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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTIETH PARLIAMENT – SECOND SESSION – 2023

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON:

THE CONSIDERATION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2022)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	04 OCT 2023 Wed. 4/10/2023
TABLED BY:	Chair, Finance Hon. Francis Kenyatta
CLERK AT THE TABLE:	Mado

CLERKS CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

OCTOBER, 2023

TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD.....	3
PART I	4
1 PREFACE.....	4
1.1 ESTABLISHMENT OF THE COMMITTEE.....	4
1.2 MANDATE OF THE COMMITTEE.....	4
1.3 COMMITTEE MEMBERSHIP.....	5
1.4 COMMITTEE SECRETARIAT.....	6
PART II.....	7
2 OVERVIEW OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2022).....	7
2.1 INTRODUCTION	7
2.2 ANALYSIS OF THE BILL.....	7
PART III	8
2 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION	8
3.1 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK).....	8
3.2 NATIONAL TREASURY AND PLANNING	8
PART IV.....	10
3 COMMITTEE OBSERVATIONS	10
PART V.....	11
4 COMMITTEE RECOMMENDATION	11
PART VI.....	12
5 SCHEDULE OF PROPOSED AMENDMENTS.....	12

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Public Procurement and Asset Disposal (Amendment) (No. 3) Bill (National Assembly Bill No. 62 of 2022). The Bill is sponsored by the Hon. Mejjadonk Benjamin Gathiru, Member of Parliament for Embakasi Central Constituency and was published on 16th December, 2022. The Bill went through the First Reading on 8th March, 2023 and was thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

The Bill has two (2) clauses and seeks to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount of tenders where Kenyan citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect Kenyan traders from foreign competitors.

Following the placement of advertisement in the print media requesting for comments on the Bill from the public and relevant stakeholders pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee received two written memoranda from the National Treasury and Planning and the Institute of Certified Public Accountants of Kenya (ICPAK).

The stakeholders' comments on the Bill are contained in Part III of the Report. All the stakeholders' comments were considered while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

The stakeholders were opposed to the amendment noting that the threshold set will inhibit the participation of private firms that usually contribute to the economy through the public-private partnership framework. They also raised concerns that limiting the participation of foreign tenderers may hinder technological transfer and building local capacity and lock out foreign contractors will negatively affect Kenya's participation as a key player in regional and international trade.

A similar amendment was considered by the Committee in the 12th Parliament under the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022) which was published on 16th December, 2022. The Committee then, recommended to the House that the two clauses in the Bill be deleted in its entirety. Consequently, the Committee concurs with the recommendations of the Committee in the 12th Parliament.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank Hon. Benjamin Gathiru, MP for sponsoring the Bill and the stakeholders who participated in the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Procurement and Asset Disposal (Amendment) (National Assembly Bill No 62 of 2022 with the recommendation that Clause 2 in the Bill be **DELETED IN ITS ENTIRETY**.

HON. CPA KURIA KIMANI, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

PART I

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - iii. **To study and review all the legislation referred to it;**
 - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on Appointments);
 - vii. To examine treaties, agreements and conventions;
 - viii. To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;
 - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - x. To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - i. The National Treasury
 - ii. State Department for Economic Planning
 - iii. Commission on Revenue Allocation
 - iv. Office of the Controller of Budget

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in October , 2022 and comprises the following Members:

Chairperson

Hon. CPA. Kuria Kimani, MP

Molo Constituency

UDA Party

Vice-Chairperson

Hon. Amb. CPA. Benjamin Langat, CBS, MP

Ainamoi Constituency

UDA Party

Hon. Adan Keynan, MP
Eldas Constituency

Jubilee Party

Hon Andrew A. Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency

Wiper Party

Hon. CPA Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joseph Kipkoros Makilap, MP
Baringo North Constituency

UDA Party

Hon. Umul Ker Kassim, MP
Mandera County

UDM Party

Hon. CPA Julius Rutto, MP
Kesses Constituency

UDA Party

Hon. Shadrack Ithinji, MP
South Imenti Constituency

Jubilee Party

Hon. Paul Biego, MP
Chesumei Constituency

UDA Party

Hon. Joseph Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Dr. John Ariko, MP
Turkana South Constituency

