

**VOL. 1
No. 9**

FEDERAL REPUBLIC OF NIGERIA

**Thursday
9th July, 2009**



NATIONAL ASSEMBLY DEBATES

FOURTH REPUBLIC THIRD ASSEMBLY (SIXTH SENATE)

THIRD SESSION

SENATE OFFICIAL REPORT

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**SENATE OF THE FEDERAL
REPUBLIC OF NIGERIA**

Thursday, 9th July, 2009

The Senate met at 10.20 a.m.

PRAYERS

(The President in the Chair)

VOTES AND PROCEEDINGS

The President: Distinguished Senators, we have the Votes and Proceedings of Wednesday, 8th July, 2009 before us for approval: Pages: 57, 58, 59, 60, 61.

Senator George Anthony Manzo (Taraba North): Mr. President, I rise to move that the Votes and Proceedings of yesterday, Wednesday, 8th July, 2009 be approved

Senator Felix Kolawole Bajomo (Ogun West): Mr. President, I rise to second the Motion that the Votes and Proceedings of Wednesday 8th July, 2009 be approved.

Question put and agreed to.

Resolved: That the Votes and Proceedings of Wednesday, 8th July, 2009 be approved.

ANNOUNCEMENTS

Meeting of the South-South Senate Caucus

The President: There will be a very important meeting of the South-South Senate Caucus today, Thursday 9th July, 2009.

Time: 7 p.m.

Venue: Deputy Senate Leader's Residence

Members should endeavour to attend promptly as important and critical issues affecting the zone will be discussed.

(Signed)

Senator Victor Ndoma-Egba (SAN)
Deputy Senate Leader.

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**Meeting of the Committee on the Review of the
Constitution**

There will be a meeting of the Senate Committee on the Review of the 1999 Constitution.

AGENDA

To receive the Report of a round-table discussion on Constitutional Reform organised by the Office of the Deputy Senate President with the Canadian Forum of Federations.

Time: Immediately after Sitting today; Thursday 9th July, 2009.

Venue: Senate President's Meeting Room 301 (New Senate Building).

(Signed)

Senator Ike Ekweremadu (CFR)
(Ikeohandighbonine n'uwa)
Deputy Senate President
Chairman of the Committee

Meeting of the Northern Senators Forum

There will be a brief meeting of the Northern Senators Forum immediately after the Senate Session today.

Date: Thursday 9th July, 2009

Venue: Senate Hearing Room 1.

All Members are kindly requested to attend please.

Senator Bala A. Mohammed
Secretary
(Announcer)

**Visit of the Staff and Students of St. Luke Catholic
Nursery and Primary School, Kubwa, Abuja**

I wish to acknowledge the presence of the Staff and Students of St. Luke Catholic Nursery and Primary School, Kubwa, Abuja who are in the Gallery to observe the Senate Proceedings.

We wish them fruitful observation of our proceedings. *(The Visitors stood for recognition)* Good morning, teachers and children. Thank you and please sit down.

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Committee for the Immortalisation of Senators

You will recall that we agreed to set up a Committee to give us a report on how we immortalise Senators. The Membership of that Committee is:

- | | |
|---------------------------------------|----------|
| (i) Senator Ndoma-Egba (SAN) | Chairman |
| (ii) Senator Olorunnimbe Mamowora | Member |
| (iii) Nkechi Nwaogu | Member |
| (iv) Senator Mustapha Mujitaba Mallam | Member |
| (v) Senator Omar A. Hambagda | Member |
| (vi) Senator Suleiman Adokwe | Member |

You will find some questionnaires distributed to you in your letterboxes on the Floor here. Please, I want to ask you to kindly fill them as faithfully as you can. We would try and explain the questionnaire next week but they will be in your boxes today for you to look at over the weekend.

You do not have to put your name. You just fill the questionnaire as much as you want to.

Birthday Wishes to Senator John Adego Erhiawarie Eferakeya

On behalf of all of us, I like to wish distinguished Senator John Adego Erhiawarie Eferakeya a happy birthday. Today, the 9th of July, 2009 is his birthday. We wish him long life and prosperity.

PRESENTATION OF BILLS

Area Courts Act, Amendment Bill, 2009

Senator Teslim Kolawole Folarin (Oyo Central): Mr. President, the first business of the day is the presentation of a Bill standing in the name of Senator Umar Dahiru and two other distinguished Senators on the Area Courts Act (Amendment Bill), 2009.

You may invite the Clerk of the Senate to read the Short Title of the Bill.

Area Courts Act Amendment Bill, 2009 – *read the First Time*.

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Copy Rights Act (Amendment) Bill, 2009

The second business of the day is the presentation of a Bill standing in the name of Senator Aloysius Etok on the Copy Rights Act (Amendment) Bill, 2009.

You may invite the Clerk of the Senate to read the Short Title of the Bill.

Copy Rights Act (Amendment) Bill, 2009 – *read the First Time*.

FCT Customary Courts Act (Amendment) Bill, 2009

The third business of the day is the presentation of a Bill standing in the name of Senator Umar Dahiru and three others on the Customary Courts Act (Amendment) Bill, 2009.

You may again, invite the Clerk of the Senate to read the Short Title of the Bill.

Federal Capital Territory Customary Courts Act (Amendment) Bill, 2009 – *read the First Time*.

ORDERS OF THE DAY

CONSIDERATION OF REPORT

Report of the Committee on Finance on the Finance and Public Procurement Act (Amendment) Bill, 2009

Senator Teslim Kolawole Folarin: The first Order of the day is the presentation and consideration of the Report of the Committee on Finance and Public Procurement Act (Amendment) Bill, 2009.

You will recall that the Public Procurement Act (Amendment) Bill was passed by this Senate on Thursday, 15th January, 2009 and was recommitted back to the Committee on Thursday, 26th February, 2009 to enable the Senate review the Bill and remove any observed inadequacies.

You may invite the Chairman, Senator Ahmed Makarfi to move for the presentation and consideration of the Report.

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Senator Ahmed Mohammed Makarfi (Kaduna North): Mr. President, I rise to move the Motion that the Senate do consider the Report of the Committee on Finance on the Public Procurement Act (Amendment) Bill, 2009.

Senator Caleb Zagi (Kaduna South): Mr. President, I rise to second the Motion that the Senate do consider the Report of the Committee on Finance on the Public Procurement Act (Amendment) Bill, 2009 as ably moved by Senator Ahmed Makarfi.

Question put and agreed to.

Resolved: That the Senate do consider the Report of the Committee on Finance on the Public Procurement Act (Amendment) Bill, 2009

Senator Ahmed Mohammed Makarfi: Mr. President, as the Senate Leader mentioned earlier, this Bill had already been considered and approved by the Senate and we were already in the Conference with the House of Representatives for harmonisation when certain issues arose. A Motion was moved on the Floor to rescind an earlier decision of this Senate for the Bill that was read the Third Time to be recommitted to our Committee in order to incorporate issues that arose after the Bill had already been considered and approved. So, it is not essentially entirely a new thing altogether.

During our deliberations, issues also came up from the Executive and we received a write-up from the Civil Society. We tried to incorporate, as best as possible, all that we felt were necessary. The Report before this Senate is essentially to correct certain anomalies that were found in the Bill that was earlier approved.

On page 2 of our Report, for example, the Chartered Institute of Purchasing and Supply of Nigeria as a Member of the Council was incorporated, whereas in the earlier Bill, it was the Nigerian Institute of Purchasing and Supply which no longer exist as an organ.

Equally, a number of Clauses were amended, essentially to provide for the independence of the Legislature and the Judiciary with regard to Public Procurement. These provisions will be found in Amendment to Clauses 2, 16, and 22.

