the economic well-being of Kenyans in all parts of the country. As we do this, and I am glad that in Article 158 the National Assembly introduced a secretariat within the Treasury that will implement preferences and reservations, even within the counties as we give 20 per cent, we must make sure that these opportunities of business transcend all communities and all corners within the county.

We have been going round the country with the Joint Committee on National Cohesion and Equal Opportunity and we noted that the cohesion levels within our counties are very low because the dominant communities in each county have been getting undue advantage over the communities that are not necessarily dominant, but are equal stakeholders and players within those counties. Devolution was not created for us to have ethnic balkanisation in our country. It will be important to see how we define residence of a county. Everybody within a county needs to have an opportunity if they call that county their home.

Secondly, I will speak on Clause 124 which raised quite some heat within the Committee. It talks about evaluation of tenders by public entities and that the financial and technical capability of tenderers shall be given equal weight. There are two schools of thought. One is that some felt that this was an absolute statement that refers to all categories of tendering despite the fact that it is in Part X which talks about consultancy services and requests for proposals. In this Senate amendment, probably, the wording did not fully match the spirit of that amendment because it is in a section talking about quality and cost-based selection as one of the methods of procurement and that where there is a competitive process that takes into account quality of the proposal and the cost with the same weight, then it is only in that situation where you can have equal weights for technical and financial capacity. However, it must not be applied to all categories of tendering. That is something that should be improved since we have agreed on these amendments. They are only five of them. We could improve them through the regulations or whichever measure that shall be taken.

Hon. Deputy Speaker, I am grateful that all in all the Committee agreed finally to support these amendments by the Senate. Usually when these Bills go to the other House, we find certain amendments that we are not comfortable with. However, we are very comfortable with the amendments that have come from the Senate. We support and pray that the President shall assent to it expeditiously so that our young people, women, people with disabilities and even the residents and locals in counties start taking advantage of the provisions and gains that have been made in this landmark legislation.

With those few remarks, I support.

Hon. Gaichuhie: Thank you, hon. Deputy Speaker. I also want to support these amendments that were brought by the Senate. I am a Member of the Committee and we critically looked at the amendments and found that although they are affecting the Bill, it is not critically. So, we decided, as a Committee, for prosperity and to make sure that things move, we support the amendments as presented by the Senate.

Hon. Koyi: Thank you very much, hon. Deputy Speaker for giving me this chance to contribute. I support the Senate Amendments. In this country, we want to have value for our money. Variations of contracts have killed this country. Somebody will be awarded a contract for Kshs2 billion and at the end of one or two years, he claims Kshs15 billion. That has killed this country.

I support the Senate Amendments.

Hon. Dido: Thank you very much, hon. Deputy Speaker for this opportunity. I wish to make very precise comments. The first comment is on the minimum of 20 per cent in public procurement being given to the county residents. Rather than the minimum, we should have set the maximum, so that outsiders in the counties are aware of how much leeway they have in terms of getting contracts in the county and also reinforces what the county residents can get for the value of devolution. This is important. On that, I congratulate the Senate.

Clause 124 is on financial and technical capability. The Committee on Finance, Planning and Trade must note that that is a very dangerous thing. There are small, start-up, foreign and local companies and if you are going to weigh their financial and technical capability at the same level, then it means that you are going to lock out start-up companies who do not have the sort of equal capacity in terms of financial and technical capability. This is an area that we need to watch out.

With regard to Clause 176, it is important that we hold professionals in this country responsible. Professionals such as engineers and lawyers are held in high regard. If they will have their way, particularly in the area of contractual obligation, then they may fleece companies, counties and the country at large. So, holding them responsible or setting thresholds is important.

Finally, the Committee on Finance, Planning and Trade must be careful on Clause 176(6) which provides that where penalties are imposed by a professional body, you may also be liable to this Act or before a court of law. Natural justice provides that you cannot be judged twice for a single offence. It is important to note that.

Hon. Chanzu: Thank you, hon. Deputy Speaker for the opportunity to support the Senate Amendments to the Public Procurement and Asset Disposal Bill.

First of all, this Bill is very important. It changed what was going on before in this country where there was haphazard procurement and awarding of tenders. There had to be some kind of law to control that. Unfortunately, it did not take into account the situation that eventually evolved. I am happy that the idea of a minimum of 25 per cent in public procurement in the counties being given to the residents is there. It has been there in other legislations, but it was not put in a harmonised manner.

There is the element of transfer of expertise, technology and knowledge which will then have to be taken into account. Counties are not all the same. Development in the counties has not been at the same level. That means that there will be a necessity of importing or transferring some skills from the other counties. The Constitution has been

written for posterity. So, as the country develops, it will come a time when all the counties will have enough personnel, technology and techniques to do whatever they want to do. For now, that flexibility that we allow at least 25 per cent is good.

There is also the issue of mutual consultation in Article 6 of the Constitution which talks about the two levels of Government being distinct and independent. It is important that the Senate had an opportunity to look at this Bill, so that there is involvement of everybody. This helps as far as the Constitution is concerned that all of us, as a country and leaders, get involved in what is going on so that there is the aspect of transparency and accountability.

There is the aspect of agents being registered, which is sufficient because the addition of the word “licensed” was going to be restrictive. When we just say that they are registered that is quite good. There is an element which has come out, namely evaluation, which is good, which we have been basing on both financial and technical capabilities. The Senate said that it should be given equal weighting, which is reasonable. All these will help us to tame some of the errant and defaulting contractors who have been defaulting in contracts and who have been operating without proper regulation.

With those few remarks, I support the Motion.

Hon. (Ms.) Chidzuga: Shukran, Mhe. Naibu wa Spika. Nasimama kuiunga mkono Hoja hii na kuipongeza Seneti na pia Kamati za Nyumba zote mbili kwa sababu zimeonyesha uwiano. Nina imani kuwa uwiano huu utaendelea katika Mswada yote ili tuonekane kwamba tunafanya kazi kumsimamia mwananchi apate haki yake kwa pande ya Seneti na Bunge la Taifa lenyewe.

Hoja hii imefungua mlango wa ajira zaidi kwa vijana, kina mama na wenzetu waliozaliwa na ulemavu. Hili limekuwa tatizo sugu katika maeneo yetu ya Bunge. Vijana wetu hawana kazi ilhali kandarasi zinatolewa kwa watu ambao si wenyeji wa lile jimbo na watu wetu wanawachwa bila chochote cha kujishikilia.

Mswada huu umekuja kwa wakati unaofaa. Pia utasimamiwa na sheria kwamba haiwezekani kwa kandarasi zote za sehemu hiyo zitolewe bila kuhusisha wenyeji. Pia imefungua njia ambayo itatuwezesha sisi pamoja na wananchi kufuatilia kwa kina zile kazi zinazofanywa kule nyanjani na kuweza kutoa maoni yetu kama kazi haifanyiki kwa njia ya kisawa. Naupongeza huu Mswada na naunga mkono kwamba tunaweza kusonga mbele.

Shukrani sana.

Hon. Deputy Speaker: Hon. Julius Melly.

Hon. Melly: Thank you, hon. Deputy Speaker. First of all, I want to thank the Senate for these amendments, especially on Clause 124 on evaluation of tenders by public entities. This will ensure that all the entities that have applied to participate in a tender process are capable and will be able to do a good job. I just want to point out that in most public expenditure, procurement is taking a lot of money. If not well evaluated, public resources will be put into waste.

I also want to point out the issue of reservations, especially for the counties. In Nandi County where I come from, most of the tenders are awarded to individuals outside the county. You realise that devolution was meant to bring resources down to the people

in the counties. So, by allocating 20 per cent to the entities within the county, it means that the funds shall remain within that particular county. It will also mean that the tenderers within that county will have gained experience, especially in procuring and participating in ensuring that resources remain in their county.

I also want to point out that in Clause 176 the Senate tried to ensure that there is some control and penalty for individuals who are found to have engaged in professional misconduct. In cases where a body has launched a complaint, a penalty is imposed on the body, individual or company that has entered into that agreement. Penalties will ensure that procuring entities do a good job and the public gets value for the finances they have.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, this list keeps on adding up as people walk into the Chamber. We seem to be all agreed. Do we have somebody that is disagreeing with the Senate Amendments? As I approach to finish, another two Members keep adding up as they walk in. At some point we need to move because we still have other business.

Hon. Kiuna, I have given you the Floor.

Hon. J. K. Ng'ang'a: Thank you, hon. Deputy Speaker. I also rise to support this Bill. With the amendments the Senate has made, we have come to an agreement that we shall have very competent people who will be getting these jobs. We used to have some cowboy contractors and suppliers before, but this time we do not have shortcuts. Everything will be done transparently, openly and there will be no bias.

With those few remarks, I support the Bill. Thank you.

Hon. Deputy Speaker: Hon. Nicholas Gumbo.

Hon. (Eng.) Gumbo: Thank you, hon. Deputy Speaker for giving me the opportunity to contribute to the Senate Amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014). As you are aware, in engaging with the Departmental Committee on Finance, Planning and Trade, we had proposed with my good friend Hon. Johnson Sakaja quite a number of amendments to this Bill. I am happy to say that, looking at the amendments proposed by the Senate, I have not seen any material dilution of the amendments that we had proposed. I want to largely agree with the proposals by the Committee except that I was talking to the Chair of the Committee and I felt the proposal with reference to the disciplinary action to be taken by professionals vis-à-vis the provisions of this Bill as provided for by the Senate Amendments, will need to be looked at probably at a later stage.

