

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 28th April, 2015

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM PARLIAMENT OF ZAMBIA

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation from the Parliament of Zambia's Committee on Legal Affairs, Governance, Human Rights, Gender Matters and Child Affairs, which is seated at the Speaker's Row. The delegation comprises the following Honourable Members:

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|--------------------------------|---|-------------|
| 1. The Hon. J. J. Mwiimbu, MP | - | Chairperson |
| 2. The Hon. M. A. Malama, MP | - | Member |
| 3. The Hon. B. M. Ntundu, MP | - | Member |
| 4. The Hon. J. M. Kapyanga, MP | - | Member |
| 5. The Hon. V. Kalima, MP | - | Member |
| 6. The Hon. H. Kunda, MP | - | Member |
| 7. The Hon. M. Kapeya, MP | - | Member |
| 8. The Hon. S. Masumba, MP | - | Member |

They are accompanied by Ms. C. Musonda, an Assistant Committee Clerk.

The delegation is in the country to learn from and share experiences with Members of this House and other government institutions on constitutional, judicial and electoral reforms, including prevention and management of conflict in the electoral process. They have been with us since Sunday, 26th April, 2015 and are scheduled to complete their tour on Friday, 1st May, 2015. On my behalf and that of the Honourable Members, I wish to welcome them to the National Assembly and wish them fruitful engagements.

Thank you.

MEASURES TO ENHANCE SECURITY WITHIN PARLIAMENT BUILDINGS

Hon. Speaker: Hon. Members, as you may be aware, there have been heightened security checks around all critical Government installations including Parliament. The Parliamentary Service Commission, which I chair, is implementing meticulous measures aimed at enhancing the security of all persons and facilities within and around the

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precincts of Parliament. In this regard, Members and parliamentary staff are required to be vigilant and to cooperate with the security agencies as they implement these measures.

Hon. Members, from now on, the Speaker's Rules on admittance of strangers will be strictly enforced, including the requirement that a Member will not be allowed to have more than two visitors at any one time. Visitors will also not be allowed access to the precincts of Parliament without duly authorized visitor's cards. Further, no Member of Parliament will be allowed to bring in visitors aboard the Member's vehicle, except a driver and official bodyguards. All other passengers will be required to alight from the vehicle at the gates for screening and scrutiny of the invitation cards.

Hon. Members, you may also be aware that a member of staff of the Parliamentary Service Commission is being questioned by security agencies on security related issues and has been arraigned in court today. I wish to assure you that the Commission is keenly following up on this matter to its logical conclusion.

Finally, I also wish to assure all Members, Parliamentary staff and the public at large that stringent security measures have been put in place to secure you and all parliamentary facilities as you discharge your duties within the precincts of Parliament.

PAPERS LAID

Hon. A.B. Duale: Thank you, hon. Speaker, I beg to lay the following Papers on the Table of the House, today Tuesday, 28th April, 2015:-

The Report of the Auditor-General on the Financial Statements of the Jomo Kenyatta Foundation for the year ended 30th June 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Power and Lighting Company Limited for the year ended 30th June 2014, and the certificate of the Auditor-General therein.

Thank you, hon. Speaker.

Hon. Speaker: The Chairperson, Departmental Committee on Administration and National Security, hon. Kamama, do you have any report, or is it your Vice-Chair? There is a host of Reports; I do not know whether you have any?

Hon. Abongotum: Hon. Speaker, my Clerks are not ready, so you can proceed to the next item. We can do it tomorrow.

Hon. Speaker: My record shows that you have about five reports, which are ready. The Vice-Chairperson, Departmental Committee on Agriculture, Livestock, and Cooperatives, hon. Kareke Mbiuki, you may proceed.

Hon. Mbiuki: Thank you, hon. Speaker, I beg to lay the following Papers on the Table of the House, today Tuesday, April 28th, 2015:-

The Message from the Senate on the Fertilizer and Animal Foodstuffs (Amendment) Bill, 2013 and the Fisheries Management and Development Bill, 2014.

Thank you, hon. Speaker.

Hon. Speaker: Very well, Next.

EXISTENCE OF SUPPLEMENTARY ORDER PAPER

Hon. Speaker: Hon. Members, I need your undivided attention. Before we go to the next Order, which is Order No.8, I wish to draw your attention to the existence of a Supplementary Order Paper which was duly approved and in good time, the purpose for which was to include some last minute proposed amendments from you, Members. I would like your attention to be drawn to the existence of that Supplementary Order Paper.

BILL

Second Reading

THE PROHIBITION OF ANTI-PERSONNEL MINES BILL

(Hon. Washiali on 23.4.2015)

(Resumption of Debate interrupted on 23.4.2015)

Hon. Members, including the Member who is shaking hands, just be in the House for the time being. Hon. Members, what remains on this business is to put the Question, which I proceed to do. This is the Prohibition of Anti-Personnel Mines Bill, National Assembly Bill No.7 of 2014.

(Question put and agreed to)

*(The Bill was read a Second Time and
Committed to a Committee of the whole
House tomorrow)*

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are now at Order No.9, Committee of the whole House. We are discussing The Public Procurement and Asset Disposal Bill, National Assembly Bill No.40 of 2014. We will be moving very quickly.

As we proceed in the Committee of the whole House, hon. Members, I want to announce that we have at the Public Gallery 30 bishops and pastors from Narok East.

Clause 3

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 3 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) —
“(j) promotion of citizen contractors”.

(Question of the amendment proposed)

Hon. Maanzo: Hon. Temporary Deputy Chairman, Clause 3 is to be amended by inserting the new paragraph immediately after Paragraph (i).

(Loud consultations)

There are loud consultations and I cannot be heard.

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! The Members who are leaving the Chamber should quietly do so. Hon. Wanyama, I am going to take disciplinary action if we do not stop this. Let us proceed in a more organised manner. I cannot understand from you, Hon. Maanzo, whether you are you proposing another amendment. I thought the amendment has been proposed by the Chair of the Committee. So, are you contributing to it?

Hon. Maanzo: Not exactly. I am just saying that promotion of our citizens is very good before we give priority to other people.

The Temporary Deputy Chairman (Hon. Cheboi): So, we will give the next chance to Hon. Cyprian Iringo.

Hon. Kubai Iringo: Thank you, hon. Temporary Deputy Chairman. I support the Committee's proposal to add a paragraph on the promotion of citizen contractors, so that we can promote our people in doing contracts and other businesses in Kenya. This will reduce our dependence on foreigners.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly on that one, let us have Hon. Waluke.

Hon. Koyi: Thank you, hon. Temporary Deputy Chairman. It is high time we promoted our contractors. We have prompted outsiders like the Chinese for a very long time leaving out our people.

I support.

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

(Clause 3 as amended agreed to)

Clause 4

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 4 of the Bill be amended in subclause (1) by inserting a new paragraph immediately after paragraph (d)—

“(e) contract management.”

In addition to what is provided, the Committee felt that contract management should also be included.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Member for Kiminini, do you want to contribute to that amendment?

Hon. Wakhungu: No, hon. Temporary Deputy Chairman. When the Departmental Committee Chair moves an amendment, he needs to explain why he has brought it. We are not hearing that from him. We cannot just be rubber-stamping amendments. He needs to explain the merits of the amendments so that we know.

The Temporary Deputy Chairman (Hon. Cheboi): Also, hon. Members, because we have a raft of proposals, we will be moving quickly. You realise that this is a voluminous Bill.

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

(Clause 4 as amended agreed to)

Clause 5

The Temporary Deputy Chairman (Hon. Cheboi): Departmental Committee Chair, as you move your amendment, give a preview of what you intend to achieve with the amendment.

Hon. Langat: Hon. Temporary Deputy Chairman, some of the amendments, like the one which we have just passed, is a simple insertion. The problem is that hon. Wamalwa does not even have the Bill.

The Temporary Deputy Chairman (Hon. Cheboi): Departmental Committee Chair, I want you to deal with what we are dealing with now. Let us forget about what has passed.

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

THAT, Clause 5 of the Bill be amended-

(a) in sub-clause (1) by inserting the words “except in cases where procurement of professional services is governed by an Act of Parliament applicable for such services” immediately after the word “disposal”;

(b) in subclause (2) by inserting the words “the entire” immediately after the words “respect to”.

Hon. Temporary Deputy Chairman, Clause 5 says that this Act shall be final in matters of public procurement except for professional services where there is an Act that

governs the procurement. That is the amendment. The new Chair of the Public Accounts Committee (PAC) can explain further.

The Temporary Deputy Chairman (Hon. Cheboi): No, I have not given hon. Gumbo the Floor.

(Question of the amendment proposed)

We will start with the Member for Rarieda.

(Applause)

Hon. Members, what is the applause for? I can overhear that this is the new Chair of PAC. Congratulations!

Hon. Members: Eehh!

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, there is nothing called “Eehh” inside this House. You know the best way to applaud is the normal way we do it.

So, Chair of PAC, let us hear from you.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, before I make a small contribution, may I use the Floor of this House to thank the Almighty God, the creator of the universe, who created and enabled me to come to this House. I also want to thank my dear wife for her prayers. She prayed this morning that I should get the Chair of PAC. It happened. I also wish to thank Members of my Committee and to assure them that I am nothing but first among equals. We will work as a team.

Hon. Temporary Deputy Chairman, I had proposed to bring an amendment to Clause 5 as per---

The Temporary Deputy Chairman (Hon. Cheboi): Chair of PAC, the amendment we are dealing with now is what the Departmental Committee Chair has proposed.

Hon. (Eng.) Gumbo: Yes, hon. Temporary Deputy Chairman, I just want to confirm that that amendment actually came from me. What we are doing is to make the exception that where we have professional services that are governed by Acts of Parliament, those acts will apply.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): It is good to know that you have a prayerful wife, Member for Rarieda.

I will give an opportunity to hon. Kangogo, Member for Marakwet East.

Hon. Bowen: Thank you, hon. Temporary Deputy Chairman. I support the proposal by the Chair of the Departmental Committee on Finance, Planning and Trade. However, we also need to be very careful with the so-called “professional services.” They have to be defined very clearly. Otherwise, it will create a loophole of corruption, where we see some people using those specialised services to just squander Government money in the name of professional services. It has to come out very clearly what “professional services” are.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): I see the Member for Westlands. Hon. Wanyonyi, do I get the indication that you want to contribute to the amendment?

Hon. Wetangula: Hon. Temporary Deputy Chairman, I want to follow the proceedings but I cannot because the consultations are too loud.

The Temporary Deputy Chairman (Hon. Cheboi): Order! Order, hon. Members! We can only follow the proceedings of the House if we are silent. You have heard the complaint from hon. Wanyonyi. He cannot hear what is going on in the House. Let us maintain some order. Those Members who want to consult can do so outside or in the many other chambers behind the House. Hon. Members, we have to consult in low tones.

Let us have, hon. Njagagua.

Hon. Njagagua: Hon. Temporary Deputy Chairman, I support the proposal of the Departmental Committee. Where we have professional bodies, their fees and remunerations are well captured in their specific bodies. So, I support that proposal.

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

(Clause 5 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): What is it, hon. Wamalwa? You seem agitated.

Hon. Wakhungu: I am agitated because when you look at this amendment---

The Temporary Deputy Chairman (Hon. Cheboi): The amendment is gone. Probably, it was not very clear that you wanted to contribute. I would have given you an opportunity and you know that.

(Clause 6 agreed to)

Clause 7

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

THAT, Clause 7 of the Bill be amended in sub-clause (2) by inserting a new paragraph immediately after paragraph (i)—

“(ia) to facilitate affirmative action for disadvantaged groups in accordance with the Constitution and advance their participation in the procurement process.”

Hon. Temporary Deputy Chairman, Clause 7 deals with the role of the National Treasury in procurement. What we simply want to add there is one of the roles which will facilitate affirmative action for disadvantaged groups.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see a lot of interest in this particular amendment.

We will start with the Member for Westlands, hon. Wanyonyi,

Hon. Wetangula: Hon. Temporary Deputy Speaker, I support this amendment. This is an area where I have interest. We know that disadvantaged people in this country, who do not get an opportunity to participate in national functions, are mostly people with disabilities. I believe that this amendment will go a long way to empower them so that they can also take part in the procurement process and participate in the economy of the country.

With those remarks, I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for North Horr, hon. Chachu Ganya.

Hon. Ganya: Thank you, Hon. Temporary Deputy Chairman. I also support this amendment. Our Constitution dictates that we take care of the needy in our communities especially the disabled and others. I hope that it will be implemented for the sake of the marginalised in our communities. It should not just be good wordings and statements on paper.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Let us have Hon. M'eruaki.

Hon. M'uthari: Thank you, hon. Temporary Deputy Chairman. I rise to support this Bill. It is very important that we recognise the disadvantaged groups in this Act. This will help. Even as it is implemented, this will require that the real disadvantaged people get the benefits that are accrued to them. This is because it is abused at times.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I will give a chance to Hon. Kemei, the Member of Parliament for Sigowet/Soin Constituency also.

Hon. Kemei: Thank you, hon. Temporary Deputy Chairman. I wish to support this amendment. We should be able to define the various disadvantaged groups later on in the regulations so that we can mainstream them in the economic life of our country.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I will probably give the last chance to the hon. Member for Ndhiwa Constituency.

Hon. Oyugi: Thank you, hon. Temporary Deputy Chairman. I would like to support this amendment. It is an amendment in good faith. I also think there is already a law that exists that gives 30 per cent procurement issues to people of disadvantaged groups. My only proposal will be that the two levels of laws be harmonised so that they read together. Otherwise, I support because it is a good amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. We are doing very well.

Hon. Wakhungu: On a point of order, hon. Temporary Deputy Chairman. The amendment is good but my worry is that the way it is framed can lead to abuse. This is because when you talk of "disadvantaged", we know very well that there was an element of the youth, women and the disabled in matters of procurement. I am imagining of a situation where one is in a county where we have a marginalised group. Suppose this marginalised group is the only one that has applied, do we qualify that as a disadvantage? It is, indeed, important that clarification should have been put here to specify the issue of the youth, women and the disabled.

(Hon. Langat consulted with Hon. A. B. Duale)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Wamalwa! The Chairman of the Departmental Committee on Finance, Planning and Trade is not concentrating. Therefore, he will not be able even to clarify. Hon. Wamalwa is seeking a clarification. Hon. Langat, I hope you used your other ear to listen to Hon. Wamalwa but, repeat it.

Hon. Wakhungu: I can repeat, hon. Temporary Deputy Chairman. The amendment is good and we know very well that when we talk of disadvantaged groups in as far as matters of procurement are concerned, we are talking about the youth, women and the disabled. I am trying to imagine of a situation whereby you are applying for a job or a business as a marginalised or minority ethnic group somewhere in Teso for example. Does that qualify you to be disadvantaged or it would have been more prudent if we would have gone into specifics? This is in line with the Bill which Hon. Sakaja brought to this Floor sometimes back. The focus was particularly on the youth, women and the disabled.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, Hon. Wamalwa. That should be it. I will give just a minute for the Hon. Chairman to clarify. The reason we are moving very fast is because we have 188 clauses to deal with, actually 184. We need to move pretty quickly.

Hon. Langat: Hon. Temporary Deputy Chairman, I want to appreciate what Hon. Wamalwa has said but if you look at what we are trying to do under this clause, we are only trying to give Treasury that function so that we can actually seal the loophole which the Hon. Member is worried about. We will be coming to a section where we will be dealing with reservations and preferences for these disadvantaged groups. That is where we should address those things. We will even realise, Hon. Wamalwa, that we will be creating some secretariat to monitor all these issues at some point.

