



**REPUBLIC OF KENYA**

**ELEVENTH PARLIAMENT – THIRD SESSION**

**NATIONAL ASSEMBLY**

**VOTES AND PROCEEDINGS**

**WEDNESDAY, APRIL 29, 2015**

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **PRESIDING** – the Speaker
4. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications –

- (i) **Messages of Condolences from other Legislatures on Terror Attack at Garissa University College**

“Honourable Members, you will recall that on Tuesday, April 14<sup>th</sup> 2015 the Deputy Speaker delivered messages of goodwill and condolences from other Parliaments and Inter-parliamentary bodies regarding the terrorist attack at Garissa University College on 2<sup>nd</sup> April 2015.

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

I thank you”.

- (ii) **Delegation from the Parliament of Tanzania**

“Honourable Members, I wish to introduce to you a delegation of the National Assembly of the Republic of Tanzania, Committee on HIV/AIDS and Narcotic Drugs, who are seated at the Speakers Row. The delegation comprises of the following Honourable Members: -

1. The Hon. Lediana Mafuru Mn'gon'go MP - Leader of delegation

2.	The Hon. Saidi Suleiman Saidi, MP	-	Member
3.	The Hon. Anna Mary Stella John Mallac, MP	-	Member
4.	The Hon. Rev. Luckson Ndaga Mwanjale, MP	-	Member
5.	The Hon. Ignatius Aloyce Malocha, MP	-	Member
6.	The Hon. Maulida Anna Valerian Komu, MP	-	Member
7.	The Hon. Ahmed Ali Salim, MP	-	Member
8.	The Hon. Mbarouk Salim Ali, MP	-	Member
9.	The Hon. Maria Ibeshi Itewa, MP	-	Member
10.	The Hon. Ignatius Maluche, MP	-	Member

Honourable Members, the delegation is accompanied by the following members of staff: - Mr. Theonest Ruhilabake, Asst. Director/Committee Clerk and Mr. Amam Msami-Principal Pharmacist. The delegation arrived on Sunday 26<sup>th</sup> April, 2015. They are in the country to share with and draw lessons on best practices on the role and functions of the Committee responsible for HIV/AIDS and Narcotic drugs. They will be meeting Members of the Health Committee tomorrow morning and are scheduled to leave the country on Saturday 2<sup>nd</sup> May 2015.

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

Thank you!"

(iii) **Considered Ruling on the Matter of Expunging of proceedings or words from the Hansard**

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

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

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

The Honourable Member argued that Standing Order 248 do not make any reference to the expunging of information from the record of the House. He added that the Hansard is a vital component of parliamentary democracy in that it captures the speeches, the votes and the debates in the House and is the only complete, accurate and permanent record of the House, and is a sacrosanct document.

Honourable Members,

The Hon. Waiganjo's contention is that nothing at all should be removed or added to what an Hon. Member says so that the expression and intention of the Member changes

because of any alteration to the Hansard record, and that any change to the Hansard should only be to ensure the readability of the text but not to change or remove anything. He is also of the opinion that the Speaker or any presiding officer should not expunge any record merely because it is "unpalatable, ignominious, archaic or it is not good enough".

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

I wish to respond as follows:-

What is Hansard?

First I agree with Hon. Waiganjo that the Hansard is an authoritative document particularly for ascertaining accuracy of law as passed among other proceedings and to the courts of law when interpreting law. The name 'Hansard' has been used for two centuries. This was due to the fact that T.C. Hansard was the first printer, and later the publishers, of the official series of Parliamentary Debates way back in 1803. The Hansard (the Official Report), as rightly put by the Hon. Waiganjo, is the edited verbatim report of proceedings of Parliament. It is the traditional name of the transcripts of Parliamentary debates in Britain and many Commonwealth countries.