In Clause 124, the Committee has agreed with the Senate in the evaluation of tenders by public entities. I do not know how this will be applicable because in almost all jurisdictions, including all World Bank tenders, usually the weight given to technical proposals is bigger than the weight given to financial proposals. So, to say that you give financial and technical capabilities of a tenderer equal weight, in my view and arising

from the practice that we have had for many years, might be a way of diluting technical competence of a tenderer. However, as with Bills such as this, most times the taste of the pudding is in the eating. This is one of the areas that, as we start to put the law into practice, we may have to look at and see how practical it is.

I support.

Hon. Deputy Speaker: Hon. Samuel Ndiritu.

Hon. Ndiritu: Thank you, hon. Deputy Speaker. I stand to support this Bill. First, the reason why we have two Houses of Parliament is to enrich the Bills. I must congratulate the Senate for playing their part. Being a very long Bill, I also congratulate the Committee for only leaving very little that was contentious.

I would only want to emphasise on the requirement for professionals to take liability in the procurement process. It is known that for most cowboy contractors and most of the projects that have become white elephants, we have always found there is professional culpability. It is good that the Senate found it wise to place more liabilities on the professionals so that they can up their game.

With those few remarks, I beg to support.

Hon. Deputy Speaker: Hon. Onyango Oyoo.

Hon. Oyoo: Thank you very much, hon. Deputy Speaker for giving me this opportunity. I want to take this opportunity to thank the Senate for making very keen and accurate observations in key areas. I had the opportunity to tour America courtesy of the sponsorship of this House. One of my duties was to see how order and prudence in Government expenditure is done. I was also fortunate to meet the so-called First Ladies (read the wives of Governors) and I had the opportunity to remind them that they should advise their husbands to run the affairs of the counties the same way the Americans have done. A lot of things done by the State governments are done very properly. A lot of things that have gone wrong in this country have found their way via a procurement system that had no diligence. I realise these people have talked about arbitrary variations. You constantly find tenders that are meant to take Kshs5 billion ending up gulping Kshs1 billion or Kshs2 billion more just because of political patronage.

We have also seen in the past tenders awarded to people on very flimsy reasons. Most of them are awarded before formal decisions are made because certain interested parties who have political support, have a way of meandering around it. We tried our best, during the deliberations on this issue, to close those gaps.

I want to appeal to the technocrats, more so the professionals in this country, that whatever comes in their domain--- For example, when we are doing roads, the engineers should do us proud by making sure that they give certificates to jobs that are done in the prescribed manner and not in their own manner. Let the lawyers forward certificates for processes and works that have been done, that is, things that can be seen and not astronomical demands that are making this process to be hard.

This is about procurement and so, the Jubilee Government must walk the talk. The ongoing anti-corruption crusade is very good and encouraging. Kenyans are looking

to the President to see whether he will meet the threshold of their aspirations. Let no political patronage or consideration be involved. Those who are supposed to be hanged, let them be hanged because of their guilt. Let no politician, including myself, come back and give the President unnecessary pressure that their tribe is being finished. When those people are eating, they eat alone. The President does not eat with them.

Kenyans are suffering in the streets. Up to the time I started talking the Government's bursary considerations have not yet reached the constituencies ---

Hon. Deputy Speaker: Order, Hon. Oyoo. You have gone out of the substance of the Motion.

Hon. Oyoo: Thank you so much, hon. Deputy Speaker, I may have veered a bit because I represent the interest of the people.

The Senate has done a good job and we will support them.

Thank you so much.

Hon. Deputy Speaker: Hon. Ababu Namwamba.

Hon. Ababu: Thank you, hon. Deputy Speaker. It is very good to see a situation where finally you see some kind of meeting of minds between the two houses of Parliament. Therefore, let me start by commending and encouraging this spirit that, the Senate and the National Assembly can agree on legislation, especially critical legislation including the Public Audit Bill that this House has already considered and this Bill that we are debating now. This is the spirit and the makers of the Constitution envisaged a situation where the bicameral arrangement would work harmoniously where business can move from the National Assembly to the Senate and from the Senate to the National Assembly seamlessly. That, these two Houses which are chambers of the same House, would find common purpose in the best interest of the people of this country.

Hon. Deputy Speaker, I wish to address two issues in respect of this critical Bill. Of all serious issues and key matters that touch on spending of public resources, nothing is more important than procurement. Therefore, having a law that is streamlined, harmonised and ensures smooth operation of public procurement is a major step forward. Even as we debate this law and enact it, there are two critical issues that must be at the back of our minds. One is the question of value for money. As we seek to follow the proper procedure to maintain fidelity to regulations, we must also insist on value for money because you can follow the procedures and the regulations, but still end up in a scenario or in an arrangement which costs the public the best value. So, value for money is key in this law.

Secondly, the timeframe within which we are undertaking procurement in this country is still pretty much archaic and stone age. Now with the coming to town of the e-procurement, we would like to see a scenario where we revise time scales. You do not have to wait for two weeks or a whole month before these processes are concluded. So, we need a system that will make procurement and doing business in the public sector efficient, smooth, fast and cost effective.

Therefore, without a doubt, this is one law that is definitely progressive and pointing in the right direction in so far as we seek to strategically locate this country as a competitive place to do business and even a destination for investment capital.

I support, thank you.

Hon. Deputy Speaker: Hon. Kimaru.

Hon. Kimaru: Thank you, hon. Deputy Speaker. I want to support the amendments by the Senate particularly Clause 124 regarding evaluation of tenders by public entities, by giving weights of 50 per cent to both the financial and technical capability of the tenderers. I want to concur particularly on 50 per cent to technical capability because previously, technical weight had been rated at almost 70 per cent which many local contractors could not have achieved. But by bringing it to 50 per cent, it enables many local contractors to achieve the threshold.

Two, Clause 33, regarding promoting preference and reservation schemes for residents of the county, is very important. It affords the residents of a particular county an opportunity to participate more in tendering. Therefore, they will get funds and improve their standards of living.

I support.

Hon. Deputy Speaker: Hon. William Kipkemai, Marakwet West.

Hon. Kisang: Thank you, hon. Deputy Speaker, I arise to comment on two of the clauses of the Senate Amendments.

One is Clause 33 on the affirmative action of giving 20 per cent of the tender specifically to residents of the county. You realise that in some counties, more than 90 per cent or 100 per cent of the tenders are given to people outside the counties instead of at least leaving some reasonable percentage of the tendering within the county to improve the circulation of money and the economies of those counties.

Two is on the evaluation of technical and financial capability of tenderers. In the past, 80 per cent of the weight of the tender was for technical evaluation and 20 per cent was financial. Now that the Senate has proposed equal weight to both of them, I believe this will assist especially some of the new young upcoming companies that may not get the 80 per cent threshold for technical capability and may not proceed to the next stage. So this Senate amendment is good and it will assist to grow young companies so that they may be able to get businesses both within the county and nationally.

I beg to support the amendments given by the Senate.

Thank you.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, are we properly constituted for purposes of putting the Question? Please confirm.

Hon. Nderitu, you have already spoken to these amendments.

The Chairman of the Committee, are we okay now?

Hon. Langat: Hon. Deputy Speaker, I wish to thank the Members who have spoken to the Senate Amendments. Generally, they were in support. I want to thank the House for supporting the Committee and the Senate on those amendments. I urge the Members to support these proposed amendments by the Senate.

(Question put and agreed to)

THE PUBLIC AUDIT BILL

Hon. Deputy Speaker: Majority Whip.

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

THAT, the Senate Amendments to the Public Audit Bill (National Assembly Bill No. 38 of 2014), be now considered.

The Public Audit Bill, 2014, was passed by this House on 2nd April, 2015 and forwarded to the Senate for concurrence. It was at that stage that the Senate made nine amendments to the Bill. They amended Clauses 5, 11, 19, 24, 26, 32, 39, 40 and 41.

I agree with the Senate Amendments especially to Clauses 26, 40 and 41. Specifically, the amendment by the Senate to Clause 26 proposes an Audit Advisory Board, which is enrichment to the Bill. This Board shall act as a commission to the Office of the Auditor-General similar to the Parliamentary Service Commission. The Board will advise the Auditor-General on the following matters as proposed by the Senate:- recruitment of senior managers into the Office of the Auditor-General, the deployment and review of organisational development issues, the budget estimates and plans of the Office of the Auditor-General, the remuneration and other terms of appointment of staff and any other matter related or referred to them from time to time.

This is a good improvement to the Bill. I thank and fully agree with the Senate for that. The Senate's amendments are generally quite good, but it is also good to note that most of them, in my view, contravene some other parts of the Bill. I am aware that our Senate colleagues were also under pressure due to the very limited time that they had to conclude the Bill, but they could have done better taking into consideration the fact that the Bill was sent to them by the National Assembly on 20th April, 2015. They had more than a month to look into it.

Finally, on the rest of the clauses, I am aware that the Finance, Planning and Trade Committee had a sitting this morning and we will be advised by the Committee accordingly. We will be guided by the view of the Committee on the rest of the clauses since they dealt with the original Bill at length. Therefore, since this is a straight forward matter, I want to end there.