ODM Party

Hon. Mohamed Machele, MP
Mvita Constituency

ODM Party

Hon. George Sunkuya, MP
Kajiado West Constituency

UDA Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff

Mr. Benjamin Magut
Principal Clerk Assistant /Head of Secretariat

Ms. Jeniffer Ndeto
Deputy Director, Legal Services

Mr. Salem Lorot
Legal Counsel I

Mr. Nebert Ekai
Clerk Assistant II

Mr. Benson Kamande
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst III

Ms. Terry Ondiko
Fiscal Analyst III

Mr. Andrew Jumanne Shangarai
Principal Serjeant-At-Arms

Mr. Simon O. Ouko
Assistant Serjeant-At-Arms

Ms. Shamsa A. Abdi
Research Officer III

Ms. Nelly W. N Ondieki
Research Officer III

Ms Joyce Wachera
Hansard Officer III

Ms Benson Muchiri
Audio Officer II

Mr. James Macharia
Media Relation Officer

PART II

2 OVERVIEW OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2022)

2.1 INTRODUCTION

6. The main principle object of the Bill is to amend the Public Procurement and Asset Disposal Act, 2015 to enhance the amount for tenders where Kenyan citizens are given exclusive preference from the sum of five hundred million shillings to twenty billion shillings. This is to protect Kenyan traders from foreign competitors.

2.2 ANALYSIS OF THE BILL

The Bill proposes the following amendments:

7. **Clauses 1** of the Bill provide for the short title.
8. **Clauses 2** of the Bill increase the amount for exclusive preference of tenderers for Kenyans from five hundred million shillings to twenty billion shillings.
9. The Bill does not limit any fundamental rights and freedoms as provided under the Constitution.
10. The Bill affects the functions of county governments and is therefore a Bill concerning county governments for purposes of the Standing Orders.
11. Enactment of this Bill shall not occasion additional expenditure of public funds to be provided for through the annual estimates.

PART III

2 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

12. Following the call for memoranda from the public through the placement of adverts in the print media, the Committee received memoranda from the following stakeholders:
- i. Institute of Certified Public Accountants of Kenya (ICPAK)
 - ii. National Treasury and Planning

The stakeholders submitted as follows:

3.1 THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

In the Institute's memorandum, the CEO, Dr. Grace Kamau, submitted as follows on the Bill:

13. The increment margin of exclusive preference from five hundred million shillings to twenty billion shillings is too high. Whereas the threshold set will enhance the eligibility of local firms and contractors in promoting the growth of the SME sector, it has the risk of completely excluding foreign firms from participating in procurement thus inhibiting foreign investment in Kenya.
14. In addition, they submitted that the threshold set will inhibit the participation of private firms that usually contribute to the economy through Public Private Partnership frameworks. They also raised concerns about the capacity of citizen contractors and tenderers to adequately provide the necessary services that require specialized skills that the market space demands.
15. They proposed that the Bill should be amended by reducing the threshold of exclusive preference from twenty billion to five billion shillings.

Committee's decision

The Committee noted ICPAK's concerns and resolved to delete the proposed amendment.

3.2 NATIONAL TREASURY AND PLANNING

Through a written submission dated 23rd May, 2023, the National Treasury, submitted that:

16. The amendment implies that the Cabinet Secretary shall set thresholds of above KSh. 20 billion for citizen contractors (firms wholly owned and controlled by Kenyan citizens). This will lock out local contractors (firms registered in Kenya with above 51% Kenyan shareholding) and foreign contractors (firms owned by foreign Nationals).
17. The proposed amendment will limit competition to citizen contractors hence the loss of benefits that accrue from international competition which includes increased prices for projects. Further, there is an inadequate capacity of citizen contractors to deliver quality complex projects promptly.
18. If procurements of KSh. 20 billion are reserved for local contractors, foreign bidders and local contractors will be locked out leading to capital flight, decline in direct investments and relocation of businesses to other countries. Limiting the participation of foreign tenderers may hinder technological transfer and building local capacity.