To quote *Erskine May*, a treatise on Parliamentary Practice (23 Edition, p. 260), Hansard is *"a full report, in the first person, of all Speakers alike, a full report being defined as one 'which, though not strictly verbatim, is substantially the verbatim report, with repetitions and redundancies omitted and with obvious mistakes corrected, but which on the other hand leaves out nothing that adds to the meaning of the speech or illustrates the argument."*

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

To what extent can a Hansard Report be edited?

In most jurisdictions, each Member of Parliament is given an opportunity to read the transcript prepared of what he or she said and, if necessary, to make minor corrections. Indeed, our own Standing Order 248(2) states and I quote;

*'Every Member shall have an opportunity to correct the draft verbatim report of his or her contribution, but not so as to alter the substance of what the Member actually said.'*

In most jurisdictions Members are allowed to suggest corrections to errors and minor alterations to the transcription but may not make material changes in the meaning of what was said in the House. This is a long-standing practice of the House that editors of

the Hansard may exercise judgment as to whether or not changes suggested by Members constitute the correction of an error or a minor alteration. The editors may likewise alter a sentence to render it more readable but may not go so far as to change its meaning. Editors must ensure that the Hansard are a faithful reflection of what was said; any changes made, whether by Members or editors, are for the sole purpose of improving the readability of the text, given the difference between the spoken and written word.

And as Speaker Cameron, from the Australian South Wales State legislature would aptly put it, and I quote,

*"If we get to the stage where speeches are recorded precisely as they are delivered, without the help of those benevolent corrections in matters of detail made by the staff, it may well be the source of embarrassment to many honourable members."*

In order for corrections and alterations to be considered, the Members' corrections must be returned within stipulated deadlines. Returned corrections must be clearly approved by the Member or an authorized delegate. Where a Member does not forward corrections within the stipulated time, it is assumed there are no suggested modifications to be made.

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

It is therefore evident that a Hansard report may be edited but only to the extent to which there is no deviation to the substance of what actually happened. In the House of Representatives of the Parliament of Australia, very much like our practice here, Members are allowed to peruse and revise the drafts of their speeches in a long established practice. However, even though this is a long held tradition, this right to make corrections to their remarks is limited and any changes, which alter the sense of words used in debate or introduce new matters are not admissible.

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

Is expunging information from the record or Hansard Report an affront to the proceedings of the House?

On whether the expunging of information from the Hansard is an affront to the proceedings of the House, it should be noted that while Members have the freedom of speech as protected in the privileges and immunities accorded, the speeches have to be within a dignified, decorous and acceptable code.

Under Rule 380 of the Rules of Procedure and Conduct of Business of the Indian Lok Sabha, the Speaker is vested with the power to order expunction of words, which in the

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

**What privileges and immunities in law does the HANSARD Report enjoy?**

Since Members' speeches in the House are privileged, it is corollary that the text form of those speeches is equally privileged. The National Assembly (Powers and Privileges) Act under Section 4 states that no civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to, the Assembly or a committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise. However, once words or certain statements have been expunged, they are no longer privileged and shall not be used or quoted elsewhere.

**Where does the Speaker derive the authority to determine that proceedings stand expunged from the records now that it is not provided for in the Standing Orders?**

Different jurisdictions have developed different practices, with some allowing the Speaker some discretion to expunge while others require a resolution of the House for any matter to be expunged.

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

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

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

**Honourable Members**, while our Standing Orders do not directly provide for expunction of Hansard records, our traditions, precedents and practice do. Virtually all Speakers have had to expunge objectionable or reckless utterances, inaccurate Votes or records when the need has arisen.