I beg to move and ask Hon. Kimaru to second.

Deputy Speaker: Hon. Kimaru.

Hon. Kimaru: Hon. Deputy Speaker, I stand to second the Motion as moved with the recommendations by the Senate. Like my colleague has said when moving the acceptance of those amendments, generally, they add value to the Bill as earlier passed by this House.

In particular, we see the small issues of language being sorted out, thereby making the Bill clearer and removing any ambiguity that there might have been. We have also the threshold for members of the Advisory Board being increased in Clause 5. Initially, the qualification was only a Bachelor's Degree, but now it has been moved to Postgraduate Degree. That would add value, but it also creates some handicaps. We have many Kenyans who have higher qualifications and this would add value to the contribution by the Advisory Board that is going to be constituted.

We also see that the Chairman of the Board shall be elected from among the members by themselves. That is good for governance and promotion of democracy and accountability. We also see it making provisions clearer where it will be easy to implement.

Clause 6 also stipulates the functions of the Advisory Board. It states that the Board in particular shall advise the Auditor-General in the performance of his duty. This adds value unlike before where the Auditor-General was a lone ranger. So, we see people around the Auditor-General advising and guiding him on how to move without necessarily removing his independence.

In Clause 32, there is a compelling bit and the word “shall” is used. Previously, the provision was that he “may”, but now we have a compelling word “shall”. In general, I am in agreement with the clauses that have been brought forward by the Senate. Even Clause 39 where the Senate recognises the need to have confidentiality in audit reports especially regarding security organs.

As the Mover stated earlier, probably there might be need to improve it further later on where we might feel that some of the provisions by the Senate may not sit very well with the initial intentions of the Mover of the Bill. This may be sorted out later.

Therefore, I beg to second.

(Question proposed)

Deputy Speaker: Is this Hon. Ngunjiri or Hon. Gikaria with the card of Hon. Ngunjiri? Hon. Gikaria.

Hon. Gikaria: Thank you, hon. Deputy Speaker. First of all, I disagree. I heard the Mover, the Majority Whip, when he was moving the Motion and he mentioned that some of these proposed amendments by the Senate contravene some of the sections. I totally agree. The Senate has a right to give us their views and thinking, but I totally agree that some of those amendments, which have already been agreed upon, are supposed to improve the Bill especially under Clause 32.

Hon. Deputy Speaker: Hon. Benjamin Langat, are you on a point of order? Okay, we cannot have both of you standing.

Hon. Langat: On a point of order, hon. Deputy Speaker! The resolution of the House passed on Wednesday, 11th February 2015 provides that the Leader of the Majority Party will move the Motion, then next to talk will be the Leader of the Minority Party followed by the Chairperson of the Departmental Committee, in that order. I do not know whether that has been varied. I thought I should inform the House what the Committee resolved so that it is properly guided.

Hon. Deputy Speaker: Yes, I believe that was the case. I do not know who made the order. The Majority Whip was given the responsibility to move. As to how you agreed on who is the seconder, I do not know how the Chair of the Committee is not aware of how the---

Hon. Langat: After secondment, the Leader of the Minority Party was next and then the Chair of the Committee. However, I give my good friend time to complete his contribution.

Hon. Deputy Speaker: So, were you were aware of the seconder? You had agreed that he was to second the Motion. The only problem is you are the last one on my list and you should have been the first one after the seconder. Anyway, allow hon. Gikaria to finish his submissions then you can guide the House.

Hon. Gikaria: Maybe in line with what the Chair of the Departmental Committee on Finance, Planning and Trade has just said, I need your guidance whether I should just wait. This is because I could be more advised on some of the issues which were raised by the Mover after the Chair of the Departmental Committee on Finance, Planning and Trade has given his contribution. I might not have anything to raise on most of the things I am going to raise. If you allow me I will seek your guidance as to whether I sit, allow him to give his contribution and then I can contribute, if there is anything I will have.

Hon. Deputy Speaker: Let me guide you that you will not be able to get a second attempt. If you are contributing, just make your contributions. Once the Committee Chair speaks, he will have clarified and said the way forward. Just make your contributions as you had planned.

Hon. Gikaria: Thank you, hon. Deputy Speaker. I stand guided.

I concur with the amendments on clauses 26, 40 and 41, which did not have a lot of issues. However, if you look at Clause 32, and I remember when we were contributing to the Bill when it came before the House, we said that there are some words which are very dangerous when they are used in any Act. An example is in Clause 32 where they are proposing that we delete the word “may” and substitute with the word “shall”. I totally agree with the Committee when I heard that these are some of the things that they did not agree with. It might be very dangerous to insert such words.

Secondly, I remember the membership and chairmanship of the Board was an issue which was brought up. We had suggested that some of these positions as the chairmanship--- It was a heated debate here. I totally agree with the resolution of the National Assembly then. Sometimes if you insist on a particular person being the chair and something was going to be raised against him or her or something has been raised about the chair and things have to be investigated about him or some issues have to be raised about him--- I believe that some of the issues which have been raised are not that fundamental. Basically, it is something we need to check as to who should be the chair of the Board. I totally agree with what the Mover has just said that a mediation team needs to be formed for them to agree. I totally agree with the Committee. As we allow the Senate to bring their sentiments, we should not allow them again to continue contravening the same Act that we are purporting to legislate. It is important for us to think and understand that as they bring any amendments, it must be within the required standards.

With those few remarks, I stand to agree with the Committee.

Hon. Deputy Speaker: Let us have the Chair of the Committee.

Hon. Langat: Thank you very much, hon. Deputy Speaker. As has been mentioned by the Majority Whip when he was moving, the Senate proposed nine amendments to nine clauses, that is 5, 11, 19, 24, 26, 32, 39, 40 and 41. My Committee sat in the morning pursuant to the Speaker’s ruling and we went through all those amendments. We did agree with the Senate in some amendments. We also did disagree with the Senate in some of their proposed amendments. I will go to details which I will ask Members to support or reject at the relevant stage of the House. By and large, my Committee was reasonable to agree with what is not material.

The Committee agreed to clause 5 (b) because the Senate was just trying to be more specific in their reference to the Constitution. In clause 5 (c), the Senate proposes

that for one to be an Auditor-General, he or she must have a minimum of postgraduate degree. The constitution is very clear. It has provided very clear academic qualifications on the Auditor-General. What the Senate proposed can be construed to mean denying a majority of Kenyans a chance to apply to be Auditor-General. The Constitution specifies that the President only needs to have a degree. It is too elitist and too exclusionist when you put a postgraduate degree as a minimum. At a relevant stage, I will ask the House to reject this proposal. A standard practise has been basic minimum first degree and the panel can decide on the others when they are interviewing. That is why we have an interviewing process which invites people and then the other qualifications can become added advantage. However, to put it in the law that you must have a minimum postgraduate, it is too elitist and too exclusionist.

There was also a proposal which this House passed on the selection panel. When appointing the Auditor-General, we agreed that we should have a selection panel which has been provided already. I think the Senate was trying to fill a gap which we did not fill about who will chair. The Senate is proposing that the members should elect the chairman among themselves. However, if you look at the Constitution, the President is the appointing authority. There is nowhere where we should have a selection panel. However, we said that in order to improve on public participation, let us have that selection panel to invite applicants. We agreed that we should reject the amendment by the Senate that requires members to elect their Chairman. We said that it should be the President to appoint the chair because in the appointment of the Auditor-General, the buck stops with him. I will ask the House to again reject that proposed amendment by the Senate.

Three is the proposed amendment to clause 19.

The Senate is proposing that we amend Clause 19, subsection (2) by deleting the words “review and” appearing immediately after the words “each year for” at the end of the paragraph. This is about the budget estimates of the Office of the Auditor General (AG). If we were to accept what the Senate is saying, then it means that the AG can do a budget of any amount he wishes and then the purpose of the National Treasury is just to bring it to the National Assembly like a conveyor belt. In the Constitution of Kenya, there are only three arms of Government and they are Judiciary, Parliamentary Service Commission and the Executive which bring all the other budgets which have been provided for. It is the role of the National Treasury to do physical consolidation to ensure everybody is living within the set limits. But again, I think the fears are being expressed because we talked of the Office of the AG. The fear is that the AG seemed to be saying that Treasury might give them low funding. However, the National Assembly has the final say in terms of the budget estimates in the new Constitution. Those fears have no basis because this House will call everybody and will determine whether the AG has been given the necessary support or not. I will be asking the House to reject these amendments at the relevant stage which is the Third Reading.

Clause 24 is dealing with the advisory committee. If you look at the Bill as passed by the House, we agreed that there has to be an advisory committee to advise the AG. It was the wish of my Committee earlier on that you stay out of that advisory team if you are being advised so that the advice is objective. At the end of the day and in the

Constitution, the AG has the final say. He can actually accept or reject the advice he is being given because the law is very clear.

What the Senate is proposing is that the person being advised will chair the advisory committee. How do you advise yourself? I think it would be better to either do away with the whole advisory committee issue or we make it more objective so that the person being advised does not chair that process. He is the final person to decide whether he will take that advice or disagrees with it and performs his functions as per the Constitution. So, I will be asking the House again to strongly reject this idea that you must chair the person who is trying to advise you.