19. Additionally, locking out foreign contractors will negatively affect Kenya's participation as a key player in regional and international trade. Further, it may create room for laxity among citizen contractors due to poor quality of projects which will in the long run outweigh the intended benefits.
20. Arising from the above reasons, there is a need to assess the existing thresholds and evaluate if citizen contractors have the requisite capacity to handle tenders of that amount and increase gradually through prescribing in the Regulations.
21. The threshold for the exclusive preference given to citizen contractors is prescribed in Regulation 163 of the Public Procurement and Disposal Regulations 2020 as follows: (i) One billion shillings for procurements in respect of works, construction materials and other materials which are made in Kenya; and (ii) five hundred million shillings for procurements in respect of goods and services.

Committee's decision

The Committee agreed with the National Treasury's proposed amendment.

PART IV

3 COMMITTEE OBSERVATIONS

22. In considering the Bill, the Committee observed as follows:

- (i) The proposed amendment will raise the threshold for exclusive preference from five hundred million shillings to twenty billion shillings;
- (ii) The leap from five hundred million shillings to twenty billion shillings is too huge i.e. 40 times more. The increase should be gradual; and
- (iii) Very few Kenyan contractors can execute tenders worth twenty billion shillings. This will therefore mean that tenders worth the amount will be reserved for the few Kenyans who can afford them.

PART V

4 COMMITTEE RECOMMENDATION

23. The Committee having considered the Public Procurement and Asset Disposal (Amendment) Bill (National Assembly Bill No. 62 of 2022) recommends to the House that Clause 2 in the Bill be **DELETED IN ITS ENTIRETY**.

PART VI

5 SCHEDULE OF PROPOSED AMENDMENTS

24. The Committee proposed the following amendments to be considered by the House in the Committee Stage:

25. Clause 2: Delete

Justification

The increase from five hundred million shillings is too huge. Additionally, very few Kenyans can execute contracts worth twenty billion shillings. This means that such tenders will only be reserved for a few contractors.

SIGNED.....



DATE.....

4th October, 2023

HON. CPA KURIA KIMANI, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

MINUTES OF THE 80TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY 3RD OCTOBER 2023 IN HILTON GARDEN INN HOTEL, MACHAKOS COUNTY AT 10.00 AM

PRESENT

1. Hon. CPA. Kuria Kimani, MP - **Chairperson**
2. Hon. Amb. Benjamin Kipkirui Langat, MP - **Vice- Chairperson**
3. Hon. Adan Keynan Wehliye, MP
4. Hon. Andrew Adipo Okuome, MP
5. Hon. CPA. Joseph Maero Oyula, MP
6. Hon. George Sunkuiya Risa, MP
7. Hon. Joseph Kamau Muniyoro, MP
8. Hon. Joseph Makilap Kipkoros, MP
9. Hon. CPA. Julius Kipletting Ruto, MP
10. Hon. Mohamed Soud Machele, MP
11. Hon. Dr. Shadrack Mwititi Ithinji, MP
12. Hon. Paul Kibichiy Biego, MP
13. Hon. (Dr.) John Ariko Namoit, MP
14. Hon. Umul Ker Sheikh Kassim, MP

ABSENT WITH APOLOGY

1. Hon. David Mwalika Mboni, MP

SECRETARIAT

1. Mr. Benjamin Magut - Principal Clerk Assistant II
2. Mr. Nebert Ikai - Clerk Assistant I
3. Mr. Salim Lorot - Legal Counsel I
4. Mr. Benson Kamande - Clerk Assistant III
5. Ms. Nelly Ondieki - Research Officer
6. Mr. Simon Ouko - Serjeant-At-Arms
7. Mr. Alfas Mulunda - Intern
8. Ms. Charity Zawadi - Intern

MIN. NO.296/2023: PRELIMINARIES

The meeting was called to order at Ten Minutes past Ten O'clock followed by introductions and a word of prayer.