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Equally we have been making assertions that the Public Procurement Act as presently exist inhibits expeditious implementation of Capital Budget particularly with reference to the level of advance payment that could be made on some contracts. The pegging to 15 *per cent* was found to encumber proper mobilisation. For example, if you are given a contract in the Niger Delta that percentage may not enable you to practically mobilise sufficient enough to do the project in good time. This Clause was amended to allow flexibility so that it is not a fixed amount; it will be subject to peculiarities and such an amount that could be paid would be stated in the tender documents which would be a public issue to everybody that is tendering for it.

These are the key Amendments that the Committee addressed to further enhance the very good work that was earlier done by the Committee that was charged with the responsibility of looking at this Bill which was read the Third Time and passed as I earlier mentioned.

If this Report is considered by the Senate and approved as presented, we will still have to go back to the Conference with the House of Representatives because in the House version the same problems exist; that of non-provision for the independence of Judiciary and Legislature and also the inclusion of bodies which in law, no longer exist. But we have been working hand in hand with the House. They are fully aware of what we are doing and when we go back to such Conference, we do not expect any problem in harmonising our positions.

We, therefore, recommend the Bill as presented to be approved by this Senate.

Senator Teslim K. Folarin: Mr. President, I move that this Senate do now go into the Committee of the Whole to consider the Report.

Senator Umar Hambagda (Borno South): Mr. President, I rise to second the Motion that the Senate do now resolve into Committee of the Whole to consider the Report.

Question put and agreed to.

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Report of the Committee on Finance on the Public Procurement Act (Amendment) Bill, 2009 – CONSIDERED IN THE COMMITTEE OF THE WHOLE

The Chairman: We will now take the Clause by Clause consideration.

Clause 1 – (AMENDMENT OF PUBLIC PROCUREMENT ACT 2007 NO. 14) - ordered to stand part of the Bill

Clause 2 – (AMENDMENT OF SECTION 1)

Question proposed

Senator Nimi Barigba-Amange (Bayelsa East): Mr. Chairman, under page 2, paragraph (g)(2) it says: *Notwithstanding the provision of sub-section (1) each of the arms of government shall determine its individual threshold.*

When you say *each of the arms of government* is it the Executive and the Legislature or the Judiciary and the Executive. If it is meant for the Judiciary and the Legislature, we should state it explicitly because this is a law. We should not say; *each of the arms*. Which of the arms are we referring to out of the three?

The Chairman: Let us finish with page 1 first before page 2.

Clause 2(1) – ordered to stand part of the Bill.

Clause 2(a) – order to stand part of the Bill.

Clause 2(b) – ordered to stand part of the Bill.

Clause 2(c) - ordered to stand part of the Bill.

Clause 2(d) – ordered to stand part of the Bill.

Clause 2(e) – ordered to stand part of the Bill.

Clause 2(f) – ordered to stand part of the Bill.

Senator Omar A. Hambagda: Unfortunately, Senator Bukar Ibrahim made the correction but now we have come to the time for it he is not raising his hand. The Amendment in Clause 2(g)(vii) should be *Nigerian Institute of Quantity Surveyors*.

The Chairman: That should be Clause 2(g)(vii). It should read; *Nigerian Institute of Quantity Surveyors*

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Senator Andrew Abidemi Babalola (Oyo North): On Clause 2(g), I will like the Chairman of the Finance Committee to explain that. Before six part time members were provided but now it is increased to seven. Where is the seventh one coming from?

The Chairman: The seven part time members are -

- i) *Chartered Institute of Purchasing and Supply Management*
- ii) *Nigerian Bar Association*
- iii) *Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture*
- iv) *Nigerian Society of Engineers*
- v) *Civil Society*
- vi) *the Media, and*
- vii) *Nigerian Institute of Quantity Surveyors.*

Senator Ayogu Eze (Enugu North): Mr. Chairman, I remember that when we considered this Bill, I pointed out that Clause 2(g)(vi) is rather amorphous if we just say *the media*. This is because in the media there are a lot of organisations such as NUJ and NAWAJ. So, rather than the media we should say *the NUJ*. If you say, the media how do you select their representative?

Several distinguished Senators: No!

Senator Ayogu Eze: We have to be specific so that we clear the confusion. It cannot be *the Media* because the term is very amorphous.

Senator Joel Danlami Ikenya (Taraba South): Mr. Chairman, the point Senator Ayogu Eze raised is a very fundamental point and we should look at it with understanding. If other groups are represented by their organisations why should the NUJ not be represented. The Society of Engineers has its representatives. They are engineers and they know who should represent them. But if you say *the Media*, which type of media are we talking about? NUJ is the right organisation that should represent the media as part time member.

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Senator Bassey Ewa-Henshaw (Cross River State): Mr. Chairman, I agree with the point Senator Ayogu Eze is making. Within the media, there is the Guild of Editors, there is the Nigerian Union of Journalists, there is the Newspaper Proprietors Association and so on and so forth. Although it would not be they who should select who should represent them but it is important that whoever is going to appoint the representative would be a bit more specific as to which of these organisations they could go to pick the representative for the media. The word; media is rather amorphous.

I am suggesting that we go with what Senator Ayogu Eze has said. The Newspaper Proprietors Association is also within the media. What I am saying is more or less like the Society of Engineers.

Senator Victor Ndoma-Egba (Cross Rivers Central): Mr. Chairman, I want to support Senators Ayogu Eze and Joel's position. Looking at all the other professional bodies, the Clause is very specific about them. Chartered Institute of Purchasing and Supply Management, Nigerian Bar Association, Nigerian Association of Chambers of Commerce. In Nigerian Bar Association, there are different groups there. You have the Nigerian Association of Democratic Lawyers and others, but they are all under one umbrella, Nigerian Bar Association.

For consistency, we should pick a body to represent the media. If we are going to use the Nigerian Union of Journalists, let us say, Nigerian Union of Journalist. If we want to use the Guild of Editors, let us say the Guild of Editors. But we must be specific. Who do you meet in the Media to pick somebody?

Senator Ike Ekweremadu (Enugu West): Mr. Chairman, the reasons they have advanced supports leaving the provision as it is. In the case of the Nigerian Bar Association which he spoke about, all those other ones are all members of NBA. In the case of the NUJ, not all in the media are members of NUJ.

Secondly, in the case of Civil Society, there are several Civil Societies in Nigeria. So, where do you start? That will defeat the argument. Therefore, it is better to leave it as the Media. Since you are not going to call the NUJ or any of them to bring somebody, the government will decide who it is. It is better to leave it as it is and create room for government to decide who is suitable in the circumstance, because if you say NUJ, you shut out the rest.

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Senator Abubakar Danso Sodangi (Nasarawa West) Mr. Chairman, I rise to support the opinion of those who are saying that we should leave Media as it has been captured here. If you say we should take the Nigerian Union of Journalists that means it is restricted to only members of the Nigerian Union of Journalists. I want to believe that members of the Guild of Editors cannot be ordinarily called NUJ members. I am not sure if they are.

If you are talking of Media, you are talking of both print and electronic media. The man who has the authority can go to either the electronic media, members of the Nigerian Union of Journalists or any other. But if you narrow it to NUJ, I assure you, you have narrowed it only to an Association. I subscribe to that we should accept it as it is because it is all encompassing, whether you are in the Guild of Editors, NUJ or a freelance.

Senator Jibril Aminu (Adamawa Central): Mr. Chairman, I sometimes act as a journalist. Journalism is a very wide word covering all these people. Some of them rise to become editors. Some of them rise to become proprietors. They are all journalists. Why should you put the Society of Engineers? There are technologists, there are technicians, why do you not put technological areas? Why should we say Society of Engineers, which is specific; a body of very highly privileged and over paid people. To be consistent and not to be cowed by the presence of Engineers here, if we are going to put the Nigerian Society of Engineers, we should put the Nigerian Union of Journalists. I recommend that.