Clause 26 deals with the functions of the advisory Committee. After careful consideration, the Committee agreed that the Senate added some value here because it made it clear that the function of the advisory committee is to advise. The way it is presently worded makes it look like the advisory committee will actually do what it is supposed to advise on. We agreed on Clause 26 and I will ask the House to support the amendments to Clause 26 at the relevant stage. I do not want my Committee to be seen to be sadist. We actually agreed with them.

Clause 32 deals with the AG using the reports of internal auditors of respective organs of Government. What that clause was saying is that the internal reports of the State organ may be given to the AG if he wishes to have them. However, the Senate wants to say that they must be given to the AG, whether he needs them or not. If you look at Clause 32(2), the AG may demand all the internal audit reports. The amendment is superfluous and it does not make sense at all.

Hon. Deputy Speaker: I think we will give three more minutes to the hon. Chairman.

Hon. Langat: Yes, hon. Deputy Speaker. Two minutes please because I am almost finishing. My Committee rejected the proposed amendment to Clause 39 and I will be giving the reasons. The Committee agreed with Clauses 40 and 41.

Hon. Deputy Speaker, I support but with some reservations which I will express at the Third Reading.

Hon. Sakaja: Thank you very much for this opportunity, hon. Deputy Speaker. I would like to concur with the hon. Chairman of the Committee. Indeed, the office of the AG is very important in this country and has been provided for within our Constitution. It is important that we have a strong and independent office of the AG. However, there must be a very clear legal framework that provides for how the Office of the AG will accomplish that. We have considered this extensively within the Departmental Committee on Finance, Planning and Trade and, unfortunately and contrary to the earlier Bill which is the Public Procurement and Asset Disposal, we have certain reservations on this one. We will disagree with the Senate on the amendments.

I will just go quickly because the hon. Chairman has expounded on most of these reservations. The first one is on the qualification of the AG. We are not sure if this is a provision which is meant to lock out even the current AG or certain people who are likely to ascend to that position by asking for postgraduate qualification. We feel that it is too restrictive and it also locks out many of the young people who have excelled in audit. If you look at the Constitution, it is clear in Article 229(2). It says:-

“To be qualified to be the Auditor-General, a person shall have extensive knowledge of public finance or at least ten years experience in auditing or public finance management.”

We felt that, that is sufficient.

Secondly, on Clause 11, it creates a selection panel which has a certain representation, I think six of them are from the Government. It has certain Cabinet Secretaries (CSs) and representatives from the Association of the Private Sector and the Law Society of Kenya (LSK). Again, if you look at the Constitution, it is very simple and clear in Article 229(1) that:-

“There shall be an Auditor-General who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.”

Even the earlier provisions that we had were almost taking this constitutional privilege that the President has been given in nominating and appointing the AG. In fact, in any case, we should do away with the provision of the selection panel and just have the President nominate. If the President wants to nominate through a selection panel, let him have the leeway to do it. Or, if he just wants to appoint by thinking of somebody or an advice from one CS, the Constitution has given the permission to do it but we have made it too restrictive in terms of creating a selection panel and having the members within that panel then choosing who becomes the chairperson.

Clause 19 is sort of trying to make a shortcut within the budget process because what it was providing for was that the budget estimates of the Office of the AG shall be forwarded to the National Treasury for review and subsequent onward transmission to the National Assembly. The Senate felt that we need to remove the word “review”. The Constitution only provides that the Judicial Service Commission (JSC) and the Parliamentary Service Commission (PSC) are the bodies that can send their budgets to the National Assembly directly.

By removing provisions for review by National Treasury, it is tantamount to giving them an express route to the National Assembly in terms of the budget which is almost like amending the provisions within the Constitution. We understand the fears that may be there, that Treasury might be trying to allocate little money to the Office of the Auditor-General (AG) and that the review should not be done by a client because the Treasury is also a client of the AG but ultimately, the National Assembly has the final say on budget estimates and all appropriations done by the National Assembly. We feel that the review must be there because Treasury has a bird’s eye view over the economy. They can tell the budget ceilings which we should abide by and the Budget and Appropriations Committee and the National Assembly then can do the necessary.

On Clause 24, there is creation of the Audit Advisory Board. In this Board which is supposed to advise the AG on issues of recruitment, budget estimates and to review Organisational issues, the provision by the Senate is to make the AG the chairman of the Audit Advisory Board that is advising him. I think it does not make sense for him to chair a Board that advises him. If anything, he should not be a member of that Board and if he is, he could be a secretary. That is something that we need to be able to discuss with the Senate to make it clear. This takes us to the provisions in Clause 26 where we agreed with the Senate. If you look at what was in the Bill, it was not clear that the work of the

Advisory Board is purely advisory. If anything, a lot of the provisions and the language that was used in Clause 26 was written with a lot of finality. For instance if you read Clause 26 (a) it says:

“The Audit Advisory Board shall deal with recruitment of senior managers. They shall determine the remuneration and other terms of appointment.”

An advisory board should be purely advisory. The amendment by the Senate was written very well to make sure that it remains as such; purely advisory.

In Clause 32, the provision in the original Bill was that a state organ and such entity has the leeway, they may forward the results of an internal audit to the AG. The word used there was “may.” The amendment that has been made seems to want to make it mandatory that all internal audits done by state organs should be sent to the AG. We feel that this may not be necessary because the following clause says that the AG has unhindered access to all reports. So, if he actually wants a report he can ask for it and so there is no need to make it mandatory for these state organs to transmit their reports to the AG. Apart from that significantly, this was an important issue that we discussed as a Committee.

Clause 39 talks about auditing of national security organs. I must say that the Committee, the AG and every one that we spoke to including Treasury concur that national security organs must be audited. The auditing must be done in a proper way. However, the auditing of national state organs is a sensitive issue. What we felt is that at the beginning of this audit, the highest level in the AG’s office together with the highest level in that state organ must have an inception meeting to agree on areas which touch on national security and consequently determine the scope of the audit coverage. This is important because if we do not provide for this within the law may be some leaders of this national security organ might not want to be part of that inception meeting or might evade it. So, it is very important for us to put it in law that there is a mandatory inception meeting with the state organs and the AG when such audit begins. So, there we disagree because the Senate sought to delete that provision that provides for that inception meeting when auditing state organs.

They also sought to delete Clause 2 which talks about redacting, to seal the identities of certain persons, their assets and liabilities. That is a security issue and we felt that we need to discuss this more conclusively because finally ---

(Loud consultations)

Hon. Deputy Speaker: Order, Members! These are critical issues being discussed here.

Hon. Sakaja: That provision was that all the staff of the AG’s Office performing such sensitive audit within security organs must undergo vetting by the appropriate security agency, not the agency being audited. At the beginning of it a certain number of members of staff from the AG’s office should be passed on for vetting may be by the National Intelligence Service (NIS).

Hon. Deputy Speaker: Let us have Hon. Joseph Kyuna.

Hon. J.K. Ng’ang’a: Thank you. I rise to support this Bill with the amendments from the Senate. I would like to dwell on the Advisory Board. My appeal is that as I

congratulate them for coming up with such a noble idea, I was of the opinion that the people who will be on the Advisory Board be picked and vetted thoroughly so that they are people whom Kenyans have confidence in. They should be honest and patriotic. We have been complaining and the Government has been accused of supporting corruption. However, if we shall ever fight and eliminate corruption we must have committed and serious Kenyans who will serve in their various capacities diligently. Otherwise, fighting corruption merely by talking will never end. We need to have patriotic Kenyans who in any assignment that they have been given, they do it to the best of their knowledge with an understanding that they are serving fellow Kenyans. For those people who will be elected, let them be vetted thoroughly and be respected Kenyans.

On Clause 39, I also would like to suggest that when it comes to security issues we need to be very careful, not to debate everything.

Hon. Deputy Speaker: Hon. Kyuna, please stick to the amendments because of time. I appreciate the message that you want to get across but let us stick to the amendments.

Hon. J.K. Ng'ang'a: I am on Clause 39, where they are saying that there are some things we should not disclose unless authorised. I support it. It is high time we concentrated on this issue seriously.

Thank you, I support the Bill.

Hon. Deputy Speaker: Let us have Hon. (Eng.) Nicholas Gumbo.

Hon. (Eng.) Gumbo: Thank you, hon. Deputy Speaker, for giving me the opportunity to contribute to the Senate Amendments. I want to say at the outset that when this Bill came up for Third Reading, I had close to 40 amendments on Clauses 1, 2, 4, 5, 7, 11, 12, 13, 14, 15, 17, 20, 21, 22, 24, 24, 25, 27, 31, 37, 38, 40, 41, 42, 48, 50, 54, 56, 57, 58, 60, 61, 62, 67, 68, 72 and even on the Schedule. I am happy to note that most of my amendments have not been touched by the Senate.

I agree with the Chair of the Committee that it is not necessary to raise the bar under Clause 5. Requiring the Auditor-General to be a graduate is good enough. However, I agree with hon. Sakaja. The process of appointing the Auditor-General is exactly the same as the process of appointing Cabinet Secretaries. I was, therefore, wondering why we should incur an extra public expenditure on a process where the President is expressly given authority by the Constitution to make an appointment.

Therefore, I would request that, as we go into mediation, we go by my amendment to Clause 11, which was defeated. In that amendment, I had clearly said that the President shall nominate a person to be appointed as the Auditor-General and forward the name for approval by the National Assembly as provided for under Article 229(1) of the Constitution. The selection panel and the idea of trying to introduce a chair to the selection panel are not necessary. Therefore, we should completely do away with the selection panel.