Our practice has never required a resolution of the House for the Speaker to expunge any matter from record. The discretion has largely been left to the Presiding Officer, and particularly the substantive Speaker. On October 11, 1995 the Speaker ordered the expunction of two documents earlier in the day laid by the Hon. James Orengo purportedly from some Presidential Escort officers blowing the whistle on the killing of the late Dr. Robert Ouko. He ordered the expunction because the documents were not signed. On October 4, 2007 Speaker Francis Ole Kaparo ordered that adverse remarks made by members against the Hon. Gideon Moi, and without a substantive motion, during debate on the 15th Public Investments Committee Report be expunged. On November 25, 2010 the Speaker Hon. Kenneth Marende, ordered the expunction from the records of the House the mentioning by Hon. Dr. Kilemi Mwiria of the Hon. Bahari instead of referring to the Member for Bahari. On March 13, 2012 when the Hon. Shebesh questioned the authenticity of a document earlier presented to the House by the Hon. Charles Kilonzo on an International Criminal Court matter, the Hon. Njuguna made unsubstantiated remarks about the British Government and the Kapenguria Six. He was ordered by the Speaker to withdraw the remarks, which he did. Consequently, the Speaker ordered the offending remarks to be expunged from the record of the House.

From the foregoing it is clear that, the Speaker, being the custodian of the Standing Orders and under the powers conferred upon him by the provisions of the Standing Order No. 1, may order for expunging of words that are unparliamentary or are of expletive nature.

This long held practice still stands, and I hereby affirm as elucidated above.

I thank you".

## 5. PETITIONS

The following Members presented Petitions –

- (i) The Member for Kibwezi East (Hon. Jessica Mbalu) on the relocation of Matangini Primary School to sub-standard temporary structures; and,
- (ii) The Member for Samburu North (Hon. Alois Lentoimaga) on recovery of illegal firearms in the North Rift region.

Petitions referred to the relevant Departmental Committees pursuant to Standing Order 227(1)

## 6. PAPERS LAID

The following Papers were laid on the Table –

- (i) The Report of the Auditor-General on the Financial Statements of Kenya Plant Health Inspectorate Service for the year ended 30 June 2014, and the certificate of the Auditor-General therein;
- (ii) The Report of the Auditor-General on Kenya Sisal Board for the thirteen months period ended 31 July 2014, and the certificate of the Auditor-General therein;
- (iii) The Report of the Auditor-General on the Financial Statements of Sugar Development Fund for the thirteen months period ended 31 July 2014, and the certificate of the Auditor-General therein;

- (iv) The Report of the Auditor-General on the Financial Statements of Machakos University College for the year ended 30 June 2013, and the certificate of the Auditor-General therein;
- (v) The Report of the Auditor-General on the Financial Statements of Consolidated Bank of Kenya for the year ended 31 December 2014, and the certificate of the Auditor-General therein;
- (vi) The Report of the Auditor-General on the Financial Statements of Ministry of Defence for the year ended 30 June 2014;

*(Leader of the Majority Party)*

- (vii) The Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30<sup>th</sup> June, 2016 and the Projections for 2016/2017-2018;

*(Hon. Adan Keynan)*

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

*(Chairperson, Committee on Regional Integration)*

7. **NOTICE OF MOTION - REPORT ON THE EAC PEACE AND SECURITY PROTOCOL & THE MUTUAL PEACE AND SECURITY PACT**

*(Chairperson, Committee on Regional Integration)*

THAT, this House adopts Report of the Committee on Regional Integration on the East African Community (EAC) Peace and Security Protocol and the Mutual Peace and Security Pact, laid on the Table of the House on Wednesday, April, 29, 2014

8. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

The First Chairperson of Committees in the Chair

**The Public Procurement and Assets Disposal Bill (National Assembly Bill No. 40 of 2014)**

Clauses 104, 105 & 106 - agreed to

Clause 107 - amendment proposed –

**THAT**, clause 107 of the Bill be amended by inserting the words "in the Regulations" immediately after the word "prescribed";

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 107 - as amended agreed to

Clause 108 - amendment proposed –

**THAT**, clause 108 of the Bill be amended in sub clause (4) by inserting the words "in the Regulations" immediately after the word "prescribed";

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 108 - as amended agreed to

Clauses 109, 110, 111 & 112 - agreed to

Clause 113 - amendment proposed –

**THAT**, clause 113 of the Bill be amended in sub clause (1), paragraph (b), by inserting the word, "of" immediately after the word "quantity";