MIN. NO. 297/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Confirmations of the minutes of the previous sittings were deferred to the next meeting

MIN NO. 298/2023: CONSIDERATION AND ADOPTION OF THE REPORT ON THE EQUALISATION FUND BILL (NATIONAL ASSEMBLY BILL NO. 47 OF 2022)

The Committee considered the Equalization Fund Bill (National Assembly Bill No. 47 of 2022) sponsored by Hon Kamket Kasait, MP Clause by Clause. Further the Committee considered the schedule of the amendments and resolved as follows: -

Clause 7(c) – The Committee agreed and adopted the proposed amendment

Clause 10 – The Committee agreed and adopted the proposed amendment. The Committee further proposed removal of the phrase “in consultation with the County Government” in clause 10 (d)

Clause 11 - The Committee agreed and adopted the proposed amendment

Clause 14 - The Committee agreed and adopted the proposed amendment

Clause 16 – the Committee recommended deletion of the proposed amendment and proposed retaining the Clause as it is in the Bill

Clause 17 – the Committee recommended deletion of the proposed amendment and proposed retaining the Clause as it is in the Bill

Clause 20 – the Committee recommended deletion of the proposed amendment and proposed retaining the Clause as it is in the Bill

Clause 34 - The Committee agreed to the proposed amendment

Clause 40 - The Committee agreed to the proposed amendment

Adoption

The Committee unanimously adopted the report on the Equalization Fund Bill (National Assembly Bill No. 47 of 2022) having been proposed by Hon. (Dr.) John Ariko Namoit, MP and seconded by Hon. Andrew Adipo Okuome, MP.

MIN NO. 299/2023: PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 62 OF 2022)

The Committee considered the Public Procurement and Asset Disposal Act (Amendment) Bill (National Assembly Bill No. 62 of 2022) sponsored by Hon Mejjadonk Benjamin Gathiru, MP Clause by Clause and made the following observations.

- a) The proposed amendment will raise the threshold for exclusive preference from five hundred million shillings to twenty billion shillings;
- b) The leap from five hundred shilling to twenty billion shilling is too huge i.e 40 times more. The increase should be gradual; And

- c) Very few Kenyan contractors can execute tenders worth twenty billion shillings. This will therefore mean that tenders worth the amount will be reserved for the few Kenyans who can afford them.


The Committee having considered the Public Procurement and Asset Disposal Act (Amendment) Bill (National Assembly Bill No. 62 of 2022) recommends to the house that Clause 2 in the Bill be deleted in its entirety.