Senator Adeyemi Smart (Kogi West): Mr. Chairman, the Nigerian Union of Journalists is the umbrella of all practicing journalists in Nigeria. Just like you have in the legal profession, there are the Senior Advocates of Nigeria that have their forum. The Guild of Editors are part and parcel of NUJ. Indeed, there registration is done by the NUJ.

Within the NUJ, there are about seven recognised Associations; Sports Writers Association of Nigeria, National Women of Nigerian Journalists and Labour Writers Association of Nigerian. There are about seven of them. The NUJ remains the umbrella of all practising Journalists in this country and that is what is obtainable in all other nations of the world. We have the International Federation of Journalists, which all Journalists in every country of the world are affiliated to.

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Nigeria attends the IFJ Conference which is the World Conference of Journalists. It is only the NUJ that nominates members that attend such forum. The NUJ remains the professional body. My good friends, Senator Ayogu Eze, Senator Chris Anyanwu and other Journalists are more authoritative on this issue. With due respect to our Colleagues who are Lawyers, they should leave the issue of NUJ and Journalism to us because that is our profession. We are not politicians. We are Journalists first and foremost, we are only here practising politics. The NUJ remains the umbrella of all practising Journalists.

The Chairman: Before I put the Question, I need to be clear. Senator Smart, what is the difference between NUJ and the Media?

Senator Smart Adeyemi: Mr. Chairman, the NUJ is the professional body of Journalists. When we talk about the Media, we are just talking about the structures and practitioners without talking about a formal forum.

Senator Anthony Manzo (Taraba North): Point of Order, Mr. Chairman!

The Chairman: Point of Order, distinguished Senator Manzo.

Senator Anthony Manzo: Mr. Chairman, it is a constitutional Point of Order. With your permission, I want to read Section 22 of the Nigerian Constitution because it defines what the Media is in my opinion. It says:

The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the government to the people.

The point I am making is that the media has already been defined in the Constitution. It refers to the press, the radio, the television and other agencies. I suggest that we make it mass media, because it is going to capture everything based on the Constitution.

The Chairman: Well, the question I asked has not been answered.

Senator Ayogu Eze: I can answer it.

The Chairman: What is the answer Senator Ayogu Eze?

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Senator Ayogu Eze: The answer is that right now, through the Press Council and all Agencies, we have been trying to purify the process of practice. Do you know why? It is because there are lots of people parading themselves as media men who are not practicing in any reputable organisation. Even in the press corps here, every time we do press address we have over 70 people but the accredited people who can be traced to any media institution is about 50 or 60 people.

We have a situation where there are people who wear the toga of media under that omnibus title but the NUJ is a regulatory institution. If you have NBA to regulate the practice of those who are in the legal profession, the question is that there are people who are claiming to be in the media but are not in NUJ. It is NUJ that has the register of all people who practise as journalists in Nigeria whether in the electronic or print media. So, if you want to ask for nomination, you cannot throw it open to the media. You need to go to the body that has the register and they will go to their register and bring professionals who are not quacks. These days there are so many quacks. That is the difference between media and NUJ.

The Chairman: So, my understanding here is that because there are so many quacks are going round to claim to be media that is the only reason you think media should not be there. Having said that, which one is more embracing to capture everybody, is it NUJ or Media?

Along side that I would also want you to address the issue of who is going to appoint these people because nobody is going to throw it open and say NUJ bring one nominee; that is not the way it is done. Government will appoint somebody whether from the Guild of Editors, NUJ or whatever.

Senator Uche Chukwumerije if I may know which one is more embracing? You people cannot resolve it there so, please listen to what he is going to say. For the purpose of the comments he is going to make, he is an authentic Comrade not former.

Senator Uche Chukwumerije (Abia North): Mr. President, permit me first to object to the qualification you gave to your proper designation of my status. That said let me answer your question.

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The NUJ is more comprehensive than media. NUJ is the general regulatory framework, the umbrella, the totality of different sections of practices that make up the media family. My problem here is that there is confusion in the nomenclature. We should ask ourselves one basic question, for each profession mentioned here, which one is to represent the general umbrella of that organisation.

If you talk about the Nigerian Society of Engineers, is it the overall umbrella organisation or is it COREN? The basic point I am making is for consistency in nomenclature, what we should aim at is the umbrella organisation of a given profession not anything outside that. For this one, NUJ is the umbrella organisation.

To answer your question about who will do the nomination. The nomination will be done by the central authority NUJ. When you refer it to them they will nominate somebody.

The Chairman: Please, distinguished Senators, we have opportunity to talk and if people have doubts we must clarify it. If you do not clarify it properly, they will remain with that doubt. If you take Civil Society, for instance, there is more confusion with that because which of the Civil Societies are you going to call. So, the only body that has authority to say that this is the person we have chosen is the Government. Government is not going to write to any media to bring one person. If they appoint any member of the media whether he is from the Proprietors Association, the Guild of Editors or a Sports Writer within the NUJ that person is in the media.

Senator Tawar Umbi Wada (Gombe South): Mr. Chairman, the problem is a matter of proper definition of the words. The word media is the plural of the word medium. It signifies the channel through which communication is made. The word NUJ is simply an association of journalists who are aspects of media practitioners. So, media is the plural of medium, a channel with which communication is made. The proper thing we need to put here is media practitioners. The person could be from the Association of Advertising Practitioners, or from the Nigerian Union of Journalists, they are all under media. Therefore, the correct nomenclature here should be media practitioners and anybody can be picked from the entire media canopy. That is exactly the position.

Senator Bukar Abba Ibrahim: Mr. Chairman, I have a Constitutional Point of Order under Section 22 of the Constitution. It has been mentioned before but

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was not treated properly. It reads: *The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people.* These are the obligations of the mass media, therefore, it would be wrong for us to take any agency of the mass media as they are suggesting only the NUJ. We should leave it as media. Those who are going to do the appointment would decide to choose somebody from any agency of the media.

The Chairman: I am going to put the Question because people have argued convincingly on both sides.

Senator Anyim Ude (Ebonyi South): Mr. Chairman, the beauty of this hallowed Chamber is that you have people from different professions and you have always relied for guidance on what these professionals say because they know what they are talking about.

I want to align myself to what Senators Smart Adeyemi, Ayogu Eze and Jibril Aminu said. They have tried to guide you and I would like you to take what they have said seriously because I support what they have said. These are people in the industry.

The Chairman: That is precisely why I am going to put the Question and if they lose, they lose in spite of their explanations. At the end of the day it can only be resolved by the Question I will put.

Senator Victor Ndoma-Egba: Mr. Chairman, I want to make a suggestion so that we can have consistency in this case. Instead of Nigerian Bar Association, Association of Chambers of Commerce and the Nigerian Society of Engineers, we should have, for NBA, a lawyer or a legal practitioner. For Association of Chambers of Commerce, we should have a businessman and for the Nigerian Society of Engineers, we should have an engineer.

The Chairman: All right, when we get to those ones you make those corrections but let us sort out this Media one first. I am going to put two Questions. The first one is for those who support that it should be the Media. You should answer Aye. Please, listen attentively. If you say *Nays* then it means you support it should be the Nigerian Union of Journalists (NUJ). That is what the Question is. I hope it is clear. So, let me take the vote of those who are in support that it should be the Media.

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Question put.

I will put the Question a second time.

Question put.

I find it difficult to decide, therefore, I will put the Question once more. *(Prolonged Interruptions)*

Senator Bob D. Effiong (Akwa-Ibom North-East): Point of Order, Mr. President.

The Chairman: Point of Order, distinguished Senator Bob Effiong.

Senator Bob D. Effiong: It is Order 73. Mr. Chairman, I need your protection.