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

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

(Clause 7 as amended agreed to)

(Clause 8 agreed to)

Clause 9

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

THAT, Clause 9(1) of the Bill be amended—

(a) by

(i) deleting the word “in” appearing immediately after the word “if” appearing in paragraph (b);

(ii) inserting the words “and the county executive member for finance in each county,” immediately after the words “the Cabinet Secretary” in paragraph (b);

- (b) in paragraph (d), by inserting the words “specific items of” immediately before the word “security”;
- (c) inserting the following new paragraph immediately after paragraph (d) –
- (da) to monitor the implementation of the preference and reservation schemes by procuring entities;
- (d) deleting paragraph (h);
- (e) inserting the following new paragraph immediately after paragraph (k)—
- “(ka) to monitor and evaluate the preference and reservations provided for under this Act and provide quarterly public reports.”
- (f) by inserting the following new paragraph immediately after paragraph (p)—
- “(pa) to ensure the procurement entities implement the preference and reservations and provide data to the Authority disaggregated to indicate the number of disadvantaged groups that have benefitted”;

Clause 9 deals with the functions of the Public Procurement Regulatory Authority (PPRA). One of the amendments there is to clean up the Bill. Two, the Board is supposed to give a report to the Cabinet Secretary in charge of the National Treasury in terms of how the procurement system works. The Departmental Committee on Finance, Planning and Trade felt that they should also give the report and recommendations both to the Cabinet Secretary in charge of Treasury and the County Executive Committee Member (CECM) in charge of treasury or finance at the county level. This is because the CECM will also be monitoring their procurement at that level. We are bringing in the issue of the CECMs in that amendment so that they can advise the county governments in terms of the procurement system at the county level.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the opportunity to Hon. Florence Kajuju, Member for Meru.

Hon. (Ms.) Kajuju: Thank you, hon. Temporary Deputy Chairman. I stand to support the amendment and say that it will assist in the devolution process that is in this Constitution. Instead of concentrating power to the Cabinet Secretary in Nairobi, you find that even the CECM at the county level will also be accountable as far as the process of financing is concerned. It is a good amendment and I support it.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): I will give the opportunity to Hon. K’oyoo, Member for Muhoroni.

Hon. Oyoo: Thank you very much, hon. Temporary Deputy Chairman. I want to support the sentiments of the Chairman but with reservations more so when it comes to the consideration of the so-called members of Cabinet for finance in the counties. You are all aware that governors have towering influence over the operations of finances and other administrative matters in the counties. While Kenyans thought they were devolving functions, they actually devolved corruption. I would rather this thing is properly looked at and reinforcements done.

Thank you. Otherwise, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. It has to be brief Hon. K'oyoo. Let us have Hon. Noor Ali Abdi as the last person on this one.

Hon. Abdinoor: Thank you, hon. Temporary Deputy Chairman. I support the amendments. This will make sure there is accountability at the two levels of Government; the county and national governments. Once the County Executive Member chairs this committee at the county level, there will be proper accountability of resources and procurement procedures.

Thank you.

(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 9 as amended agreed to)

Clause 10

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 10 of the Bill be amended—

(a) in sub-clause (1), by—

(i) deleting the words “There is established a board” and substituting therefor the words “The management of the Authority shall vest in a board”;

(ii) deleting paragraph (b) and substituting therefor the following new paragraphs—(b) four members who shall be appointed by the Cabinet Secretary after nomination through a fair process, by —

(i) the Law Society of Kenya;

(ii) the Institute of Certified Public Accountants of Kenya;

(iii) the Kenya Institute of Supplies Management;

(iv) the Association of Professional Societies in East Africa provided that the appointed nominee is not a member a professional body under sub-paragraphs (i)-(iii);

(ba) two persons nominated by the respective organizations representing—

(v) the youth; and

(vi) persons with disabilities.

The first amendment there is to clean up or correct the English bit of the Bill. The way it is drafted in the Bill looks like there is a different board from the Authority. So, we made sure the board being mentioned in the amendment is for the Public Procurement Oversight Authority (PPOA).

Two, we gave out fields from which the members of the board may be nominated. We said that four members shall be appointed by the Cabinet Secretary after nomination through a fair process by the Law Society of Kenya (LSK); the Institute of Certified Public Accountants of Kenya (ICPAK); the Kenya Institute of Supplies Management

(KISM) and the Association of Professional Societies in East Africa (APSEA) to provide one appointee who is not a member of any of the above bodies.

We also felt that we need to have a representation of the youth and persons with disability in the board. That is what we are providing in that amendment.

(Question of the amendment proposed)

We will have the hon. Member for Kesses.

Hon. J. K. Bett: Thank you, hon. Temporary Deputy Chairman. I support this amendment because when you look at the issues revolving around procurement they relate to procurement issues, finance and legal matters. That is why we have the Law Society of Kenya, the Institute of Certified Public Accountants of Kenya (ICPAK) and the Kenya Institute of Supplies Management (KISM).

The aim of introducing youth and people living with disability is so as to comply with the law.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Let us have Hon. Makali Mulu.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I want to support this amendment and I am actually impressed with Part (b) of the amendment which says that part of this Authority will have representatives of the youth and persons with disabilities.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Hon. Members can now make their decision.

*(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 as amended agreed to)

I get quite uncomfortable Chair when I put the Question and I do not see you supporting your own amendment. I will be tempted next time to give it to the “Nays” because you do not seem to trust yourself. You must be very keen.

Clause 11

Hon. Langat: Hon. I beg to move:-

THAT, Clause 11 of the Bill be amended—

(a) in sub clause (1), by—

(i) deleting the words “or a member” and “under section 12” appearing immediately after the words “as a chairperson” and “the Board” respectively;

- (ii) inserting the words “in a relevant field” immediately after the words “a university degree” in paragraph (a);
- (iii) inserting the following new sub paragraph immediately after subparagraph (iv) in paragraph (b)—
- (v) economics;
- (b) by inserting the following new sub clause immediately after sub clause (1) —
 - (2) A person shall be eligible for appointment as a member of the Board if that person—
 - (a) holds a university degree from a recognized university in Kenya;
 - (b) has knowledge and relevant experience of not less than five years in a management position; and
 - (c) meets the requirements of Chapter Six of the Constitution.

The Committee felt that we should separate the qualifications of the Chair from those of other members. We are providing Clause 11(2) to provide for the qualifications of ordinary members of the Board. We also felt that the Chair should have specific qualifications in terms of procurement, finance, law or in accounts. The other members are only required to have any other degree so that we open up for every citizen of this country. That is what we are amending in Clause 11.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): We will start with Hon. Njagagua.

Hon. Njagagua: Thank you, hon. Temporary Deputy Chairman. I would wish to differ with the Committee’s position on this matter.

Hon. Temporary Deputy Chairman, when you propose five years, does that not mean that you are locking out the youth of this country? Again, when you put a degree as a prerequisite for appointment, there are so many Kenyans who can serve in many positions and do not have a degree. I feel that would lock out deserving Kenyans. This goes against the Constitution of this country because it would be biased against them.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Hon. Kobado, Member for Uriri.

Hon. Kobado: Thank you, hon. Temporary Deputy Chairman. I really do not oppose but I feel sub clause (1) has a negative connotation. Instead of saying “a person shall not”, I thought we would say “a person shall be qualified for appointment as the chairperson of the Board if that person---” so that we avoid that negative connotation.

The Temporary Deputy Chairman (Hon. Cheboi): So you are actually supporting. Let us have the Member for Kiminini.

Hon. Wakhungu: Thank you, hon. Temporary Deputy Chairman. I want to oppose that amendment. As my other colleague Hon. Njagagua has said, this is tantamount to discrimination which the Constitution does not entertain. In most cases, the work of the Board chairman is to preside over the meeting. You are not there to look at the technical aspects, and therefore, the issue that you must have a specific degree that is relevant to this, does not add value.

In many cases, when the Board meets and the chair is not there, we have other provisions that allow members to elect one of their own as long as they have a quorum to chair that particular session. So, the issue of saying that the chair must have specific qualifications higher than others does not hold water.

I am totally against this amendment and I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I will give an opportunity to two more Members and then come back to the chair because this is an issue that is creating some interest. Let us start with Hon. Korir, Member for Cherangany.

Hon. Korir: Thank you, hon. Temporary Deputy Chairman. I rise to oppose this amendment. As my friend Chris has said, I am opposing this amendment alluding to the fact that from the previous amendment, we have just added the youth and people living with disability as members of the Board. We are again saying five years of experience and I think we are really contradicting ourselves because by the time youths graduate from the university---A youth is somebody under 35 years. So, if you are saying that somebody graduates from the university and should have five years experience then we are locking out the youth from this. I agree with my friend Hon. Chris that as the chairman, you do not need a degree in a relevant field because your work is to chair meetings.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Korir, just tell us what you have said. What you are agreeing with Hon. Wamalwa has already been put across. Let me have Hon. Nassir.

Hon. Nassir: Thank you, hon. Temporary Deputy Chairman. I speak as a member of this Committee. The reason why this amendment was passed as it is was because over the years, whatever had been happening with the various boards that we have seen---

(Loud consultations)

Hon. Chair, you can probably protect me from—

The Temporary Deputy Chairman (Hon. Cheboi): Order, hon. Members! Order, hon. Members from Meru County congregating inside the Chamber!

Hon. Nassir: They were having a tribal affair inside the Chamber.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nassir, that is out of order and so you will have to withdraw.

Hon. Nassir: Okay. Hon. Temporary Deputy Chairman, I take it back.

The Temporary Deputy Chairman (Hon. Cheboi): Proceed. You were supporting the amendment.

Hon. Nassir: Hon. Temporary Deputy Chairman, I wish to support this and I want to probably put it very clear. When someone completes Form Four, we are looking at an average age of 19 years. If someone proceeds to the university, we are looking at an average age of 23 years. If they have 10 years relevant experience, we are looking at about 34 years for them to chair the Board. This country has been of the opinion---

(Loud consultations)

Hon. Temporary Deputy Chairman, protect me once again.

The Temporary Deputy Chairman (Hon. Cheboi): No, just finalise. You are taking long.

Hon. Nassir: This country has always been of the opinion that appointments have always been made based on some form of bias. Here we are trying to put things in place so that someone's qualifications are what will judge that person into holding an office.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Nassir, you have been heard supporting the amendment. Let me have Hon. Kathuri Murungi. He will be the last one for now.

Hon. Murungi: Thank you, hon. Temporary Deputy Chairman, for this chance. I want to oppose this amendment because briefly reflecting on the appointments made yesterday by His Excellency the President, you realise there are so many people without degrees and they are sitting in various boards. This clause will hinder many Kenyans from accessing these positions.

Hon. Temporary Deputy Chairman, I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly, hon. Chair of the Committee. You must be brief.

Hon. Langat: Hon. Temporary Deputy Chairman, I want Members to understand what we are doing here. As it is in the Bill now, Clause 11 provides as follows: That you cannot be appointed both as a chair and a member if you do not have knowledge and experience of 10 years and specific qualifications of procurement and supply chain management, finance, law and accountancy. What we have done as a Committee is responding to the issues Members are worried about. We have said that we will separate the qualifications of the chair from those of other members. For ordinary members, we are reducing the requirement for experience from 10 to five years and then we are opening it to any degree.

It is not fixed for ordinary members now. We are improving it from the way it is on the Bill to reflect what the Members are talking about. It is not honest to say that we should not have qualifications in any field. Even for you to come to Parliament, there is some specific minimum criterion. For you to become the President of this country, you must have a degree. That is not discrimination. For you to become a governor, you must have a degree. It is not discrimination. So, it is wrong to say that by putting qualifications, you are discriminating other people. We want to make sure that the people appointed to boards perform in those posts.

The Temporary Deputy Chairman (Hon. Cheboi): Let us see if you have convinced the House.

(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 12

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
 THAT, clause 12 of the Bill be amended in paragraph (1) (c) by deleting the words “manage, control and administer the assets of” and substituting therefor the words “oversee the management, control and administration of the assets of”.

Hon. Temporary Deputy Chairman, the Committee felt that there will be conflict between the management staff and the Board. The Board members are not supposed to manage, they are supposed to oversee the management of the Authority and not to manage themselves. It is just to bring that clarity.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I give the first shot to Hon. Ali Rasso.

Hon. Dido: Hon. Temporary Deputy Chairman, I support the amendment. What we have in most of our institutions where there are boards is conflict of interest where the board actually interferes with the running of the organisations by appearing to manage and control rather than providing oversight.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Member for Bondo, Hon. Ochanda.

Hon. Ogolla: I support the amendment. This solves a big problem that we have in organisations many times where policy organs and administrative organs of agencies end up conflicting.

Hon. King’ola: Hon Temporary Deputy Chairman, I support this amendment because it is going to reduce impunity. The Board should not manage and control the Authority but it should oversee.

*(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 12 as amended agreed to)

(Clause 13 agreed to)

Clause 14

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
 THAT, Clause 14 of the Bill be amended in subclause (3) by deleting the word “Three” and substituting therefor the word “Five”.

This is to increase the number required for quorum of the Board from three to five members.

The Temporary Deputy Chairman (Hon. Cheboi): Let us be clear. Did you say to reduce from three to five, or to raise?

Hon. Langat: I said, “to increase”.

The Temporary Deputy Chairman (Hon. Cheboi): To increase. That is okay.

Hon. Langat: To increase the number required for quorum from three to five to ensure that the decisions of the Board are made when most of the members are present.

The Temporary Deputy Chairman (Hon. Cheboi): That is fairly straightforward.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give two Members to contribute on this one. It is fairly straightforward. We will start with Hon. Member for Rangwe.

Hon. Ogalo: Hon. Temporary Deputy Chairman, I want to support the amendment as proposed by the Chairman. We have seen boards in this country where people connive and convene meetings through e-mails and pass things. Increasing the mandatory number of people to form the quorum would make the management of the Board more transparent.

Hon. Nderitu: I would like also to support that amendment. As my colleague, Hon. Oner has said, we have issues where people connive and call board meetings at night. As we increase the number, it will safeguard that so that as many Board members as possible are included so that when they make critical decisions, we avoid what we had in the National Social Security Fund (NSSF) when they were passing some board resolutions.

The Temporary Deputy Chairman (Hon. Cheboi): It is fairly straightforward. Members will make your decisions.

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

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

(Clause 14 as amended agreed to)

Clause 15

Hon. Langat: I beg to move:-

THAT, Clause 15 of the Bill be amended in—

(a) subclause (2) (b), by inserting the words “and can demonstrate a logical progression in acquiring the academic qualifications” immediately after the word “Kenya”;

(b) subclause (3), by inserting the words “and the Secretary to the Board” immediately after the word “Authority”.

This amendment came from Hon. Gumbo. The Committee felt that we should take it over because he told us that some people cannot logically explain how they

obtained their qualifications. We felt that if it would solve that problem, we should include it so that it reads, “can demonstrate logical progression in acquiring their academic qualifications.” I wish Hon. Gumbo could explain it further.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first shot to Hon. Wanyonyi.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I support this amendment especially because of the Secretary to the Board who is normally the legal mind of the Board. This is very important so that the Board can function properly.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Hon. Member for Gatanga, Hon. Njuguna, *roho safi*.

Hon. H.K.Njuguna: Hon. Temporary Deputy Chairman, I want to support this amendment because we are talking about logical acquisition of papers. In this country, there are some people who cannot explain where they got their papers. One claims that he is a Form Four graduate and then after that he has a Masters Degree. So, we are talking about logical acquisition of papers.

The Temporary Deputy Chairman (Hon. Cheboi): That is also fairly straightforward. Members can make their decision.

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

(Clause 15 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): What is your point of order, Member for Rarieda?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, we sat with the Committee for three days to harmonise these amendments. The purpose of harmonisation was so that when an amendment that was brought by me is brought here, I am given a chance. Clause 15 was my amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Gumbo! We have disposed that. Let me clarify this: When the Chairman moved that amendment, I looked at you and you were busy consulting with some three Members. So, since I did not see any--- If it is really your amendment and the Members are supporting, you achieve the same thing. You have actually achieved it. In the next amendments that will be coming, let me get a clear indication that you are the one who had participated in the agreement with the Committee. I will obviously give you an opportunity. If you are with us, then you must be concentrating. If you are making other discussions somewhere, I will proceed because we will still achieve the same thing. That is over. Let us not discuss that. Let us proceed.