Hon. Deputy Speaker, I agree with the amendment proposed on Clause 19. It is good to allow the Treasury but what we had proposed in that amendment was informed by the fact that it is important that we strengthen public audit processes by providing adequate funding to the Office of the Auditor-General. However, I completely disagree with the Committee's position on Clause 24. Looking at other jurisdictions, audit advisory councils are provided for. Even in India, they have an audit advisory council,

which is chaired by the Auditor-General. I was drawing parallels with the Judicial Service Commission (JSC), which also advises the Chief Justice despite the fact that the Chief Justice is also the Chair of the JSC. Therefore, I see no problem at all. So, I will be disagreeing with the Committee's recommendation that the Auditor-General should not be the chair of the audit advisory council.

Hon. Deputy Speaker, the Senate's amendment to Clause 26 seems to be okay with me. On Clause 32, I also agree with the Committee that it seems superfluous; it is unnecessary.

Therefore, I generally agree with the Committee but, as we go into mediation, let us do away with the selection panel and make the Auditor-General the chair of the audit advisory council.

I support with those views.

Hon. Deputy Speaker: Hon. Members, we have some challenges. Since we are properly constituted, I urge those of you who wanted to say a word on this matter to feel sufficiently represented by those who have spoken. Therefore, I will put the Question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Hon. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

CONSIDERATION OF THE SENATE AMENDMENTS TO THE FAIR ADMINISTRATIVE ACTION BILL

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we will be moving very quickly. So, you must concentrate.

Clause 4 Senate Amendment

THAT Clause 4 of the Bill be amended-

(a) in sub-clause (3)-

- (i) in the introductory phrase by deleting the words "decision making authority" appearing immediately before the words "freedom of any person" and substituting therefor the word "administrator";
- (ii) in paragraph (c) by inserting the word "an" immediately before the words "administrative decision"; and,

(iii) in paragraph (f) of sub-clause (3) by deleting the word “or” appearing immediately before the words “where applicable”;

(b) in sub-clause (4) by deleting the words “decision making body” appearing immediately after the word “the” at the beginning of the sub-clause and substituting therefor the word “administrator”;

(c) by deleting sub-clause (6) and substituting therefor the following new sub-clause-

(6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.

(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 4 of Senate Amendment agreed to)

Clause 5

Senate Amendment

THAT, Clause 5 of the Bill amended in sub-clause (2) by deleting paragraph (a) and substituting therefor the following new paragraph-

(a) challenge any administrative action or decision in accordance with the procedure set out under the Commission of Administrative Justice Act, 2011 or any successor to the Commission on Administrative Justice under section 55 of the Commission in Administrative Justice Act”

(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 5 of Senate Amendment agreed to)

Clause 6

Senate Amendment

THAT, Clause 6 of the Bill amended by inserting the following new sub-clauses immediately after sub-clause (2)-

(3) The administrator to whom a request is made under subsection (1), shall, within thirty days after receiving the request, furnish the applicant, in writing, the reasons for the administrative action.

(4) Subject to subsection (5), if an administrator fails to furnish the applicant with the reasons for the administrative decision or action, the administrative action or decision shall, in any proceedings for review of such action or decision and in the absence of proof to the contrary, be presumed to have been taken without good reason.

(5) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances, and shall inform the person making the request of such departure.

(Question of the amendment proposed)

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

(Clause 6 of Senate Amendment agreed to)

*Clause 7
Senate Amendment*

THAT, Clause 7 of the Bill be deleted and substituted therefor with the following Clauses:-

PART III – REVIEW OF ADMINISTRATIVE ACTION

**Institution of
Proceedings**

7. (1) Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to-

(a) a court in accordance with section 8; or

(b) a tribunal in exercise of its jurisdiction conferred in that regard under any written law.

(2) A court or tribunal under subsection (1) may review an administrative action or decision, if-

(a) the person who made the decision-

(i) was not authorized to do so by the empowering provision;

(ii) acted in excess of jurisdiction or power conferred under any written law;

(iii) acted pursuant to delegated power in contravention of any law prohibiting such delegation;

(iv) was biased or may reasonably be suspected of bias; or
 (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;
 (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 (c) the action or decision was procedurally unfair;
 (d) the action or decision was materially influenced by an error of law;
 (e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;
 (f) the administrator failed to take into account relevant considerations;
 (g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;
 (h) the administrative action or decision was made in bad faith;
 (i) the administrative action or decision is not rationally connected to-
 (i) the purpose for which it was taken;
 (ii) the purpose of the empowering provision;
 (iii) the information before the administrator; or
 (iv) the reasons given for it by the administrator;
 (j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;
 (k) the administrative action or decision is unreasonable;
 (l) the administrative action or decision is not proportionate to the interests or rights affected;
 (m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;
 (n) the administrative action or decision is unfair; or
 (o) the administrative action or decision is taken or made in abuse of power.

(3) The court or tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless the court is satisfied that-

(a) the administrator is under duty to act in relation to the matter in issue;
 (b) the action or decision is required to be undertaken within a period specified under such law; and
 (c) the administrator has refused, failed or neglected to take action within the prescribed period.

Period for
determination
of applications
and appeals

7A. An application for the review of an administrative action or an appeal under this Act shall be determined within ninety days of filing the application.

(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 7 of Senate Amendment agreed to)

*Clause 8
Senate Amendment*

THAT, Clause 8 of the Bill be deleted and substituted therefor with the following Clause:-

PART IIIA – JUDICIAL REVIEW

Procedure for judicial
review

8. (1) Subject to subsection (2), a person who is aggrieved by an administrative action may, without unreasonable delay, apply for judicial review of any administrative action to the High Court or to a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution.

(2) The High Court or a subordinate court under sub-section (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.

(3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that applicant shall first exhaust such remedy before instituting proceedings under sub-section (1).

(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.

(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 8 of Senate Amendment agreed to)

*Clause 9
Senate Amendment*

THAT, Clause 9 of the Bill be deleted and substituted therefor with the following Clause:-

Rules

9. (1) An application for judicial review shall be heard and determined without undue regard to procedural technicalities.

(2) The Chief Justice may make rules of practice for regulating the procedure and practice in matters relating to judicial review of administrative action.

(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 9 of Senate Amendment agreed to)

*Clause 10
Senate Amendment*

THAT, Clause 10 of the Bill be deleted and substituted therefor with the following Clauses:-

Orders in
proceedings for
judicial review

10. (1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order—

(a) declaring the rights of the parties in respect of any matter to which the administrative action relates;

(b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;

(c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;

(d) prohibiting the administrator from acting in a particular manner;

(e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;
(g) prohibiting the administrator from acting in a particular manner;
(h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;
(i) granting a temporary interdict or other temporary relief; or
(j) for the award of costs or other pecuniary compensation in appropriate cases.

(2) In proceedings for judicial review relating to failure to take an administrative action, the court may grant any order that is just and equitable, including an order-
(a) directing the taking of that decision;
(b) declaring the rights of the parties in relation to the taking of the decision;
(c) directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the court or tribunal considers necessary to do justice between the parties; or
(d) as to costs and other monetary compensation.

(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 10 of Senate Amendment agreed to)

Clause 2 Senate Amendment

THAT, Clause 2 of the Bill be amended by-

(a) inserting the following new definition after the definition of the word administrative action-
“administrator” means a person who takes an administrative action or who makes an administrative decision;
(b) in the definition of the word “decision”, by deleting the words “under any written law” appearing after the words “as the case may be”;

(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

be inserted, put and agreed to)

(Clause 2 of Senate Amendment agreed to)

*New Clause 11A
Senate Amendment*

THAT, the Bill be amended by inserting the following new clause immediately after clause 11-

Regulations

11A (1) The Cabinet Secretary may, in consultation with the Commission on Administrative Justice, make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made under subsection (5) shall, before publication in the *Gazette*, be approved by Parliament.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

*New Clause 12A
Senate Amendment*

THAT, the Bill be amended by inserting the following new clause immediately after Clause 12-

Transition provisions

12A(1) In all proceedings pending whether preparatory or incidental to, or consequential upon any proceedings in court at the time of the coming into force of this Act, the provisions of this Act shall apply, but without prejudice to the validity of anything previously done.

(2) Despite subsection (1)-

(a) if, and in so far as it is impracticable in any proceedings to apply the provisions of this Act, the practice and procedure obtaining before the enactment of this Act shall be followed; and,

(b) in any case of difficulty or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are through with the Senate Amendments to the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015). Let us now proceed to the Senate Amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014).

CONSIDERATION OF THE SENATE AMENDMENTS TO THE
PUBLIC PROCUREMENT AND ASSETS DISPOSAL BILL

*Clause 33
Senate Amendment*

THAT, Clause 33 be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (f)-

(fa) promote preference and reservation schemes for residents of the county to ensure a minimum of twenty percent in public procurement at the county.

(Question of the amendment proposed)

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

(Clause 33 of Senate Amendment agreed to)

*Clause 51
Senate Amendment*

THAT, Clause 51 be amended in sub-clause (3) by deleting the words “and licensed” appearing immediately after the words “agents registered”.