The Chairman: The Senate is called to order. You would have enough opportunity to speak. We should not make ourselves a market square. I refer all of us to Order 63. I am up on my feet. Your Point of Order, Senator Effiong Bob?

Senator Bob D. Effiong: Mr. Chairman. I had expected His Excellency the Chairman, to rule on whether it is Ayes or Nays before I take up my Point of Order. This is because for Order 73, there ought to have been a ruling before I can move on.

The Chairman: It is all right for you to hold on to your point of argument but when it is voice voting, it must be very clear. For a very close voice vote, you cannot just stand up because you are on one side and insist that I must rule in your favour. That is not correct. A close voice vote must be done in such a way that I have convinced myself that what I am ruling on is the correct thing. So, if I say that I want to put the Question one more time and all of you start moving all over the Chamber insisting that we must take your own point of view, it is just not the correct thing to do. I will go ahead and put the Question one more time and then I rule.

The fact is that I must be clear in my mind that what I am ruling on is the correct thing and if you challenge it, we would go for a division. I would honestly want a division here so that we also test it out. So, please listen one more time as I put the Question. Those who answer Aye are those supporting that it is the Media and the Nays mean Nigerian Union of Journalists (NUJ).

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Question put and agreed to. (Interruptions)

The Chairman: Well, as far as I am concerned, the Ayes have it.

Some distinguished Senators: No!

Senator Bob D. Effiong: Point of Order!

The Chairman: Yes, Point of Order, Senator Bob Effiong.

Senator Bob Effiong: I raise this Point of Order under Order 73 of our Standing Orders and with the permission of Mr. Chairman, I would read. Order 73(1) says: *Any Senator may challenge the opinion of the President or the Chairman by claiming a division.*

(2) If the opinion of the President of the Senate, or in Committee of the Whole Senate, the Chairman, as to the decision of a question is challenged, the President of the Senate or the Chairman shall direct that the lobbies be cleared and on such direction being given, all doors leading to the Chamber shall be locked and the division bells shall be rung for one minute.

(3) After the lapse of two minutes from the direction to clear the lobbies the President of the Senate or the Chairman shall put the question a second time and, if his opinion is again challenged, a division shall be taken by the Clerk calling each Senator's name and asking each Senator separately how he desires to vote and recording the vote accordingly. The Clerk shall thereafter read the names and announce the number of those who have voted for and against the proposal, and the President or the Chairman shall declare the result of the division.

(4) Every Senator present, unless he expressly says that he declines to vote, shall record his vote either for the Ayes or the Noes. The Clerk shall add a statement of the names of Senator who declined to vote.

Mr. Chairman, I call for this division because if you look at the voice vote, it appears to me that it was the Nays that have it. So, I move the Motion that a division should be taken now.

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The Chairman: Your Point of Order is sustained and we would go for division. Distinguished Colleagues we should not shy away from going for division. It is an integral part of our process. In any case, no voice vote because so many people hide under the guise of voice vote not to come out plainly. Now, it is time for all of us to say exactly where we stand on these issues.

Senator Andrew Babalola (Oyo North): Mr. Chairman, Point of Order!

The Chairman: Senator Babalola you should know that you cannot raise a Point of Order now. We are yet to decide on a Point of Order, therefore, there should be no other one. In accordance with our Standing Order, I will put the Question again. Order 73(3) and after that we would go for division and I can assure you that I would rule in such a way that we must go for division here.

Question put and agreed to.

Senator Bob Effiong: I challenge again. Mr. Chairman, for the avoidance of doubt, the Rule is very clear and I stand by what I said before that you should call for division. I am calling for a division because everybody must answer his father's name.

The Chairman: Let me just explain, Senator Bala, it is proper for you to listen before you answer wrongly. When he calls your name, if you say yes, then you are supporting Media, if you say No you are supporting NUJ that is what it means.

Sergeant-at-arm please clear the Lobby. *(The Lobby is accordingly cleared)*

Clerk you may begin the roll call. If you answer Aye it means you are voting in favour of the Media. On the other hand, if you answer Nay, you are voting in favour of Nigerian Union of Journalists.

AYES

1. Senator Abaribe, Enyinnaya
2. Senator Ahmed, Mohammed
3. Senator Akaagerger, Joseph
4. Senator Babalola, Andrew Abidemi
5. Senator Bajomo, Felix Kolawole
6. Senator Bello, Mahmud Kanti

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7. Senator Dahiru, Umaru
8. Senator Dukku, Peto Kawo
9. Senator Ehinlanwo, Hosea
10. Senator Ekweremadu, Ike
11. Senator Hambagda, Omar
12. Senator Ibrahim, Bukar Abba
13. Senator Ida, Ibrahim Mohammed
14. Senator Jibril, Mohammed Kabiru
15. Senator Lado, Garuba Yakubu
16. Senator Lokpobiri, Heineken
17. Senator Makarfi, Ahmed Mohammed
18. Senator Mallam, Mujitaba Mohammed
19. Senator Manzo, G. Anthony
20. Senator Nwaogu, Nkechi
21. Senator Obasanjo-Bello, Iyabo
22. Senator Oduoye, Simeon
23. Senator Shagaya, John Nanzip
24. Senator Ugbane, Nicholas Yahaya
25. Senator Wada, Tawar Umbi
26. Senator Zagi, Caleb

NAYS

1. Senator Adetunji, Isiaka Adeleke
2. Senator Adeyemi, Smart
3. Senator Adokwe, Suleiman
4. Senator Akwashiki, Patricia Naomi
5. Senator Aminu, Jibril, Mohammed
6. Senator Argungu, Abubakar Umar
7. Senator Barigha-Amange, Nimi
8. Senator Bob, Effiong Dickson
9. Senator Chukwumerije, Uche
10. Senator Eferakeya, Adego
11. Senator Ekaette, Eme Ufot
12. Senator Ewa-Henshaw, Bassey
13. Senator Eze, Ayogu
14. Senator Festus, Ola

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15. Senator Folarin, Teslim
- 16.** Senator Gada, Abubakar Umar
17. Senator Gogwim, Satty Davi
18. Senator Ikenya, Joel Danlami
19. Senator Izunaso, Osita Bonaventure
20. Senator Maeba, Lee Ledogo
21. Senator Mana, Mohammed
22. Senator Mohammed, Bala Abdulkadir
- 23.** Senator Mohammed, Mohammed
- 24.** Senator Ndoma-Egba, Victor
25. Senator Ohize, Otaru Salihu
26. Senator Sodangi, Abubakar Danso
27. Senator Solomon, Ganiyu O.
28. Senator Talba, Adamu Garba
29. Senator Ude, Anyim Chukwu
30. Senator Umar, Audu Idris
31. Senator Yale, Kaka Mallam

ABSENT

1. Senator Adedibu, Kamorudeen
2. Senator Agbo, Anthony
3. Senator Ajibola, S. Sule
4. Senator Ake, Wilson Asinobi
5. Senator Akinyede, Sola
- 6.** Senator Akume, George
7. Senator Ali, Sidi Adamu
8. Senator Aliyu, Nuhu
9. Senator Anyanwu, Chris N. D.
10. Senator Anyanwu, Sylvester N.
11. Senator Ayuba, Abubakar Tanko
12. Senator Bello, Mohammed Adamu
13. Senator Bent, Grace Folashade
14. Senator Braimoh, Yisa
15. Senator Dahiru, Bako Gassol
16. Senator Dantong, Gyang Dalyop
17. Senator Emodi, Joy Ifeyinwa

