

**PARLIAMENT OF THE REPUBLIC OF UGANDA**

**REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC  
DEVELOPMENT ON THE NATIONAL LOCAL CONTENT ACT, 2022 (ASSENT  
COPY) AS RETURNED BY H.E THE PRESIDENT**

**OFFICE OF THE CLERK TO PARLIAMENT**

**MARCH, 2023**

*[Handwritten signatures and initials]*

## **1 INTRODUCTION**

**Rt. Hon. Speaker,**

The assent copy of the National Local Content Act, 2022 was returned to Parliament by His Excellency the President and referred to the Committee on Finance, Planning and Economic Development on 1<sup>st</sup> March, 2023.

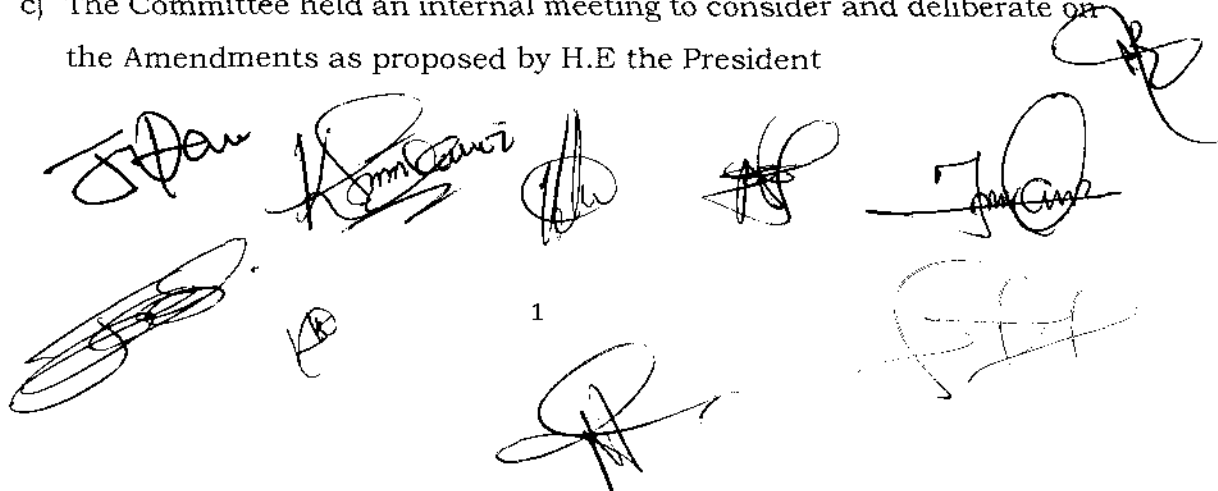
The Committee has considered the assent copy of the National Local Content Act, 2022 Act, as returned by H.E The President and hereby reports.

## **2 OBJECT OF THE NATIONAL LOCAL CONTENT ACT, 2022 (ASSENT COPY)**

The object of the Act is to impose local content obligations on a person using public money or utilizing Uganda's natural resources or carrying on an activity requiring a license; to prioritize Ugandan resident companies and citizens in public procurement; to ensure skills and technology transfer to Ugandans; to provide for the development of local content plans; to provide for the supervision, coordination, monitoring and implementation of local content in Uganda; and for related matters.

## **3 METHODOLOGY**

- a) The Committee reviewed the Letter from H.E the President of the Republic of Uganda returning the Act and received submissions from the mover of the Bill, Hon. Oshabe Patrick Nsamba.
- b) The Committee further carried out consultations with the Attorney General's Chambers and the Ministry of Finance, Planning and Economic Development on the Clauses under consideration.
- c) The Committee held an internal meeting to consider and deliberate on the Amendments as proposed by H.E the President



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#### **4 COMMITTEE'S FINDINGS, OBSERVATIONS AND RECOMMENDATIONS**

The Committee scrutinised the Clauses that formed the basis for the return of the Act by H.E the President made the following proposals on the findings were made;

##### **4.1 Clause 1(c): Application of the Local Content Act, 2022 to the mining, electricity and tourism sectors.**

**The President** notes that the Mining Act, Electricity Act, Uganda Tourism Act and PPDA Act have provisions on local content. He further states that the National Local Content Act should apply to public sector procurement matters only.

**The Mover** notes that whereas the Mining Act, 2003 did not contain local content obligations, the Mining and Minerals Act 2022 contains provisions imposing local content obligations such as Clause 3 (q), 28 (2) (k), 194 (1) (v) and 196 (3).

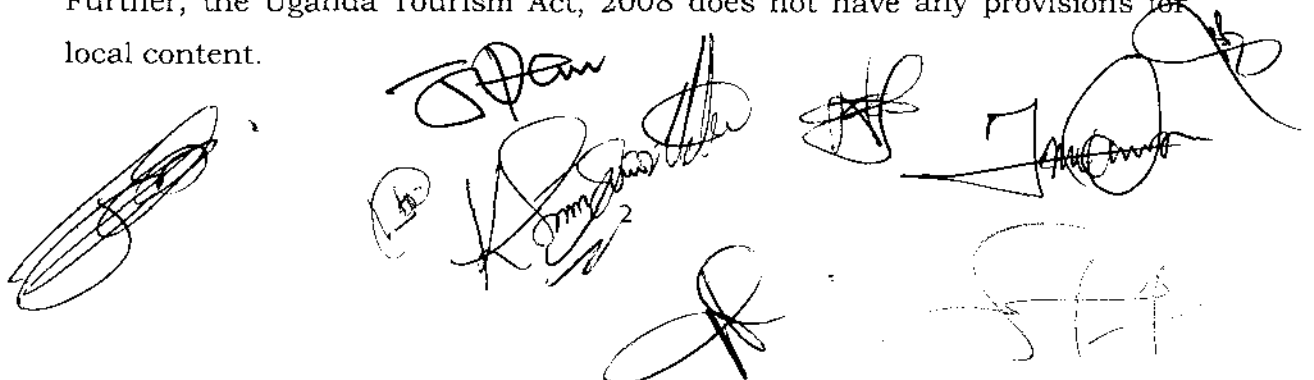
##### **The Committee observes that;**

Clauses 3 (q), 28 (2) (k), 194 (1) (v) and Clause 196(3) of the Mining and Minerals Act, 2022 provide for local content in the Mining Sector.

While the Mining and Minerals Act, 2022 consisted of all the above empowering provisions for local content, there were no regulations that gave a detailed breakdown of matters concerning local content as stipulated in the National Local Content Act, 2022.

The Electricity Act, Cap 145, the Electricity (Amendment) Act, 2022, and its Regulations, policies, codes, guidelines and Standards have no reference to local content.

Further, the Uganda Tourism Act, 2008 does not have any provisions for local content.

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Regarding the Application of the Act to Public Sector Procurement matters only, Clauses 50, 55, 59A and 59B of the PPDA Act provide for preference and preservation for Ugandan goods and services and further require all public procurement and disposal to be carried out in accordance with the rules set out in Part V of the Act and any regulations and guidelines made thereunder.

Whereas the PPDA Act does not have elaborate provisions on local content, the Act allows for the issuance of guidelines under S.55. It is under this pretext that the Guidelines on Reservation Schemes to enhance Local Content were issued. The Guidelines have elaborate provisions on local content.

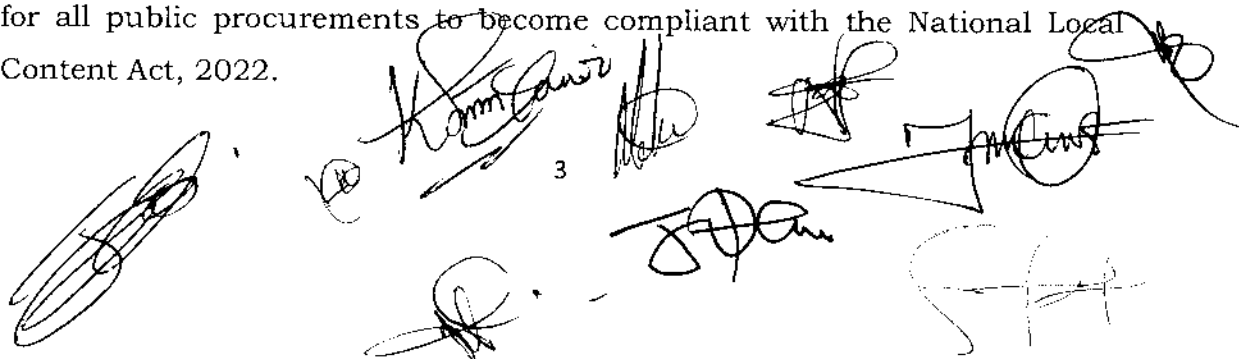
**The Committee further observed that with the proposal by H.E the President that this Act apply only to public sector procurement matters only, there would be 2(two) concurrent laws addressing local content matters in procurement.**

The Committee was of the considered view therefore that:

- a) Since there is a regulatory framework for local content in the current procurement regulatory framework, the same could be reviewed and where the Guidelines on local content are perceived to be inadequate, they can be enriched to comprehensively cover all aspects of local content; or
- b) The provisions of the law on local content in the PPDA regulatory framework be repealed and the proposed National Local Content law applies to all matters of local content including public procurement.

This is to allow for one law to cover aspects of local content instead of having two laws covering the same exact subject matter.

The Committee was cognizant of the fact that where Parliament adopts the recommendation to repeal the provisions on local content in the PPDA Act, several contracts will be affected. This can however, be cured by providing for a grace period (of either 6 months or one year whichever is practicable), for all public procurements to become compliant with the National Local Content Act, 2022.

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**The Committee recommends that: -**

- i. The Mining Act should be deleted from the application of the Local Content Act, 2022 under Clause 1 (1) (c).**
- ii. Maintain the application of the National Local Content Act, 2022 to Electricity and Tourism Acts.**
- iii. The passing of the regulations under the Mining and Minerals Act be expedited and the requirements on local content specifically provided for to cover all aspects elaborated in the National Local Content Act, 2022.**
- iv. The local content provisions in the PPDA Act be repealed and incorporated in this Act, which shall take precedence over all other laws on local content in the public procurement matters. That all contracts existing under the current framework be granted a grace period to become compliant with the National Local Content Act.**

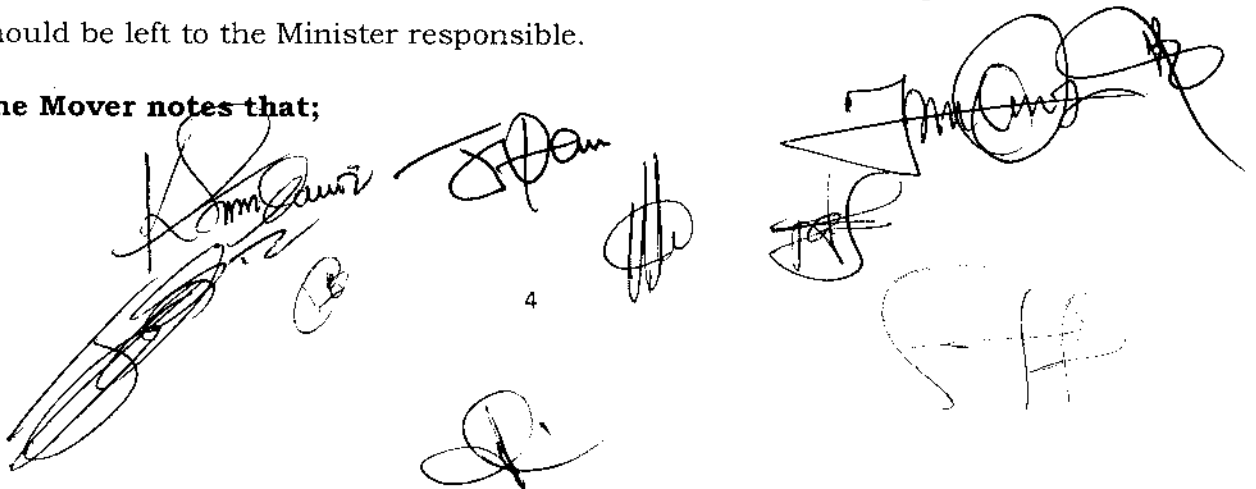
#### **4.2 Clauses 1(g) and 23 regarding internally and externally financed public borrowing of any such similar arrangement**

**Clause 1(g)** states that; *“this Act shall apply to a local content entity –*

*(g) whose activities are financed through public borrowing or any such similar arrangement.”*

**The President** notes that this provision, together with Clause 23 require Government’s internal and externally acquired resources to comply with local content obligations. According to the President, this is not practical since each Development Partner has their own policies and guidelines negotiated before the start of any project. The President therefore proposes that the negotiations for local content, to the extent that is practicable, should be left to the Minister responsible.

**The Mover notes that;**



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This Clause is intended to draw as much value from transactions arising internally and externally sourced resources since they are now numerous and are contracted using the procurement laws of the relevant body.

The minimum obligations imposed under the Clause are merely a guide to the Minister who will be negotiating the agreements to ensure that these matters are included in the Agreement.