(Clauses 16, 17 and 18 agreed to)

Clause 19

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Chair, as you move your amendment, you had better tell me if there are Members who participated strongly in it, so that I can give them an opportunity.

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

THAT, Clause 19 of the Bill be amended—

(a) by numbering the first clause as (1);

(b) in subclause (1), by inserting the words “Public Service Commission and the Salaries and Remuneration Commission” immediately after the words “the Cabinet Secretary”;

(c) in subclause (2), by inserting the words “and the Public Service Commission” immediately after the words “the Cabinet Secretary”.

Clause 19 deals with determination of the terms and conditions of service of the Director-General and the staff of the Authority. As it is, this is supposed to be determined by the Board in consultation with the Cabinet Secretary. The Committee felt that it should also be in consultation with the Public Service Commission and the Salaries and Remuneration Commission. We are bringing on board the Public Service Commission as well as the Salaries and Remuneration Commission. Hon. Gumbo participated a lot here and I wish you could recognise him.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, you have the Floor.

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Chairman. I also thank the Chairperson of the Committee. We discussed this matter and said that consulting with the Cabinet Secretary alone is not good enough. Therefore, we introduced the amendment that it should be determined by the Board in consultation with the Public Service Commission. In sub-clause (2), we also introduced that the scheme of the Authority and its organisation structure shall be determined by the Board in consultation with the Public Service Commission and the Salaries and Remuneration Commission. We made contributions to this amendment and we are in agreement with what the Committee has presented.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for Kiminini. You want to speak to this one, Hon. Wamalwa?

Hon. Wakhungu: No.

The Temporary Deputy Chairman (Hon. Cheboi): The problem is that we have the same names coming up again. Let us have Hon. Jackson Rop. He has not spoken this afternoon.

Hon. Rop: Thank you, hon. Temporary Deputy Chairman. Before I contribute to this, allow me to thank the Almighty God for having given me the opportunity today, through the Public Accounts Committee, to serve as a Vice-Chairperson.

The Salaries and Remuneration Commission as well as the Public Service Commission harmonise the salaries of staff. In this Authority, we need to have that objectivity, so that salaries can be harmonised with those of public officers.

I support this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Very well and congratulations. Lastly, let us have Hon. Rasso. No, I had given an opportunity to Hon. Rasso. I will give an opportunity to the Member for Mandera North.

Hon. Nooru: Thank you, hon. Temporary Deputy Chairman. I support the amendment. In most parastatals and institutions, there is no harmony. The involvement of the Public Service Commission in developing a criteria and terms of reference for the staff is the best way to go about it. Rather than leaving every Board to develop its own criteria and terms of service, it is better to invoke the regulations, so that all of them are harmonised.

The Temporary Deputy Chairman (Hon. Cheboi): Since I had mentioned Hon. Rasso, you will have a few seconds on this one. It is fairly straightforward. We are finalising.

Hon. Dido: Thank you very much, hon. Temporary Deputy Chairman. I was wondering why you should have the Cabinet Secretary involved in this. The laws of this country are clear that it is the Public Service Commission and the Salaries and Remuneration Commission who should determine salaries for civil servants and other public officers.

The Temporary Deputy Chairman (Hon. Cheboi): That is something that we will now make a decision on.

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

(Clause 19 as amended agreed to)

(Clauses 20 and 21 agreed to)

Clause 22

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 22 of the Bill be amended by deleting the words “or during a vacancy in the office” appearing immediately after the words “of the Director-General”.

This is just to clean up the Bill. There was a repetition of words, which are being deleted.

(Question of the amendment proposed)

Hon. G.W. Omondi: Hon. Temporary Deputy Chairman, the amendment I wanted to propose is that nobody should be prevented from taking part in procurement simply because he has been sued. That is why I moved that amendment that has been adopted by the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): Are you supporting the amendment?

Hon. G. W. Omondi: Yes, I am supporting the amendment.

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

(Clause 22 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Sakaja, when you open your mouth, I cannot listen to you. I was not so sure whether you were yawning or saying ‘Aye’. There was no sound coming from your end.

Clause 23

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 23 of the Bill be amended by inserting the words “ethnic and” immediately after the words “the need for”.

This is again to clean up the Bill. My good friend, Hon. Gumbo, was very passionate about good English in the Bill. He was doing this to ensure that the English in the Bill is good.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! I see a Member who is turning out to be a celebrity within the Chamber. That should be Hon. Linturi. Order, Hon. Linturi! You are creating a celebrity out of yourself this afternoon and there is a lot of interest in that direction.

(Question of the amendment proposed)

Hon. King’ola: Thank you, hon. Temporary Deputy Chairman. I stand to support this amendment. We have been struggling with ethnic balance in all appointments. The word “ethnic” in this clause is highly supported by everybody.

Hon. Wetangula: Hon. Temporary Deputy Chairman, I support the amendment. My reasoning was the same as Hon. Makau’s. Ethnic balance is something that is talked about over and over. You find skewed appointments in most of these parastatals and people from the same ethnic background occupy all the positions. This is a very important amendment.

Hon. Lati: Thank you, hon. Temporary Deputy Chairman. I support this amendment because we do not understand what regions are in Kenya. What is a region and where does it stop? Gender is very clear. You are either male or female. When it comes to regions, I do not know what region I belong to in Kenya. However, I truly know I am a Samburu.

Thank you.

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

(Clause 23 as amended agreed to)

Clause 24

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat.
Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 24 of the Bill be amended in subclause (3) by inserting the following new paragraph immediately after paragraph (f) —
“(g) capital expenditure to be undertaken by the Authority.”

Clause 24 deals with the budget estimates of the Authority. The Committee agreed with Hon. Gumbo that the estimates should include the capital expenditure to be undertaken by the Authority. Hon. Gumbo had a strong support for that.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Let us start with Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, indeed, we discussed this amendment. Subclause (3) provides that:

“The estimates of budget shall make provision for all the estimated revenues and expenditures of the Authority for the financial year and, in particular, shall provide for—

- (a) the estimates of revenues accruing to the Authority;
- (b) the payment of salaries, allowances and other charges in respect of the staff of the Authority;
- (c) the payment of pensions, gratuities and other charges in respect of former staff of the Authority;
- (d) the proper maintenance of buildings and grounds of the Authority;
- (e) the maintenance, repair and replacement of the equipment and other property of the Authority; and
- (f) the payment of allowances and expenses of the Board.

My view, which the Committee agreed with, is that even as you make estimates of budget provisions for the estimated revenues and expenditure, you should also include any capital expenditure to be undertaken by the Authority.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): That one is well disposed of.

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

(Clause 24 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): There is no amendment to Clause 25.

(Clause 25 agreed to)

Clause 26

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

THAT, Clause 26 of the Bill be amended —

(a) in sub-clause (3) by—

(i) deleting the words “have issues” and substituting therefor the words “are subject of controversy or litigation” in paragraph (b);

(ii) inserting the following new paragraph immediately after paragraph (d)—

“(e) a report on the compliance with this Act by each county government”.

(b) in sub-clause (5) by deleting the word “the” appearing immediately before the word “Parliament”.

This is a clean-up of the language of the Bill from my good friend, Hon. Gumbo. It also provides that the report of the Authority to the Cabinet Secretary (CS) should include a report on the compliance with this Act by each county government.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, be brief. It is a straightforward one. So, be very brief.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, it is. This was a very interesting clause. Sub-clause (3)(b) says that:

“A report on how the public procurement and disposal systems are working and those that have issues.”

I thought that kind of language belongs to primary school and not in an Act of Parliament. So, we decided to change that to read “those that are subject of controversy or litigation.” The issue with sub-clause (5) was just a typo. It talks of “transmit it to the Parliament.” I do not think there is something like “to the Parliament.” It should just read “transmit it to Parliament and the relevant county assembly.”

I, therefore, support.

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

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

(Clause 26 as amended agreed to)

Clause 27

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

THAT, Clause 27 of the Bill be amended—

(a) in sub-clause (1) by deleting the words “There is established” and substituting therefor the words “There shall be a”; and

(b) by deleting sub-clause (2).

This is to improve the wording of the provision. Clause 27 deals with the establishment of a central independent Procurement Appeals Review Board. As a Committee, we propose to delete subclause (2) which says that the Board should establish regional panels consisting of three members. The Board should work as one. If there are issues, they should form an *ad hoc* sub-committee for that issue rather than establishing permanent regional panels which can introduce subjectivity. So, we agreed to delete subclause (2) and improve the wording in subclause (1).

(Question of the amendment proposed)

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

Hon. Sakaja: Thank you very much, Hon. Temporary Deputy Chairman. I rise to support this, specifically the amendment to Clause 27(2). The Board had been proposed to set up regional panels to handle procurement appeals in different parts of the country. We felt that, that would create cartels. If there are three people known to listen to all the procurement appeals in Mombasa or Kericho then we shall have given them too much opportunity for rent-seeking. To avoid that, we felt that the appeals panel stays as one. So, I support that amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Let us have Hon. Njoroge Baiya as the last person on this.

Hon. Baiya: Hon. Temporary Deputy Chairman, thank you. I also support the proposal to delete subclause (2). This would be a very dangerous legislation. In the course of time as institutions grow, there will be fewer cases of challenge to procurement when the level of compliance improves. However, this provision appears to imply that there will always be need for close monitoring at the regional level, which would deny the Board aptitude to plan its own activities.

(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 27 as amended agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): We do not have an amendment to Clause 28.

(Clause 28 agreed to)

Clause 29

- Hon. Langat:** Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 29 of the Bill be amended—
- (a) in sub-clause (1), by—
 - (i) inserting the words “ whose qualifications and experience shall be as that of a Judge of the High Court” immediately after the word “chairperson in paragraph (a);
 - (ii) inserting the words “whose qualifications and experience shall be as prescribed in the regulations” appearing immediately after the word “member” in paragraph (b);
 - (b) by deleting sub-clause (2) and substituting therefor the following new sub-clause—
 - (2) A person appointed as a member under subsection (1) shall be nominated by the following professional bodies from amongst their members as follows—
 - (i) three persons nominated by the Law Society of Kenya;
 - (ii) one person nominated by the Chartered Institute of Arbitrators, Kenya Chapter;
 - (iii) three persons nominated by the Kenya Institute of Supplies Management;
 - (iv) three persons nominated by the Institute of Certified Public Accountants of Kenya; and
 - (v) four persons nominated by the Association of Professional Societies in East Africa provided that the appointed nominees are not members of the professional bodies mentioned under subparagraphs (i)-(iv).
 - (c) by inserting the following new subclause immediately after subclause (2)—

“(3) The procedure for nominating the persons mention under subsection (2) shall be as prescribed.”

This amendment gives the qualifications for the chairperson and members of the Review Board. We also had a lot of proposals from Hon. Gumbo, Hon. Ogari and Hon. Njuguna in terms of the nominating bodies to the Review Board. We sat, harmonised and agreed that the membership of the Review Board shall be obtained from the listed organisations. That is the amendment we are passing. We agreed to have 14 members and one chairperson. This is because, since procurement will be done in all the counties in this country, we need to have people who will listen to issues that come up. So, we agreed the membership of the Review Board shall be nominated by the following bodies as follows: Three persons nominated by the Law Society of Kenya (LSK). The Members said most of the issues which will be listened to will be about the legality and process of procurement. That is why LSK is appearing. One person nominated by the Chartered Institute of Arbitrators, Kenya Chapter; three persons nominated by the Kenya Institute of Supplies Management (KISM). That is the relevant profession for procurement. Three persons nominated by the Institute of Certified Public Accountants of Kenya (ICPAK) and four persons nominated by the Association of Professional Societies in East Africa (APSEA).

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat, you do not have to go through the entire list. If it is in the Order Paper, like it is, all you need to do is to give us the effect of that amendment. I think you have brought it out well. So, let us leave it at that.

Hon. Langat: Thank you very much.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I do not know whether Hon. Njuguna has a contribution on this one. But let us have Hon. Kitungi.

Hon. Kitungi: Thank you, hon. Temporary Deputy Chairman. Let me support this amendment because procurement is a very important field. We must have all the fields represented in this amendment.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I will give the Floor to Hon. Ogari.

Hon. Ogari: Thank you, hon. Temporary Chairman. I also want to support it because it is one of my amendments, together with my colleague Eng. Gumbo. The list we had is a bit too long because we wanted quantity surveyors, engineers, architects, doctors and other professionals to be there. We realised that we have the Association of Professional Societies in East Africa which can sort out the list of other professionals that are interested or are part of procurement. They are quite a number.

With those remarks, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, I will be deciding on when to give you the Floor. If the Departmental Committee Chair has proposed an amendment which we are totally in agreement with, it is not necessary for us to repeat ourselves. So, I will put the Question. We will listen to you in the next amendment.

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

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

(Clause 29 as amended agreed to)

Clause 30

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

THAT, Clause 30(1) of the Bill be amended in Paragraph (b) by deleting the figure "10" and substituting therefor the word "seven".

Clause 30 deals with qualifications of the members of the Review Board. The Committee felt that 10 years experience is way too high, and that we should strike a balance of seven years so that we can bring the youth into the bracket. So, we are reducing experience from 10 years to seven years.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, that is fairly straightforward.

(Question of the amendment proposed)

I am looking at Hon. Wanyonyi.

Hon. F.K. Wanyonyi: Hon. Temporary Deputy Chairman, I had wanted to contribute to the previous amendment and not on this one.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, I give the Floor to the Hon. Member for Sigor, Hon. Rotino.

Hon. Rotino: Hon. Temporary Deputy Chairman, I want to support the amendment to reduce the time limit from 10 years to seven years. It is important to reduce the period so that we can accommodate many people in that bracket.

The Temporary Deputy Chairman (Hon. Cheboi): I also see the Hon. Member for Homa Bay, Hon. Wanga.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I support the amendment. I wish we could reduce it to five years. The reason is that the difference between 10 and seven is very small. The logic behind this is that young people should be taken care of in public appointments. It would make even more sense to have it at five years.

I support the spirit.

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

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

(Clause 30 as amended agreed to)

Clause 31

The Temporary Deputy Chairman (Hon. Cheboi): On this particular one, there is no amendment. So, I will proceed to put the Question.

(Clause 31 agreed to)

Clause 32

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

THAT, Clause 32 of the Bill be amended in Subclause (1) by inserting the words “and the Salaries and Remuneration Commission” immediately after the words “the Cabinet Secretary”.

We are bringing on board the Salaries and Remuneration Commission in determination of the terms and conditions of service of the members of the Review Board.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see some interest. Let us start with Hon. Sakaja.

Hon. Sakaja: Hon. Temporary Deputy Chairman, it is really simple. I want to contribute to another one, but this is just to harmonise with all the other civil servants.

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

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I really wanted to participate in Clause 29 but it has been dealt with.

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

(Clause 32 as amended agreed to)

Clause 33

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 33 of the Bill be amended in Subclause (2) by —
(a) inserting the words “establish a procurement function which shall”
immediately after the words “County Treasury shall”;

(b) inserting the words “citizen contractors, women, youth, persons with disabilities, minorities and marginalized groups” immediately after the words “disadvantaged group” in paragraph (f);

This is just to clarify the role of the county treasury, which is to establish a procurement function. Secondly, we are giving the county treasury the additional function of ensuring that seasoned contractors, women, youth, persons with disabilities and marginalised groups participate in procurement at the county level.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to support this amendment. I thank the Chair of the Departmental Committee for the consensus we built. Under Clause 33(2) (f), I felt very strongly that, in addition to the disadvantaged groups, we should specifically include citizen contractors, women, persons with disabilities, youth minorities and other marginalised groups. So, I just want to say that the amendment was introduced by me and I am in full support.

The Temporary Deputy Chairman (Hon. Cheboi): Very well! Let us have Hon. Kedogo, the Member for Vihiga.