(Question of the amendment proposed)

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

(Clause 51 of Senate Amendment agreed to)

*Clause 124
Senate Amendment*

THAT, Clause 124 be amended by inserting the following new sub-clause immediately after sub-clause (3)-

(3A) In evaluation of tenders by public entities, the financial and technical capability of the tenderers shall be given equal weight.

(Question of the amendment proposed)

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

(Clause 124 of Senate Amendment agreed to)

*Clause 165
Senate Amendment*

THAT, Clause 165 be amended in sub-clause (1) by deleting paragraph (d).

(Question of the amendment proposed)

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

(Clause 165 of Senate Amendment agreed to)

*Clause 175
Senate Amendment*

THAT, Clause 176 of the Bill be amended by inserting the following new sub clauses immediately after sub clause (4)-

(5) A procuring entity may lodge a complaint with the relevant professional body for the institution of disciplinary proceedings against a

contractor who is a member of a professional body and who contravenes the provisions of this Act.

(6) The penalties imposed by a professional body pursuant to a complaint lodged under subsection (5) shall apply in addition to any penalties that may be imposed under this Act.

(Question of the amendment proposed)

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

(Clause 175 of Senate Amendment agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are also through with the Senate Amendments to the Public Procurement and Assets Disposal Bill (National Assembly Bill No.40 of 2014). Therefore, we shall now proceed to the Public Audit Bill (National Assembly Bill No.38 of 2014)

CONSIDERATION OF THE SENATE AMENDMENTS
TO THE PUBLIC AUDIT BILL

*Clause 5
Senate Amendment*

THAT, Clause 5 be amended in-

(a) paragraph (b) by deleting the words “Article 229” appearing immediately after the words “specified in” and substituting therefor the words “Article 229(2)”; and,

(b) paragraph (c) by inserting the words “post graduate” immediately after the words “holds a”.

Hon. Langat: Hon. Temporary Deputy Chairman, as I reported to the House earlier, my Committee considered the Senate amendment to Clause 5, paragraph (c). I urge the House to reject the amendment because accepting it would mean that in order for one to become the Auditor-General, one should have a minimum qualification of a Master’s Degree. The standard practice has been a minimum qualification of a first degree. Other qualifications become added advantage for a candidate. If we adopt the Senate’s amendment on this clause, we will be excluding many people from seeking to serve as Auditor-General, and it would be unfair.

Therefore, I urge this House to reject this particular Senate amendment by voting “No”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see hon. Jimmy Angwenyi on top of the request list. I presume that he wants to contribute on this amendment.

Hon. Angwenyi: Thank you, hon. Temporary Deputy Chairman. To put a threshold for being an Auditor-General at Masters level is against a majority of qualified people in Kenya. The Cabinet Secretaries who are superior to the Auditor-General are not required to have Masters Degree. In other jurisdictions, for example India, they do not require a postgraduate qualification to be an Auditor-General. Therefore, we are proposing that amendment to be rejected.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Let us have the hon. Member for Rarieda.

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Chairman. I want to support the view expressed by Hon. Angwenyi. This for me is superfluous and unnecessarily raising the bar. In fact, there are Auditors-Generals who are not even graduates but they do a much thorough job than even those who are graduates. This is because there are qualifications that they can go through that include experience which will make them be capable without necessarily having a degree. The fact that we have put the bar at the degree level is good enough and I think we should reject this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. The hon. Member for Bahati, you want to speak to this?

Hon. Member: He is not in.

The Temporary Deputy Chairman (Hon. Cheboi): I cannot see the Member for Bahati. Therefore, I will give a chance to two more hon. Members then I put the Question.

Hon. Nyamweya.

Hon. Nyamweya: Thank you, hon. Temporary Deputy Chairman. I support what the Committee has come up with. The Committee has been very clear here---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nyamweya, so that we do not get confused in this issue, are you supporting the proposal?

Hon. Nyamweya: I am supporting the proposal as given by the Committee---

The Temporary Deputy Chairman (Hon. Cheboi): That creates confusion. You are either rejecting or---

Hon. Nyamweya: Hon. Temporary Deputy Chairman, I am rejecting the proposal by the Senate and it is based on one simple reason; the Constitution has given the qualification required and if it has specified the qualification, none of us legislators can change what has been put in the Constitution. So, it is only fair that we abide by what is in the Constitution in terms of qualification. Efficiency is not achieved by higher qualification but rather by the commitment of the holder of the office.

Hon. Temporary Deputy Chairman, I reject the amendment of the Senate.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman. I support the Chairman of the Departmental Committee on Finance, Planning and Trade and the Committee in rejecting the proposed "postgraduate" inclusion in the Bill. The reason being ordinarily the standard is first degree and the other one an added advantage. Therefore, we cannot put added advantage to be a compulsory standard. On the basis of

this, sometimes we say “Senate *ni nyumba ya wazee*” and that is why they end up coming with amendments that are undesirable like this one.

We should therefore reject that amendment

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

(Clause 5 of Senate Amendment negatived)

The Temporary Deputy Chairman (Hon. Cheboi): I am speaking to the Chairman of the Committee that you cannot prosecute a specific case and then reject it yourself because that brings confusion.

Clause 11

Senate Amendment

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

Hon. Langat: I beg to move:-

THAT, clause 11 be amended by inserting the following new sub-clause immediately after sub-clause (5)

(5A) The members of the selection panel appointed under subsection (5) shall elect a chairperson from among themselves.

Clause 11 relates to the selection panel appointed to advertise the position of the Auditor-General. Madam Speaker, what the Senate is proposing is that---

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat you know you are completely out of order.

Hon. Langat: I am very sorry, hon. Temporary Deputy Chairman. The Senate is proposing that the selection panel selects their chair but if you look at the Constitution - I think I want to move to where hon. Gumbo was saying it is the President's mandate to nominate an Auditor-General - we said that we cannot have this panel doing that. It should be the President to appoint the chair so that he takes responsibility for his actions. I want to request the House to reject this proposal so that we give the President that mandate because the buck stops with him. This is because we do not want when things go bad, we accuse the President yet he is not in control of the whole process.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give a chance to two hon. Members so that we can move faster.

Member for Marakwet West.

Hon. Kisang: Thank you, hon. Temporary Deputy Chairman. I rise to oppose the Senate amendment on giving the leeway to the panel to select the chairperson. If we give them the leeway to choose the chairperson, we know there will be a lot of lobbying and money might be used. This will go a long way in influencing who is going to be the

Auditor-General. I think it is good to give the President a chance to choose the chairperson of the panel

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Member for Kitui Central, you want to speak to this a particular one or you are waiting for the next one?

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I want to agree with the chairman. I am opposing the amendment by the Senate. This is because in normal boards, even though the members may be appointed by the Principal Secretary, the chair is normally appointed by the President. I think it is just procedural that we do not really deviate from this norm.

I support the rejection.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, it is very fair that I now put the Question. Hon. (Eng.) Gumbo, I will give you an opportunity if you will speak very briefly. I will also give another chance to a Member from this other side and this will be it.

Hon. (Eng.) Gumbo, very briefly and straight to the point.

Hon. (Eng.) Gumbo: I want to request the Chairman of the Committee because I think he will be in the mediation panel that we do away with this selection panel completely. The Constitution is express that it is the President's mandate to nominate the Auditor-General with the approval of the House. So, why do we waste public funds on a selection panel? This is the same process, like I have said that the President uses to appoint Cabinet Secretaries. I really plead with the Chairman that let us do away with this selection panel because it is not necessary. It is just delaying a process which can otherwise move faster.

The Temporary Deputy Chairman (Hon. Cheboi): Member for Nakuru Town East.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I totally agree with the proposal by the Committee Chairman that we reject this amendment by the Senate and for obvious reasons given that it is unconstitutional. Some of this goes against the already existing act.

I support what the Chairman is saying.

The Temporary Deputy Chairman (Hon. Cheboi): As I put the Question, the hon. member for Nakuru Town East, you will not be lucky next time because you know what you have just done.

Hon. Members I want you to be very clear about the direction you are taking. If you vote Ayes, you are approving the Senate Amendment and if you reject it means you are amending.

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

(Clause 11 of Senate Amendment negated)

Clause 19

Senate Amendment

THAT clause 19 be amended in sub-section (2) by deleting the words “review and” appearing immediately after the words “each year for” at the end of the paragraph.

Hon. Langat: Hon. Temporary Deputy Chairman, thank you for your guidance. The last time we were voting, I voted very wisely.

Clause 19 deals with the budget process for the Auditor-General’s Office. What the Senate is proposing is that the Auditor-General will get the estimates, take it to the National Treasury and the Treasury shall not even check, shall not even do anything with it. The purpose of the National Treasury is just to bring it as a conveyor belt to the National Assembly. It is like the Auditor-General wants to submit directly to the National Assembly.

There are only three organs which the Constitution allows to bring directly to the National Assembly. That is the Judicial Service Commission (JSC), the Parliamentary Service Commission (PSC), and the National Treasury. This one seems like they want to short-circuit the Constitution. The fears being expressed, because we had interacted with the Auditor-General, is that the Auditor-General feels he may not be funded properly but those fears are unfounded because Parliament has a lot of say in the allocation of the resources and they are given that power. They are allowed to come and talk to the Budget and Appropriations Committee or even to my Committee. I am requesting---

The Temporary Deputy Chairman (Hon. Cheboi): You have put your case well. Let us be precise.