He referred to Clause 4A of the PPDA Act which requires that where a bilateral loan or negotiated grant contains a condition that the provider shall originate from the country of the donor, procurement of the provider shall be in accordance with this Act and where there is conflict between the Act and the Agreement then the Agreement would take precedence.

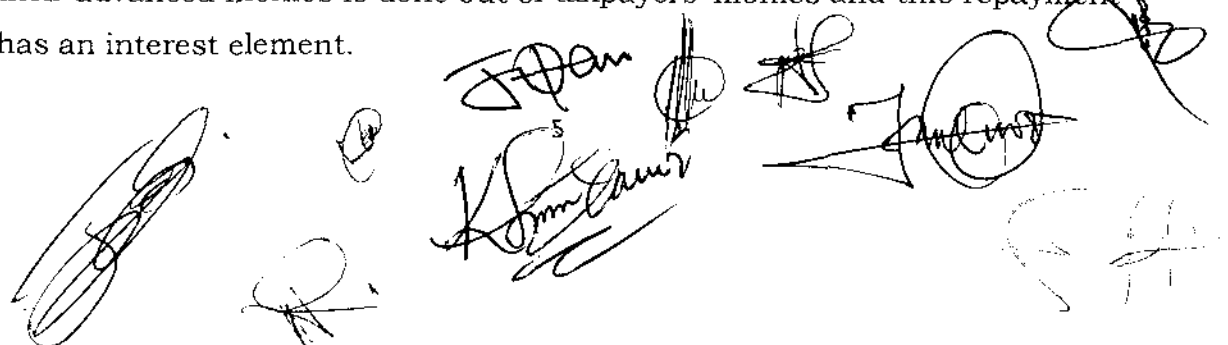
He concludes by stating that Clause (1) (g) and 23 should be left in the Act since it operationalises Clause 4A (1) of the PPDA Act which allows for the procurement laws of Uganda to take precedence and they are only set aside when they are in conflict with the Agreement.

**The Committee observed that;**

The PPDA Act, under S.4A (2) provides for the proposal made by the President for the exemption of Development Partners from compliance with local content requirements especially where there is a conflict between the Agreement of the Development Partner and the law on local content for procurement matters.

The Committee further observes that there is need to define who a donor is in the context of S.4A of the PPDA Act for purposes of determining which funds should be exempted from the application of the local content law in line with the President's proposal.

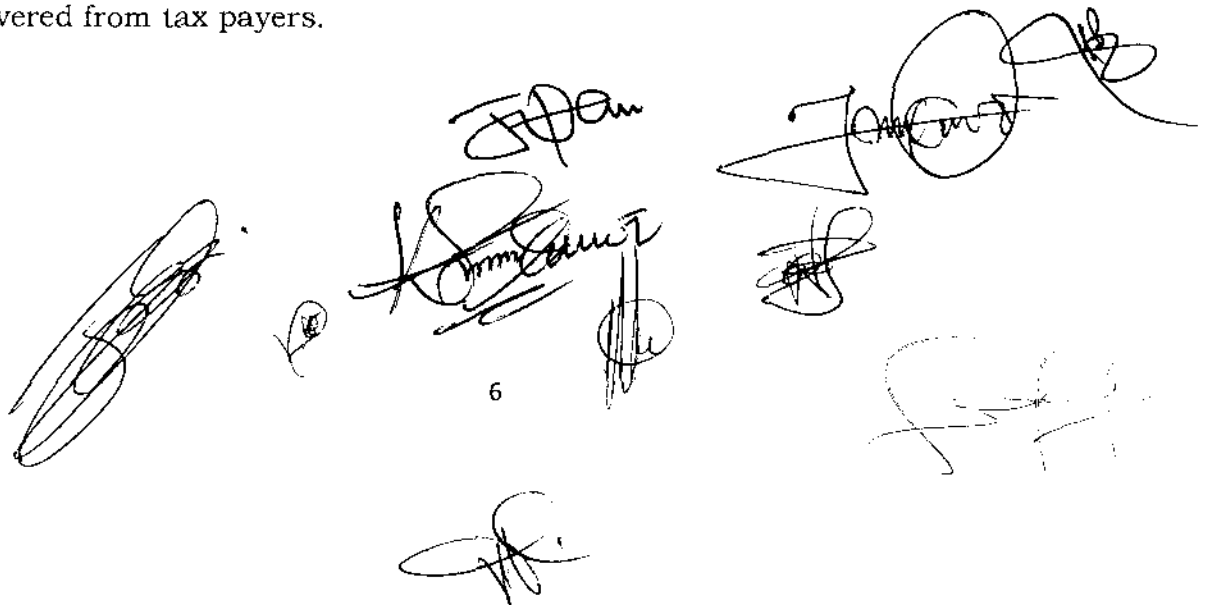
The Committee was also emphatic on the funds advanced by Development Partners which are recovered from public money (which includes taxpayers' money) in terms of principal, interest, and commitments. Such projects ought to comply with the national local content laws since the repayment of their advanced monies is done out of taxpayers' monies and this repayment has an interest element.

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The Committee was mindful of the fact that the National Local Content Act is an affirmative action law whose primary objectives include development of the human, capital and economic aspects of the country. Therefore, there was need to critically examine any provision that appeared as an impediment to the attainment of these objectives. In that regard, the Committee proposed a re-draft of Clause 4A of the PPDA Act to ensure that the primary objective of the local content law is achieved especially with regard to monies paid to Development Partners that are recovered from taxpayers.

The Committee observes that Clause 4A (2) has the effect of all allowing a private agreement to fetter the application of an Act of Parliament. This was found to be unconstitutional since an Act of Parliament cannot be amended or reversed by a private arrangement since provisions ordained by Parliament cannot be amended by a private contract. This was the finding of court in the cases of High Court of Uganda in **Civil Appeal No 14 of 2011 Heritage Oil and Gas Limited versus Uganda Revenue Authority and K.M. Enterprises and Others v Uganda Revenue Authority HCCS No. 599 of 2001** which all found that a private arrangement cannot waive a legal obligation imposed under the law. The proposal by the President to grant precedence over a legal provision by a private agreement will be challenged as were the actions in **Civil Appeal No 14 of 2011 Heritage Oil and Gas Limited versus Uganda Revenue Authority**.

In that regard, the Committee proposed a re-draft of Clause 4A of the PPDA Act to ensure that the primary objective of the local content law is achieved especially with regard to monies paid to Development Partners that are recovered from tax payers.

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### **Recommendations**

***The Committee recommends that Clause 4A of the PPDA Act is reviewed to clearly define who a donor is and apply accordingly to the Local Content provisions.***

#### **4.3 Clause 2: Definition of a Contracting Authority**

The Committee made the following Findings, Observations, and Recommendations on Clause 2 regarding the definition of a Contracting Authority.

**The President** proposes that the definition of Contracting Authority should be extended to cover Authorities, Local government, local authorities, statutory bodies and agencies.

**The Committee** agrees with the President's proposal. The Committee notes that the proposal may be modified to exclude local authorities since they are covered under local government.

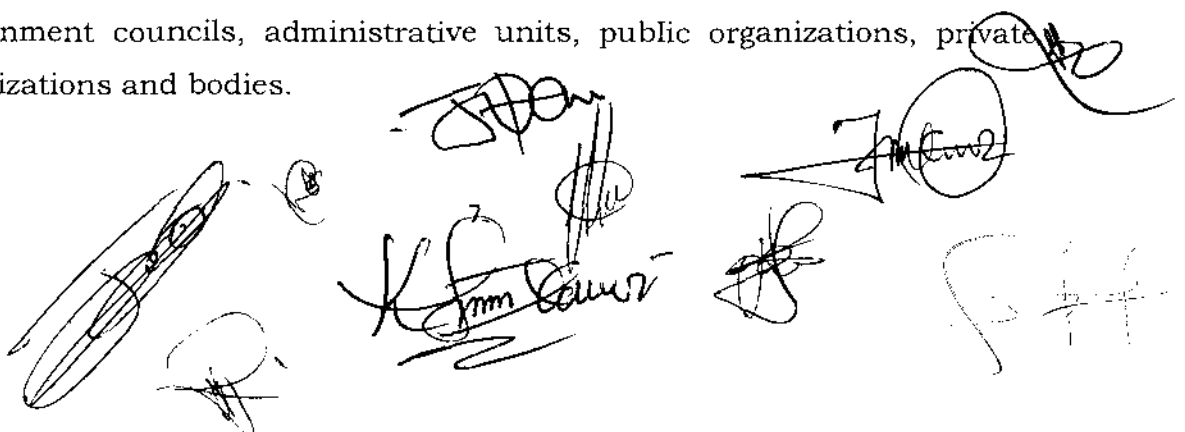
### **Recommendation**

***The Committee recommends that Clause 2 of the Act is amended in the definition of Contracting Authority to include Authorities, Local Government, Statutory bodies and Agencies.***

#### **4.4 Clause 3; Department under the Ministry of Finance, Planning and Economic Development to implement provisions of the Act**

**The President** states that the functions of audit and compliance of local content should be left to the Auditor General, Internal Auditor General or PPDA. The President further states that the monitoring function should be undertaken together with other stakeholders.

**The mover** notes that the Auditor General is empowered under the National Audit Act to provide for the auditing of accounts of central Government, local Government councils, administrative units, public organizations, private organizations and bodies.

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He further notes that the audit powers granted to the Department are restricted to only auditing compliance with the Act while those of the Auditor General are restricted to auditing accounts.

He concludes by noting that there is therefore no conflict between the exercise of the functions of the Department and the Auditor General since these entities will exercise jurisdiction over different matters. He therefore prays that Clause 3 (2) (k) be retained in the Act.

**The Committee observes that;**

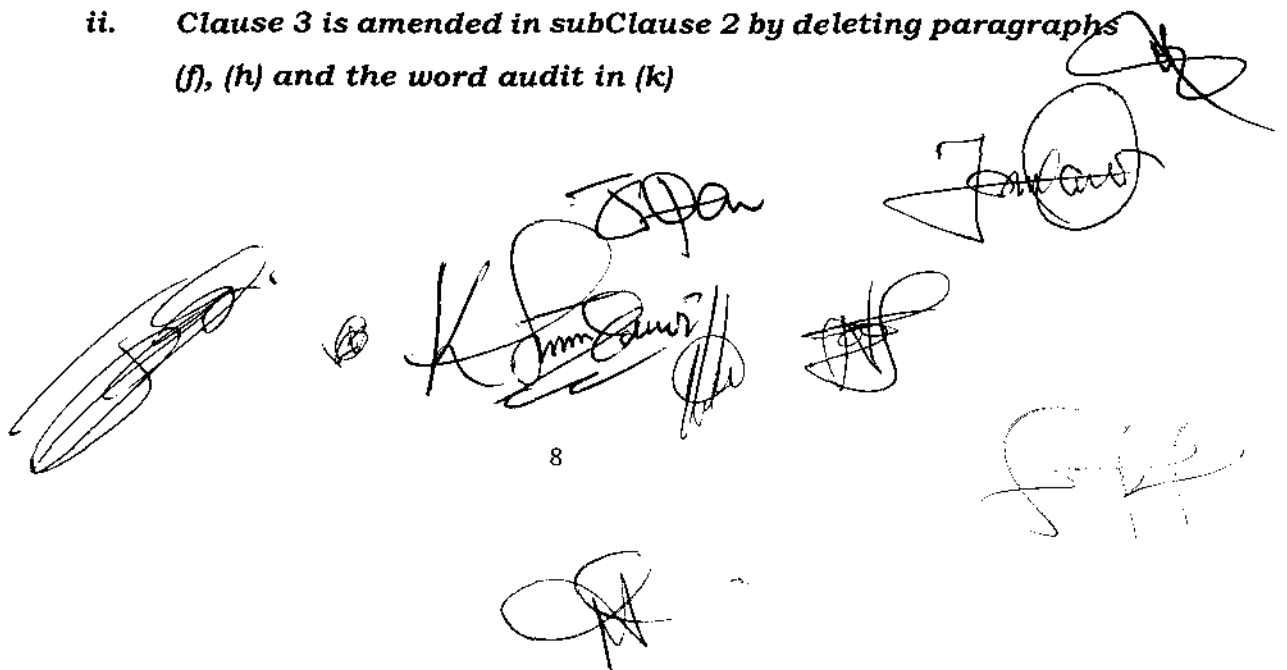
The Department should do the monitoring and supervision and the auditing of the local content be left to the office of the Auditor General and internal Auditor General.

The Audit Act, 2008 under S. 13 (1) (b) clearly states that the Auditor General shall conduct financial, value for money audits and other audits such as gender and environment audits in respect of any project or activity involving public funds.

The above provision is permissive and allows the Auditor General to carry out specially themed audits. The local content audit would qualify under such audits. The Committee therefore agrees with H.E the President that the audit and compliance aspects of local content remains with the office of the Auditor General.