Hon. (Ms.) Kedogo: Hon. Temporary Deputy Chairman, I support the amendment with the insertion of the words “citizen contractors, women, youth, persons with disabilities, minorities and marginalized groups” because if it is left as it is, we may end up having contractors from other countries getting all the jobs. Women may not be taken on board.

(Question, that the words to be inserted

be inserted, put and agreed to)

(Clause 33 as amended agreed to)

(Clauses 34 and 35 agreed to)

Clause 36

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

THAT, Clause 36 of the Bill be amended in Subclause (3), by inserting the words “by Regulations” immediately after the words “be prescribed”.

This is simply to clarify that the powers of the investigator are subject to such conditions and limitations as may be prescribed by--- We are only including the words “by regulations”.

(Question of the amendment proposed)

Hon. (Ms.) Amolo: Thank you, hon. Temporary Deputy Chairman. I actually wanted to contribute on Clause 33. I believe that by having regulations in Clause 36, it will be of importance as we are looking at this procurement Bill.

I support the amendments.

Hon. (Eng.) Gumbo: I support. That amendment was actually brought by me and we agreed with the Committee during their harmonisation stage that we include that. We will prescribe that bit that the powers of the investigator should be subject to such conditions and limitations as is prescribed by regulations.

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

(Clause 36 as amended agreed to)

Clause 37

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

THAT, Clause 37 of the Bill be amended by inserting the words “or her” immediately after the word “his”.

Hon. Gumbo felt that, that Clause was not gender sensitive and, therefore, he said we must make it gender sensitive by introducing the words “or her”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Cheboi): Therefore, that looks like it is extremely straightforward.

(Question, that the words to be inserted be

inserted, put and agreed to)

(Clause 37 as amended agreed to)

(Clauses 38, 39 and 40 agreed to)

Clause 41

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

THAT, Clause 41(1) of the Bill be amended by—

(a) inserting the words “of Kenya or any other jurisdiction” immediately after the words “Act or Law” in paragraph (b);

(b) inserting the words “or the code of ethics of the relevant profession regulated by an Act of Parliament” immediately after the word “Act” appearing in paragraph (f);

(c) inserting the words “or her” immediately after the word “his” in paragraph (g);

(d) inserting the word “or fraudulent” immediately after the word “corrupt” in paragraph (h);

This is to clarify that you will be debarred from participating in procurement if you have committed an offence relating to procurement under any Act or law in Kenya or in other jurisdictions. If, say, you have committed a procurement offence in Uganda and you come to Kenya, you will not participate in any procurement process.

(Question of amendment proposed)

Hon. Kubai Iringo: Thank you, hon. Temporary Deputy Chairman. I support the amendment as it is in the Order Paper because it is specific and not ambiguous. It is also indicating that we are dealing with the Laws of Kenya and, therefore, those other jurisdictions which do not comply with our laws have to be fitted to conform to our Constitution and laws.

Hon. (Ms.) Nyasuna: I think it is a good idea to be specific. This is so that whoever commits an offence in another country cannot come to Kenya and participate in procurement process. The law, as it is now, can be drafted in a way that can be argued either way.

I also want to thank Hon. Gumbo for inserting the words “or her” in the clause. This shows that a lot of legislation is gender-blind. A lot of the legislation only uses “his”. This amendment is very fundamental. The message we are sending is that when doing legislation, the drafters need to ensure that this very important matter is taken care of.

Hon. Nooru: Thank you, hon. Temporary Deputy Chairman. The Chairperson is dealing with these amendments and leaving some parts. Like Part (b) requires some clarification. He has talked about the amendment on Part (a) but in Part (b), there are some inclusions which are very critical and require some kind of explanation as to what is to be included.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I think the purpose of that amendment was to just introduce something new. My colleague, the Member for

Homa Bay, said a lot of our legislation tends to be gender-blind. Where we have reached, when talking about equality between the sexes, it is important that we adapt with times and make laws that identify and provide for both gender.

I support.

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

(Clause 41 as amended agreed to)

(Clauses 42 and 43 agreed to)

Clause 44

The Temporary Deputy Chairman (Hon. Cheboi): I see there are two amendments here. Before we proceed, Hon. Langat, you might want to shed more light on it because I see there are two proposals. I know one is not yours, but I would want to know whether the Committee is aware of this other amendment. First, we will start with your amendment Hon. Langat.

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

THAT, Clause 44 of the Bill be amended—

(a) in Sub-clause (2) by deleting the expression “Section 68 ” appearing in Paragraph (e) and substituting therefor the expression “sections 68, 147, 148 and 149”;
(b) by inserting the following new paragraph immediately after Paragraph (h) —
“(ha) submit to the Authority the part in its procurement plan demonstrating application of preference and reservations schemes in relation to the procurement budget within sixty days after the commencement of the financial year; and”.

This deals with the role of the accounting officer. He should ensure compliance with Article 68, 147, 148 and 149. The accounting officer in every State organ shall submit to the Authority part of its procurement plan demonstrating an application of preference and reservation schemes in relation to the procurement budget within 60 days after the commencement of a financial year. This is to enable the Authority to establish the compliance, for example, whether they are complying with the requirement that youth, people with disability and women must be given specific tenders. Each accounting officer, by that clause, is made to give reports to the Authority to ensure compliance of those reservations.

I would request that you give it to my Member, Hon. Sakaja, to shed some more light.

The Temporary Deputy Chairman (Hon. Cheboi): Let us put first things first.

(Question of the amendment proposed)

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman. Clause 44 deals with internal organisation of procuring entities. We felt that it was important to clearly put in place what we expect from the accounting officers of every procuring entity. One of this is to comply with sections 68, 147, 148 and 149, which talk about advance

payments and when these payments are done. Lack of clarity before has led to a lot of corruption. More importantly for me, which is why I asked to contribute, we want to insert a new paragraph that says that they shall submit to the Authority part of the procurement plan demonstrating how they are going to apply preference and reservations. So, every county government and national entity must show in its budget the amount of money they expect the young people, women and people with disabilities to access. It should not just be by chance that young people get tenders. It should start from the planning point until the execution where we have put monetary mechanisms in Clause 148.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): I think you can make a decision on this.

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

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

The Temporary Deputy Chairman (Hon. Cheboi): I want to give an opportunity to the Leader of the Majority who also has an amendment to the same Clause 44.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 44 be amended—

(a) in subclause (2), by inserting the words “subject to Subsection (2A)” immediately before the word “submit” in paragraph (c);

(b) by inserting the following new sub-clause immediately after Sub-clause (2)—
“(2A) The procurement plans prepared by the national security organs shall be exempted from submission to the National Treasury”.

I picked this, this morning when I was looking at the amendments by the Chair. Because of the situation we are in, if we publicise our security plans, for example, say that we are going to buy this number of guns with these specifications, planes and jets and make it a plan that can be accessed by everybody, then that means that our enemies can get access to that information. This is something I have discussed with the Chair. The House might decide whether, in our current situation, it will be prudent to make it public to our enemies the type of security items that we are buying.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the opportunity to the Member for Kathiani.

Hon. Mbui: Thank you, hon. Temporary Deputy Chairman. I have a concern with that amendment. As much as I support this, it is also important to note that this has been an area where Government operatives have taken advantage, done a lot of corruption and taken a lot of money from the coffers of this nation. The amendment needs to be crafted

very well, so that we are sure that it cannot be used to negate the gains that this Bill is about to bring.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have hon. Cyprian Iringo. I will give a chance to four Members on this one.

Hon. Kubai Iringo: Hon. Temporary Deputy Chairman, I wanted to speak to the other one.

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

Hon. Baiya: Hon. Temporary Chairman, I support the amendment by Hon. Duale. It makes a lot of sense to ensure that even as we enforce procurement procedures, we safeguard other national interests, which include protecting confidential information. We have already taken other actions to safeguard public interest in the way public resources are spent like in audits. So, it would be imprudent to require those documents to be made public when they relate to national security.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have the Member for Kibra.

Hon. Okoth: Hon. Temporary Deputy Chairman, I understand why it is important to keep some of the security issues private. However, I would like to understand from the Leader of the Majority Party how we can protect our soldiers and our security personnel from substandard equipment that is being purchased. For instance, if the budgeting and the procurement processes clearly state that the money we give should be used to purchase new equipment, new generation arms like bullet-proof vests and helmets, how do we safeguard and protect our officers from the procurement people hiding this information and buying for them cheaper or second-hand equipment that do not help them in their job and keep them safe? I understand the importance of security, but this other angle of making sure that the equipment that we want and the best value for money is what we get. If that can be addressed, then I fully support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear the voice of the Committee on this one. Hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairman, as said by the Mover, I support this amendment although it was brought this morning. It does not deal with procurement itself, it deals with submission of procurement plans to the National Treasury. It has nothing to do with the actual procurement. It deals with publishing or submitting the procurement plans to the National Treasury, which may lead to insecurity. I support the exemption of the national security organs from the requirement to submit to the National Treasury their procurement plans.

The Temporary Deputy Chairman (Hon. Cheboi): Make your decision. Hon. Members, this is a further amendment and it is prudent that we understand that.

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

(Clause 44 as amended agreed to)

Clause 45

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 45 of the Bill be amended in Sub-clause (3) by inserting the following new paragraph immediately after paragraph (b) —

“(c) undertaken in strict adherence to Article 227 of the Constitution”;

This is just to say that all the procurement processes must strictly be undertaken in adherence to Article 227 of the Constitution. That is the article that deals with procurement and public disposal in the Constitution. It is just to enhance the requirement to follow the provisions of Article 227 of the Constitution.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to support. That amendment was largely proposed by me. The import of that amendment is basically to make sure that the procedures required in Subsection 1 shall be consistent with this Bill. All procurements should be undertaken in strict adherence to Article 227 of the Constitution. Article 227 deals with the principles of public procurement. That is what we added and we had the concurrence of the Committee.

Hon. J.K. Bett: Thank you, hon. Temporary Deputy Chairman. I support the amendment to Clause 45, which reads:-

“All procurement processes shall be undertaken in strict adherence to Article 227 of the Constitution”. Other than complying with the budgetary allocation, Article 227 of the Constitution anchors public procurement to law by adhering to the principles of efficiency, transparency and subjecting procurement processes to competition so that we can have value for money.

I support.

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

(Clause 45 as amended agreed to)

Clause 46

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 46 of the Bill be amended:-

(a) in Sub-clause (3) by:-

(j) deleting the word “gotten” and substituting therefor the word “obtained”;

(ii) deleting the words “or whoever is responsible for procurement” appearing immediately after the words “procurement function”;

(b) in Sub-clause (4)-

(i) by deleting the words “of at least three heads of department of the procuring entity, one of whom shall be the head of the user department” appearing in paragraph (b) and substituting therefor “heads of user department and two other departments or their representatives” ;

(ii) by inserting the words, “or professionals who shall advise on the evaluation of the tender documents and give a recommendation on the same to the committee within a reasonable time” immediately after the words “procured consultants” in paragraph (b);

(iii) by inserting the word “procedurally” immediately before the word “disbanded” and by deleting the word “by a disciplinary body” in paragraph (d).

Hon. Temporary Deputy Chairman, part of the amendment is meant to correct the English. The other part of the amendment is to clarify the *ad hoc* committee established under that clause; that it shall comprise of the heads of the user department and two other members. This is as opposed to what was provided before when it was saying that the *ad hoc* committee will consist of, at least, three heads of department of the procuring entity. It was not providing for the user department. So, we said that one of them must be the user department and two other departments.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see Hon. Ogari, the Member for Bomachoge Chache.

Hon. Ogari: Thank you, hon. Temporary Deputy Chairman. Clause 46 is a bit lengthy. I want to comment only on Part (b), which was my amendment. It was discussed and we agreed with the Departmental Committee. The import of my proposal is to ensure that professionals like quantity surveyors, engineers and the rest are involved in the *ad hoc* committee’s deliberations by being allowed to give professional opinion.

That was carried and I support.

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

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman introducing the user department is important. This is because sometimes procurement proceeds to conclusion only for the user department to say that what has been procured is not what they wanted in the first place. Having two other departments is also important because we would not want the membership of the committee to be predictable. We do not want people to predict that it is so and so who are going to be in the committee. Leaving the other two slots open gives room for manoeuvring, so that we reduce predictability of the committee’s membership and, therefore, reduce rent-seeking or any other incidences of corruption.

*(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 46 as amended agreed to)

Clause 47

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

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THAT, Clause 47 of the Bill be amended by inserting the following new subclause immediately after Subclause (2)—

“(3) The Cabinet Secretary shall make regulations for the better carrying out of this section in respect to low value procurement.”

Hon. Temporary Deputy Chairman, that clause says that a procurement function shall be handled by a procurement professional whose qualifications are recognised in Kenya. What the Departmental Committee felt is that the Cabinet Secretary shall make regulations in terms of exemptions. We said that it will be handled by professionals recognised in Kenya. However, we are saying that when we come to a situation where, for instance, our local primary schools in Kisii, Kericho or Lodwar are unable to hire professionals, the Cabinet Secretary should have power to make regulations and say that they can appoint head teachers to undertake the procurement function under such exceptional circumstances.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I can see Hon. Sunjeev Birdi.

Hon. (Ms.) Sunjeev: Thank you, hon. Temporary Deputy Chairman. I fully support this clause. I would like to say that as the Jubilee Coalition fights the terror of corruption, it is very important that we have this *ad hoc* committee. This is because it is through such committees that we can go forward and make sure that things are inspected properly.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear Hon. Sammy Mwaita, who will be the last Member to contribute to this amendment.

Hon. Mwaita: Thank you, hon. Temporary Deputy Chairman. I had actually presented this amendment to the Committee. Since we have done away with the tender committee, the best thing is to introduce an *ad hoc* committee to inspect goods and services in the procurement process.

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

Hon. Sakaja: Hon. Temporary Deputy Chairman, I realise that the two Members have spoken about the next amendment. We are not yet there. They have talked about the New Clause 47 (a).

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I will give you an opportunity in the next amendment. In the meantime, let us make a decision on the amendment before us. Let us have a brief one from Hon. Mulu. I consider that the contributions made by Hon. Birdi and Hon. Mwaita are for the next amendment.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. This amendment is quite important and I support it. The idea of having regulations is quite good. It actually provides the details of implementation of specific clauses.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Lastly, on this amendment, we will hear Hon. Lelelit Lati.

Hon. Lati: Hon. Temporary Deputy Chairman, this is a very important amendment. We do not have procurement professionals in many parts of this country. The problem is not

just in Nairobi but even in small schools upcountry. Where are we going to get procurement professionals from?

Thank you.

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

(Clause 47 as amended agreed to)

(Clauses 48, 49, 50 and 51 agreed to)

Clause 52

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

THAT, Clause 52 of the Bill be amended by-

(a) inserting the following new sub-clause immediately after Sub-clause (5):-

“(5A) All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups.

(b) inserting the following new sub-clause immediately after Sub-clause (7)-

“(7A) An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under this Act.”

(c) deleting the words “reserved for the disadvantaged groups targeted” appearing in Sub-clause (8) and substituting therefor the words “referred to under subsection (5A)”.

Hon. Temporary Deputy Chairman, this Clause deals with general procurement and asset disposal principles. Because we have taken on board youth and people with disabilities and generally the disadvantaged, the Committee felt that there should be a principle which says that all the procurement and asset disposal planning shall reserve a minimum of 30 per cent of the budget allocations for enterprises owned by women, youth and persons with disabilities. This principle will ensure that anything done in procurement takes on board those categories which have been disadvantaged over a long time.

Again, we are introducing an amendment to ensure that nobody starts a procurement process without ascertaining whether funds---

The Temporary Deputy Chairman (Hon. Cheboi): Order, Hon. Langat! I see Hon. Amolo. What is your point of order?

Hon. (Ms.) Amolo: On a point of order, hon. Temporary Deputy Chairman.

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

Hon. (Ms.) Amolo: Thank you, hon. Temporary Deputy Chairman. I stand to be guided on Clause 47. We have a New Clause 47A which has been skipped.