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18. Senator Etok, Aloysius Akpan
19. Senator Garo, Aminu Sule
20. Senator Gaya, Kabiru Ibrahim
21. Senator Gusau, Hassan Mohammed
22. Senator Hayatu, Bello Gwarzo
23. Senator Kure, Zainab
24. Senator Kuta, Dahiru
25. Senator Lawan, Ahmed Ibrahim
26. Senator Lawan, Maina Ma'aji
27. Senator Maccido, Ahmed Muhammad
28. Senator Mamowora, Olorunnimbe
29. Senator Manager, James Ebiowou
30. Senator Muse, Munirudeen Adekunle
31. Senator Mustapha, Ramoni Olalekan
32. Senator Nazif, Suleiman Mohammed
33. Senator Ngaji, Gregory
34. Senator Nnamani, Chimaroke
35. Senator Obiora, Ikechukwu John
36. Senator Oguniya, Gbenga
37. Senator Okonkwo, Annie
38. Senator Olajumoke, Bode
39. Senator Omisore, Iyiola
40. Senator Osakwe, Patrick E.
41. Senator Paulker, Emmanuel
42. Senator Sani, Ahmad Rufa'i
43. Senator Saraki-Fowora, Gbemisola R.
44. Senator Sekibo, George Thompson
45. Senator Turaki, Ibrahim Saminu
46. Senator Ucha, Julius A.
47. Senator Ugbesia, Odion M.
48. Senator Usman, Abdulaziz
49. Senator Uzamere, Ehigie Edobor
50. Senator Ya'u, Sahabi

The Chairman: Distinguished Senators, please listen to a very authentic result.

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Aye	-	26
Nays	-	31
Absent	-	50
Abstain	-	0
Total:	-	107

There are two Senators who did not vote, that is the Senate President and Senator Ayo Arise who is not in the Senate now. Therefore, the *Nays* have it. What will be retained there is the *NUJ*.

Senator Andrew A. Babalola: Mr. Chairman, I want to make a Constitutional Point of Order. I am referring this august Senate to Section 1(3) of the 1999 Constitution. If the Chairman so permit I will read.

The Chairman: Yes, read please.

Senator Babalola: It says: *If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail; and that other law shall to the extent of the inconsistency be void.*

Section 22 of the same 1999 Constitution says: *The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the people.*

The Chairman: Along side with what you have just read, may I ask you to read also, our Standing Order 53(6).

Senator Babalola: Order 53(6) says: *It shall be out of order to attempt to reconsider any specific question upon which the Senate has come to a conclusion during the current session except upon a substantive motion for rescission.*

The Chairman: All right, what do you want to say now?

Senator Babalola: Mr. Chairman, this is the Constitution of the Federal Republic of Nigeria, this is an Order for this Senate. It cannot override this Constitution. I am quoting Constitution which is above any other law in this land. The law of this land recognises only one body to represent radio, press and television and that is the media. If we go ahead to make this law it will be *ab initio* null and void.

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The Chairman: Unfortunately, your conclusion is not the correct one. Why I asked you to read our Standing Order is that you cannot come through the back door. It says, once we have concluded a matter, you come through a substantive Motion. Have you come through a substantive Motion? Does the Constitution say you should not come through a substantive Motion? Show me a Section in the Constitution that says that you cannot come through a substantive Motion. So, your procedure *ab initio* is wrong. What is the essence of making all that big talk when you know that what you are doing is *ab initio* wrong?

Senator Babalola: I came through a Point of Order

The Chairman: No, forget the Point of Order that you have raised. You should raise your Point of Order in consonance with our Standing Order. Is it not? You have not done so.

Senator Dickson Bob Effiong: Award cost.

The Chairman: No, I will not award cost. I will simply rule him out of Order. I rule you out of Order anyway. Let us continue so that we can finish this Bill before us.

Senator Lee Ledogo Maeba: Observation!

The Chairman: What is your observation?

Senator Maeba: Mr. Chairman, since we are about concluding Clause (2) I want to draw attention to the provisions of Clause (2)(a). I want to find out from you, Mr. Chairman, is it proper that in a Committee where we have the Attorney-General, the Secretary to Government, the Head of Service and Economic Adviser to the President, a Chairman is appointed to head them. How will the Chairman operate Sir? The Chairman is just a Chairman of a Parastatal, the Procurement Bureau. How will he head all these people? The extant provision that the Minister of Finance be the Chairman, to me looks more reasonable than to appoint a Chairman to head the Secretary to Government and all these people. I ask to know if it is proper by protocol.

The Chairman: All these characters here are under the President. If he decides to appoint anybody as the Chairman, what is the problem with that? It says that the President shall appoint the Chairman. What is the problem with that?

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Senator Jibril Aminu: Mr. Chairman, there was a Committee like this in the past, I think it was about the Public/Private Sector branches headed by a former Head of State, but a Minister objected serving under a former Head of State. Besides that we know the reality that these Ministers will not come, it is most likely they would be represented by their officials. With all due respect, that is not a very valid point.

The Chairman: Just because we are making a law hence I try to listen to everybody's point of view. If you are a member here and the President appoints you a Chairman, I do not see where the problem will come from.

Senator Bassey Ewa-Henshaw: Mr. Chairman, the point that Senator Jibril Aminu made is valid. Often these Ministers do not come. But I suggest we probably say that in each case, the Minister of Finance or his representative, so that there is sufficient flexibility.

Experience has shown that unless it is someone of the caliber of an ex-Head of States, those Ministers feel reluctant to work under a Chairman that is not at that level. There is nothing wrong technically or legally wrong with this, but to ensure that the Committee actually functions properly if we say the Minister or his representative it gives a little bit of flexibility.

The Chairman: My own experience on this issue is that whether we say Minister or his representative they will normally send, maybe, the Permanent Secretary or a Director. I do not think that invalidates their decisions. Unless you insist that we say his representative, but usually they would send a representative.

Senator Umaru Dahiru: Mr. Chairman, by virtue of the provision as contained here, there is no room for any representation. It says: *The Council shall consist of...*, that *shall* is mandatory. We do not expect a Minister to send anybody other than himself. That is the provision of this law. If he does it, it is wrong and could be challenged.

Senator Victor Ndoma-Egba: Mr. Chairman, I agree with my Colleague, Senator Dahiru that the provisions as they stand are mandatory. But we must appreciate the reality of our situation. In real life it is difficult for Ministers to attend to all of these things. Also in reality our experience is that they send representatives. For me, it is safer that we err on the side of surplusage by making a provision allowing for a representation of those who are substantive members of

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this body. If we take the Minister of Finance, for instance, we could just add a phrase there; *or his representative provided he shall not be lower than a Director*.

Senator Ahmed Mohammed Makarfi (Kaduna North): Mr. Chairman, we are dealing with a law which is already in existence. Some of these comments simply imply as if the law does not exist. We are only amending an existing law and it has not come to anybody's notice that they are failing to function as the law stipulates. This Amendment came from the Executive itself. As I mentioned earlier on, the Executive also used the opportunity to bring in some Amendments they wanted to the Bill which we try to incorporate into the Bill.

Senator Tawar Umbi Wada (Gombe South): The most important thing is that we are here to consider our limitations. What makes the Legislature very supreme to other forms of government is that it is our thinking that we turn into command. It depends on the intention of the Legislature. If we want all these Ministers to attend, we say it categorically just as it is being stated here. The word *shall* is mandatory and if we are spelling out that those Ministers should attend, it signifies the calibre of the Committee but if we want to water the calibre of the Committee down, we can do so by saying that they can send a representative. If we do so, we are giving them a leeway to send their representatives. So, my thinking is that there is nothing wrong with the provision as it stands. It reflects our thinking that all these Ministers should attend. If you cannot attend, you quit the government. That is simple.

The Chairman: Is there any more comment?