Hon. Langat: I am requesting the House to reject that proposal. Let us allow the National Treasury to do its mandate as per the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members starting with Hon. Jimmy Angwenyi.

Hon. Angwenyi: Thank you, hon. Temporary Deputy Chairman. What the Senate is proposing - I am surprised somebody said that it is a House of old men like me and yet they are proposing wrong things - be it as it may, is that the National Treasury which knows how much resources we have and proposes caps which are either accepted or rejected by the National Assembly, will only be a conveyor belt. Therefore, we should reject this amendment by the Senate and give the authority and power to the National Treasury to review whatever is being presented to them.

Thank you. I beg to reject.

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

Hon. Kubai Iringo: Thank you, hon. Temporary Deputy Chairman. I concur with the Chairman that we should not accept this amendment because in removing the word “review,” it means that now it is just the Auditor-General who will be handling

documents in their raw state whereas when it comes to money matters, the National Treasury has to take a very paramount measure and review and make sure that whatever goes to the Auditor-General is reviewed and checked and is completely in order. I reject.

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

(Clause 19 of Senate Amendment negatived)

Clause 24

Senate amendment

THAT clause 24 be amended in-

(a) paragraph (a) of sub-section (1), by inserting the words “who shall be the chairperson” at the end of the paragraph; and

(b) sub-section (3) by deleting the words “shall appoint a chairperson from among the persons under subsection (1) above and” appearing immediately after the words “the Auditor-General”.

Hon. Langat: First of all, that clause 24 deals with the membership or the chairmanship of the Audit Advisory Board. What my Committee said and we also discussed last time is that that board is mainly advisory. The Auditor-General, by the Constitution, is independent. He can choose to go by the advice of the advisory board or reject it but we said that in order for this Board to be effective and in order for the advice to be objective, let this Board not be chaired by the Auditor-General himself. Why do you now have that Board because the Auditor-General is chairing? So I am asking the House to reject that proposal so that we discuss on the better way of---

(Question of the amendment proposed)

Hon. (Dr.) Kibunguchy: Thank you, hon. Temporary Deputy Chairman. I agree with the Senate proposal for one reason. We know that the Auditor-General is independent but this Board, to me, would be more of a consultative forum rather than a forum which is going to directly advise him. So, when they sit together so that the sitting is not in vain, it will be more consultative and so the Auditor-General should chair this Committee.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman. I rise to agree with the Chairman of the Committee in rejecting the Senate amendment for two reasons. One, the entire constitution of this Audit Advisory Board should strictly be to advise. For you

to strictly advise and to advise in an independent way, the Auditor-General should not be a member or even chair.

Hon. (Eng.) Gumbo addressed parallels of the JSC and the PSC. The JSC is not an advisory board. It executes certain roles. If you look at Article 172, they recommend appointments of judges. They review the conditions of service. They appoint and receive complaints. They are an executive board. So is the PSC if you look at Article 127. The PSC undertakes executive functions within Parliament but this other one is an Advisory Board that is supposed to look at general issues to recommend on the kind of appointments, the budget estimates and not even to approve. So, we feel that for the Auditor-General to get independent and good advice, he should not be chairing the team that is supposed to be giving him that kind of advice.

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

(Clause 19 of Senate Amendment negatived)

Clause 26

Senate amendment

THAT the Bill be amended by deleting clause 26 and substituting therefor the following new Clause-

Functions of the

- Audit Advisory Board.
- 26.(1) Subject to section 10, the principal function of the Audit Advisory Board shall be to advise the Auditor-General on the exercise of his or her powers and the performance of his or her functions under the Constitution and this Act.
- (2) Subject to the generality of subsection (1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the Auditor-General on-
- (a) the recruitment of senior managers into the Office of the Auditor-General;
 - (b) the development and review of organizational development issues
 - (c) the budget estimates and plans of the office of the Auditor-General;
 - (d) the remuneration and other terms of appointment of the staff of the Office of the Auditor-General in consultation with the Salaries and Remuneration Commission; and

(e) any other matter that the Auditor-General may refer to the Board from time to time

Hon. Langat: Hon. Temporary Deputy Chairman, on behalf of my Committee we support that amendment. It provides more clarity in the language in which it is put and so we support the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see all the Members in the list have spoken so I will start with Hon. Angwenyi. Hon. Oporess has just pressed the button now.

Hon. Angwenyi: Thank you, hon. Temporary Deputy Chairman. On this one, I want to support the Senate proposal in that they are advisory; they are not executive. Therefore, theirs should be to advise the Auditor-General on what to be done on various aspects of the functions.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have your neighbour Hon. Oporess. You have not spoken this afternoon.

Hon. Oporess: Thank you, hon. Temporary Deputy Chairman. I support the amendment that the Senate has given and as the Committee agrees.

The Temporary Deputy Chairman (Hon. Cheboi): As we take a vote on this one, it is important again for me to clarify. If you are supporting the Senate amendment, you will have an “ayes” on your side. If you vote “nay” it will be rejecting it.

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

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

(Clause 26 of Senate Amendment agreed to)

Clause 32

Senate Amendment

THAT, clause 32 be amended in sub-clause (1) by deleting the word “may” appearing immediately after the words “public entity” and substituting therefor the word “shall.”

Hon. Langat: I wish to urge the House to reject that amendment for the reason that the Senate is trying to tell State organs that all their internal audit reports must be copied to the Auditor-General, whether he likes them or not.

Hon. Temporary Deputy Chairman, if you look at Clause 32(2), it makes the amendments by Senate to be irrelevant and superfluous. If I read to you, it says: "The final report by an internal auditor which has been deliberated on and adopted by audit committee of a state organ or public entity may be copied to the auditor general." So, that is where the Senate wanted to say "shall be copied to the Auditor General." If you look at Clause 32(2) it says that the Auditor-General shall have unhindered access to all the internal audit reports of a state organ or any public entity under sub-section (1) above which is subject to audit by the Auditor-General as provided under Article 229(4) of the Constitution. So, the amendment that they are trying to bring is actually unnecessary.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members starting with Hon. Wamalwa, Member for Kiminini.

Hon. Wakhungu: Hon. Temporary Deputy Chairman, I rise to support as the Chairman has clearly put it. It is completely unnecessary. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I will give Hon. Opore a second shot on this.

Hon. Opore: Hon. Temporary Deputy Chairman, I support the view taken by the Committee that the amendment is irrelevant as submitted by the Senate.

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

(Clause 32 of Senate Amendment negatived)

Clause 39 Senate Amendment

THAT, clause 39 be amended-

- (a) by deleting sub-clause (1);
- (b) by deleting sub-clause (2) and substituting therefor with the following new sub-clause-

(2) Sections of the audit reports on national security organs may remain confidential to the Auditor-General but may, on demand, be submitted to Parliament; and

- (c) by deleting sub-clause (3).

Hon. Langat: Hon. Temporary Deputy Chairman, I wish to urge the House to reject the amendment because Clause 39(1) which the Senate seeks to delete says that in auditing national security organs, the Auditor-General shall hold an essential meeting at the highest level to agree on the areas which may touch on national security and

consequently determine the scope of audit scope. The Senate wants to delete that and we say no because that meeting is very important in determining the scope of the Auditor-General. Personally, I have been an auditor and this is the standard practice especially in national security organs. The Auditor-General may be intimidated. He may not be given audience. So, it is good to appear in law so that everybody knows that before the House starts, the leaders of those various agents should give the Auditor-General an opportunity to meet.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members starting with Hon. Mwaita.

Hon. Mwaita: Hon. Temporary Deputy Chairman, I want to support what the chairman has said because national security is very paramount. What the Senate was going to propose was actually going to expose this country in very bad light and its security installations, gadgets and equipment. So, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Hon. (Eng.) Gumbo. He is not in the House. I will give the opportunity to Hon. Iringo.

Hon. Kubai Iringo: Hon. Temporary Deputy Chairman, I reject the Senate Amendments to this one and by natural justice there should be confidentiality in State organs and those other organs where we need to keep secrets for the national security. So, I support the rejection.

Hon. Sakaja: I just want to point out that our rejection of this is for the right reasons because we agreed and we are saying that these national security organs must be audited. For it to be done well there must be an inception meeting. If we do not put it in the law some of these heads of security organs will avoid the auditors and it is at the highest level of both.

Secondly, we are saying it is very important that the staff members under the Auditor-General's Office who are performing audits of national security organs must be vetted by the appropriate security agency. It can be vetting done every two years but the appropriate security agency must be the National Intelligence Service. They are going to come across very sensitive information that has to deal with the security of Kenyans and deal with the integrity of our country's sovereignty. For that very reason, we are saying that it is important and I do not understand why the Senate was deleting it. You cannot just have anybody walking and getting unhindered access to some of this information. We want it to be audited but done well.

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

(Clause 39 of Senate Amendment negative)

*Clause 40
Senate Amendment*

THAT, clause 40 be amended in sub-clause (2) by deleting the words “Article 206(1)(b)” appearing immediately after the words “accordance with” and substituting therefor the words “Article 206(1)”.

Hon. Langat: Hon. Temporary Deputy Chairman, on behalf of my Committee, I wish to say that we support that amendment. It was just making specific reference to the Constitution to be more specific than we have done. So, we support.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): We will start with Hon. Limo. Do you want to speak to this particular one?