The Temporary Deputy Chairman (Hon. Cheboi): We have gone past that. When that comes, you will be guided appropriately. Proceed, Hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairman, we also made a provision that no accounting officer should start a procurement process before ascertaining that the money has actually been budgeted for. This came from my very good colleagues, Hon. Gumbo, Hon. Ogari and Hon. Njuguna. From their experience, some people request for feasibility studies and so on without intending to move to the next phase of implementation. That is the other bit of the amendment.

Thank you.

(Question of the amendment proposed)

Hon. (Ms.) F.M. Mutua: Thank you, hon. Temporary Deputy Chairman. I want to support this new subclause to ensure that 30 per cent of budgetary allocations is given to enterprises that are owned by women, youth and the people living with disability.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Florence Mutua, Member for Busia, I want to be clear that you are in support of Subclause 52(a) and not the new subclause. It is important that probably you wait for the other one.

Hon. (Ms.) F.M. Mutua: No, I am on the right one - Subclause 52(a).

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Proceed.

Hon. (Ms.) F.M. Mutua: I want to support this subclause so that our women get 30 per cent of the budgetary allocation. As I support, I would like the Committee to explain to us what they mean by the “disadvantaged groups”. We already have women, youth, and persons with disabilities. I would like to know which groups are “disadvantaged groups.”

Hon. Temporary Deputy Chairman, it is important for people to know that the 30 per cent is working very well. In Busia County, it has taken off. But what is important is for the National Government to ensure that *Huduma* Centres are rolled out very quickly to the counties so that women, youth and persons with disabilities can be able to access company documents easily. As it is right now, they are coming to Nairobi all the time to access some of those company documents.

I support. Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): It is important for Members to be clear. If you want any description of a particular definition for example the “disadvantaged groups,” you will go to Clause (2) on Interpretation; that specifically describes them. For this particular one, it is on page 3,255 and page 3,256. That is the part that will clarify it so that you do not have to wonder on issues that are well captured in the interpretation pages.

I will give the last opportunity to--- Who has not spoken this afternoon? Hon. Ochanda and Hon. Gumbo have spoken many times. Hon. Gumbo is very active today and it can be understood. Let Hon. Gumbo have the microphone.

(Laughter)

You know when a prayer begins the day, especially when it comes from your other half, you can be sure you will be with a very clear mind the whole day.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, the truth of the matter is that when we appeared before this Committee, I had more than 100 amendments. So, when you see me contributing so many times--- We jointly owned this amendment with my good friends Hon. Humphrey Njuguna, Hon. Ogari and even Hon. Sakaja. It was actually a convergence of ideas because we felt that we now need to have this as a principle on women, youth, people with disabilities and disadvantaged groups. My sister had asked about the disadvantaged groups. We have groups in this country that have been traditionally marginalised. So, when we talk about disadvantaged groups, those are the people we are talking about.

I thank you, hon. Temporary Deputy Chairman, I support.

The Temporary Deputy Chairman (Hon. Cheboi): Since this issue of disadvantaged groups has come up severally, let me read the interpretation for Members to be clear on it. It says: -

“Disadvantaged Group” means persons denied by mainstream society access to resources and tools that are useful for their survival in a way that disadvantages them or individuals who have been subjected to prejudice or cultural bias because of their identities as members of groups or categories of persons without regard to their individual qualities, and includes categories as shall be prescribed.”

If you refer to page 3,255 of the Public Procurement and Asset Disposal Bill, 2014, that will be clear. The issue that has come up a few times is the “Disadvantaged Group.”

(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 52 as amended agreed to)

(Clause 53 agreed to)

Clause 54

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

- THAT, Clause 54 of the Bill be amended—
- (a) in subclause (1) —
 - (i) by deleting the words “and is not the subject of legal proceedings relating to the foregoing” appearing in paragraph (b);
 - (iii) paragraph (g) by inserting the word “or fraudulent” immediately after the word “corrupt”.
 - (a) by inserting a new subclause immediately after subclause (2)—
 - “(2A) Despite the provisions of subsection (2), a person or other body having a substantial or controlling interest shall be eligible to bid where—
 - (a) such person has declared any conflict of interest; and

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(b) performance and price competition for that good, work or service is not available or can only be sourced from that person or consortium.

The effect of the amendment is one, to clean up the Bill. Two, the Bill as it is seems to entirely discriminate a company which is owned by a related party case. However, we are saying we should not discriminate entirely provided such person has declared any conflict of interest and, of course, where performance and price competition of that good, work or service is not available or can only be sourced from that person or consortium.

Hon. Temporary Deputy Chairman, Hon. Gumbo can further enhance my explanation.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. First of all, let me propose the Question.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, this is one of those amendments that we had a consensus with the Committee Chairman. The import is that we are talking about a person or another body having substantial controlling interest to be eligible.

If you look at the provision of Clause 54, it talks about eligibility to bid. So, we are bringing in another criterion for eligibility for bidding.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Makali Mulu.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I wanted to say something on the last amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Hon. Ochanda, lastly!

Hon. Ogolla: Hon. Temporary Deputy Chairman, issues of conflict of interest are normally very complex.

I support the amendment but we need to be cautious of these issues, particularly when you are talking about subclause (b) which states:-

“Performance and price competition for that good, work or service is not available or can only be sourced from that person or consortium.”

It is something that we really need to look at in as much as I support.

Thank you, hon. Temporary Deputy Chairman.

*(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 54 as amended agreed to)

Clause 55

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

THAT, Clause 55 of the Bill be amended by deleting the words “or public entity’s registration list of all registered persons in category provided that the list is valid and developed through a competitive process in accordance with relevant provisions of this Act” appearing in subclause (1)” and substituting therefor the words “public entity’s or regulated professional body’s registration list of all registered persons in the category provided that the list is valid and developed through a competitive process in accordance with the relevant provisions of this Act or, in the case of regulated professional bodies, developed through a process in accordance with relevant provisions of the legislation regulating the particular profession.”

Hon. Temporary Deputy Chairman, give me a minute to consult. This amendment came from Hon. Sakaja. Can I request him to shed more light on that?

The Temporary Deputy Chairman (Hon. Cheboi): Well, I think what you need to do is to give a brief explanation.

(Question of the amendment proposed)

I will give the first shot to Hon. Sakaja, who will give clarity to that one.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman. I will speak quickly on it. I propose that you also give an opportunity to Hon. Ogari because it originated from him.

The Temporary Deputy Chairman (Hon. Cheboi): Well, speak on it and yes, I will give Hon. Ogari a chance.

Hon. Sakaja: Hon. Temporary Deputy Chairman, what this talks about is when a procuring entity needs to identify a list of qualified persons, they can actually seek it in writing a list from another State organ provided that the list has been arrived at competitively. The amendment seeks to increase that and say not only can you do it from another State organ, but also from a professional body that regulates a certain profession so long as the list is valid and developed through a competitive process. In the case of regulated professional bodies--- For example, if they want a list of qualified persons from the Law Society of Kenya, the list is developed through a process in accordance to the provisions of the LSK Act and the same applies to the engineers. We thought it was a good amendment that Hon. Ogari had brought to the Committee.

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

Hon. Ogari: Thank you, hon. Temporary Deputy Chairman. Hon. Sakaja has explained the way it is supposed to be. What we are trying to do here is this: We have talked about the regulated bodies before but where the list is not available to the State agencies, they are actually available with professional bodies. If you want a list of engineers, you go to the Engineers Board of Kenya (EBK). If you want surveyors, you have to go to the Institution of Surveyors of Kenya (ISK).

Secondly, the professionals who are registered there for professional services were not gotten there by competitive means but rather, by qualifications means. So, we want to capture that.

(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 55 as amended agreed to)

Clause 56

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 56 (1) of the Bill be amended by deleting the words “procurement management unit” appearing immediately after the words “head of the” and substituting therefor “procurement function”.

Hon. Temporary Deputy Chairman, we are simply inter-changing the words “procurement management unit” with the words “procurement function” in order to be consistent with what has been used all over the Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I will give the first shot to Hon. Michael Kiso, Member for Mbooni. You want to speak to this one Hon. Kiso?

Hon. Kiso: Hon. Temporary Deputy Chairman, I am sorry but my contribution was on Clause 55.

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

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, my contribution was on Clause 55. I want to say that Clause 55 was so important particularly when there is a very short period within which a procurement entity needs to procure.

The Temporary Deputy Chairman (Hon. Cheboi): Were you supporting it or opposing it?

Hon. (Ms.) Nyasuna: I was supporting it fully.

The Temporary Deputy Chairman (Hon. Cheboi): Then you succeeded. Let us proceed to the next clause.

(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 56 as amended agreed to)

(Clause 57 agreed to)

Clause 58

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 58 of the Bill be amended in subclause (1) by deleting paragraph (c).

The reason for that is that it is a very general statement. Clause 58 (c) states that:-

“A State organ or public entity shall not enter into a contract for procurement with a person, including a corporation, who is related to a public officer or a State officer.”

I think Hon. Gumbo can shed some good light on that.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Chairman. I brought that amendment and in all honesty, it goes against the constitutional principle of non-discrimination. That is because what it would mean---

The Temporary Deputy Chairman (Hon. Cheboi): What did you say Hon. Gumbo?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I brought that amendment and it was harmonised by the Committee. I said that, in all honesty, it goes against the constitutional principle of non-discrimination.

The Temporary Deputy Chairman (Hon. Cheboi): The amendment you made or the original proposal? There are two issues here. There is the original proposal and the amendment you proposed jointly with the Committee. Which one are you saying goes against the Constitution? Is it that you are making it to be in tandem with the Constitution?

Hon. (Eng.) Gumbo: Yes, hon. Temporary Deputy Chairman. If we leave that amendment, it would mean that all of us in this House, all our children or the corporations we have an interest in cannot engage in State public procurement. It was on that principle that we agreed with the Committee that it goes against the Constitution on non-discrimination and it should be deleted.

I support.

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to Hon. Kibunguchy.

Hon. (Dr.) Kibunguchy: Thank you, hon. Temporary Deputy Chairman. I also support it because, like it has been said, it will go against the Constitution. As much as we do that, if we are to support that and it is deleted, then if you go back to Clause 58(b), the very last word also needs to be deleted. I am throwing this to the Chairman of the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): Unfortunately, we will be speaking to the amendment which is already before the House. Hon. Kibunguchy, are you through? You know it had to be brief.

Hon. (Dr.) Kibunguchy: Yes, I was trying to make it a little neater that if we are deleting Paragraph (c), then (d), right at the end, also needs to be deleted. That is all I was saying.

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

Hon. Lati: Hon. Temporary Deputy Chairman, I think deleting (c) is really very important because I think people and corporations are entities unto themselves. On this thing of being related, where do you stop? What is a relationship? Where does it stop? Is it my girlfriend or my wife? Where do you stop with this relationship? Anybody can be related to anybody. I think this is a very good amendment and I want to thank the person who saw this.

An hon. Member: It is the Chair of the Committee who came up with that amendment.

Hon. Lati: I want to thank the Chair of the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): We will have to dispose of that because it is not right for any Member to ambush the Chair with a further amendment, which was not brought before us. We will not operate like that. We will operate on the basis of what is before us. If we allow a further amendment which the two of you have made a decision on, we will not really give it---

(Hon. Sakaja spoke off record)

No. That is not the procedure Hon. Sakaja. Even if I wanted to listen to you, that is not the procedure to come to the House. I will dispose of this particular one.

An hon. Member: That is dangerous.

The Temporary Deputy Chairman (Hon. Cheboi): Even if it is dangerous, is it not a better way to throw away the amendment completely? Hon. Members, we are not going to operate like that. You would have had the courtesy of even approaching the Chairman and giving---

(Hon. Sakaja approached the Chair)

Hon. Members, give us some minutes to consult here and see an easier way. This is a better way to do it as opposed to shouting from your places.

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, I can see the request list, but a few of you are on intervention. Are these people speaking of issues out of order or you just wanted to ventilate to the issue of Clause 58? Member for Homa Bay, are you ventilating on Clause 58, or was this a contribution? What are your thoughts on this?

Hon. (Ms.) Nyasuna: No! I wanted to contribute on Clause 58. I want to agree with the amendment. I also want to agree with Hon. Kibunguchy that Clause 2(d) should also follow that amendment because it does not make sense that, as long as you are a State Officer, then any other person related to you cannot participate in State procurement

processes. That would be extremely discriminatory. Therefore, I support the amendment to remove Clause 1(c). If there could be a further amendment for Clause 2(d), I will also support.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Samburu West, are you in the Chamber?

Hon. King’ola: Hon. Temporary Deputy Chairman, I am a Member of that Committee and we are still awaiting the outcome of the same for Clause 58.

The Temporary Deputy Chairman (Hon. Kajwang’): We are in Clause 58. What is the substance of your discussion? Member for Garissa Township, I am saving you for a minute because I can see your team consulting. Do you want to ventilate on Clause 58?

Member for Mbooni!

Hon. Kisoi: Hon. Temporary Deputy Chairman, we are waiting for consultation because I want to support the amendment. I agree that the extent of relationships cannot be properly defined. It will be against the constitutional provisions to discriminate any institution, individual or member simply because they have a certain kind of relationship. They are different entities with distinct existence by law and recognised under the legal structures. Therefore, they need to be accorded the attention and the privileges of doing business to whatever extent as they deserve. So, we are just waiting to see what further consultations may come up so that we can ventilate further.

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

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

The Temporary Deputy Chairman (Hon. Cheboi): Do we have another Member who wants to speak on this particular one? Hon. Member for Mavoko, you can quickly contribute to this. The consultation has been sufficiently thrashed. Do you have the microphone?

Hon. King’ola: Hon. Temporary Deputy Chairman, Paragraph (c) contravenes the Constitution. I support the amendment because nobody applies to be born or related to a State officer or a public officer. So, it is in order for us to remove Paragraph (c) from Clause 58.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, let us have one more Member speaking to this one. Can we have the Member for Gatanga?

Hon. H.K. Njuguna: I am supporting the amendment by the Committee since I was part of the people who were harmonising the process. We want to make a good law. So, I am waiting for consultations. To what extent can you discriminate and talk about relationships? I support, but I am waiting for the consultations.

The Temporary Deputy Chairman (Hon. Cheboi): We will have the Leader of the Majority Party and then come to Hon. Langat. I hope you are ready with the further amendment.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, we need to define these relationships because if we say that they cannot do business, then where will they do business? Will they do it in Uganda or Tanzania? The relationship should be defined because some people can misuse it and say that even the distant cousins of a managing director. The Chairman of the Committee can help us. It is good so that we know that, for example, it is your spouse or brother. We need to define it because if we do not do that, many Kenyans will be denied an opportunity to do business. If we deny them, then where will they do the business? Will they do it in another country?

To take the House down memory lane, the late Minister Hon. Michuki was invited by a Committee of this House in the last Parliament. He was told that his relative is doing business in the Ministry of Environment. I was in that Committee and the Minister said: "So, where is he going to do business if he does not do it in Kenya? We need to define it because it can be abused. We agree with what is written here. It is good we go further and say that you cannot do business with a corporation or State officer if that is your immediate family, that is, your spouse and children.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. You have heard the sentiments of your colleagues. Let us hear what you have Hon. Langat. It has to be very clear so that the record can capture it properly.

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

THAT, Clause 58 be further amended:-

(i) in subclause (1)(a) by inserting the words "of that state organ or public entity" immediately after the words "or Board".

(ii) in subclause (1)(b) by deleting the word "a" appearing immediately after the words "an officer of" and substituting therefor with the words "that".

Listening to the concerns of the Members and further consultations with my neighbour here, I propose to move this further amendment to Clause 58(1)(a), so that it is clear that you cannot enter into a contract to do business with Parliament if you are working in Parliament. It is only the State organ that you work for that you cannot enter into a contract with. If you are working in Parliament, you cannot do business with Parliament, but you can do business with any other State organ such as the National Treasury or the Ministry of Education, Science and Technology.