**The Committee recommends that;**

- i. ***Audit and compliance issues be left with the office Auditor General and that of the internal auditor general.***
- ii. ***Clause 3 is amended in subClause 2 by deleting paragraphs (f), (h) and the word audit in (k)***

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#### 4.5 Clause 4: Preferential treatment to Ugandan goods, works and services

**The President** states that Clause 4 gives preferential treatment to Ugandan goods, works and services contrary to the East African Community Protocol on free movement of goods and services and the East African Monetary Union.

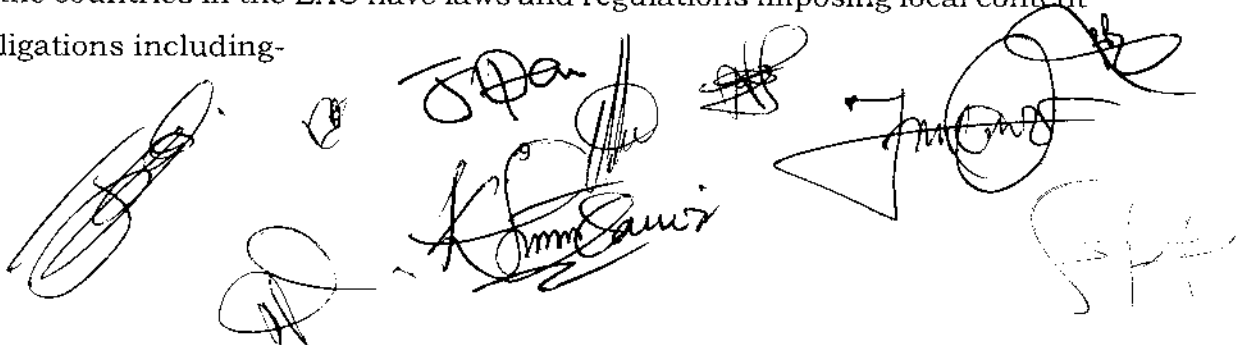
**The Mover** notes that the Act granted priority to Goods manufactured and services provided from the EAC under Clause 31 meaning that the Act conforms to the EAC protocols.

He adds that the Act under Clause 31 grants priority in a tiered manner to goods and services, noting that the first priority is granted to Ugandan goods and services and where those goods are not readily available in Uganda, then priority is extended to goods and services procured from EAC countries.

The Mover mentions that local content obligations are also imposed under other laws, including the petroleum Acts, Mining and Minerals Act and PPDA Act and they were all passed after the coming into force of the EAC Treaty.

The mover further noted that almost all the East African partner states have local content laws such as Kenya, Tanzania, Rwanda and South-Sudan. These local content laws have specifically targeted particular sectors such as gas, oil and other mineral resources, telecommunication, Public Procurement and Asset Disposal (in public institutions), participation in the private security sector, National Construction Authority, and investment in the insurance sector. None of the laws in these jurisdictions give similar/priority treatment to goods from Uganda. The legislations on further examination provide frameworks to increase the local value capture along the value chains in the sectors highlighted above.

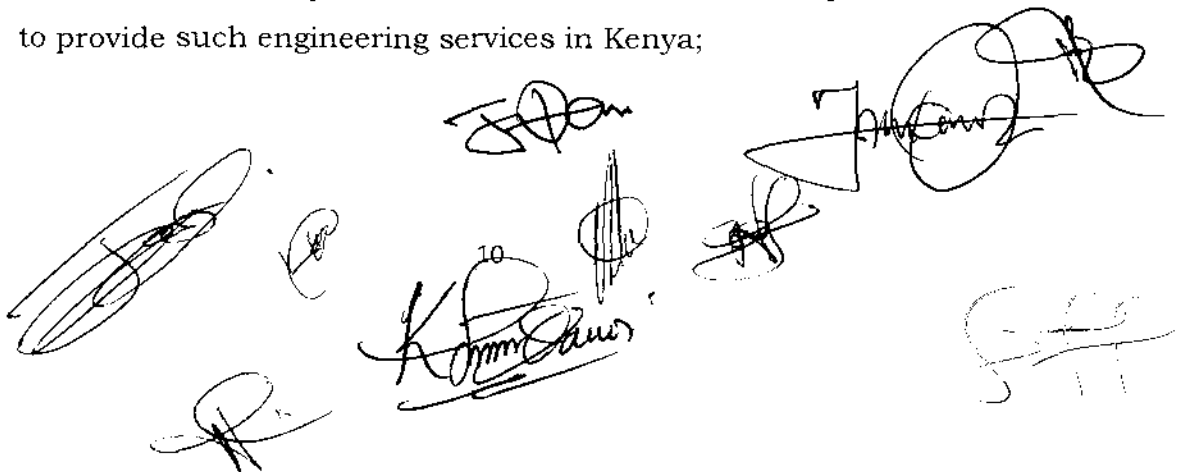
The Committee is aware that currently, certain local content obligations are contained in a number of laws, including the Minerals law and the oil and gas laws of Uganda, Kenya, Tanzania and South Sudan. Furthermore, most of the countries in the EAC have laws and regulations imposing local content obligations including-

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- (a) In Kenya, there are more than three Local Content Acts that provide framework to increase the local value capture along the value chain in the exploration of gas, oil and other mineral resources, telecommunication, Public Procurement and Asset Disposal (in public institutions), participation in the private security sector, National Construction Authority, and investment in the insurance sector. The National Construction Authority Act (2011) for example, imposes local content restrictions on “foreign contractors,” defined as companies incorporated outside Kenya or with more than 50 percent ownership by non-Kenyan citizens. The act requires foreign contractors to enter into subcontracts or joint ventures assuring that at least 30 percent of the contract work is done by local firms. Regulations implementing these requirements are in process.

The other Act is the Kenya Insurance Act (2010) which restricts foreign capital investment to two thirds with no single person controlling more than 25 percent of an insurers’ capital.

Kenya also introduced new Regulations which require holders of existing mineral rights to submit to the Cabinet Secretary for Mining (CS) procurement plans which must (i) set target levels of local procurement based on a procurement list to be developed and communicated by the Director of Mines and (ii) indicate specific support to be provided by mineral rights holders to local providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support. The Regulations also require engineering services to be rendered by Kenyan engineering companies registered with the relevant regulatory bodies or by foreign engineering consultants working in collaboration with firms or companies licenced to provide such engineering services in Kenya;

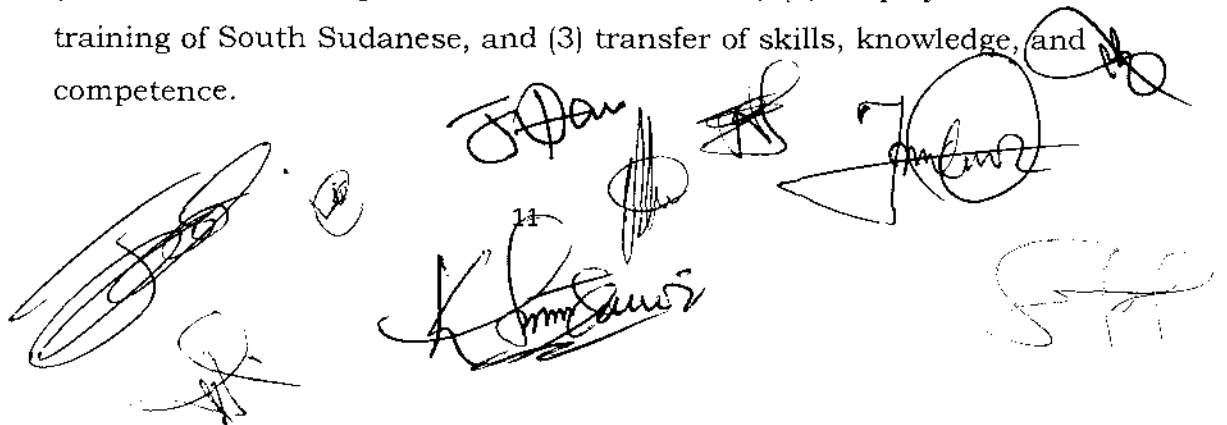
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- (b) In Tanzania, local content provisions are provided under the Mining Act, wherein the Minister responsible for Minerals in Tanzania recently published Government Notice No. 749 of 2022 introducing various amendments to the Local Content Regulations of 2018 which grant priority to Tanzanian entities to the exclusion of the other entities from EAC.

Under that Act, foreign companies seeking to provide goods or services must incorporate a company in Tanzania and enter into a joint venture with a local company. Prior to the amendments, foreign companies could provide the goods or services in association with a local company. The new regulations have thus specified the form of association acceptable under the law, in which case the provider of goods or services must be incorporated as a local entity which must in turn be in a joint venture with a wholly-owned local company. Tanzania has local content obligations under the Mining, Oil and Gas Local Content, the Works, Transportation and Communication, the Agriculture, Livestock and Fisheries and under the Industries, Trade and Tourism sectors.

- (c) The Government of Rwanda has recently drafted a “Made in Rwanda” (MiR) policy that seeks to improve the overall trade balance by improving perceptions of Rwandan products within the country. Part of this proposal includes the establishment of a Local Content Unit (LCU) that connects new investors with potential local suppliers.

- (d) In 2012, South Sudan National Legislative Assembly enacted the petroleum bill, which was signed into law by the President in 2012. The Act paved way for the formulation of the National Content Policy in 2018. The Policy includes clauses that require (1) procurement of goods and services produced in South Sudan, (2) employment and training of South Sudanese, and (3) transfer of skills, knowledge, and competence.

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All the above local content laws do not grant priority to Uganda. Having such laws is essential for national development and since all the EAC countries have them, it is prudent that Uganda has them as well to ensure that when these laws are all harmonised, Uganda does not lose out.

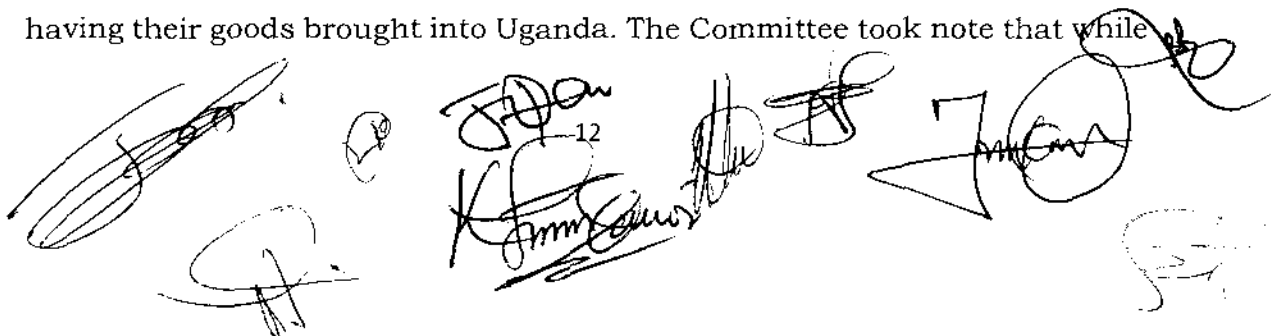
**The Committee observes that;**

While the cited jurisdictions have aspects of local content laws for specific sectors, and while Uganda is desirous of taking the lead in complying with the Treaty, it is necessary to appreciate the likely impact of considering the East African goods without priority being given to Ugandan producers/manufacturers.

The Committee further observed that whereas the Partner States have no specific legislation called the National Local Content Act, they have sector specific laws addressing issues of local content. These covered the Oil and gas sector, mining, telecommunication, insurance and procurement among others. The countries further had policies that strongly required promotion of local content requirements.

Secondly, when the local content laws are being harmonized, only existing laws can be harmonized. If Uganda has no existing laws on local content at the time of harmonization, it will have to recognise the local content laws for the other jurisdictions but it cannot at that point introduce local content for itself in the harmonized laws. Therefore, Uganda should also have a law on local content for purposes of uniformity and ease of harmonization with other East African countries.

Thirdly, the law is not in any way prohibiting free movement of goods. At no point does it exclude movement of goods from the other EAC Partner states. It only seeks to give preference to Ugandan goods when it comes to public procurements. Giving Ugandan goods priority for public procurement is not in any way a barrier to trade for goods from other East African countries entering the Ugandan market. The law has not stopped any jurisdiction from having their goods brought into Uganda. The Committee took note that while

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Non-tariff barriers include import quotas, subsidies, customs delays, technical barriers, or other systems preventing or impeding trade, none of these is being introduced by this law.

Lastly, Clause 31 of the Act gives East African goods and services priority over any other goods and services.