Senator Ibrahim Mohammed Ida: Mr. Chairman, in order laws where there is room for representation, the statement is that the representative of Minister A not below the rank of a Director. In this case, because of the nature of the Agency we are talking about and the fact that previously it was even the Minister himself that was chairing; the intent here is to have the Ministers themselves there. This is because we are talking of public procurement at the highest level possible. There is no room for representation. The idea is to have the Ministers themselves and that is why it is very categorically stated.

Senator Ayogu Eze: I am of the opinion that we have to be practical because we know that *strict sensu* these Ministers will not come all the time. We have seen in the past where this Senate spent a lot of time

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debating the problem of not issuing certificate or going through the process of procurement and delays in contract award and execution. I also do not subscribe to the argument that because this is a law that has already been passed or is sent by the Executive, we cannot improve on it. The essence of bringing it back is for us to improve on it. Even after we have treated it this time, the next time it will come, we would still see something that needs to be improved upon.

To guide ourselves knowing that we are dealing with human institutions, these Ministers always travel; we may say the Minister or his representative not below the rank of a Director. It must not be the Minister; otherwise we would be putting ourselves in a position again where we hold projects down.

The Chairman: Please distinguished Colleagues, if the law says a Minister shall attend, the Minister should attend. I do not understand where the problem is. Do the Ministers not go for Executive Council Meetings? So, if the law says let the Minister attend, let the Minister be responsible and attend. We should not be going up and down just because we think that a Minister could do what he wants at any given moment. Please, if we may make progress.

I will put the Question in favour of Clause 2(g)(i) to (vii) as amended.

Question put and agreed to.

Senator Caleb Zagi (Kaduna South): Mr. Chairman, I remembered that Clause 2(h)(a) all appointments are being done without confirmation by the Senate and I would have thought that in a situation like this, either the appointment of the Chairman or the Director General should really pass through the screening of the Senate. You notice in Clause 2(a) where it says that the Chairman shall be appointed by the President and it is not subject to confirmation by this Chamber neither also is that of the Director-General. I feel this institution as important as it is, such appointments should be subjected to the screening and confirmation by this Senate.

The Chairman: This seems to me more like an Executive body. Do we want to get involved in approving the Chairman and the Director-General of it? It seems more to me like a body that works for the Executive because if you read through the Act, you will find that we also have our own body of Principal Officers. My suggestion would be that we just allow the Executive to handle this on their own. Is there any contrary view?

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Senator Nimi Barigha-Amange (Bayelsa East): Mr. Chairman, Clause 2(h)(ii) reads: *Notwithstanding the provision of sub-section (1) each of the arms of government shall determine its individual threshold.* Each of the arms is a bit confusing whether you are referring to the Executive or Legislature or the Judiciary. So, I propose it reads thus: *Notwithstanding the provision of sub-section (1) the Judiciary and the Legislature shall determine their individual threshold.*

The Chairman: Is that correction all right or it should be the other way round, *the Legislature and the Judiciary.*

Senator Jibril Mohammed Aminu: I am glad about the decision of the Senate because I got this principal Act and Section 59(4) says that: *The proceedings of the Council or Committee shall not be invalidated by the participation or absence of anybody.* So that is a standard in all Acts.

Then on this one, while I respect your decision, I think this body represents a great development in transparency in the way we do things in this country. This is a great thing to be considered as a great development like the Freedom of Information Bill, in only we could pass it. Like Fiscal Responsibility Bill. This is a great development and it would do no harm for the Senate to consider some of the lay members that would be appointed to serve on this. I agree they are serving the Executive but they are also bringing a new system to improve the general system of Nigeria.

The Chairman: Unless there are more views on that but my honest view is that we should also allow the Executive to just handle this and not compound it any further.

I will put the Question in favour of Clause 2(h)(i) and (ii).

Question put and agreed to.

We will now bring the amended sub-Clause (ii) as sub-Clause (i) and insert a new sub-Clause 2 as follows. We are only renumbering sub-Clause 2.

Senator Ike Ekweremadu: Mr. Chairman, I want to further propose that: Notwithstanding the position of sub-section (i), that each of the arms, just like Senator Barigha-Amange sort to do earlier when he said we should name the Executive, Judiciary and the Legislature but further to that he said that Government

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shall determine its individual threshold. I am suggesting that the word *individual* be replaced with the word; *respective*. I will put the Question in favour of Clause 2(h)(ii).

Question put and agreed to.

CLAUSE 2 - (AMENDMENT OF SECTION 1) as amended ordered to be part of the Bill.

Clause 3 - (AMENDMENT OF SECTION 7)

Question proposed.

Senator Iyabo Olusola Obasanjo-Bello (Ogun Central): Mr. Chairman, I believe that the extant Act which states that the President would choose the Director-General based on the recommendation of the Council after competitive selection is the right thing to do. In the Act that was brought, this was removed but here it is retained as such. If we want to be more open in this process, the idea should be that the Director-General should come through a competitive selection process. That is the standard all over the world. What we are doing now is already going back to what is our normal practice in this country which is removing competitive selection. What competitive selection means is that there would be an advertisement where anybody that feels he is qualified applies and then, maybe, three names are pressed up and taken to the Council for selection and then they recommend to the President. That is the standard practice all over the world.

Why do we want to remove competitive selection from our processes every time? This is how we get mediocrity as part of our normal response. The President or anybody in charge can choose anybody but competitive selection for something as professional as this is very important.

Senator Victor Ndoma-Egba: Mr. Chairman, this Bill is going to be as important as the EFCC Act or the ICPC Act because it is now pushing the thresholds of accountability and transparency further. To that extent, I support Senator Iyabo Obasanjo's position.

But, I will like to add that if this is a landmark Bill that is going to change the way we think and the way we do things and the way we apply public funds. Then the same standards that we applied for the EFCC and the ICPC, should be applied to all Members of this body.

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If you take the Ministers who are members of this body, for instance, they would have been screened already by the Senate. The other part-time members should also be subjected to the screening of this Senate. This is because it is a very important Bill and it changes the way we do things. I so submit.

The Chairman: I support that and it is valid. This is a very high caliber group put together. There is no reason they should not be subjected to screening by the Senate.

Senator Ahmed, I think we should leave that clause but why did you remove it?

Senator Ahmed Makarfi: Mr. Chairman, the procedure for appointment of the Director-General itself is such that the President will not just appoint the Director-General. It is the Council that will recommend possible names for appointment as a Director-General.

If you look at those who constitute Members of the Council, surely competition will be there. It was felt that it is just being repetitive but if the Senate feels that as a matter of emphasis it should be retained, so be it.

The Chairman: I think leaving it there adds and does not subtract. It adds to the openness and transparency that we are all trying to achieve through this. So, I think we should leave it there.

Senator Ndoma-Egba, you have to re-word how you want us to insert that. I will now put the Question in favour of Clause 3 as amended.

Question put and agreed to.

Clause 3 – (AMENDMENT TO SECTION 7) – as amended ordered to stand part of the Bill.

Clause 4 – (AMENDMENT TO SECTION 16)

Senator Mohammed Jibrin (Kaduna Central): Mr. Chairman, I have been waiting for this Section 16 even though some of it will affect earlier decisions taken on Clause 2 and, perhaps, Clause 3.

I noticed that when the provision of the body comprised in the Bureau was spelt out for the Executive and practically, that of the National Assembly is different from the Tenders Board but that of the Judiciary is the Tenders Board itself. It is not the practice to have a Bureau that is going to check public

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expenditure to also be the body that would do the expenditure. We should separate the two. Certainly, the Tenders Board with regard to the Judiciary is not the appropriate body that will check proper procedure like the Bureau. We should spelt out a different body that would represent the body similar to the Bureau for the Judiciary.