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 113 - as amended agreed to

Clause 114 - amendment proposed –

**THAT**, clause 114 of the Bill be deleted

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 114 - deleted

## **HEADING**

The heading to "PART IX" of the Bill be deleted and substituted therefor with the following new heading—

**"PART IX— METHODS OF PROCUREMENT OF GOODS, WORKS AND SERVICES"**

Clauses 115, 116 & 117 - agreed to



Clause 118 - amendment proposed –

**THAT**, clause 118 of the Bill be amended in sub clause (1), paragraph (b), by deleting the expression “section 77” and substituting therefor the expression “section 56”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 118 - as amended agreed to

Clause 119 - amendment proposed –

**THAT**, clause 119 of the Bill be amended in sub clause (3), by deleting the word “or” appearing immediately after the words “tender’s portal” and substituting therefor the word “and”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 119 - as amended agreed to

Clause 120 - agreed to

Clause 121 - amendment proposed –

**THAT**, clause 121 be amended by deleting sub clause (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 expression of interest documents and shall, in the case of expression of interest for professional services, have regard to the provisions of this Act and statutory instruments issued by the relevant professional associations regarding regulation of fees chargeable for services rendered”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 121 - as amended agreed to

Clause 122 - agreed to

Clause 123 - amendment proposed –

**THAT**, clause 123 of the Bill be deleted.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 123 - deleted

Clause 124 - agreed to

Clause 125 - amendment proposed –

**THAT**, clause 125 of the Bill be amended in—

- (a) sub clause (6), by inserting the following new paragraph immediately after paragraph (c) -

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

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

- (c) sub clause (13), by deleting the word “advert” and substituting therefor the word “advertisement”;

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 125 - as amended agreed to

Clauses 126, 127 & 128 - agreed to

Clause 129 - amendment proposed –

**THAT**, clause 129 of the Bill be amended in sub clause (3) by deleting the words “be a better offer than” and substituting therefor the words “have any price advantages over”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 129 - as amended agreed to

Clauses 130, 131, 132, 133 & 134 - agreed to

Clause 135 - amendment proposed –

**THAT**, clause 135 of the Bill be amended by—

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

“(2) An accounting officer of a procuring entity shall ensure that all complex and specialized contracts of a value exceeding Kenya shillings five billion are cleared by the Attorney-General before they are signed”.

(b) deleting sub clause (3) and substituting therefor the following new sub clause—

“(3) Each Cabinet Secretary shall regularly inform the Cabinet and national treasury of all government contracts exceeding Kenya shillings five billion”.

(c) inserting a new sub clause immediately after sub clause (3)—

“(4) Notwithstanding the provision of subsection (3) above, any Cabinet Secretary may brief Cabinet on any other project of national importance irrespective of its value”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

### **Progress Report**

Motion made and Question proposed -

**THAT**, the Committee of the whole House do report progress and seeks leave to sit again today

*(Leader of the Majority Party)*

Question put and agreed to.

9. **HOUSE RESUMED** - The Fourth Chairperson of Committees in the Chair

**Progress reported –**

**THAT**, the Committee of the whole House has considered the Public Procurement and Asset Disposal Bill (National Assembly Bill No. 40 of 2014), with amendments, and seeks leave to sit again today;

*(Leader of the Majority Party)*

Question put and agreed to.

10. **PROCEDURAL MOTION – EXTENSION OF SITTING TIME**

Motion made and Question proposed –

**THAT**, pursuant to the provisions of Standing Order 30(3)(a), this House resolves to extend its sitting until the conclusion of Business appearing under Order No.10

*(Leader of the Majority Party)*

There being no Member willing to contribute;

Question put and agreed to.

11. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

**IN THE COMMITTEE**

The First Chairperson in the Chair

**The Public Procurement and Assets Disposal Bill (National Assembly Bill No.40 of 2014)**

Clause 135 ***(Resumption of consideration interrupted)***

Further amendment proposed –

**THAT**, the proposed amendment to clause 135 in new sub clause (2) be further amended by deleting the words “complex and specialized” appearing immediately after the words “that all.”

*(Hon. Aden Duale – Leader of the Majority Party)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Further amendment proposed –

**THAT**, clause 135 be further amended by inserting a new sub clause (5) as follows –

“(5) This section shall not apply to contracts by Parliament and Judiciary”

*(Hon. Jamleck Kamau)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Question of the amendment as further amended put and agreed to;

Clause 135 - as amended agreed to

Clause 136 - amendment proposed –

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

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 136 - as amended agreed to

Clause 137 - amendment proposed –

**THAT**, clause 137 of the Bill be amended by—

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

(b) deleting sub clause (2);

(c) deleting sub clause (3);

(d) deleting sub-clause (4)

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 137 - as amended agreed to

Clause 138 - agreed to

Clause 139 - amendment proposed –

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

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

*(Hon. Aden Duale – Leader of Majority Party)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 139 - as amended agreed to

Clause 140 - amendment proposed –

**THAT**, clause 140 of the Bill be amended—

- (a) in sub clause (2) by deleting the words “a tender committee” appearing immediately after the words “ recommendation of” and substituting therefor the words “evaluation committee”;
- (b) by deleting sub clause (3) and substituting therefor the following new sub clause (3)—

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

- (c) in sub clause (4) —

- (i) by deleting the word “ten” appearing in paragraph (b), and substituting therefor the word “fifteen”
- (ii) by deleting the word “fifteen” appearing in paragraph (c) and substituting therefor the word “twenty”;

- (d) by inserting the following new sub clause immediately after sub clause (5) —

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Further amendment proposed –

**THAT**, the proposed amendment to clause 140 be further amended in new sub clause (3) by inserting the word “*upwards*” immediately after the words “*be varied*.”

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Question of the amendment as further amended put and agreed to.

Clause 140 - as amended agreed to

Clause 141 - amendment proposed –

**THAT**, clause 141 of the Bill be amended by inserting a new paragraph immediately after paragraph (c) —

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Further amendment proposed –

**THAT**, the proposed amendment to clause 141 be further amended in new paragraph (ca) by –

- (i) deleting the word “and” appearing immediately after the words “computing interest”;
- (ii) inserting the words “and ascertained” immediately after the word “liquidated”

*(Hon (Eng.) Nicolas Gumbo)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Question of the amendment as further amended put and agreed to.

Clause 141 - as amended agreed to

Clause 142 - agreed to

Clause 143 - amendment proposed –

**THAT**, clause 143 of the Bill be amended—

- (a) by deleting sub clause (1) and substituting therefor the following new sub clause—  
“(1) Subject to the regulations, a successful tenderer shall submit a performance security equivalent to no more than ten per cent of the contract amount before signing of the contract”

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 143 - as amended agreed to

Clause 144 - amendment proposed –

**THAT**, clause 144 of the Bill be amended by deleting the word “shall” appearing immediately after the words “and it shall” and substituting therefor the word “may”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 144 - as amended agreed to

Clause 145 - amendment proposed –

**THAT**, clause 145 of the Bill be amended—

(a) in sub clause (1) by deleting the word “of” appearing immediately after the word “performance”;

(b) by inserting a new sub clause immediately after sub clause (4) —

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 145 - as amended agreed to

Clause 146 - amendment proposed –

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 146 - as amended agreed to



Clause 147 - agreed to

Clause 148 - amendment proposed –

**THAT**, clause 148 of the Bill be amended by—

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

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 148 - as amended agreed to

Clauses 149 & 150 - agreed to

Clause 151 - amendment proposed –

**THAT**, clause 151 of the Bill be amended in—

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 151 - as amended agreed to

Clause 152 - amendment proposed –

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 152 - as amended agreed to

Clauses 153, 154 & 155 - agreed to

Clause 156 - amendment proposed –

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 156 - as amended agreed to

Clause 157 - agreed to

Clause 158 - amendment proposed –

**THAT**, clause 158 of the Bill be amended—

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

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

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

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

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

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

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

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

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

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

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

- (a) certify compliance with the provisions of this section; and
- (b) provide data disaggregated to indicate the number of youth, women and persons with disability whose goods and services have been procured by the procuring entity.