### ***Recommendation***

***The Committee recommends that Clause 4 regarding the preferential treatment to Ugandan goods and services be maintained in the Act.***

#### **4.6 Clause 5 (2) regarding the rejection of Ugandan goods and services during procurement**

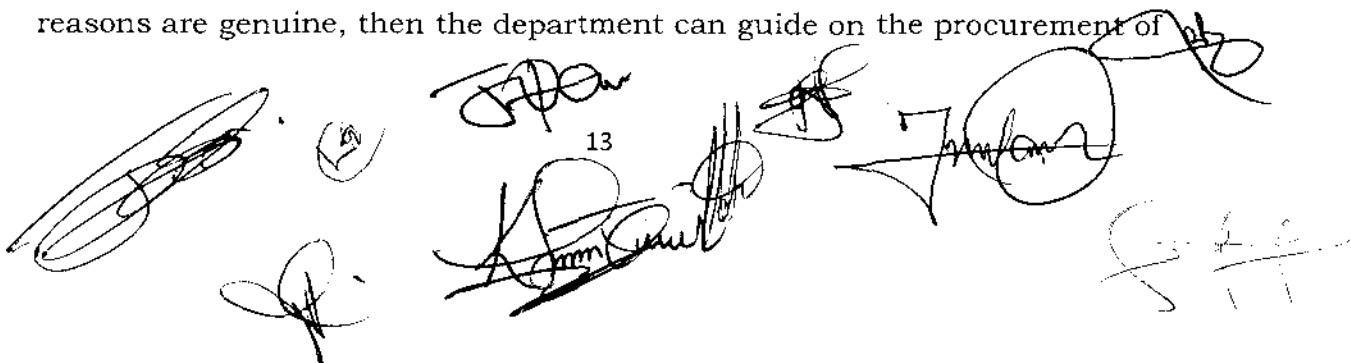
**The President** states that the requirement for written permission of the Department to acquire foreign goods where the Ugandan goods do not meet the required quality, quantity or timeline for delivery will lead to inefficiency and affect service delivery whereas the decentralized procurement reforms were created to deal with such deficiencies.

The President further proposes that the Accounting Officer should be given the discretion to procure from a foreign source in case locally manufactured goods or services do not meet the required standards.

**The Mover** notes that;

The rationale for having a single entity to authorise the procurement of goods and services where the goods and services manufactured in Uganda are below the quality, quantity or timeline for delivery or completion is to prevent abuse of those processes by accounting officers who might reject the goods manufactured in Uganda in preference for foreign goods.

He concludes by proposing that the Department is better placed to examine the reasons for rejecting the goods or services and where they find that these reasons are genuine, then the department can guide on the procurement of

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those goods, giving additional orders for sub-contracting as the department determines necessary. This process will ensure checks and balances in the decision making processes, encourage accountability and transparency in decision making.

**The Committee observes that;**

The local content entity having to first obtain approval from the Department will cause a delay in procurement and cause inefficiencies as pointed out by H.E the President. The Committee further agrees with the President that the Accounting Officer should have the discretion, in this instance, to acquire goods from a foreign entity.

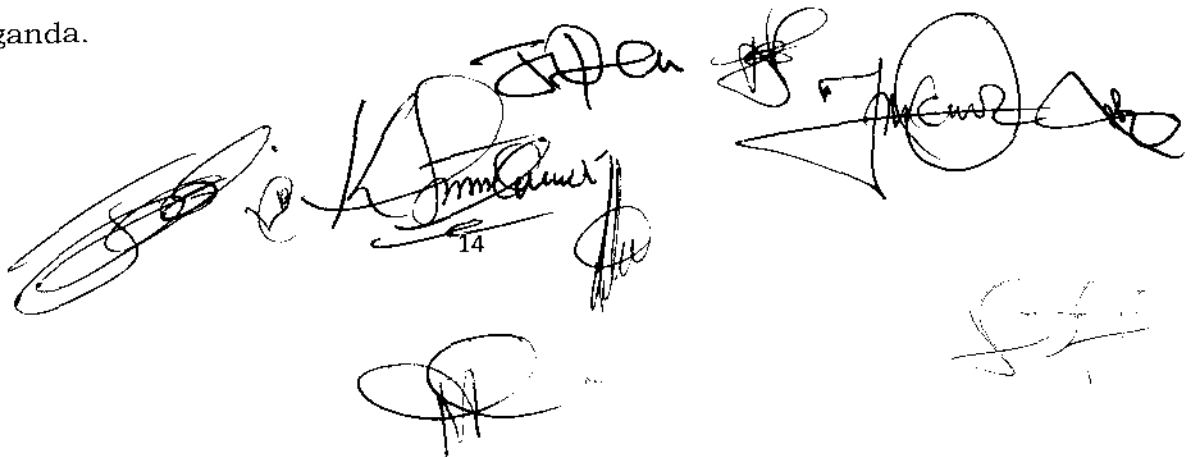
However, the Accounting Officer will be required to observe the provisions of this Act, particularly Clause 5 (3) and (4) as amended, while making such acquisition and, where they fail to comply then they shall be personally liable.

**Recommendations**

***The Committee recommends that S. 5 (2) is amended to allow the Accounting Officer of a Local Content Entity to acquire goods as provided within the proposed Clause and where they fail to comply with the provisions then they shall be personally liable.***

**4.7 Clause 6 regarding the reservation of goods or services to be exclusively procured from Uganda**

**The President** states that Clause 6 violates Article 13 of the East African Customs Union Protocol which requires removal of all non-tariff barriers. The President proposed that Clause 6 is amended to read East Africa and not Uganda.

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**The Mover** notes that;

The Act granted priority to Goods manufactured and services provided from the EAC under Clause 31 meaning that the Act conforms to the EAC protocols.

The mischief intended to be cured by Clause 6 is to build the capacity of Ugandan entities to execute public works contracts in order to stop the over reliance on foreign companies to execute public works contracts.

Therefore, making the provision discretionary as proposed by the President, rather than retaining it as a mandatory provision as prescribed in the Act, will make the achievement of the objective of this provision impossible and will increase the reliance on foreign entities to execute contracts in Uganda. The provision should be maintained as a mandatory requirement so that the Ugandan entities can build capacity to execute public works contracts.

**The Committee observes that;**

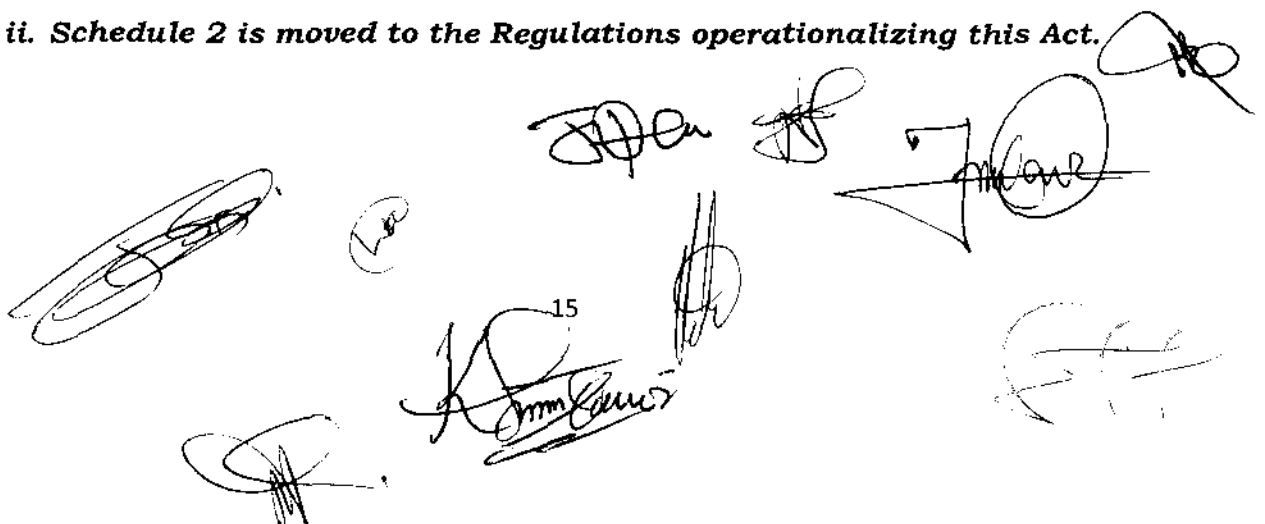
The word “Uganda” should be maintained in the Act as suggested by the mover of the Act. The Committee agreed that Clause 31 grants priority in a tiered manner to EAC goods and services over other goods and services.

Schedule 2 can be moved to the regulations especially because it is easier to amend the regulations where there is need to make changes depending on the existing circumstances in the economy.

The Committee took note that while Non-tariff barriers include import quotas, subsidies, customs delays, technical barriers, or other systems preventing or impeding trade, none of these is being introduced by this law.

**The Committee recommends;**

- i. That the word “Uganda” is maintained in the Act; and**
- ii. Schedule 2 is moved to the Regulations operationalizing this Act.**



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#### **4.8 Clause 7(3) regarding preference of goods or services readily available on Ugandan market**

The Committee made the following findings, observations, and recommendations on Clause 7(3) regarding preference of goods or services readily available on Ugandan market.

**The President** states that the concept in Clause 7(3) is not clear and seems to duplicate Clause 6 regarding reservation of Ugandan goods or services exclusively procured from Uganda.

He proposes that it should be deleted since it is counterproductive to import substitution and against the intent and objective of local content that ideally targets locally produced goods, services and utilization of local personnel.

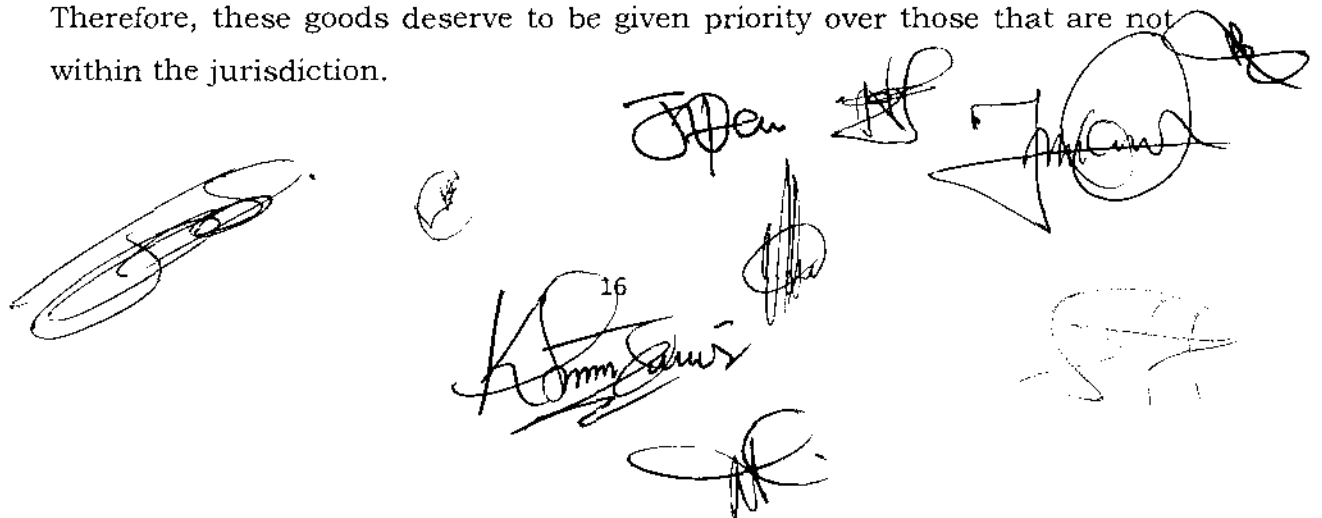
**The Mover** notes that;

The Act grants priority to goods manufactured and services provided from the EAC under Clause 31 meaning that the Act conforms to the EAC protocols.

The Act further grants priority in a tiered manner to goods and services, the first priority is granted to Ugandan goods and services and where those goods are not readily available in Uganda, then to goods and services procured from EAC countries.

Clause 7 is cognizant of the fact that there are times when the goods or services are not manufactured or cannot be obtained from a Ugandan entity or individual.

In this instance, the law is proposing that the goods, though foreign, should be obtained from the goods within the jurisdiction already. The rationale is that these goods/services are readily available and they have contributed to the economy through payment of taxes and employment of Ugandans. Therefore, these goods deserve to be given priority over those that are not within the jurisdiction.



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**The Committee observes that;**

The mover makes a valid argument that there are goods and services that are not Ugandan in the context of the local content law. These are foreign goods or services readily available and have contributed to the economy through taxes and employment opportunities for Ugandans and therefore should be given priority.

However, allowing Clause 7 gives an easy way for Ugandans to remain comfortable with their import culture instead of pushing for manufacturing/production and value addition. This, as rightly pointed out by the President, is counterproductive to the import substitution culture that the country is trying to push for.

Besides, the provisions under S. 5 and 6 address this matter substantially since they allow for the procurement of foreign goods as long as those provisions are satisfied especially with the creation of joint ventures with Ugandan persons.