Also, while I was looking at this, I thought over the use of the word; *threshold* used in both Clauses 2 and 16(i) and (ii). Perhaps, in other areas of the legislation because we do not have the complete copy of the law, as it were, then all of a sudden, Senator Ndoma-Egba used the word *threshold*, in another meaning for another purpose. So, I came to think that, perhaps, threshold as it is used variously in the Clauses of this Bill could probably not necessarily be assumed to mean things in line with the activities and objectives for which it is supposed to serve. Perhaps, threshold meant something different. Otherwise, the law should probably spelt out what is threshold. Threshold could be an arrangement; perception, assumption or anything else. Maybe the law should interpret what threshold means so that the interpretation of it would not be vague when it becomes necessary.

The Chairman: I do not know what they have in the Judiciary. Why do you say a Judicial Tenders Board is not all right? They do not spend the money. It is just a Tenders Board. The people that spend the money are the various courts. Why do you say that this Body is also spending the money?

Senator Mohammed Kabiru Jibrin: What I mean is that I know in the Executive, for example, there is the Federal Tenders Board, which is not the Bureau of Public Procurement. They are different. It is the Tenders Board that invites people to qualify and to tender for the jobs and award the contracts. Usually, the Tenders Board send those qualifications and tender results on tenders submitted to it to the Bureau of Public Procurement.

The Chairman: Rather than this explanation, what are you suggesting?

Senator Mohammed Kabiru Jibrin: I am suggesting a different body like it is comprised in the Bill for the Executive in the Bureau should be made for the Judiciary as well. That of the Legislature has been taken care off because in the Legislature, we have a Tenders Board already. The body of Principal Officers, which is supposed to act as the Bureau is not the same as the Tenders Board.

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Senator Ibrahim Ida: Mr. Chairman, I have the same problem as Senator Mohammed Jibrin. Indeed, this law appears to be set up exclusively for the Executive. If we say that we now have to have another Bureau for the other two arms of Government, it implies that there should also have to be a law for the same type of outfit set up for the Judiciary and another one with the same type of outfit set up for the Legislature.

As he was saying, the Tenders Board are the clients, so to say, of the Council on Public Procurement. If they are, how can they now probate and approbate? How can they be clients to a body that they have to set up? There is a confusion here that really has to be sorted out. If we are to have a separate threshold for the Legislature, are they going to be bound by the same provision of this law? If we have to have it for the Judiciary, are they also to be bound by the same provision of this law? We really have to clarify what we mean by saying that there should be different thresholds for the Legislature, the Executive and the Judiciary.

Senator Mohammed Ahmed Makarfi: Mr. Chairman, with due respect, the last comments surprised me because essentially, this Bill was recommitted to this Committee principally because of this Amendment to provide independence for Legislature and Judiciary. They made submissions and we met on the basis of those submissions. The essence of this is that instead of what prevails now, all Federal Agencies are bound by the Public Procurement Act, but at certain level, both the Judiciary and the Legislature would have to send their own memos to Federal Executive Council and that should not be so. The essence of this Amendment is that nothing from the Judiciary or the Legislature would have to go to the Federal Executive Council. They should have their own bodies, following the Public Procurement Act and they would conclude their own procurement processes. That is the essence of all these Amendments and that was the submissions we received from the arms that we give both the Legislature and the Judiciary their financial independence.

The Chairman: Does that explanation solve the problem?

Several distinguished Senators: Yes.

Senator Tawar Umbi Wada: Mr. Chairman, in line with the explanation given by Senator Ahmed Makarfi and in an attempt to answer what Senator

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Mohammed Jibrin has said, I would like to make a suggestion. Senator Mohammed Jibrin said that in the case of the Executive, you have the Federal Tenders Board, which is the Ministerial Tenders Board of the Federal Executive Council and then you have this Council.

In the case of the Legislature, you have the body of Principal Officers; you also have the Legislative Tenders Board. In case of the Judiciary, in order to have the same two lines of authorities, all we need to do here is to substitute the Judicial Tenders Board with the National Judicial Council. The National Judicial Council is there as a body and it becomes equivalent of the Principal Officers of the National Assembly and it becomes the equivalent of this Board, which we have just constituted. While the Judicial Tenders Board remains the Judicial Tenders Board. All we need to do is to delete Judicial Tenders Board and insert the National Judicial Council and that would take care of the situation.

The Chairman: Senator T. U Wada, I am not sure that you are not introducing a new dimension and confusion really. You have changed the whole thing completely.

Senator Victor Ndoma-Egba, I do not know what the National Judicial Council does, but I thought it is just a regulatory body.

Senator Victor Ndoma-Egba: I think we should just leave the matters as they are because there is already an existing arrangement in the Judiciary. There is a Federal Judicial Tenders Board; they have their own procurement processes and I do know that the Judiciary has been acting so far in accordance with this Procurement Act. We should just leave the matters as they are.

The Chairman: Truly, I think we should. But let me put the Question on Clause 4, please.

Question put and agreed to.

Clause 4 – (AMENDMENT OF SECTION 16) – ordered to stand part of the Bill.

Clause 5 – (AMENDMENT OF SECTION 20) – ordered to stand part of the Bill.

Clause 5 – (AMENDMENT OF SECTION 20) – ordered to stand part of the Bill

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Clause 6 – (AMENDMENT OF SECTION 22) – ordered to stand part of the Bill

Clause 7 – (AMENDMENT OF SECTION 25) – ordered to stand part of the Bill.

Clause 8 – (AMENDMENT OF SECTION 35)

Question proposed

Senator Bassey Ewa-Henshaw: Mr. Chairman, if we accept the proposed Amendment of removing the limit, it will be dangerous. We can increase from 15 *per cent* for those who feel that 15 *per cent* is a bit low; but peg it at something like 25 or 30 *per cent*. The Amendment as it stands says: *In addition, to any other regulation as may be prescribed by the bureau, a mobilisation fee of an amount to be prescribed in the bid document, may be paid to a supplier or contractor supported by the following;* it suggests that if they want to insert a 100 *per cent* they can pay everything in advance to the Contractor. That will be dangerous. So, while there is need for, perhaps, increased flexibility, we can increase the limit from 15 *per cent*, to about 25 *per cent*.

The Amendment proposed is that the entity that is ordering can prescribe in the bid document the amount that it wishes to pay to the Supplier or the Contractor. The Committee has suggested that, that be retained. I am saying that it is too open. There should be a limit imposed and I am suggesting 25 *per cent*.

Senator Umar Dahiru: Mr. Chairman, Senator Bassey Ewa-Henshaw has spoken my mind. In fact, I wanted to raise that observation. I want to amend as follows... *a mobilisation fee of not less than 15 per cent*. The existing law is not more than 15 *per cent* but here I make it not less than 15 *per cent*.

The Chairman: Senator Dahiru, in fact, what you are saying is the direct opposite of what Senator Bassey Ewa-Henshaw has said. Senator Ewa-Henshaw did not speak your mind rather he said the very opposite. What he is saying is that because they said mobilisation fee of an amount to be prescribed in the bid document may be paid to a supplier or contractor supported by the following. Senator Ewa-Henshaw said that we have left it open ended and that we should not do that, we should peg it at not more than 25 *per cent*. That is the suggestion by Senator Bassey Ewa-Henshaw.

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Senator Iyiola Omisore (Osun East): Mr. Chairman, it is a very good idea to want to peg mobilisation fee to a particular figure, but this is law. Based on the experience of past years where budget performance is so low led to the issue of 15 *per cent* of what sort of goods. There are goods that 15 *per cent* cannot do anything. It is either you are buying or you are not buying at all.

The most important thing is that we must allow this in the Budget, so that we do not have the issue of budget under performance. In the past they said there were so many bottlenecks. If you put a limit now it becomes the law of the land and they cannot go beyond that. Over the years they would say that the Due Process is not performing and that people are not working very well. You have various equipment. Except you want to state the goods and the contractors, suppliers and so on. It depends on what is involved.