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

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

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

- (a) be prescribed within ninety days after commencement of this Act;
- (b) be subject to such conditions as the Cabinet Secretary may specify therein but such conditions shall not pose any unnecessary impediment to the youth from participating in public procurement.

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

- (a) registration, prequalification and certification of the persons, categories of persons or groups as provided in for under Part XII;
- (b) training and Capacity building of the above target groups;
- (c) providing technical and advisory assistance to procuring entities in the implementation of the preferences and reservations under this Act; and
- (d) monitoring and evaluating the implementation of the preferences and reservations under this Act.

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 158 - as amended agreed to

Clause 159 - amendment proposed –

**THAT**, clause 159 be amended in sub clause (3) by inserting the words “with disaggregated data “immediately after the words “reported”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 159 - as amended agreed to

Clauses 160, 161 & 162 - agreed to

Clause 163 - amendment proposed –

**THAT**, clause 163 of the Bill be amended in sub clause (2) by deleting the word “twice” and substituting therefor the word “quarterly”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 163 - as amended agreed to

Clause 164 - amendment proposed –

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 164 - as amended agreed to

Clause 165 - agreed to

Clause 166 - amendment proposed –

**THAT**, clause 166 be amended by inserting the following sub clause immediately after sub clause(1)—

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 166 - as amended agreed to

Clause 167 - amendment proposed –

**THAT**, clause 167 of the Bill be amended by—

- (a) renumbering the existing provision as sub clause (1);
- (b) inserting the following new sub clause immediately after the renumbered sub clause (1)—

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 167 - as amended agreed to

Clause 168 - amendment proposed –

**THAT**, clause 168 of the Bill be amended—

- (a) in sub clause (1) by inserting the word "or" appearing immediately after the words "this Act";
- (b) by inserting the following new sub clause immediately after sub clause (1) —

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Further amendment proposed –

**THAT**, the proposed amendment to clause 168 be further amended in new sub clause (1A) by deleting the word “fees” wherever it appears and substituting therefor the words “refundable deposit”

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Question of the amendment as further amended put and agreed to.

Clause 168 - as amended agreed to

Clauses 169, 170, 171 & 172 - agreed to

Clause 173 - amendment proposed –

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Further amendment proposed –

**THAT**, the proposed amendment to clause 173 be amended by deleting the word “fees” appearing immediately after the words “forfeit the” substituting therefor the word “deposit”

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Question of the amendment as further amended put and agreed to.

Clause 173 - as amended agreed to

Clause 174 - amendment proposed –

**THAT**, clause 174 of the Bill be amended by inserting the following new paragraph immediately after paragraph (d)—

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 174 - as amended agreed to

Clause 175 - agreed to

Clause 176 - amendment proposed –

**THAT**, clause 176 of the Bill be amended by inserting a new sub clause immediately after sub clause (3) —

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

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Further amendment proposed –

**THAT**, clause 176 be further amended by –

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

(3) the High Court shall determine the judicial review application within forty five days after such application.

(4) a person aggrieved by the decision of the High Court may appeal to the Court of Appeal within seven days of such decision and the Court of Appeal shall make a decision within forty five days which decision shall be final.

(5) if either the High Court or the Court of Appeal fails to make a decision within the prescribed timeline under subsection (3) or (4), the decision of the Review Board shall be final and binding to all parties".

(b) re-numbering sub clause (3) as sub clause (6).

(c) inserting the words "or the Court of Appeal" immediately after the words "High Court" wherever they appear in the re-numbered sub clause (6).