**Recommendations**

***The Committee therefore recommends that Clause 7 (3) is deleted as proposed by the President.***

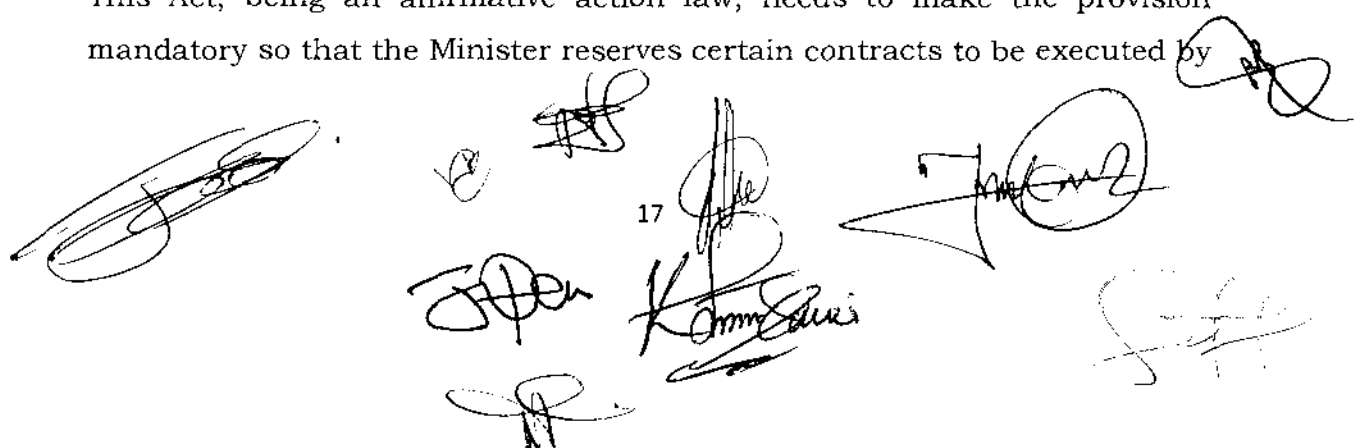
**4.9 Clause 9 regarding reservation of contracts for public works**

The Committee made the following findings, observations, and recommendations on Clause 9 regarding reservation of contracts for public works.

**The President proposes** that the word “shall” is replaced with the word “may”.

**The mover notes that;**

This Act, being an affirmative action law, needs to make the provision mandatory so that the Minister reserves certain contracts to be executed by

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Ugandan companies. This is intended to help the Ugandan entities to build capacity to execute public works contracts.

**The Committee observes that;**

The provision is considering gazetting of the notice for reserved works for Ugandans. While the “may” makes it discretionary for the Minister to consult with the PPDA, the Minister still has to gazette the reserved works for Ugandans as required under Clause 6.

Therefore, substituting the “shall” for “may” has little or no impact on the provision.

**Recommendation**

***The Committee agrees with the President’s proposal that the word “shall” is changed to “may”.***

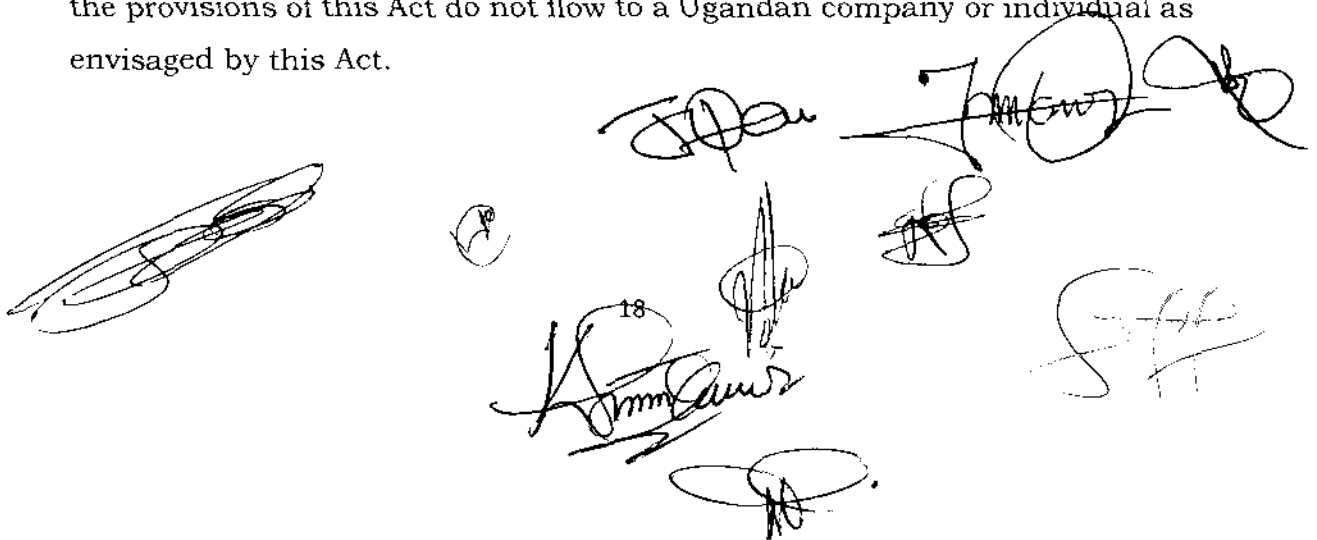
**4.10 Clause 10 regarding the prohibition of subcontracting**

**The President** states that the provision is ambiguous and should be revisited. The President further proposes that the provision is amended to read “Prohibition of Subcontracting by a Subcontractor”.

**The Mover notes that;**

The first leg of Clause 10 is intended to prevent contracts that are awarded under the Act to be subcontracted. The second leg is intended to prevent sub-contracting of sub contracted works.

This is intended to prevent benefit diversion, a problem that is faced by most, if not all, local content systems wherein the economic benefits received by a local content entity or any other entity as a result of the implementation of the provisions of this Act do not flow to a Ugandan company or individual as envisaged by this Act.

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**The Committee observes that;**

The mover rightly points out that there are 2 legs to this provision. For all instances, the contract is obtained because one is Ugandan. The persons who obtain works by virtue of the national local content law should perform the works whether as main contractor or subcontractor.

As rightly pointed out by the mover, this provision was intended to prevent benefit diversion where the economic benefits received by a local content entity or any other entity as a result of the implementation of the provisions of this Act do not flow to a Ugandan company or individual. In addition to this, the provision was meant to discourage Ugandans from becoming middle men where they obtain contracts and not perform the works but rather pass them on to another entity. The contractors or sub-contractors are expected to carry out the works to build capacity and create employment opportunities.

***Recommendations***

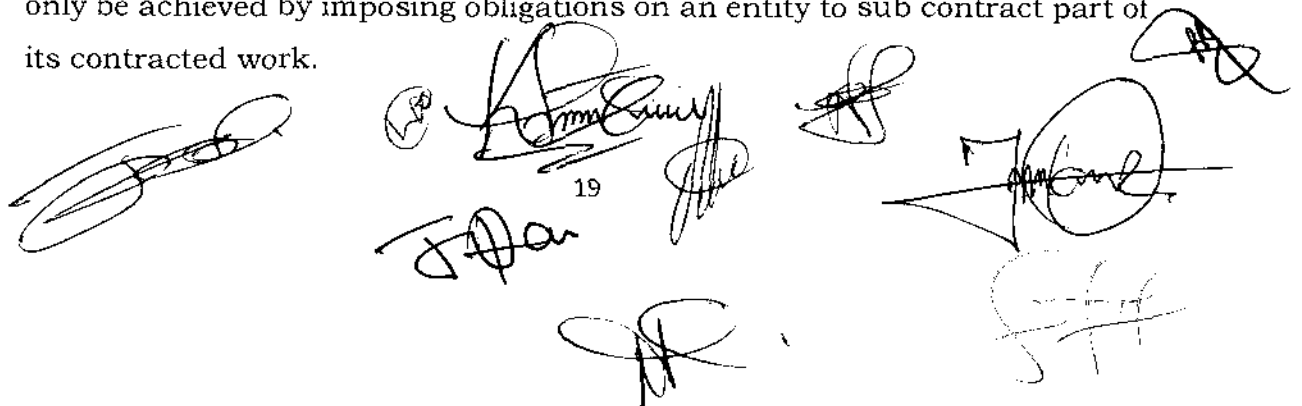
***The Committee recommends that S. 10 is maintained as is in the Act.***

**4.11 Clause 11 (1): regarding the requirement to subcontract public works contracts or activities**

**The President** states that the 40% proposed for the works to be subcontracted to Ugandans is not feasible. He further recommends that the percentage is transferred to the regulations and another provision is created for exceptions.

**The Mover notes that;**

Clause 11 is intended to ensure that Ugandan entities that have not been able to compete for large contracts are allowed to execute contracts of small sizes that they can easily handle in order to build their capacity. This can only be achieved by imposing obligations on an entity to sub contract part of its contracted work.



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This will help to build the capacity of Ugandan entities to undertake public works by sub-contracting **40%** of the contracted works to the Ugandan company. This matter is so important and should not be left to regulations.

The **40%** is therefore feasible since it is in the discretion of the entity to which the contract was granted to determine which works it will sub contract. For instance, it can sub contract actual works, the supply of materials, equipment or services to a Uganda company.

**The Committee observes that;**

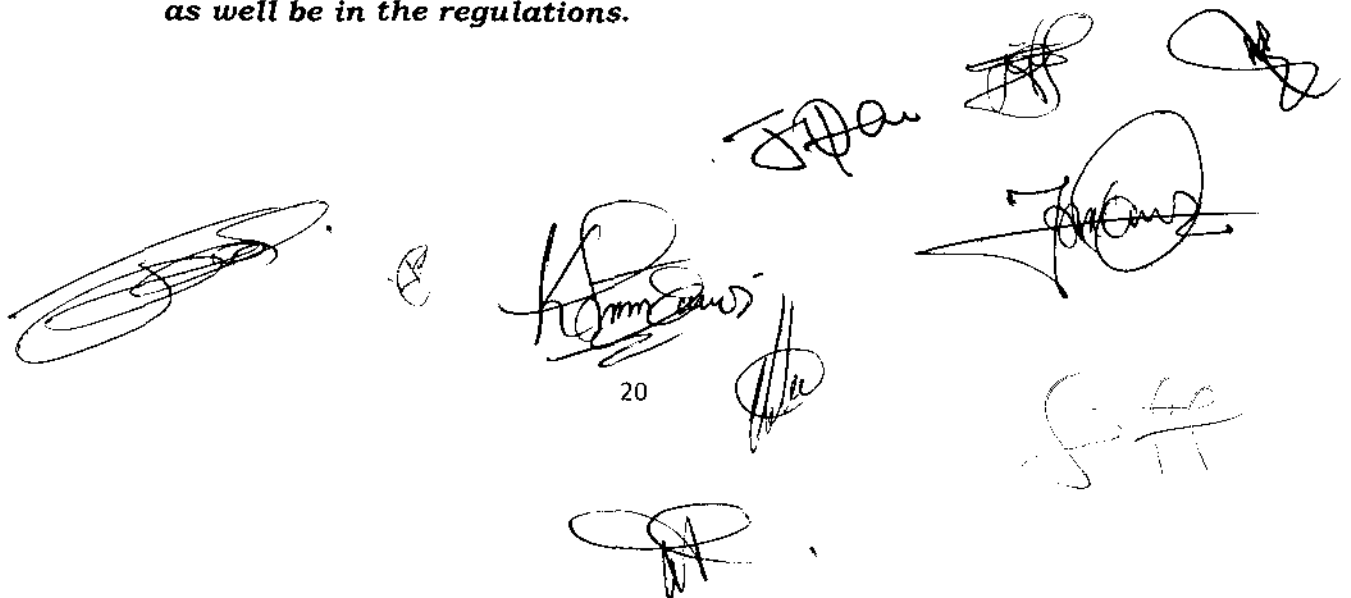
It is prudent to have Ugandans subcontracted a percentage of the works to be done especially for technology transfer, employment and capacity building.

The Committee however agrees that the percentages should not be locked at 40% since this may not be feasible based on the value and extent as well as complexity of works to be done. Having the percentages and categorizations in the regulations will allow for quicker amendments whenever the need arises.

**Recommendations**

**The Committee recommends that;**

- i. ***The percentages for sub contracted works is transferred to the regulations.***
- ii. ***Similarly, the works are categorized in order to determine the percentages to be sub contracted. The categorization can be done along the lines of value of contract, complexity, capacity available on the Ugandan market among others and these should as well be in the regulations.***

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#### **4.12 Clause 12: regarding the liability for subcontracted works**

Clause 12 provides that an individual or an entity who subcontracts part of its contracted works under Clause 11 shall, at all time, be responsible for the performance of the contract and shall, without recourse to the Subcontractor, provide the relevant security and funds for the performance of the contract.

**The President** states that Clause 12 and Clause 24(2) and (3) on compliance contradict each other.

He proposes that the obligations under this Act accruing to a local content entity, contractor, supplier or subcontractor, should in equal measure accrue to a contractor, subcontractor, agent or successor in title of such person, body or entity. Parties who jointly undertake to execute any activity subject to this Act should be jointly and severally required to comply with the obligations arising under this Act.

#### **The Mover notes that;**

There is no conflict between Clauses 12 and 24 (2) and (3) of the Act. Clause 12 provides that an individual or entity who subcontracts part of its contracted works under Clause 11 shall at all times be responsible for the performance of the contract, while;

On the other hand, Clause 24 (2) provides that the obligations under this Act accruing to a local content entity, contractor, supplier or subcontractor, shall in equal measure accrue to a contractor, subcontractor, agent or successor in title of such person, body or entity.

The 2 Clauses are therefore complementary not contradictory.