In subclause (1)(b), again, we are limiting it to that specific institution and not all State organs. Otherwise, we will be discriminating against those State officers. As my friend, Hon. Duale, has said, we might want them to do business in other countries and not Kenya. Alternatively, they might have to resign so that they can do business, which is very unfair. The further amendment that I am proposing is to limit it to that specific organization and then it will be okay.

The Temporary Deputy Chairman (Hon. Cheboi): The first one is very clear. Can you, please, go back to the second one?

Hon. Langat: The second one is by deleting the word "a" appearing immediately after the words "an officer of".

The Temporary Deputy Chairman (Hon. Cheboi): What will that achieve?

Hon. Langat: It will limit an officer of that public entity from doing business with that public entity. It will say "an officer of that public entity or State organ".

The Temporary Deputy Chairman (Hon. Cheboi): I will propose the Question and then we will allow Members to speak to it and contribute to that one.

(Question of the further amendment proposed)

Hon. Ogari: Hon. Temporary Deputy Chairman, I wanted to speak to it much earlier about the definition of relatives, which is defined somewhere ahead in Clause 60.

The Temporary Deputy Chairman (Hon. Cheboi): Does the further amendment cure your concerns?

Hon. Ogari: Yes, it partly does. I support it.

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

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I support the further amendment that the Chair of the Committee has brought because it defines where you cannot do business. It allows anybody to do business with any other firm apart from where he or she has special interest - like where he works.

I support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Sakaja. I will give a few more Members on this one. Being a further amendment, it is important that Members speak to it.

Hon. Sakaja: Hon. Temporary Deputy Chairman, you can see why I had to speak from my seat. Thank you for indulging me. The way it was initially written, the import of this provision was that a State officer or a public officer could not enter into any contract for procurement with any Government body, national or county public entity. This begged the question of where they would do it. To avoid conflict of interest, we have specified that they cannot get into a contract for procurement with an entity in which they are a State officer or a public officer. They can do it elsewhere to avoid conflict of interest. Otherwise, it would mean that we should now look for business in Rwanda and Uganda.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, as you think about it, look at whether a public officer is in the first place allowed to be a State officer and do business at the same time. It is something that Members should direct their thoughts to. Let me still hear Hon. Sakaja on that one.

Hon. Sakaja: Hon. Temporary Deputy Chairman, the law states two things, namely, that you cannot be a State officer and be in full time employment in another place. This would be misconstrued to say, if you take it as it was, that even an entity where you have an interest in or have shares in, is construed to have entered into a contract with you. That is what we are trying to cure.

The Temporary Deputy Chairman (Hon. Cheboi): That clarifies it better. Let us have the Member for Teso South. She has not spoken this afternoon. Do you want to speak to that further amendment?

Hon. (Ms.) Otucho: Thank you, hon. Temporary Deputy Chairman. I support the amendment. By removing the word "a" and replacing it with "that", that actually specifies that you will only be prohibited from doing business with that particular entity

which you are associated with. It opens the door for all citizens to do business with any other entity apart from the one they work with. That is a good amendment.

I support it.

The Temporary Deputy Chairman (Hon. Cheboi): We can dispose of the amendment.

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

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

(Clause 58 as amended agreed to)

Clause 59

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

THAT, Clause 59 of the Bill be amended—

(a) in subclause (1) by deleting the word “shall” and substituting therefor “may take into account the opinion or input of a regulated professional where technical or professional expertise is required” immediately after the words “procuring entity”;

(b) in subclause (3)—

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

“(a) conform to design, specification, functionality and performance”.

(ii) by inserting the words “servicing” and “immediately” before the word “maintaining” appearing in paragraph (g);

Hon. Temporary Deputy Chairman, I seek your guidance after looking at the amendment to Clause 59(a).

The Temporary Deputy Chairman (Hon. Cheboi): What are you seeking, Hon. Langat?

Hon. Langat: I felt that I should drop that amendment to Clause 59(a). When I read what the Bill provides and what we are doing, it looks like it does not make sense. I want to move the amendment subject to dropping the amendment to Clause 59(a).

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Langat, you should have looked at all these things critically. We will dispose of this as it is in the Order Paper. These are things that you should have looked at. We will proceed. It is important that you look at your amendments before you bring them. You have a right to drop them because they are yours. Members come here on the basis of having seen what is on the Order Paper and it becomes very difficult for them to follow once you introduce changes. However, it is your amendment if you really want to change it. Do you want to do it? The issue which we are trying to avoid is an ambush so that we end up passing laws which we have not given real thought to.

Hon. Langat: Hon. Temporary Deputy Chairman, I take note of your point. If you look at this Bill, it is a very long one. Somewhere along the line, you may miss one

or two things. On this one, I wish to drop the amendment to Clause 59(a) as it appears in the Order Paper.

The Temporary Deputy Chairman (Hon. Cheboi): So, you specifically speak to how you want to handle it? You want to move the amendment subject to dropping the amendment to Clause 59 (a).

Hon. Langat: I wish to move amendment to Clause 59 subject to dropping the amendment to Clause 59(a).

The Temporary Deputy Chairman (Hon. Cheboi): How do you deal with the numbering because we only had (a) and (b)?

(Proposed amendment to Clause 59(a) dropped)

Hon. Langat: It is not affecting the numbering, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. That is fine.

(Question of the amendment proposed)

Let us start with Hon. Kihagi. He has not spoken this afternoon.

Hon. Kihagi: Hon. Temporary Deputy Chairman, mine is a point of order. Is it in order for---

The Temporary Deputy Chairman (Hon. Cheboi): Is it a point of order?

Hon. Kihagi: Yes, because---

The Temporary Deputy Chairman (Hon. Cheboi): No. You will have to put your card in the intervention slot.

Hon. Kihagi: It is there, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Let us have Hon. Mbalu. If you have a point of order, please raise it appropriately.

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, I support the Chairman in dropping the proposed amendment to Clause 59(a) because it is not making sense. The proposed amendment is seeking to delete the word “shall” and replace it with some statement. In procurement, it is important for an accounting officer, or a procuring entity, to prepare specific requirements related to the goods, works or services being procured. The requirements should be clear and give a correct and complete description. It is important and it makes sense for him to drop that bit.

Hon. Kihagi: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. What is it, hon. Kihagi? I can now see your card in the intervention slot. Is there something which is out of order?

Hon. Kihagi: It may not be in order for the Chairman to drop it given that this amendment says “may”. We are also making a provision for the relevant professional society to be consulted to give an opinion where it may be necessary. If it is not necessary then it breaks no bone.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Kihagi, the owner of the amendment can drop any bit of his amendment. He has that right at any time. So, he is perfectly in order. Let us have Hon. Wanga and then we dispose of this.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, it is in order for the Chairman to drop that amendment, although in principle we should be amending our Standing Orders, so that Chairpersons of Committees cannot drop Committee amendments just at will. However, in this particular case, it is in order for the Chairman to drop it because the amendment does not make sense. The other amendment to subclause (3)(a), where we talk about designs, specifications, functionality and performance is a good amendment, because it makes it very clear what the technical requirements should include.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. So, you make the decision.

*(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 59 as amended agreed to)

Hon. Ogari: On a point of order, hon. Temporary Deputy Chairman.

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

Hon. Ogari: Hon. Temporary Deputy Chairman, I want to know whether it is in order for the Chairman to drop amendments. You are aware that some of us had numerous amendments to this Bill and we went to the Committee. We were directed by the Speaker to co-operate with the Committee. We shared and harmonised the amendments. They now look like the Committee's amendments. However, all our amendments, including those of Hon. Gumbo, Hon. Humphrey and many other Members in this House, are here. Is the Chairman going to be at liberty to drop at will what we harmonised and agreed on? That is going to be quite a lot of betrayal.

The Temporary Deputy Chairman (Hon. Cheboi): Ideally, the owner of the amendments, as far as we are concerned, is the Chairman of the Committee. However, he cannot drop anything that you have agreed on in good faith. As far as we are concerned, the owner of the amendments is the Chairman. However, we will be very keen. If there are issues, the Members who participated in the agreement will raise them and we will ask the Chairman to respond.

Hon. Members, we have settled that.

Hon. Ogari: Thank you.

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

The Temporary Deputy Chairman (Hon. Cheboi): What is it, Hon. Gumbo? You were with the Committee. You have agreed on many things. It looks like you are carrying each other on board very well. Let us hear what this point of order is.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, what Hon. Ogari is saying is actually a concern to us, because we spent nearly three days with the Committee. The agreement was that there would be no point in us spending all that time with the Committee then we now start inserting our separate amendments. What we agreed was that where we had proposed amendments, we would be given a chance to pronounce ourselves on those amendments. I have been requesting you to allow me to give a perspective on why the amendment to the clause that we have just passed is there.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Gumbo, that one is gone. The only thing which I want to get clear from you is: Do you have a specific problem with that particular part of the amendment which the Chairman dropped? That is my major concern. We have been going on very well since we started considering this Bill.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, we are doing very well. I am just worried that as time passes by, the sugar levels may be going down.

The Temporary Deputy Chairman (Hon. Cheboi): No. I doubt it will happen. When it happens, I will rather you raise it at that point.

(Hon. A.B. Duale spoke off the record)

Clause 60

The Temporary Deputy Chairman (Hon. Cheboi): No. You are taking it too far. Let us concentrate.

I take your point, Hon. Gumbo and Hon. Ogari. Should there be a specific thing that you think the Chairman has not done in good faith, you will be at liberty to raise it and we will address it at that point.

We have two amendments to Clause 60. One is from the Committee and another one is from Hon. Ndungu Gethenji. I would like us to start with the one by Hon. Gethenji. He is absent, yet he knew this was coming today. So, we will drop it.

(Proposed amendment by Hon. Gethenji dropped)

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

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 60 of the Bill be amended—

(a) by deleting subclause (3)(b);

(b) in subclause (4) by deleting the word “shall” and substituting therefor the word “may”;

(c) in subclause (5), by inserting the words “women, youth, persons with disabilities and other” immediately after the words “owned by”.

The import of this amendment is that in this age and era we want to disallow any arithmetic corrections that may occur in any tender. That is why we want to delete subclause 3(b). The clause should also be amended because in the original Bill there are two subclauses (4). The second subclause (4) should be subclause (5) and the words

included there should be clear. Here it says “disadvantaged groups.” We want to include women, youth and persons with disabilities to make it clear.

Hon. Wakhungu: On a point of order, hon. Temporary Deputy Chairman.

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

Hon. Wakhungu: Hon. Temporary Deputy Chairman, I had raised this issue of disadvantaged groups earlier to remove ambiguity and avoid abuse. I had proposed it should be “women, youth and persons with disabilities”. However, the same Committee is reintroducing what I had suggested earlier to be removed for purposes of consistency. Is he in order?

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Wamalwa, while you were away, we indicated that there was a descriptive part of this Bill on page 3,255. I want you to look at the description of what a “disadvantaged group” is. It will probably settle your concerns. Are you on page 3,255 of the Bill? That might, probably, settle your issue completely. In the meantime, allow me to proceed. If there is any issue, I will give you an opportunity.

(Question of the amendment proposed)

Let us start with hon. Sakaja.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairman. I just want to give information. I know that hon. Members have a lot of concerns about the definition of “disadvantaged groups” as regards the 30 per cent procurement principle. The Bill is very clear that the 30 per cent provision applies to the youth, women and people with disabilities. However, we have an entire chapter on preferences and reservations. Maybe, in the future, hon. Members may want to provide a measure for any other disadvantaged groups. So, the term “disadvantaged groups” is defined in the Bill. The particular affirmative action measure of 30 per cent is specific to women, the youth and persons living with disabilities.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, that is a voice for the disadvantaged groups.

What is it hon. Birdi? I am inclined to give you this chance because of issues that could be very relevant to this particular clause.

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Chairman, I agree with the addition but I am extremely opposed to it in subclause (4) of Clause 60. I think the Departmental Committee Chair referred to the whole of Clause 60.

The Temporary Deputy Chairman (Hon. Cheboi): We are at Clause 60 now. Is that the one you are contributing to?

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Chairman, I am talking about the amendment to Clause 60, subclause (4), which talks about deleting the word “shall” and substituting therefor the word “may”. It says that the procuring entity may immediately release any tender security if the conditions given in parts (a), (b) and (c) are met. I oppose the amendment because tender security costs a lot of time, money and effort. If somebody does not get through, or is not able to get the tender, then it is upon the procuring entity to refund the tender security. I believe that we should retain the word “shall”. Holding the tender security costs money.

The Temporary Deputy Chairman (Hon. Cheboi): In other words, you are opposing the amendment by the Departmental Committee?

Hon. (Ms.) Sunjeev: That is right.

The Temporary Deputy Chairman (Hon. Cheboi): Whether it is part (b) or (a) or (c), when you are opposing it, you are opposing that particular amendment. Your voice has been heard.

Let us hear hon. Wanga.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I would like to speak to the amendment seeking to delete subclause (3) (b). Some tender documents are extremely tedious to prepare; they have many figures going down and further down. Man is to err. I know that the Vice-Chair of the Departmental Committee said that in this era, we do not want to accept any errors, but we should know that man is to err. That does not change. You realise that such corrections always give opportunity to actors in procurement entities to steal. There is a proposed amendment to Clause 81, seeking to put out the whole issue of errors. It says that the figure is absolute and that is the figure that is going to be. I would like to understand this proposal before I support it. Why are we closing that gap completely? I know that, because of the many figures, sometimes people make errors; when such errors are corrected, we quickly accept them. Sometimes it is a small error of Kshs200 or Kshs5,000. We should not close that gap completely.

I oppose.

The Temporary Deputy Chairman (Hon. Cheboi): I will give the last chance on this one to hon. Kisoi.

Hon. Kisoi: Thank you, hon. Temporary Deputy Chairman. I oppose the proposed deletion of sub-clause (3)(b). If you are dealing with Kshs100,000, what margin of error is it that we are saying will warrant correction? If we are talking of millions of shillings, what will be the variation? If we are talking of billions of shillings, what will be the variation? The figures involved may be in trillions of shillings, yet we are talking of an error of about Kshs50,000. There is so much ambiguity. When dealing with huge sums of money and technicalities, somebody doing a variation is bound to make a mistake, which is normally provided for in terms of a plus or a minus amount. This depends on the quantities of the amount involved. To require one to be 100 per cent accurate is unfair, considering that some tenders are worth billions of shillings.

The Temporary Deputy Chairman (Hon. Cheboi): Departmental Committee Chair, you will have the last chance and then we will dispose of it one way or the other.

Hon. Langat: Thank you, hon. Temporary Deputy Chairman. We are not talking about price variations. It has been noted that when tendering, most people under quote, only for them to correct the error after the tender has already been awarded, to the disadvantage of the persons who had quoted lower amounts.

The Temporary Deputy Chairman (Hon. Cheboi): That clarifies it.

Hon. Sakaja: On a point of information, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, give the information.

Hon. Sakaja: Hon. Temporary Deputy Chairman, if you have an error, it does not mean that your tender is disqualified. It means that you cannot say that you want to take it back and correct that error. That loophole has previously been used by many bidders, who would quote lower amounts in order to get a tender and seek to vary the amount

thereafter. Because of that *ukora*, the quoted amount of a tender shall remain final. If you want to correct, you can change the rates that you are charging per item so long as you remain within the tender value.

The Temporary Deputy Chairman (Hon. Cheboi): That clarifies it. Hon. Members, you will now make your decision.

(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 60 as amended agreed to)

Clause 61

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 61 of the Bill be amended by inserting the words “or fraudulent” immediately after the words “any corrupt”;

Hon. Temporary Deputy Chairman, we are including the word ‘fraudulent’ because in the Bill it says “corruption”. So, we want to be very clear that it is both corruption and fraud.