Hon. Limo: Yes, hon. Temporary Deputy Chairman. We also support that because the Senate is making the Bill clearer and that is a good practice. We want to support at least for once.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to agree with the view of the Committee concerning the Senate Amendments. I support the amendments.

*(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 40 of Senate Amendment agreed to)

Clause 41

Senate Amendment

THAT, clause 41 be amended in paragraph (e) of sub-clause (2), by inserting the words “including statements on processes and systems audit” immediately after the words “of the Auditor-General”.

The Temporary Deputy Chairman (Hon. Cheboi): Mover, I think we have jumped but just proceed anyway.

Hon. Langat: Sorry, hon. Temporary Deputy Chairman. Again on behalf of the Departmental Committee on Finance, Planning and Trade, I wish to say that we support the amendment. It is value addition to what we had. We agree.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): We will have Hon. Manoti.

Hon. Manoti: Thank you, Hon. Temporary Deputy Chairman for the opportunity to contribute. I support the amendment because the Committee has supported it as the Senators said. So, I support.

Hon. Mulu: Hon. Temporary Deputy Chairman, I also want to support the Committee in supporting the Senate Amendments because this provides more clarity on this particular clause.

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

(Clause 41 of Senate Amendment agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): That marks the end of our deliberation on the Public Audit Bill (National Assembly Bill No.38 of 2014). Let us have the Mover of the Fair Administrative Action Bill.

THE FAIR ADMINISTRATIVE ACTION BILL

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015) and Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and their approval thereof without amendments and the Public Audit Bill (National Assembly Bill No. 38 of 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]*

THE FAIR ADMINISTRATIVE ACTION BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Senate Amendments to the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015) and approved the same without amendments.

Hon. Katoo: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Chepkong'a to second the Motion for the agreement with the Report of the Committee of the whole House.

Hon. Chepkong'a: I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): I order that the Senate Amendments to the Fair Administrative Action Bill (National Assembly Bill No.10 of 2015) appear in tomorrow's Order Paper in the morning for the purpose of voting.

*(The Temporary Deputy Speaker (Hon. Kajwang')
consulted the Clerks-at-the-Table)*

Alright Members, let us step on to the next one. This is consideration of the Public Procurement and Asset Disposal Bill.

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Senate Amendments to the Public Procurement and Asset Disposal Bill (National Assembly Bill No.40 of 2014) and approved the same without amendments.

Hon. Katoo: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Chepkong'a to second the Motion for the agreement with the Report of the Committee of the whole House.

Hon. Chepkong'a: I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Let us step on to the third one; consideration of the Public Audit Bill.

THE PUBLIC AUDIT BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Senate Amendments to the Public Audit Bill (National Assembly Bill No.38 of 2014) and approved the same with amendments.

Hon. Katoo: Hon. Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request Hon. Chepkong'a to second the Motion for the agreement with the Report of the Committee of the whole House.

Hon. Chepkong'a: I beg to second.

(Question proposed)

Hon. Chepkong'a: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): What is out of order, Member for Ainabkoi?

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I notice that this House is not properly constituted.

The Temporary Deputy Speaker (Hon. Kajwang'): Sorry, can you speak to the microphone and a little louder?

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I notice that we do not have a quorum in the House.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Sit down. As you know, quorum is decided by the Clerk-at-the-Table, who will advise the Chair whether there is quorum or not. I, therefore, order that that be done.

In the meantime, I want to recall my ruling on the Fair Administrative Action Bill. I notice that I had ordered that it appears in tomorrow's Order Paper. I will recall that ruling and make a further ruling when and if I get a correct response from the Clerk-at-the-Table. The Speaker is in doubt whether the House is fully constituted and whether there is quorum. As you know, when an issue of quorum is raised, the Speaker does not have any discretion, but to establish that there is a quorum, and if there is none, to call for the Quorum Bell. I, therefore, order that the Quorum Bell be rung forthwith.

(The Quorum Bell was rung)

*(The Temporary Deputy Speaker (Hon. Kajwang')
consulted the Clerks-at-the-Table)*

The Temporary Deputy Speaker (Hon. Kajwang'): Order. Order, the Leader of the Majority Party! Can you allow the Leader of the Majority to assume his seat?

(Hon. Kang'ata stood in the gangway)

This Member who is chatting, can you get your seat? Order Members! I have established from the Clerks-at-the-Table that we have quorum to transact business. I now put the Question.

THE FAIR ADMINISTRATIVE BILL

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Kajwang'): Let me allow the Member to get seated first.

Thank you.

PUBLIC PROCUREMENT AND ASSETS DISPOSAL BILL

(Question put and agreed to)

THE PUBLIC AUDIT BILL

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Members, the last one in this series is the consideration of the Senate Amendments to the Public Audit Bill (National Assembly Bill No. 38 of 2014). Having confirmed that we have the quorum in the House for purposes of making a decision, I put the Question.

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Kajwang'): Order, Members! As you are aware, following the rejection of the Senate Amendments to clauses 5, 11, 19, 24, 32 and 39 of the Public Audit Bill 2014 by the House just moments ago, I wish to convey that this Bill will now stand referred to a mediation committee as contemplated under Article 112 of the Constitution. I have, therefore, appointed Hon. Benjamin Langat, Hon. Makali Mulu and Hon. Johnson Sakaja to represent the National Assembly in the mediation committee. The Committee should confine itself to the six contested clauses of the Bill. Due to the constitutional deadline of tomorrow, 27th May 2015, I request the Mediation Committee to meet in the course of tomorrow morning and submit their report before 1p.m. This will ensure the two Houses consider the mediated version of the Bill within the constitutional deadline.

I thank you. It so ordered.

Hon. A. B. Duale: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Is it a point of order on the content of the message to the Assembly or on what? Let us hear that all the same. The Leader of the Majority Party, I cannot see you on my request list. Yes, what is the point of order?

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I totally agree with you that you have given a deadline of 1p.m. tomorrow. However, the mediation team that you have appointed is only from one House. I do not know when the other House will do their communication on the appointment of their mediation team and the deadline is tomorrow. So, unless we do it very fast before the Senate leaves, which I am sure by now has already gone home, the only other time they can communicate their three Members is tomorrow at 2.30 p.m. So, can you give direction that our three people cannot sit alone? They have to sit with the three from the Senate who can only be communicated to on the Floor tomorrow at 2.30 p.m.

The Temporary Deputy Speaker (Hon. Kajwang'): The Leader of the Majority Party, this Speaker is very efficient. Orders have been sent to the Senate immediately with a timeline that the Senate must compose a mediation team so that we go into mediation tomorrow. I suppose that before the end of the day today I will have the names of the people in the mediation committee.

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

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, the Member for Rarieda.

Hon. (Eng.) Gumbo: I wish to be corrected by the Chair if I am wrong, but this is a House of rules and records. If I remember well because I have been sitting here the whole afternoon, when you proposed that the House do now agree with the Committee in the said report, Hon. Chepkong'a rose on a point of order to draw your attention to the

fact that the House did not quorate. After you proposed the Question, that is when Hon. Chepkong'a drew your attention to the fact that the House was not properly quorate. So, I am just wondering: Where do we stand? Because you had proposed the Question--- The Question was not actually proposed because Hon. Chepkong'a informed you that there was no quorum. Once you propose the Question for the House to agree with the Committee, it is a chance for Members to bring in snippets of contributions.

The Temporary Deputy Speaker (Hon. Kajwang'): All right, I hear you. If the issue is whether or not the Chair proposed the Question, I think you have answered yourself that the Chair proposed the Question. However, on the other issue as to whether the Chair should have allowed Members to contribute, it remains the discretion of the Chair. As you know, at that point we are agreeing to the Committee of the whole House. It is different from when we are retiring after the Third Reading when Members can give valedictory messages. So, this is at the discretion of the Chair to allow or not to allow.

Thank you very much. Next Order!

PAPER LAID

Hon. Musyimi: Thank you, hon. Temporary Deputy Speaker. I stand here to report that my Committee has been working literally round the clock with respect to the Estimates of Revenue and Expenditure for 2015/2016 and the Medium- Term. We completed our work about two hours ago and I have been given authority, with your kind permission, to make this wonderful document the property of this House.

The Temporary Deputy Speaker (Hon. Kajwang'): Proceed and do it conventionally. Lay the Paper on the Table.

Hon. Musyimi: Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table of the House today Tuesday, 26th May, 2015:-

The Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for 2015/2016 and the Medium-Term.

(Hon. Musyimi laid the document on the Table)

The Temporary Deputy Speaker (Hon. Kajwang'): The Paper is so laid. Let us move on to next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON ESTIMATES OF REVENUE AND EXPENDITURE (2015/2016)

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Member for Mbeere South.

Hon. Musyimi: Hon. Temporary Deputy Speaker, I am also the Chairman of the Budget and Appropriations Committee.

Hon. Temporary Deputy Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure for 2015/2016 and the Medium-Term laid on the Table of the House today, Tuesday, 26th May, 2015.

The Temporary Deputy Speaker (Hon. Kajwang’): The Motion being now the property of the House, be scheduled at the appropriate time for debate in the Chamber.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, there being no other business, and the time being 5.43 p.m., this House stands adjourned until Wednesday, 27th May, 2015, at 9.30 a.m.

The House rose at 5.43 p.m.