#### **The Committee observes that;**

Clauses 12 and 24 (which provides for compliance by subcontractors) do not contradict each other in any way. If anything, the two Clauses serve to augment each other. Clause 12 simply emphasizes that the contracting party remains responsible for the performance of the contract even if they sub contract. Clause 24 (2) and (3) serve to remind all the parties involved in the

provision of goods, works or services, whether they are the contractor, supplier, subcontractors, agent or successor in title, that they are still bound by the provisions/requirements of this Act and are expected to be in compliance with the Act.

### **Recommendation**

***The Committee recommends that Clause 12 regarding the liability for subcontracted works be maintained as in the Act. The Committee further recommends that if Parliament finds it feasible, the 2 Clauses can be merged.***

### **4.13 Clause 13 (f) and 25 (a) regarding the eligibility of Ugandan entity to be subcontracted**

**S.13** provides for the eligibility criteria for a Ugandan entity to be subcontracted. Sub\_Clause (f) states that a Ugandan entity or individual qualifies if it is not blacklisted by the Ministry or PPDA.

**The President** states that this Clause is likely to cause confusion in the procurement process if both the PPDA and Department have a right to blacklist. He proposes that the sanction/ blacklisting is left to the PPDA.

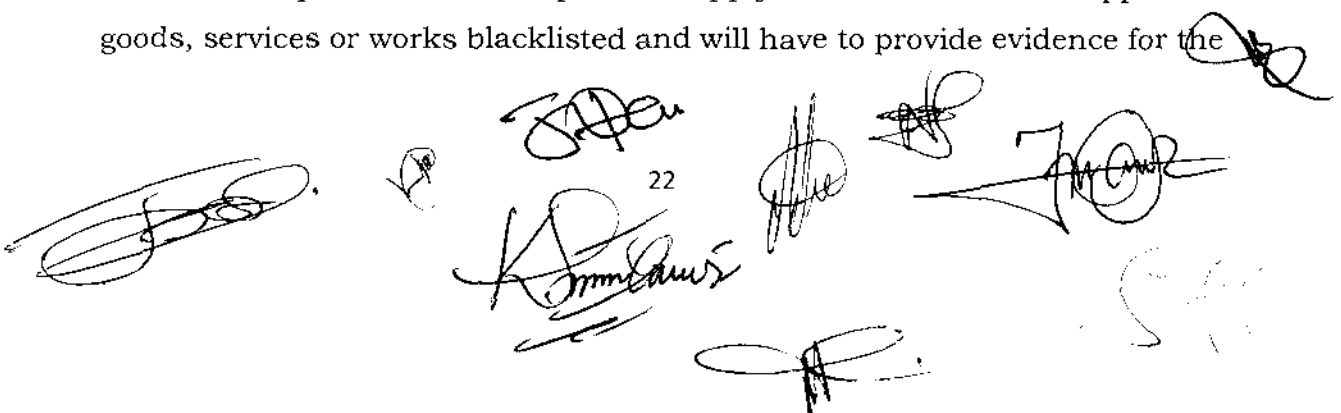
### **The Mover notes that;**

The provision under Clause 13 (f) and 25 (a) should be redrafted for local content entities and the Department to recommend the blacklisting of entities that do not comply with Local content obligations to the PPDA.

### **The Committee observes that;**

The President's proposal that only PPDA should have the right to blacklist is acceptable.

The Committee further notes that there will be a consequential amendment to S.25 (2)(a) which refers to blacklisting by the Department or local entity. All the other parties will be required to apply to PPDA to have a supplier of goods, services or works blacklisted and will have to provide evidence for the



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allegations being made against the entity they are applying to have blacklisted.

**Recommendation**

***The Committee recommends that blacklisting of firms should be left with the PPDA and all the other parties are required to apply to PPDA, with evidence, to have a supplier of goods, services or works blacklisted.***

**4.14 Clauses 21 and 22 (2) regarding the Procurement planning and Evaluation of Local Content**

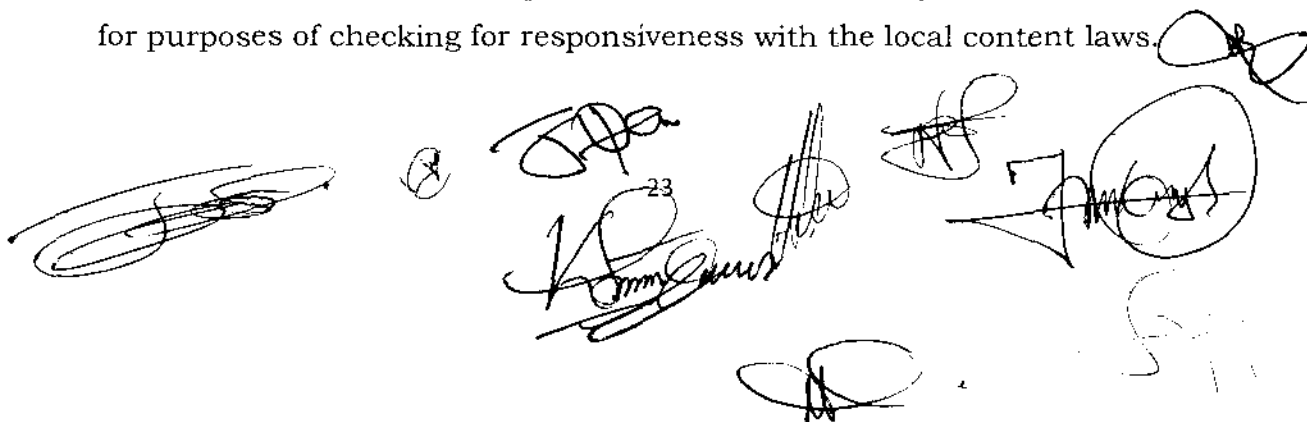
**Clause 22 (2)** seemingly provides for the department to approve all local contracts from all Procurement and Disposal Entities (PDEs) in the country.

**The President** notes that the contents under these two provisions do not match the subtitles and in some cases they are confusing. He recommends that these provisions should be cross-referenced to the PPDA Act and Regulations on Procurement Planning and Evaluation.

**The Mover notes that;**

Clauses 21 and 22 are not confusing and neither are they in conflict with the headnotes of the provisions where they are contained. Clause 21 deals with Procurement planning, while, Clause 22 on the other hand deals with Evaluation of local content in bids and establishes local content as an evaluation criterion.

**The Committee observes** that there is no contradiction between the headnotes and the provisions. The two provisions are clearly providing for different things and there is no need to cross reference with the PPDA Act. The Clauses provide guidance on how the local content aspect can be included in the plans for the procurements and how they are to be evaluated for purposes of checking for responsiveness with the local content laws.

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***The Committee recommends that the Clauses are maintained in the Act since there is no apparent contradiction.***

#### **4.15 Clause 28 regarding the penalties for the offences under the Act**

**The President** states that there is need to revisit the offenses as some seem to be too harsh.

**The Mover notes that;**

The offences proposed in the Act are intended to ensure compliance with local content obligations contained in the Act and also act as a deterrent from breach/abuse of the Act. The punishments need to be repulsive enough to discourage people from attempting to breach the requirements of the law to enable the law meet its set objectives. The penalties are therefore deterrent and should be strong enough to fulfill the function of deterring possible abuse of the provisions of the Act.

**The Committee observes that;**

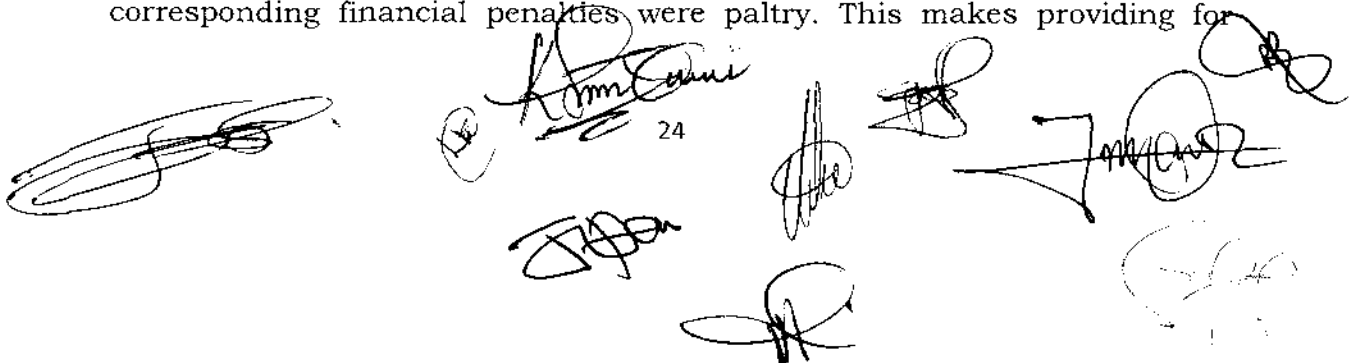
There may be need to provide for the corresponding financial penalties to the prison terms and prescribe for either or both.

The Committee used the criteria set out in the Law Revision (Fines and other Financial Amounts in Criminal Matters) Act, Act No. 14 of 2008 as a guide to determine the corresponding financial penalties for the prison sentences.

The penalties are guided by S. 3(1) of Act 14 of 2008 which provides as follows:

***“In any written law to which this Act applies and in force immediately before the commencement of this Act, where a fine is prescribed in relation to a term of imprisonment, the ratio of the fine to imprisonment shall be two currency points to each month of imprisonment.”***

However, when the criteria under Act 14 of 2008 was adopted, the corresponding financial penalties were paltry. This makes providing for



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financial penalties for the criminal element ineffective. The Committee opted to keep the criminal offences without corresponding financial penalties and instead maintained the administrative penalties under S.29 which are more effective.

The Committee was cognizant of the fact that the law is not so much intended to have people imprisoned but rather to make as much money as possible from those that do not want to comply with the law.

The Committee recommends that the prison sentences are revised downwards to make them less onerous and the financial aspects for the criminal offences be left out.

### **Recommendations**

***The Committee recommends that the prison sentences be reduced from 5 to 3 years in S. 28 (2) (a) and from 10 to 7 years in S. 28 (2) (b).***

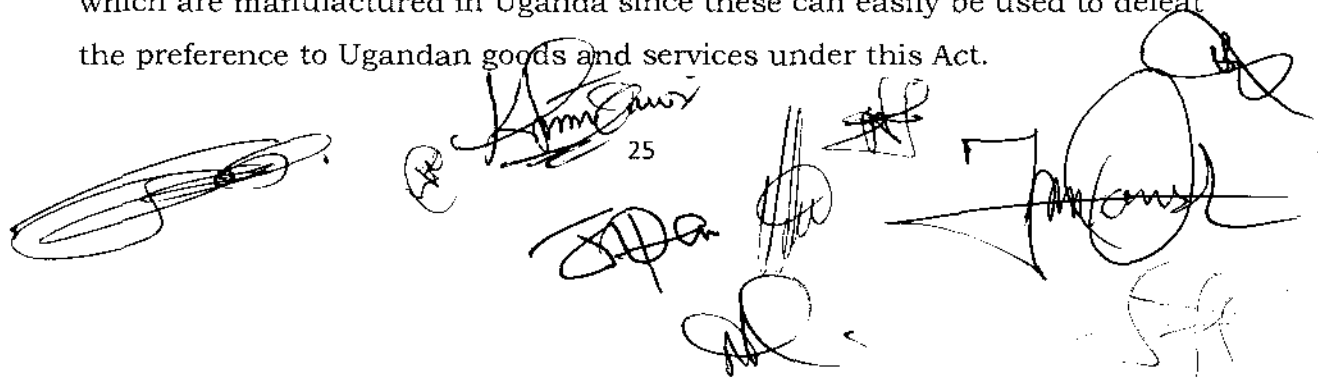
### **4.16 Clause 32 (1) regarding the prohibition of importation of regulated goods and services**

**Clause 32** provides that a person shall not, while carrying on any activity regulated under this Act, import any good, service, agricultural produce or natural resources that are readily available, produced or manufactured in Uganda.

**The President** notes that it is not clear who “a person” being referred to in this Act is. He further notes that the Private Sector has the right to import any good or service for business and their own consumption as long as they follow the existing legal framework.

### **The Mover notes that;**

This Clause is intended to ensure that a Company utilises Ugandan goods and services available in Uganda and does not import, goods and services which are manufactured in Uganda since these can easily be used to defeat the preference to Ugandan goods and services under this Act.

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The provision will therefore apply to a company undertaking a project under which preference is granted to Ugandan goods and services in order to ensure that this preference is realised without interference.

**The Committee observes that** the Act clearly spells out who it applies to under Clause 1. The law does not seek to extend to persons providing services to the private sector or for persons importing for own consumption.