(Question of the amendment proposed)

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

(Clause 61 as amended agreed to)

Clause 62

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 62 of the Bill be amended—
(a) in sub-clause (1) by inserting the following new paragraphs immediately after paragraph (f)—

(fa) force majeure;
(fb) civil commotion, hostilities or an act of war;
(fc) upon receiving subsequent evidence of engagement in fraudulent or corrupt practices by the tenderer;”

(b) by inserting the following new sub-clause immediately after sub-clause (3)—
“(4) An accounting officer shall notify all persons who submitted tenders of the termination within fourteen days of termination and such notice shall contain the reason for termination.”

Hon. Temporary Deputy Chairman, the reason here is just including civil commotion, hostilities and act of war.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to support the amendment, but you will not treat it as an amendment. I had added a further amendment which is now 62(1)(g), which simply says that an accounting officer, or a procuring entity, may at any time prior to the notification of tender award or termination or cancellation of asset procurement or asset proceedings without entering into a contract where any of the following applies. What I am saying is that the other thing which applies is where they receive subsequent evidence of engagement in fraudulent or corrupt practices by the tenderer.

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

(Clause 62 as amended agreed to)

(Clause 63 agreed to)

Clause 64

Hon. Gaicuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 64 of the Bill be amended by inserting the following new subclause immediately after subclause (2)—

“(3) Upon completion of the evaluation process, a tenderer may communicate with the procuring entity on the procurement proceedings”.

We are only including a new subclause (3).

(Question of the amendment proposed)

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairman, I support the amendment. It is important because the person who had tendered may need some information to be communicated to him with regard to the proceedings. So, it is important that this clause is introduced to give room for further communication.

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, I also support the amendment to the effect that the tenderer should be communicated to immediately after the evaluation process. It is important to know the outcome of the process.

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

(Clause 64 as amended agreed to)

Clause 65

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 65 of the Bill be amended by inserting the following new subclause immediately after Subclause (8) —

(8A) The ownership of, or right in, any property referred to in subsection (8)(b) shall not include rights arising by virtue of owning shares in publicly listed companies”.

The import is just to have the ownership very clearly elaborated and seeing the rights arising by virtue of owning shares in public listed companies.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, again, that was my amendment which we agreed jointly with the Committee. You realize that if we do not include that, then it would be very limiting because what we are talking about in this clause is about corrupt, coercive, obstructive, collusive or fraudulent practices and conflict of interest. Nearly all of us here own shares in companies and without that exclusion, we would simply be saying that by owning a share in a company, you are not able to do business with that company.

Hon. (Ms.) Nyasuna: I wanted to speak to the previous one on which I had a contrary opinion.

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

(Clause 65 as amended agreed to)

(Clause 66 agreed to)

Clause 67

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 67 of the Bill be amended in subclause (3) by inserting the words “or any interested member of the public where such information held is aligned to the principle of public interest” immediately after the words “or quotation or”.

(Question of the amendment proposed)

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

(Clause 67 as amended agreed to)

Clause 68

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 68(4) of the Bill be amended by deleting the words “procurement management unit” and substituting therefor “procurement function”.

Instead of a unit, we want the function itself to be on the Bill.

(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 68 as amended agreed to)

Clause 69

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 69 of the Bill be amended—
(a) by deleting subclause (5) and substituting therefor the following new subclause (5)—

“(5) A procuring entity may charge a fee for obtaining tender documents as prescribed by regulations and stated in the tender documents.”

(b) in subclause (6)—

(i) by deleting the word “engineer” appearing in paragraph (b) and substituting therefor “engineer’s”;

(ii) by deleting the words “procurement management unit” appearing in paragraph (e) subparagraph (vi) immediately before the words “ensuring that” and substituting therefore “procurement function”.

This one is just changing the word “engineer” to “engineers” and also changing “procurement” to “procurement function”.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to support the amendment, but I think the Chairperson of the Committee has overlooked a very important amendment which we agreed on which is on subclause (5). It states that a procurement entity may charge a fee for obtaining tender documents as prescribed by regulations and stated in the tender documents. This was not in the Bill and we thought that we have to put this. We did not want to fix a figure because it is a very fluid provision which keeps changing from time to time.

I support.

Hon. (Ms.) Sunjeev: Thank you, hon. Temporary Deputy Chairman. I would like to support this amendment because in my opinion, if Members of the public get into the

tender process then I believe they need to make a commitment in getting these tender documents because usually people have a habit of just getting a document and photocopying and distributing, which I think is not right. People who go and tender must take responsibility by buying these tenders the right way.

I support.

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

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

(Clause 69 as amended agreed to)

Clause 70

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 70 (1) of the Bill be amended by deleting the words “procurement management unit” and substituting therefor “procurement function”.

It is just about the same thing.

(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 70 as amended agreed to)

(Clauses 71 and 72 agreed to)

Clause 73

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 73 of the Bill be amended—
(a) by renumbering the existing provision as subclause (1);
(b) in subclause (1) by—
(i) deleting the words “person responsible for procurement” appearing immediately before the words “shall ensure” and substituting therefor the words “accounting officer”;
(ii) deleting the word “will” and substituting therefor the word “shall” in paragraph (e).

(c) inserting the following new subclause immediately after the renumbered subclause (1) —

“(2) All tender documents shall be sent out to eligible bidders by recorded delivery”.

The import of this amendment is to make sure that the accounting officer is solely responsible for anything that happens in the procuring entity. In Part (ii), deleting the word “will” and substituting therefor with the word “shall” makes it mandatory.

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

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

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I just want to support the amendment. If you look at the amendment in Clause 73, we are inserting a new subclause immediately after the renumbered subclause 1. This is to provide that all tender documents shall be sent out to eligible bidders by recorded delivery. This might look small, but we have had cases where mischievous people claim to have given you tender documents when they already have in mind the people that they want to give. We want to bring in this requirement that when they send out tender documents, there should be a record to show that, for instance, they sent to Hon. Jessica Mbalu, Hon. K'Oyoo and Hon. Gumbo for confirmation.

I support.

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

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

(Clause 73 as amended agreed to)

Clause 74

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 74 of the Bill be amended in subclause (5) by inserting the words “or the time remaining is less than the period indicated in instructions to tenderers” immediately before the words “the accounting”.

The import of this is just to have the words “or the time remaining is less than the period indicated in instructions to tenderers” included.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Shall I put the question? Member for Limuru, is this deliberate? Are you in the Chambers?

Hon. J. K. Chege: I am here.

The Temporary Deputy Chairman (Hon. Kajwang’): Do you want to contribute?

Hon. J. K. Chege: Yes, I want to support the amendment. This is a very important matter in that there is room for changing the tender by providing the attachment for the addendum.

I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Shall I put the Question? If you are in agreement, there is no need to hold us unless you have a contrary opinion.

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

(Clause 74 as amended agreed to)

(Clauses 75 and 76 agreed to)

Clause 77

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

THAT, Clause 77 of the Bill be amended in subclause (9) by inserting the words “where applicable” immediately after the words “discounts” in paragraph (b).

The import of this amendment is to say that discounts will only be where applicable.

(Question of the amendment proposed)

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

(Clause 77 as amended agreed to)

Clause 78 agreed to

Clause 79

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

THAT, Clause 79 of the Bill be amended—

(a) by deleting subclause (2) and substituting therefor the following new sub clause—

“(2) The evaluation and comparison shall be done using the procedures and criteria set out in the tender documents and, in the tender for professional services, shall

have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered”.

(b) in sub clause (3)(b) by inserting the word “time” immediately after the word “quality”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Gatanga, what is it?

Hon. H. K. Njuguna. I just want to support.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ndaragwa, what is the problem?

Hon. Nderitu: I just wanted to support.

The Temporary Deputy Chairman (Hon. Kajwang’): The Leader of the Majority, what is the problem? Member of Garissa Township, are you not in the Chamber? Member for Kibwezi East.

Hon. (Ms.) Mbalu: I just want to support that the procedure and criteria set out should be adhered to.

(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 79 as amended agreed to)

(Clause 80 agreed to)

Clause 81

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

THAT, the Bill be amended by deleting Clause 81 and substituting therefor the following new clause—

No correction errors

81. The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

This is to be in line with the other correction that we have made.

(Question of the amendment proposed)

Hon. Kisoi: Hon. Temporary Deputy Chairman, I was trying to read carefully because the amendment is in reference to a previous amendment that we made. I request that you call upon the Chair to clarify in relation to the previous amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Are you asking for a clarification?

Hon. Kisoi: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Hold your horses. Hon. Abdinoor.

Hon. Abdinoor: Hon. Temporary Deputy Chairman, I support the amendment because it will ensure that there is proper accountability and it is transparent.

The Temporary Deputy Chairman (Hon. Kajwang’): For those of you who are supporting, just hold your guns, so that we can move a little faster than we are doing at the moment. Member for Homa Bay.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, this is what I made reference to earlier in regard to the arithmetic errors. This is what we opposed in the first place because sometimes there are arithmetic errors in tenders that are particularly very huge. In the current practice, the errors are corrected by the evaluation or by the committee that looks through the document. You are then asked to make the correction. In a tender of Kshs3 billion, there could be an error of Kshs100,000 in your calculations. This is arithmetic. A small error like that is referred back to you and you are told to accept it. That practice is working. If the practice is working, why do you want to fix it? That practice is acceptable. It ensures that you are not locked out just on the basis of arithmetic errors. This is what was developing from there.

I oppose.

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

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, this clause was subject of a discussion which lasted nearly 30 minutes, small as it is. We believe that this provision, as rightly put by the Member for Homa Bay, is too static and unworkable. We have been in this practice for a long time. The practice is that if there is an error, the final figure remains the same, but the rates will have to be adjusted accordingly. You also give the tenderer an opportunity to either accept or reject. When you make it rigid like this, it is not good.

I have even been consulting with hon. Ogari. We discussed this amendment for over 30 minutes. Our view was that if we let it go the way it is, we will be making a rigid law which is not workable. My request---

The Temporary Deputy Chairman (Hon. Kajwang’): Can you work out a workable formula?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, my request is that we agree with the Departmental Committee Chair so that we recommit this clause. This is because if we---

The Temporary Deputy Chairman (Hon. Kajwang’): No! I would not want to recommit it. You have time. You have already made part of the solution when you said in your address that the total amount of the contract sum should be static, and that you can make corrections on something like that. I have also heard the Departmental Committee Chair as protecting tenders from unnecessary variations that may alter the tender amount.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I will just take a minute to explain. If, for example, we were doing the tender for the seats of this House and we found that it was Kshs100 million when it should in fact have been Kshs80 million, what would normally happen is that the unit rates would progressively be reduced by a factor of 0.8 so that the final figure remains the same but the unit rates are changed. However, if you say you cannot change, how are you going to execute this tender?

The Temporary Deputy Chairman (Hon. Kajwang’): I fully understand you, but be progressive. Find a working formula to harmonise the positions. Departmental Committee Chair, approach it with an open mind, knowing that Members can actually recommit the Clause. I would not want to recommit it. Nothing should make us recommit anything in this Bill.

Member for Bomachoge Chache, you are an expert in this area. Can you help us out?

Hon. Ogari: Thank you, hon. Temporary Deputy Chairman. In fact, this was my amendment and it has been harmonised word by word, in the way I had put it; only that what the Members---

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry, is this similar to your amendment?

Hon. Ogari: No! All these amendments are ours. We harmonised them together with the Committee. The Committee owns them but, in good faith, we are here to support and where it is not coming out clearly, we are here to clarify.

The Temporary Deputy Chairman (Hon. Kajwang’): That is the spirit you need to adopt.

Hon. Ogari: Hon. Temporary Deputy Chairman, the issue we are talking about could have actually been addressed if we had continued with the second part of my proposed amendment. We discussed this amendment for too long. What we are saying here is very unfair; it borders on a bit of illegality or unfairness for the four, five or ten of us to go ahead and open tenders, after which they are read out in public and I go home knowing that I lost or won the tender but later on, I am told that the tender of so-and-so was corrected and his figure is now lower than mine. It becomes very unfair. It beats the whole purpose of tendering.

The issue is that there are obviously errors. As somebody who has a lot of experience, having been involved in tendering of a lot for contractors and other big bidders, most of the errors are intentional. We introduce them intentionally, in the form of discounts or as a way of providing room for negotiation later on, which is corruption. I actually gave a clear example in the Committee that if I tender Kshs25 million and somebody else tenders Kshs30 million, I am number one but there is room for a Kshs5 million loot. We agree to correct my tender by Kshs4.9 million and share that amount of money. We are also trying to beat corruption here.

The second part of my amendment addresses that aspect. If you do not mind, I can read it out.

The Temporary Deputy Chairman (Hon. Kajwang’): On what page is it? What is this second part of your amendment that you keep talking about?

Hon. Ogari: No! It was not harmonised by the Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): I am unable to see anything which is not on the Order Paper.

Hon. Ogari: Okay. I am actually suggesting that I support this amendment the way it is but we could have made it better, just like they have said. Correction of rates is allowed because there is an error inside. You have to distribute the error within the rates inside for purposes of future variations.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Bomachoge Chache, you make a lot of sense. Your line of argument is very logical but the Departmental Committee Chair only helps to moderate your discussion. I want to think that you should hammer this one out in terms of texts. This is because you say that you do not want to have a situation in which tenders are subsequently altered at the expense of bidders who went home knowing that they had quoted favourable amounts. So, you are conceding that there is need for regulations. However, you are also saying that it is the tradition in that business to have some mathematical errors and so on.

Now, that is something which I expect you people to bring to text and agree on what you want us to do so that we do not waste a lot of time on this.

Hon. Chairman, are you willing to have some kind of discussion about this with the Members? This is because I will just put the Question as it is if you are unable.

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I think I do not have room for further discussion because we discussed, agreed and we have said that immediately these tenders--- We do not have to alter the final figure. Then how do we alter in between and not affect the final figure?

The Temporary Deputy Chairman (Hon. Kajwang’): Well, look at the mood of the House.

Hon. Gaichuhie: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): I am trying to save you. Look at the mood of the House so that you understand the art of negotiation. Look at the mood of the House carefully.

Yes, Nominated Sakaja.

Hon. Sakaja: I have got a new name today, “Nominated Sakaja”.

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry, Hon. Member. I apologise. I think I was just too fast than I could. Hon. Johnson Sakaja, Nominated Member and Chairman of the second largest party in this part of the world.

Hon. Sakaja: Thank you. The current ruling party I must add.

Hon. Temporary Deputy Chairman, if you look at the amendments, we went through a lot of consultation in the Committee on this issue and we were all in agreement including the Treasury that the final sum should not be changed because of the mischief that Hon.

Ogari has brought out very eloquently. I would like to persuade Hon. Ogari that this does not in any way affect the adjustment of the line items. If you made an error and you have to change from Kshs500 per hour to Kshs200 per hour and you accept it, then you can do it. If you do not, you withdraw and get out of the tender because of that mischief. So, the line items within your bid can be adjusted. It is not prohibited by this amendment.

However, we must cure that mischief that many contractors have been playing.

Finally, people should also be serious with tenders. No one calls you to correct your exam when you have done it. That maybe there was an error then someone tells you

“come and correct”. You have sufficient time during the exam to make sure your work is done properly. Let people be meticulous in preparing for tendering.

The Temporary Deputy Chairman (Hon. Kajwang’): Why do you not get a text which addresses Hon. Ogari’s problem? This is because you seem to say it very clearly that the line items will not be changed. Can you make a text which makes it very clear that the line items will not be changed and then they will be comfortable?

(Hon. Sakaja spoke off the record)

No. No. No. You have clarified and you have made it very clear.

Yes, Hon. Member for Kabondo Kasipul. I do not see you on this list except that I see your hand raised up. You know you are very ‘tall’ and so people may not see you.

Hon. Onyango: Thank you, hon. Temporary Deputy Chairman. I concur that there should be a clause even if it is (b) stating what kind of errors can be corrected during the tendering process because we are fixing a law and we are using the word “absolute”. We have to give some leverage to state what can be changed. It does not cost us much.

The Temporary Deputy Chairman (Hon. Kajwang’): You have used the words “absolute” and “final”.