*(Hon. Jamleck Kamau)*

Question of the further amendment proposed;

Debate arising;

Question of the further amendment put and agreed to;

Question of the amendment as further amended put and agreed to.

Clause 176 - as amended agreed to

Clause 177 - amendment proposed –

**THAT**, clause 177 of the Bill be amended –

(a) by renumbering the existing provision as sub clause (1)

(b) in sub clause (1), by inserting the following new paragraphs immediately after paragraph

(i) —

“(ia) knowingly withholds the notification of award to a successful tenderer;”

“(ib) knowingly withholds notification to unsuccessful tenderer;”

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 177 - as amended agreed to

Clause 178, 179 & 180 - agreed to

Clause 181 - amendment proposed –

**THAT**, clause 181 of the Bill be amended by inserting the words “and such regulations shall not take effect unless approved by Parliament pursuant to the Statutory Instruments Act, 2013”.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 181 - as amended agreed to

Clause 182, 183 & 184 - agreed to

New Clause 47A proposed –

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 47—



Inspection  
and  
acceptance  
committee.

- 47A.** (1) An accounting officer of a procuring entity may establish an adhoc committee known as the inspection and acceptance committee.
- (2) The inspection and acceptance committee shall be composed of a chairman and at least two other members appointed by the accounting officer or the head of the procuring entity on the recommendation of the procuring unit.
- (3) The inspection and acceptance committee shall immediately after the delivery of the goods, works or services-
- (a) inspect and where necessary ,test the goods received;
  - (b) inspect and review the goods ,works or services in order to ensure compliance with the terms and specifications of the contract; and
  - (c) accept or reject , on behalf of the procuring entity , the delivered goods, works or services.
- (4)The inspection and acceptance committee shall-
- (a) ensure that the correct quantity of the goods is received;
  - (b) ensure that the goods, works or services meet the technical standards defined in the contract;
  - (c) ensure that the goods, works or services have been delivered or completed on time ,or that any delay has been noted;
  - (d) ensure that all required manuals or documentation has been received; and
  - (e) issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract."

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Motion made and Question proposed;

**THAT**, the New Clause 47A be read a Second Time

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

**THAT** the New Clause 47A be part of the Bill

Question put and agreed to

New Clause 150A proposed –

**THAT** the following new clause be inserted immediately after clause 150—

Engagement  
of  
sub-  
contractors

- 150A.** (1) Where the works to be undertaken under a procurement—  
 (a) require greater skill than that of the contractor;  
 (b) require specialization; or  
 (c) are of a general complexity of skills and specialization  
 that may be lost if undertaken by the contractor;

that contractor may engage a domestic sub-contractor or a domestic sub-contractor to undertake those works.

(2) Where a nominated sub-contractor is engaged under subsection (1), the selection process shall be undertaken directly by the procuring entity.

(3) A nominated subcontractor may only be engaged on a necessity basis whereby the works to be undertaken by the nominated subcontractor require greater skills and specialization than the contractor's or main contractor's or where the general complexity of the skills and specialization required are such that the form and function may be lost if the works were undertaken by the contractor or main contractor.

(4) The procuring entity shall prepare separate and distinct tender documents for engagement of a nominated sub-contractor.

*(Hon. (Eng.) Nicolas Gumbo)*

Proposed amendment withdrawn by the Mover.

First Schedule – amendment proposed –

THAT, the First Schedule of the Bill be amended in paragraph 3(2), by deleting the word "his" and substituting therefor the word "their".

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

First Schedule – as amended agreed to

Second Schedule – amendment proposed –

**THAT**, the Second Schedule of the Bill be amended in paragraph 3(2), by deleting the word "his" and substituting therefor the word "their".