Adoption

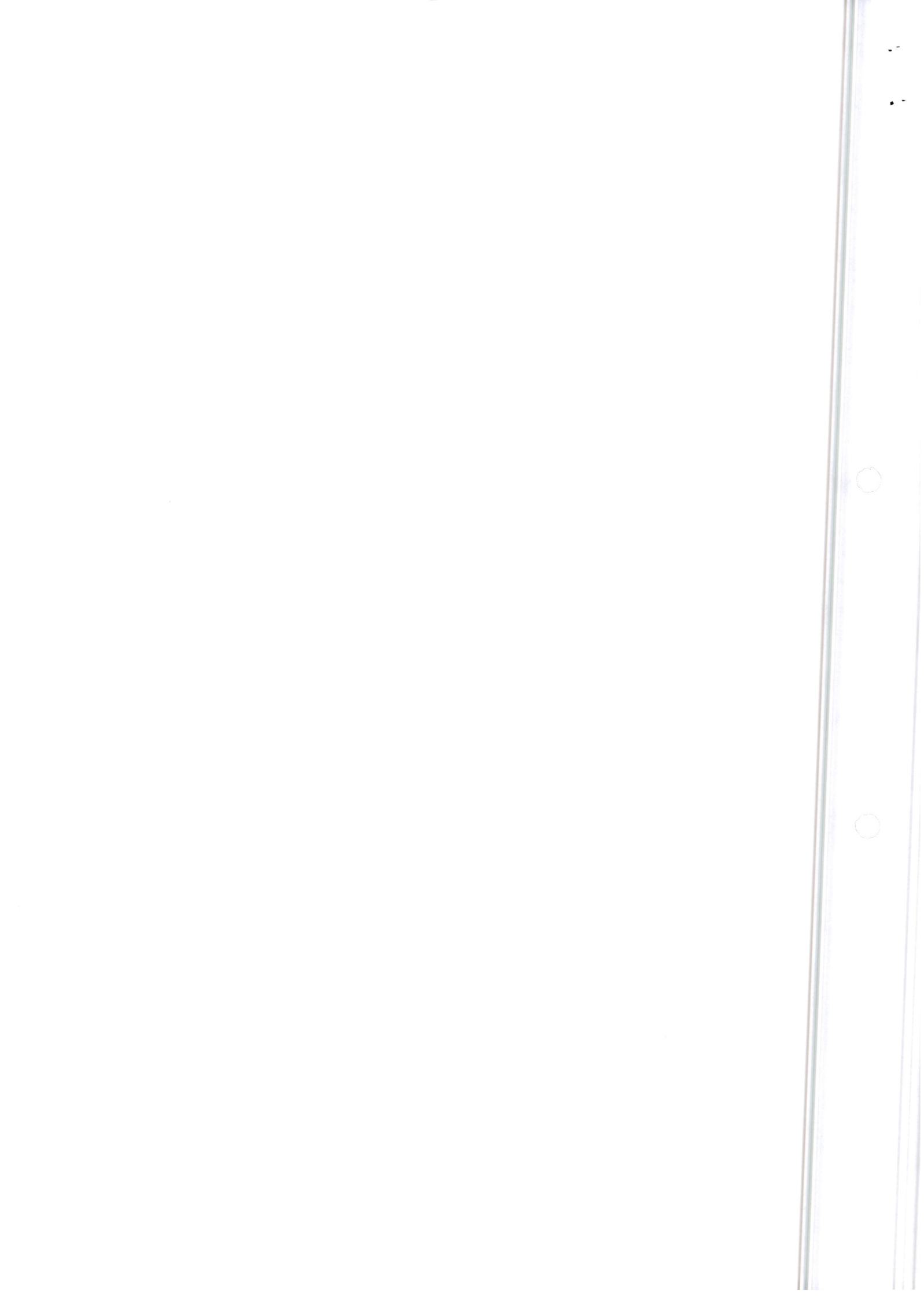
The Committee unanimously adopted the report on the Public Procurement and Asset Disposal Act (Amendment) Bill (National Assembly Bill No. 62 of 2022) having been proposed by Mohamed Soud Machele, MP and seconded by Hon. CPA. Julius Kipletting Ruto, MP.

MIN. NO. 300/2023: ANY OTHER BUSINESS / ADJOURNMENT

There being no other business, the meeting was adjourned at Thirty minutes past One O'clock. The next meeting will be held on 3rd October, 2023 at 2. 30pm in the same venue.

Signed..........
Chairperson

Date.....^{4th} October, 2023.....





THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION (2023)
COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION LIST

Date: 8/10/2023

Venue: HILTON GARDEN INN

AGENDA:

ADOPTION OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO 62 OF 2022)

No.	NAME	SIGNATURE
1.	Hon. (CPA). Kuria Kimani, MP - Chairperson	
2.	Hon. (Amb). Benjamin Kipkirui Langat, MP - Vice Chairperson	
3.	Hon. Dr. Adan Keynan Wehliye, MP	
4.	Hon. George Sunkuyia Risa, MP	
5.	Hon. (CPA) Joseph Maero Oyula, MP	
6.	Hon. Andrew Adipo Okuome, MP	
7.	Hon. David Mwalika Mboni, MP	
8.	Hon. Joseph Makilap Kipkoros, MP	
9.	Hon. Joseph Kamau Munyoro, MP	
10.	Hon. (CPA) Julius Kipletting Rutto, MP	
11.	Hon. Paul Kibichiy Biego, MP	
12.	Hon. Umul Ker Sheikh Kassim, MP	
13.	Hon. Dr. Shadrack Mwiti Ithinji, MP	
14.	Hon. Dr. John Ariko Namoit, MP	
15.	Hon. Mohamed Soud Machele, MP	