Hon. Onyango: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): So, unless you put a small clause that is able to open up that in terms of referring to the line items--- Hon. Sakaja, that should be very easy for you to find out what to say so that you provide that the line items can be mathematically corrected if there are normal human errors.

Hon. Sakaja: Hon. Temporary Deputy Chairman, we do not see the need for that because the only thing that is prohibited from correction is the tender sum. That means that anything else can be corrected.

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

*(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 81 as amended agreed to)

Next Clause.

Clause 82

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 82 of the Bill be amended by inserting the following new subclause immediately after sub clause (1) –

“(1A) the conduct of due diligence under subsection (1) may include obtaining confidential references from persons with whom the tenderer has had prior engagement”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): If any of you is in support of that amendment, please hold your guns unless you have a contrary view. Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, it is not a contrary view but it is good to say where we support.

The Temporary Deputy Chairman (Hon. Kajwang’): For everybody who is supporting, we will go by the Committee’s Report.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, that was actually my amendment and that is why it is important that I pronounce myself on it. What we are simply saying is that if you look at Clause 82 it is about prequalification and we are making a provision to allow for due diligence which includes obtaining confidential references from persons. This is important because sometimes people give information which is not correct. They lie in the information they give at prequalification.

I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Well spoken. Member for Teso South.

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairman, I had wanted to contribute to the previous clause.

The Temporary Deputy Chairman (Hon. Kajwang’): I am sorry, I did not recognise you. Member for Tharaka Nithi!

If you are in support, do not bother. Member for Kibwezi East.

Hon. (Ms.) Mbalu: Hon. Temporary Deputy Chairman, I will bother because I am in support. It is important that when you are passing these laws in this House you state exactly why. We would rather take a year to pass such an important Bill instead of just rushing in saying “Ayes” and “Nays”. Here, we are saying, “obtaining confidential references from persons with whom the tenderer has had prior engagement”. It is important. Why? We have had contractors who have lied in paper. They have very good presentations in paper work showing where they have done work in your constituency and in the Government when in reality it is not true. I think it is important to get that confidential reference from the same.

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

(Clause 82 as amended agreed to)

(Clauses 83 and 84 agreed to)

Clause 85

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

THAT, Clause 85 of the Bill be amended by—

(a) renumbering the existing provision as subclause (1)—

(b) inserting the following new paragraph immediately after paragraph (c) in the renumbered sub clause (1) —

“(ca) the tender with the highest technical score, where a tender is to be evaluated based on procedures regulated by an Act of Parliament which provides guidelines for arriving at applicable professional charges.”

(c) inserting the following new subclause immediately after the renumbered subclause (1)—

“(2) For the avoidance of doubt, citizen contractors, or those entities in which Kenyan citizens own at least fifty-one per cent shares, shall be entitled to twenty per cent of their total score in the evaluation, provided the entities or contractors have attained the minimum technical score.”

Hon. Temporary Deputy Chairman, the import of this one is to consider the highest technical score and to also clarify who a citizen contractor is.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Gatanga, are you in support?

Hon. H. K. Njuguna: I support, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Do not bother. Member for Naivasha, are you in support?

Hon. Kihagi: I am in support, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ndaragwa, are you in support?

Hon. Nderitu: I am in support of the amendment, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Tharaka Nithi, are you in support?

Hon. (Ms.) B. N. Nyaga: I am in support, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for North Horr, are you in support?

(Hon. Ganya nodded)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kesses, are you in support?

(Hon. J. K. Bett nodded)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mbooni, are you in support?

Hon. Kisoi: Hon. Temporary Deputy Chairman, I was to contribute on the previous clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Homa Bay, are you in support?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, can I make a point?

The Temporary Deputy Chairman (Hon. Kajwang’): In support?

Hon. (Ms.) Nyasuna: Yes, hon. Temporary Deputy Chairman. This amendment is important because the issue of the lowest evaluated price only, when it applies particularly to some tenders results you with the wrong supplier if you just look at the lowest evaluated price.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, what is your point of support?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, the reason this is so important is so as to take cognisance of the earlier amendment that we made in Clause 5 which recognises professional services that are governed by statute. If you look at Clause 2, a lot of times, the Kenyan professionals have been abused by foreigners who come here. They are not that much qualified. They come here and compete with us. We compete on the same level. What we are trying to do by that amendment is to give some advantage to the fact that you are a Kenyan so that when you are competing, it already bestows upon you certain advantages.

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

(Clause 85 as amended agreed to)

(Clause 86 agreed to)

Clause 87

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

THAT, Clause 87 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclause—

“(3) An extension under subsection (1) shall be restricted to not more than thirty days and may only be done once.”

This one is just to give a prescription to an extension of not more than 30 days and only once.

(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 87 as amended agreed to)

Clause 88

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 88 of the Bill be amended by deleting the word “persons” wherever it appears and substitute therefor “tenderers”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kibwezi, do you want to oppose?

Hon. (Ms.) Mbalu: No. It is true that we need to amend it to say “tenderers”. That is the procurement language.

Hon. (Eng.) Gumbo: I was of the same opinion as the Member for Kibwezi.

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

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

(Clause 88 as amended agreed to)

Clause 89

The Temporary Deputy Chairman (Hon. Kajwang’): Well, it goes without saying that if a Member proposes an amendment and he is not in the Chamber when the amendment is called, that amendment is dropped. So, this amendment is for Member for Tetu. You are not in the Chamber. I must be speaking to myself. Therefore, your amendment is thereby dropped. Let us proceed. Next clause, please.

(Proposed amendment by Hon. Gethenji dropped)

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 89 be amended by deleting sub-clause (7).

Sub-clause (7) talks about audit. We did it in the Public Audit Bill, 2014. It refers to public audit by the Auditor-General. How does an audit issue come into the Public Procurement and Asset Disposal Bill? That was why I brought this amendment after I went through the Bill. Maybe the Chairman can help me out. If it is an audit issue, that was well covered in the Public Audit Bill that we passed.

The Temporary Deputy Chairman (Hon. Kajwang’): The Leader of the Majority Party, why do you not express yourself on the HANSARD and say what you want to do with regard to your amendment? What is the effect of your amendment?

Hon. A. B. Duale: I am asking for a deletion of subclause (7). This is an audit issue, which is covered in another Bill, namely the Public Audit Bill, 2014. I wanted the

concurrence of the Chair. I discussed this with the legal team and it is a misplacement; nothing else.

The Temporary Deputy Chairman (Hon. Kajwang’): You are perfectly in order. You have brought this both as the Leader of the Majority Party and as the Member for Garissa Town. You are perfectly in order. You are deleting subclause (7). The reason we started with the Leader of the Majority is because he prefers a deletion. Chair, you prefer an insertion. A deletion takes precedence over an insertion. That is the only reason why we have brought the amendment by the Leader of Majority ahead of yours. Your concurrence is neither here nor there.

(Question of the amendment proposed)

Hon. Sakaja: Hon. Temporary Deputy Chairman, the amendment is in order. The Public Audit Bill not only just states that a classified list of items shall be subject to audit, but also gives the procedures for classification. It is neater if we remove it. I agree.

The Temporary Deputy Chairman (Hon. Kajwang’): You agree. Are you in support, Member for Rarieda?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, there is also an amendment which, in my view, is very important.

The Temporary Deputy Chairman (Hon. Kajwang’): We are beginning with the deletion of subclause (7). Let us clear this first.

Hon. (Eng.) Gumbo: I support the deletion.

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

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 89 of the Bill be amended by inserting the following new subclause immediately after sub-clause (8) —

“(8A) A person who in order to avoid open tendering, procures items that ought to be subjected to open tendering as though they were included in the list of classified items commits an offence;”

This is to make it an offence for you to avoid doing the open tender by labelling items as classified. We want to make it an offence and an abuse of the process of open tendering.

(Question of the further amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, that was my amendment. As the Chair has ably put it, there is a lot of mischief when you start procuring classified items and disposing of them. A lot of procuring entities have gone through it by claiming that the items, which otherwise ought to be procured through open tender, are classified items to avoid competition. Clearly, that has to be an offence. We introduced that amendment to make it an offence to try to sidestep the open tendering process.

I support the amendment.

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

Hon. Members: Yes.

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

(Clause 89 as amended agreed to)

Clause 90

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

THAT, Clause 90 of the Bill be amended—

(a) in subclause (1) by deleting the words “non-consultancy” appearing immediately before the word “services”;

(b) in subclause (3) by deleting the words “non-consultancy” appearing immediately before the words “services for the threshold”.

This is to ensure that the heading of that section is properly described. Clause 90 deals with---

The Temporary Deputy Chairman (Hon. Kajwang’): Just do one thing at a time. First of all, deal with Clause 90. We will come back to the heading of that part.

Hon. Langat: Thank you. Clause 90 deals with open tendering. The way it is written, it looks like it will exempt non-consultancy services from open tendering. The Committee felt it should be open to open tendering.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Well said.

(Question of the amendment proposed)

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

(Clause 90 as amended agreed to)

Clause 91

The Temporary Deputy Chairman (Hon. Kajwang’): Mover, if it is according to the Order Paper, just go by that. I have a feeling that Members are following you properly.

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

THAT, Clause 91 of the Bill be amended by—

(a) deleting the words “non-consultancy” appearing immediately before the words “services by a method”;

(b) inserting the following new paragraphs immediately after paragraph (i)—

“(ia) competitive negotiations”;

“(ib) request for proposals;”

(c) by deleting paragraph (k) and substituting therefor the following new paragraph—

“(k) any other procurement method and procedure as prescribed in regulations and described in the tender documents.”

(d) by inserting the marginal note “methods of procurement”.

(Question of the amendment proposed)

Hon. Members: Put the Question.

*(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 91 as amended agreed to)

Clause 92

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

THAT, Clause 92 of the Bill be amended—

(a) by deleting the word “non-consultancy” appearing immediately before the word “services”;

(b) in the marginal note by deleting the word “procedures”

This is in line with the amendment to Clause 90.

(Question of the amendment proposed)

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

(Clause 92 as amended agreed to)

Hon. (Ms.) Nyasuna: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Homa Bay, what is the point of order for?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, would I be in order to request you to speak a bit slower?

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. I once visited Massachusetts Legislature. You do not hear a thing of what the Speaker says. In fact, for a long time, I thought he was speaking Italian or some funny language. I understood that it was only the Clerks-at-the-Table who understand what is going on while Members consult to get help. However, I take that advice except that we are trying to be very fast.

So, Chairman, if it is according to the Order Paper and Members are not seeking clarifications, let us go as fast as we can.

Next Clause.

(Clause 93 agreed to)

Clause 94

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 94 of the Bill be amended—

(a) by deleting subclause (2) and substituting therefor the following new subclause—

“(2) The record of results prepared under subsection (1) shall be submitted with recommendations of the evaluation committee and the professional opinion of the head of procurement function to the accounting officer for approval.”

(b) by inserting the following new subclause immediately after subclause (3)—

“(4) A procuring entity shall notify every candidate who submitted an application for prequalification but did not qualify”;

(c) by inserting a new subheading “*Details of Procurement Methods*” immediately after Clause 94.

(Question of the amendment proposed)

Hon. Ganya: Hon. Temporary Deputy Chairman, it is important that we are told the import of the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): All right, Member for Kibwezi East.

Hon. (Ms.) Mbalu: Thank you, hon. Temporary Deputy Chairman. This amendment is long overdue. It is a report of an evaluation of the same committee. Such an amendment will be showing the difference. We are talking about results prepared by the evaluation committee, whose recommendations should be forwarded to the accounting officer. The previous amendment talks about the same evaluation committee forwarding the report to itself. This is an overdue amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Is that the position, Member for Ainamoi?

Hon. Langat: Yes, hon. Temporary Deputy Chairman. In addition to what the Member for Kibwezi East said, what is in the Bill appears to bypass the head of procurement, who is actually the procurement technical person. My Committee felt that after the evaluation committee has done their work, they should prepare a report. The head of the procurement entity should then make their technical recommendations, in addition to the recommendations of the evaluation committee, so that the accounting officer can be well briefed.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for North Horr, are you now sufficiently advised? Are you now able to take a vote? Shall I put the Question?

Hon. Members: Yes!

(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 94 as amended agreed to)

Clause 95

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 95 of the Bill be amended in subclause (2) by deleting the word
“one” and substituting therefor the word “two.”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, you
are still on the queue.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, it is my amendment
and I support it.

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

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

(Clause 95 as amended agreed to)

(Clauses 96, 97 and 98 agreed to)

Clause 99

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 99 of the Bill be amended by inserting the words “physical
planning and any other design scheme” immediately after the word “architectural”

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon, Temporary Deputy Chairman, I support the
amendment. That is my amendment, which was adopted by the Committee. We felt that
design competition should not be limited to architectural competition; it should also
include physical planning, which is both urban and rural planning.

I, therefore, support.

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

(Clause 99 as amended agreed to)

Clause 100

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 100 of the Bill be amended—

(a) in subclause (4) by deleting the word “one” appearing immediately before the word “technical”;

(b) by inserting the following new subclauses immediately after sub clause (5)—

(6) In participating in design competitions, all bidders shall undertake to transfer all copyrights, intellectual property rights and patents relating to their designs to the procuring entity;

(7) Upon completion of the design competition, all the submitted design schemes shall become property of the procuring entity.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Isaac Mwaura, are you supporting or opposing the amendment?

Hon. Mwaura: Hon. Temporary Deputy Chairman, I wish to ask the Mover to give the import of the amendment; reading through it, it says that if you submit a design on something you are bidding for, by such submission, you forfeit your copyrights. Is that really proper?

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Mwaura, you have brought new energy because you are fresh into the debate. However, keep that for a moment and let me hear from other people first. Member for Mbooni, what is the problem?

Hon. Kisoi: Hon. Temporary Deputy Chairman, I concur with hon. Mwaura on the same.

The Temporary Deputy Chairman (Hon. Kajwang’): You are also asking for a clarification. Just hold your horses.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, This is my amendment; I am the source.

This Chamber we are sitting in was as a result of a design competition. In my other life, I actually participated in the designing. The idea behind the design competition is that whoever calls for the design competition actually pays for the designs. Once he pays for the designs, the proprietary rights go to him. In this one, for example Parliament may have liked the arrangement of seats from one designer, and liked the murals from another designer. So, by paying for designs, he takes over the intellectual property rights. So, he actually buys the intellectual property rights and puts in----

An hon. Member: *(Inaudible)*

Hon. (Eng.) Gumbo: Yes. However, when you take part in a design competition, it is clearly stated that once--- Actually, you forego the copyrights; the idea is that the person buying the designs is able to take this or the other from one or the other of the designs.

The Temporary Deputy Chairman (Hon. Kajwang’): I now think that Members have been sufficiently reminded and we can take a vote.

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

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

(Clause 100 as amended agreed to)

(Clause 101 agreed to)

Clause 102

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 102 of the Bill be amended in subclause (2), paragraph (e) by inserting the words, “and compares well with known prices of goods, works or services” immediately after the word “reasonable”

(Question of amendment proposed)

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

(Clause 102 as amended agreed to)

Clause 103

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 103 of the Bill be amended in paragraph (c) by inserting the word, “ensure” immediately before the word “appropriate”;

(Question of amendment proposed)

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

(Clause 103 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Who is intervening? Hon. Chief Whip, what is out of order?

Hon. Kato: I am not on intervention, but I was just looking at the time.

The Temporary Deputy Chairman (Hon. Kajwang’): That is why I recognized you.

PROGRESS REPORTED

THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

Hon. Kato: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Public Procurement and Asset Disposal Bill, National Assembly Bill, No. 40, 2014 and its approval thereof with amendments and seek leave to sit again.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House is considering the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014) and has instructed me to report progress and seek leave to sit again tomorrow.

Hon. Baiya seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, the time being 6.30 p.m., the House stands adjourned until Wednesday, 29th April 2015 at 9.30 a.m.

The House rose at 6.30 p.m.