The person in the legal context is defined under the Interpretation Act, Cap 3 as follows:

*(uu) "person" includes any company or association or body of persons corporate or unincorporated.*

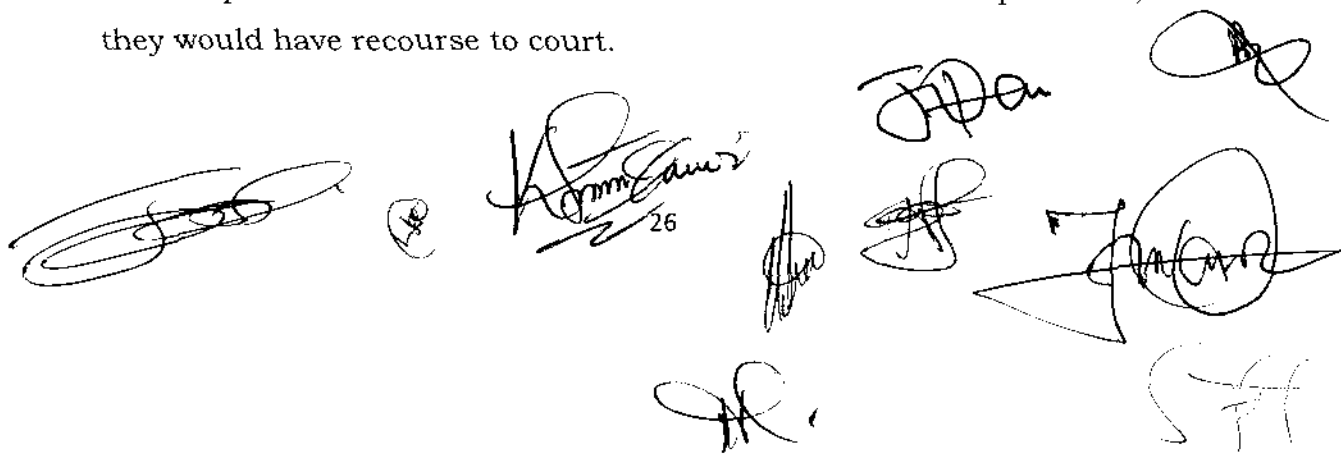
The Committee notes that even then, the concerns raised under Clause 32 (1) have already been cured by Clauses 4 and 5, making Clause 32 an over-kill and unnecessary.

#### **Recommendation**

***The Committee recommends that Clause 32 is deleted since Clauses 4, 5, 6 and 7 adequately provide for the regulation of goods and services in the country. The Committee emphasized the need to encourage PPDA and the Department to enforce the requirements of this law with the different local content entities.***

#### **4.17 Clause 38 regarding appeals Clause 38 provides for an appeal from decisions made under the Act.**

**The President** proposes that the Clause is cross referenced with the PPDA Act and regulations. The provision has given the Department the first line of reference for any complaint for violation of the local content law and where the complainant is dissatisfied with the decision of the Department, then they would have recourse to court.

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**The Mover notes;**

The provision is included to ensure that the decisions of the Department can be challenged in the High Court.

The proposal by the President to have the disputes referred to PPDA is untenable at law because these decisions of the Department can only be challenged through a Court process as directed in Article 42 of the Constitution.

Secondly, the administrative arrangements in the PDPA do not apply to decisions of the Department since the PPDA mechanisms are restricted to addressing disputes arising from procurement processes.

**The Committee observes that;**

The reference to the court following dissatisfaction with the decision does not in any way hinder the Department from carving out the process they want to follow while determining these complaints. The Department is at liberty to adopt the processes similar to those in the PPDA Act and Regulations. In the event that they desire to have it hard corded in the law, then the processes would be contained in the Regulations.

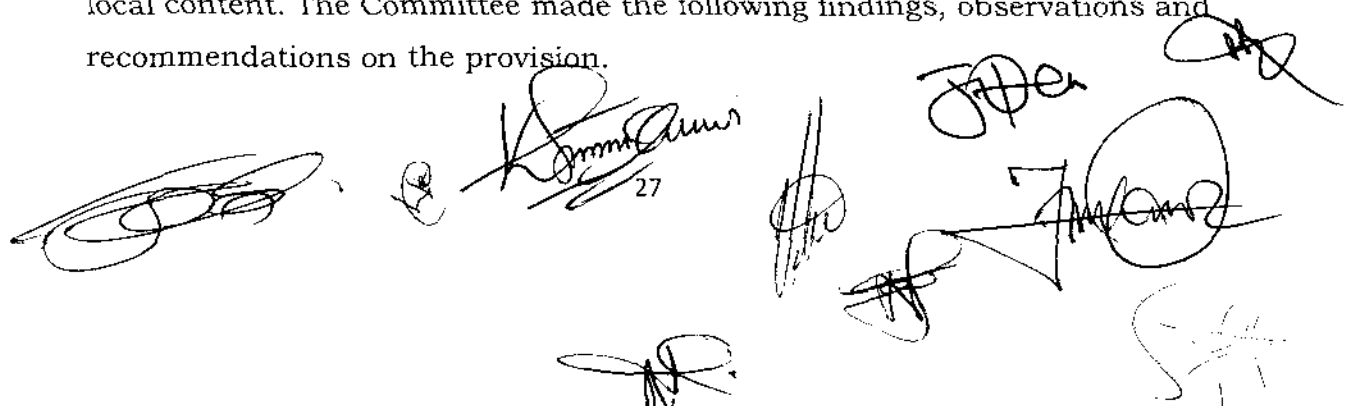
The provision should therefore be maintained as is. If there is a need to make any amendment, then the law can provide for the process to be prescribed in the regulations.

**Recommendation**

***The Committee recommends that Clause 38 regarding appeals be maintained as currently reflected in the Act.***

**4.18 Clause 39 regarding the Supremacy of the Act**

**Clause 39** provides for the supremacy of the Act over other legislations on local content. The Committee made the following findings, observations and recommendations on the provision.

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**The President** states that this provision may not be practical from a legal perspective.

**The Mover notes that** this provision is intended to ensure that the other laws do not conflict with the provisions of this Act, which Act is intended to be a law of general application.

**The Committee observes** that there are rules of statutory interpretation. One of the rules is that a specific law prevails over a general law and a later law prevails over the earlier law.

It therefore follows without question that on matters of local content, where there is no specific law for a particular sector, then this law will apply.

This provision should therefore be deleted because it is redundant.

***The Committee recommends that Clause 39 is deleted.***

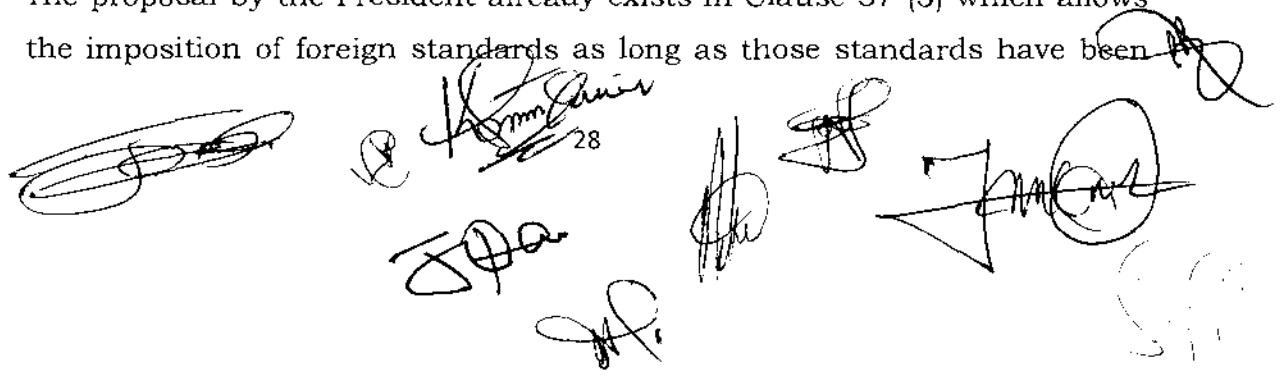
#### **4.19 Clause 37 on prohibition of imposition of foreign standards and foreign technical qualifications.**

While in the President's letter the Clause is referenced as S. 40 and 41, the head note corresponds with Clause 37 of the assent copy. The Clause prohibits the imposition of foreign standards and foreign technical qualifications.

**The President** notes that the mandate of the Uganda National Bureau of Standards is to formulate and promote the use of standards in Uganda. The mandate takes into consideration that Uganda National Bureau of Standards does not have the standards for items procured or produced in the country. Therefore, a provision allowing international standards, where necessary, should be incorporated.

**The Mover notes that;**

The proposal by the President already exists in Clause 37 (3) which allows the imposition of foreign standards as long as those standards have been

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approved by the national standards body rather than being imposed arbitrarily by the entity that seeks to utilise the same.

**The Committee observes that;**

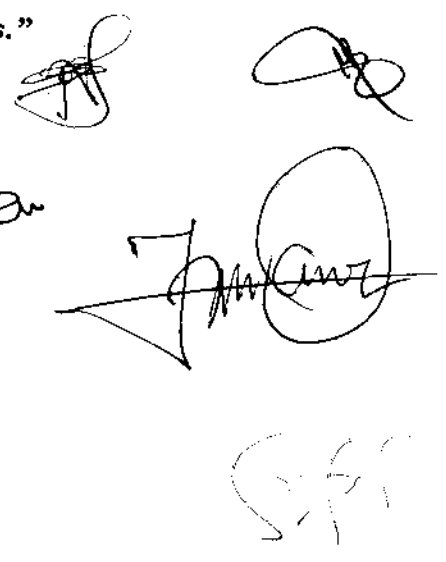
The Clause provides for application to the Uganda National Bureau of Standards for authorization to use a standard that is suitable to Uganda and where none exists then a foreign standard is applied with the approval of UNBS. The provision is therefore already providing for what the President is proposing. The Committee proposes that the provision is redrafted for clarity.

***The Committee recommends for the redrafting of Clause 37 on prohibition of imposition of foreign standards and foreign technical qualifications to make it clearer that Uganda National Bureau of Standard shall authorise the use of a standard that is suitable to Uganda and where there is none, then an international standard will be applied.***

***Prohibition of imposition of foreign standards***

***(1) A local content entity, contractor, provider or supplier, for purposes of this Act, shall only comply with standards set by the Uganda National Bureau of Standards to provide a good, service or material for public works.***

***(2) Where there are no standards set by the Uganda National Bureau of Standards, a local content entity, contractor, provider or supplier shall with the approval of the Uganda National Bureau of Standards use international standards.”***

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## **PROPOSED AMENDMENTS TO THE NATIONAL LOCAL CONTENT BILL, 2022**

### **Clause 1: Application**

Clause 1(c) is amended by deleting paragraph (i).

### **Justification**

The existing legal framework for mining sufficiently provides for local content.

### **Clause 2: Interpretation**

Clause 2 is amended by-

- i) Inserting immediately before the definition of "Contracting Authority" the following -

"“Authority” means the Public Procurement and Disposal of Public Assets Authority;"

- ii) Substituting the definition of "Contracting Authority" the following-

*"“Contracting Authority” means a Ministry, Department, Agency, statutory body, Local Government, or any other body established by Government and mandated to carry out a public function in a public private partnership;"*

### **Justification:**

1. To define Authority to mean the Public Procurement and Disposal of Public Assets Authority
2. To expand the definition of contracting Authority to include local government, statutory bodies and agencies since they all use public money

### **Clause 3: Designation of department for procurement policy and Management**

Clause 3 is amended in sub clause (2) by deleting paragraphs (f), (h) and (k);

### **Justification**

1. To avoid duplication of roles since the office of the Auditor General is mandated to carry out audits and check compliance under Article 163 of the Constitution and the National Audit Act, 2008.
2. To avoid duplicity of roles since the PPDA is mandated to develop guidelines for implementation of local content in Uganda.