If you do not want to list the type of contracts, procurement is a general procurement of all goods and services. There are some goods if you make 15 *per cent* it cannot make any impact at all. That is why they left the discretion to the Procurement Bureau. That is why it is so. Otherwise, you will hamper and disturb Budget Performance and you will be returning money every year.

Senator Mahmud Kanti Bello (Kastina North): My feeling is very simple on this. In addition to any other regulations as may be prescribed by the Bureau, mobilisation fee of amount to be prescribed in the bid document may be paid to a Supplier or Contractor supported by Performance Bond which you get from a bank or insurance.

The Chairman: Does that cure the defect?

Several distinguished Senators: No.

The Chairman: The point that Senator Bassey Ewa-Henshaw raised is that people should not do things recklessly in an irresponsible manner. I personally believe that this calibre of people should not, but, it is a law that we are making it should take care of all eventualities. He said that the cure for it is, if they decide to pay 50 *per cent* mobilisation, let it be supported by Performance Bond or Performance Guarantee. What is the proper name?

Senator Garba Yakubu Lado (Katsina South): Mr. Chairman, I support what Senator Kanti Bello has just said. We should leave it open. It will be secured by Performance Bond or Advance Payment Guarantee (APG).

As a contractor, before you are given any amount you must have a Bond from a reputable bank that will secure whatever amount that would be given to you. That is the only way our Budget will be implemented because some of our contractors do not have the capacity when they are given only 15 *per cent*. That is why we are having cases of returning money every year.

Senator Iyiola Omisore: Mr. Chairman, he said that he supported Senator Kanti Bello and he is mentioning Performance Guarantee. There are many words and that was why we put Requisite Guarantee. When you say, Performance Guarantee, you are not limiting them to particular one we have had such cases. When you say Requisite Guarantee, that is, the requisite guarantee for that particular job. But, the issue is that the Guarantee must be made. A Requisite Guarantee makes it easy.

The Chairman: Those of you who have been involved in major procurements are the ones confusing us now.

Senator Jibril Aminu: Mr. Chairman, I will like to urge you to listen very sympathetically to what Senator Omisore, said. These things vary so, please, do not put any figure which will make it impossible for the work to be done. There are some engineering contracts, for instance, somebody building a refinery or petrol chemical or electrical establishment if you do not give him up to 60 or 75 *per cent*, they would not be able to start, because they have to order everything and on time. If they do not order on time, in about three months, the price would have changed to an extent that it will make it difficult for them.

So, the Performance Bond, or Performance Guarantee, no matter what you name it, as mentioned by Senator Kanti Bello is valid and we should rely on them getting a Performance Bond from a reliable bank and allow this highly responsible body made up of Ministers and very senior people to decide the sort of level of mobilisation fee they would give according to the nature of the contract they are giving out. I would strongly recommend that.

The Chairman: That was the point I made saying that to cure the fear that Senator Bassey Ewa-Henshaw has expressed it is qualified by Performance Bond or Performance Guarantee whatever the technical language is.

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Let me also emphasise this, if any one of us is a member of this Body are we going to act in a manner that is totally irresponsible? My simple answer is *No*. So, let us not carve it in such a way that it gives an impression that we have just gathered a group of very irresponsible people and we have to guide them absolutely on what they have to do on day to day basis.

Senator Bassey Ewa-Henshaw: Mr. Chairman, the point I raised is borne out of experience. I have served in several areas where I have been privileged to see government contracts. In most of the contracts that I have seen, they are usually heavily loaded against Nigeria. That is the truth. Apart from the advance payments that you make, you will always find in the kinds of contracts that Senator Jibril Aminu is talking about, that the contractor will ask you as part of the agreement, to set up an Escrow Account to ensure that payments are made on time. The point is that if you leave this matter open-ended, advantage will be taken of Nigeria. That has been the experience, no matter the kind of contract involved.

Finally, I also think that contractors have a duty if they want to do business with government. Government is not meant to pay 100 *per cent* before you do the job. As a contractor, you are also expected to invest your money in the project because it is something that you believe in and that is why you want to do it. There must be room to allow a contractor to show commitment in ensuring that the job is properly done. That is the point.

The Chairman: I will put the Question now. We have cured that by saying that they should produce the requisite bond. That cures it. If they perform, they collect their money but if they do not perform, the bond covers it.

Senator Ahmed Makarfi: Mr. Chairman, I do not think that even the Amendment is required because Section 35(1)(a) and (b) of the principal Act has clearly stated that a bank unconditional guarantee must support mobilisation payments. I have a copy of the Act here. So it would be a repetition. *(Interruptions)*

The Chairman: What you are saying is exactly what we are saying here. So that has covered it because we do not have the advantage of the Act here. I will not put the Question in favour of Clause 8.

Question put and agreed to.

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Clause 8 (AMENDMENT OF SECTION 35) - ordered to stand part of the Bill.

Clause 9 (LONG TITLE) - ordered to stand part of the Bill.

Senator Victor Ndoma-Egba: Let me read what I have on the Amendment of Clause 2(1)(f). I said: *Seven part time members who shall be subject to confirmation by the Senate to represent those interests.*

Amendment put and agreed to.

The Chairman: On the issue of Chairmanship, we have already debated that and we said that the President would get whoever he wants as the Chairman. Let us not just carry on as if the President would always do something which is wrong. Obviously, these six characters, obviously, have had no association at all with us here in the Senate and it is only proper that the Senate should clear them.

Senator Teslim Kolawole Folarin: Mr. Chairman, I move that you now report progress.

Senator Omar Hambagda: Mr. Chairman, I rise to second the Motion that the Chair reports progress.

The Chairman: Before I put the Question, Senator Jibril Aminu would act as the link-man of the Senate because he is also detecting the mood of the Senate now.

Question put and agreed to.

(The President resumed the Chair)

The President: The Senate in the Committee of the Whole considered the Report of Finance Committee on the Bill for an Act to Amend the Public Procurement Act and approved as follows:

Clause 1 - as recommended

Clause 2 - as amended

Clause 3-9 - as recommended

Title: - as recommended

Is this a true reflection of what transpired in the Committee of the Whole?

Several distinguished Senators: Yes.

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The President: Thank you very much.

Third Reading of the Bill

Senator Teslim Kolawole Folarin: Mr. President, I now move that the Bill be read the Third Time.

Senator Umar Hambagda: Mr. President, I second the Motion that the Bill be read a Third Time.

Question put and agreed to.

Bill read the Third Time and passed.

Report of the Committee on Sports and social Development

Senator Teslim Kolawole Folarin: Mr. President, I want to move that the last item on the Order Paper be stood down to another legislative day.

Senator Umar Hambagda: I second the Motion that the last item on the Order Paper be stood down to another legislative day.

Question put and agreed to.

Resolved: That the last item on the Order Paper be stood down to another legislative day.

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ANNOUNCEMENT

Membership of the Conference Committee on Public Procurement Bill

The President: Distinguished Senators, the Members of the Conference Committee on Public Procurement Bill are:

1. Senator Ahmed Mohammed Makarfi - Chairman
2. Senator Felix Bajomo
3. Senator Idris Umar
4. Senator Sidi Ali
5. Senator Emmanuel Paulker
6. Senator Anthony Agbo

ADJOURNMENT

Senator Teslim Kolawole Folarin: Mr. President, I now move that this Senate do now adjourn till Tuesday, 14th July, 2009 at 10.00 a.m.

Senator Umar Hambagda: Mr. President, I rise to second the Motion that the Senate do adjourn till Tuesday, 14th July, 2009 at 10.00 a.m.

Question put and agreed to

Resolved: That the Senate do adjourn till Tuesday, 14 July, 2009 at 10.00 a.m.

The Senate adjourned accordingly at 1.15 p.m.