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to:

Second Schedule - as amended agreed to

Third Schedule - amendment proposed –

**THAT**, the Third Schedule of the Bill be amended by inserting a new paragraph immediately after paragraph 10—

Time specification for the Regulations.	10A. Regulations contemplated under this Act shall be made within a period of one year immediately after the effective date of the Act.
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*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to:

Third Schedule - as amended agreed to

Clause 2 - amendment proposed –

- (a) in the definition of the expression “consultancy services” by inserting the words “and includes services offered by all professionals” immediately after the word “nature”;
- (b) in the definition of “design competition” by deleting the words “ and fine arts, and graphic designs” and substituting therefor the words, “fine arts, interior design, marketing, advertising and graphic designs”;
- (c) in the definition of the term “disadvantaged group” by inserting the words, “enterprises in which a majority of the members or shareholders are youth, women, persons with disability or” immediately after the words “and includes”;
- (d) in the definition of the term “procurement professional” by deleting the words “, or a recognized institute of purchasing and supply” appearing immediately after the words “Practitioners Management Act”;
- (e) in the definition of the term “standard” by deleting the word “generally” appearing immediately after the words “ other products is”;
- (f) in the definition of the term “supply chain management” by inserting the words “contract management” immediately after the words “stock control”;
- (g) in the definition of the term “works” by deleting the words “ and commissioning” appearing in paragraph (a) and substituting therefor the words “, commissioning and setting up” ;
- (h) in the definition of “writing” by inserting the word “facsimile,” immediately after the word “photography”;
- (i) by inserting the following new definitions in the proper alphabetical sequence—

"corruption" has the meaning assigned to it under section 2 of the Anti-corruption and Economic Crimes Act, 2009;

"professional" means a person who has professional qualifications in a specialized field and who is engaged in the practice of a skill or trade, having undertaken the relevant formal academic and professional training including undertaking practical learning in the form of apprenticeship or tutelage under the guidance of a suitably qualified and experienced person in the field of training or tutelage;

"professional body" means a body representing members of a profession, which is regulated by statute, code of conduct or rules as may be amended from time to time.

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

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

"youth" means a person who has attained the age of eighteen years and has not attained the age of thirty-five years and includes a company, association or body of persons, corporate or unincorporated in which at least seventy percent of shareholders are persons who have attained the age of eighteen years and have not attained the age of thirty-five years.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Further amendment proposed –

**THAT**, clause 2 of the Bill be amended—

(a) in the definition of the term "contractor" by inserting the words "and includes the main contractor" immediately after the words "procuring entity";

(b) by inserting the following definitions in the proper alphabetical sequence—

"domestic sub-contractor" means a person selected by the contractor or main contractor to carry out part of the works;

"nominated sub-contractor" means a person selected directly by the procuring entity through a tender process to carry out an element of the works;

*(Hon. (Eng) Nicolas Gumbo)*

Question of the further amendment proposed;

Debate arising;

Proposed amendment in part (b) withdrawn by the Mover;

Question of further amendment put and agreed to;

Question of the amendment as further amendment put and agreed to;

Clause 2 - as amended agreed to;

Clause 1 - agreed to

Title - agreed to

Bill to be reported with amendments;

12. **HOUSE RESUMED** - the Third Chairperson of Committees in the Chair

**The Public Procurement and Assets Disposal Bill (National Assembly Bill No. 40 of 2014)**

Bill reported with amendments;

Motion made and Question proposed:-

**THAT**, the House do agree with the Committee of the Whole House in the said report.

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Question put and agreed to;

Motion made and Question proposed:-

**THAT**, the Public Procurement and Assets Disposal Bill (National Assembly Bill No.40 of 2014) be now read a Third Time

*(Chairperson, Departmental Committee on Finance, Planning & Trade)*

Debate arising;

Question of the Third Reading deferred to another day.

And the time being forty-two minutes past Eight O'clock, the Third Chairperson of Committees interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. **HOUSE ROSE** - at forty-two minutes past Eight O'clock.

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**M E M O R A N D U M**

The Speaker will take the Chair on  
Thursday, April 30, 2015 at 9.30 a.m.