**Clause 5: Rejection of Ugandan goods and services during procurement**

Clause 5 is amended:

- i) In sub Clause (2) by substituting it for the following –

*(2) “Where a good locally manufactured in Uganda or a service provided by a Ugandan citizen or company does not meet the required quality, quantity or timeline for delivery or completion, the local content entity may procure the goods or services-*

- i. in accordance with Clause 7 of this Act, from a Ugandan entity;*
- ii. in accordance with Clause 31 of the Act, from a member state of the East African Community; or*
- iii. from any other country, where a good or service cannot be obtained as provided in paragraphs (a) and (b).*

- ii) by substituting for sub Clause (4) the following-

*(4) The local content entity shall keep a record of the acquisition under Sub Clause (2) and file a monthly report with the Department stating-*

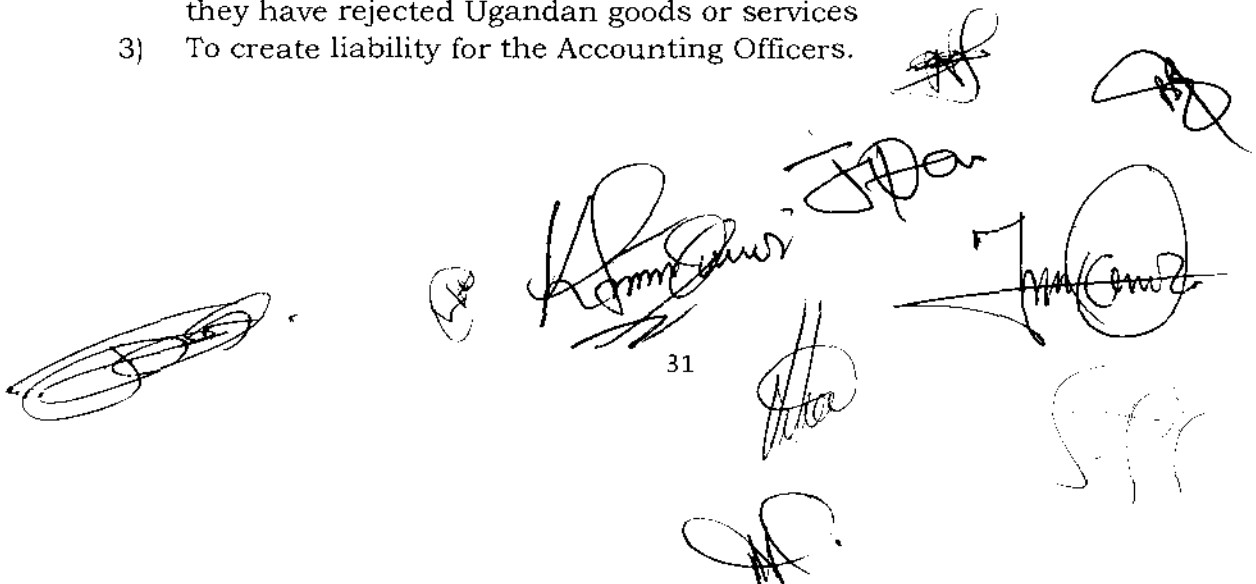
- (a) The nature of the good or service procured or contracted;*
- (b) Availability of similar goods or services in Uganda;*
- (c) The purpose for which the good or service was required;*
- (d) The minimum quality, quantity and timeline for delivery that was required by the local content entity;*
- (e) The market price for the good or service;*
- (f) The market price for similar goods or services; and*
- (g) Any other information the Minister may prescribe by Regulation*

- iii) By inserting immediately after sub clause (5) the following -

*“(6) The Accounting Officer shall be liable for breach of this Section.”*

**Justification**

- 1) To allow for the procurement of goods or services without any delays or inefficiencies
- 2) To guide the local content entities on the parameters they can use once they have rejected Ugandan goods or services
- 3) To create liability for the Accounting Officers.



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### **Clause 9: Reservation of contracts for public works**

Clause 9 is amended by substituting for the word “shall” the word “may”

#### **Justification**

To enable the Minister make consultations with the PPDA for reservation of certain contracts for Ugandans.

### **Clause 11: requirement to subcontract public works contracts or activities**

Clause 11 is amended by substituting sub clause (1) the following-

*“(1) Every contract for public works granted to an individual or entity other than a Ugandan person, shall, subject to fulfilling the eligibility requirements under Section 13, contain a requirement for such person to subcontract a percentage of the works as prescribed in the Regulations.”*

#### **Justification**

To provide for the regulations to prescribe the percentages of the works to be subcontracted based on the value, complexity and size of the works to be performed.

### **Clause 13 Eligibility of Ugandan entity to be subcontractor**

Clause 13 is amended by deleting sub Clause (f)

#### **Justification**

This is a consequential amendment to Clause 25.

### **Clause 25 Administrative measures for compliance**

Clause 25 is amended in sub Clause (2) by substituting for the words “department or local content entity” the word “Authority”

#### **Justification**

- 1) To allow the PPDA to be the only supervisor that blacklists local content entities that violate the provisions of this Act.

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### **Clause 28: Offences and penalties**

Clause 28 is amended in sub Clause (2)-

(a) in paragraph (a), by substituting for the word "five" the word "three"; and

(b) in paragraph (b), by substituting for the word "ten" the word "seven"

#### **Justification**

To reduce the prison sentence.

### **Clause 34: National Supplier database for Ugandan entities and citizens**

Clause 34 is amended by substituting for the word "Department" the word "Authority"

#### **Justification**

To provide for the PPDA Authority to be the supervisory body responsible for developing and maintaining the local content national data base.

### **Clause 37: Prohibition of imposition of foreign standards**

s Clause 37 is substituted with the following-

(3) *"A local content entity, contractor, provider or supplier, for purposes of this Act, shall comply with standards set by the Uganda National Bureau of Standards to provide a good, service or material for public works.*

(4) *Where there are no standards set by the Uganda National Bureau of Standards, a local content entity, contractor, provider or supplier shall with the approval of the Uganda National Bureau of Standards use international standards."*

#### **Justification**

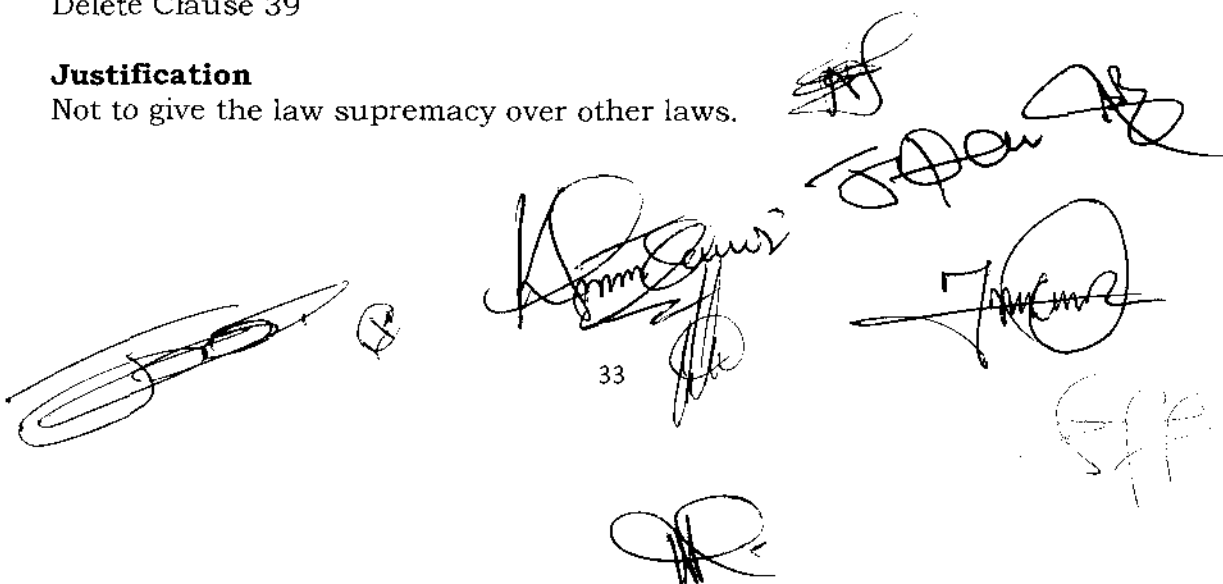
- 1) To allow UNBS to be the primary standard setter in Uganda
- 2) To provide for use of international standards

### **Clause 39: Supremacy of this Act**

Delete Clause 39

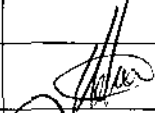




#### **Justification**

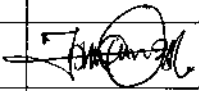
Not to give the law supremacy over other laws.



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**MEMBERS OF THE COMMITTEE FINANCE, PLANNING AND ECONOMIC  
DEVELOPMENT; THE NATIONAL LOCAL CONTENT ACT, 2022 ( ASSENT  
COPY) AS RETURNED BY H.E THE PRESIDENT**

NO	NAME	CONSTITUENCY	SIGNATURE
1	<b>Dr. Keefa Kiwanuka C/P</b>	<b>Kiboga East County</b>	
2	<b>Hon. Avur Jane Pacuto D/CP</b>	<b>DWR Pakwach</b>	
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27	Hon. Ocan Patrick	Apac Municipality	
28	Hon. Omara Paul	Otuke County	
29	Hon. Muhammad Nsereko	Kampala Central Division	
30	Hon. Aciro Paska Menya	DWR Pader	
31	Hon. Masaba Karim	Mbale, Industrial Division	



**PARLIAMENT OF THE REPUBLIC OF UGANDA**

**MINORITY REPORT ON THE NATIONAL LOCAL CONTENT ACT, 2022  
(ASSENT COPY) AS RETURNED BY H.E THE PRESIDENT**

**OFFICE OF THE CLERK TO PARLIAMENT**

**MARCH, 2023**

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## **1. INTRODUCTION**

**Rt. Hon. Speaker,**

The assent copy of the National Local Content Act, 2022 was returned to Parliament by His Excellency the President and referred to the Committee on Finance, Planning and Economic Development on 1<sup>st</sup> March, 2023.

The Committee scrutinized the sections that formed the basis for the return of the Act by H.E The President.

The Minority of the Committee agree with the report of the Committee but for sections that relate to preferential treatment of Ugandan goods, services and works over East African goods, works and services; Sections 4 and 6, ~~it is agreed~~

## **2. OBJECT OF THE NATIONAL LOCAL CONTENT ACT, 2022 (ASSENT COPY).**

The object of the Act is to impose local content obligations on a person using public money or utilizing Uganda's natural resources or carrying on an activity requiring a license; to prioritize Ugandan resident companies and citizens in public procurement; to ensure skills and technology transfer to Ugandans; to provide for the development of local content plans; to provide for the supervision, coordination, monitoring and implementation of local content in Uganda; and for related matters.

## **3. METHODOLOGY**

The Committee consulted with the Attorney General, the Ministry of Finance, Planning and Economic Development, and considered the letter from H.E the President returning the Act and the Mover's responses to the said letter.

## **4. FINDINGS, OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE**



**4.1 Findings, Observations and Recommendations on Section 4:  
preferential treatment to Ugandan goods, works and services**

**The President** states that Section 4 gives preferential treatment to Ugandan goods, works and services contrary to the East African Community Protocol on free movement of goods and services and the East African Monetary Union.

**The Mover** notes that the Act granted priority to Goods manufactured and services provided from the EAC under Section 31 meaning that the Act conforms to the EAC protocols.

He adds that the Act under Section 31 grants priority in a tiered manner to goods and services, noting that the first priority is granted to Ugandan goods and services and where those goods are not readily available in Uganda, then priority is extended to goods and services procured from EAC countries.

**The Minority of the Committee observes that;**

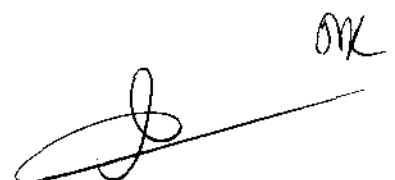
Uganda is desirous of taking the lead in complying with the Treaty, and as such, should base its laws on setting a best-in-class example to other EAC member states in adhering to the Protocol.

Therefore, in agreeing with the President, there is minority consensus that Section 4 should be expanded to include East Africa and not be exclusive to Uganda.

**Recommendation**

***The Committee recommends that Section 4 regarding the preferential treatment to Ugandan goods and services be amended to read “East Africa”, not “Uganda.”.***

**4.2 Findings, Observations and Recommendations on Section Section 6  
regarding the reservation of goods or services to be exclusively procured  
from Uganda**



**The President** states that Section 6 violates Article 13 of the East African Customs Union Protocol which requires removal of all non-tariff barriers. The President proposed that Section 6 is amended to read East Africa and not Uganda.

**The Mover notes that;**

The Act granted priority to Goods manufactured and services provided from the EAC under Section 31 meaning that the Act conforms to the EAC protocols.

The mischief intended to be cured by Section 6 is to build the capacity of Ugandan entities to execute public works contracts in order to stop the over reliance on foreign companies to execute public works contracts.

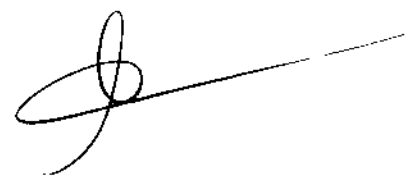
**The Minority of the Committee observes that;**

As was the case with Section 4 regarding preferential treatment, Section 6 should be amended to abide by the East African Customs Union Protocol through the inclusion of other East African Community Member countries in the granting of public works with a component of local content as delineated in the Act. This proves that Uganda is taking lead in East Africa's integration.

**The Committee recommends;**

- i. *That the word "Uganda" under Section 6 is changed to read "East Africa";*

OK





**PROPOSED AMENDMENTS ARISING FROM THE MINORITY REPORT ON  
THE NATIONAL LOCAL CONTENT BILL, 2022 AS RETURNED BY H.E THE  
PRESIDENT**

**Clause 4: Priority of Ugandan goods and services during procurement**

Clause 4 is amended by substituting for the words “Uganda” and “Ugandan” the word “East African Community” respectively.

**Justification**

To bring the provision into compliance with the East Africa Treaty and Protocols.

**Clause 6: Priority of Ugandan goods and services during procurement**

Clause 4 is amended by substituting for the words “Uganda” and “Ugandan” the words “East African Community” respectively.

**Justification**

To bring the provision into compliance with the East Africa Treaty and Protocols.

OK



**MEMBERS OF THE COMMITTEE FINANCE, PLANNING AND ECONOMIC  
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