

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 11th March, 2015

The House met at 2.30 p.m.

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

PRAYERS

Hon. Speaker: Hon. Members, there will be a Communication coming which has to deal with the integrity of the House. Most of you will appreciate that we seem to suffer from momentary lapses of memory. When matters are before Committees of the House, our own Standing Orders tell us that Members should not discuss such matters.

(Applause)

If you think that you have no respect for any Committee of the House, the easiest way is to write to the Speaker tendering your resignation as provided for in Article 103 of the Constitution. The Committees of the House are a reflection of the House. If you do not have faith in any of the Committees, it means that you have no faith even in yourself. However, we want to address it in some specific context.

Let us proceed.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday, 11th March 2015:-

The National Police Service Commission (Recruitment and Appointment) Regulations, 2015 and the Explanatory Memorandum (in accordance with Section 11 of the Statutory Instruments Act, 2013 and Section 28 of the National Police Service Commission Act, 2011)

The Constituencies Development Fund Board Reports on Project Approvals and Disbursement Status for the month of February, 2015.

The Report of the Auditor-General on the Financial Statements of the Presidency for the year ended 30th June 2014, and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Media Council of Kenya for the year ended 30th June 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kipchabo Tea Factory Ltd (A Subsidiary of the Nyayo Tea Zones Development Corporation) for the year ended 30th June 2014, and the certificate of the Auditor-General therein.

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The Annual Report and Financial Statements of the Kenya Power and Lighting Company Limited for the year ended 30th June 2014.

Thank you, hon. Speaker.

Hon. Speaker: The Chairperson of the Departmental Committee on Finance, Planning and Trade. How can it be that a chairperson who has chaired a committee that has prepared a Report, the Report has been approved for tabling and even the Motion approved, hon. Langat, who has an able assistant, be absent?

Proceed.

MOTION

APPROVAL OF THE BUDGET POLICY STATEMENT, 2015

THAT, pursuant to the provisions of Section 25(7) of the Public Finance Management Act and Standing Order 232, this House adopts the Report of the Budget and Appropriations Committee on the Budget Policy Statement 2015, laid on the Table of the House on Wednesday, 4th March, 2015, subject to –

(a) deletion of Part VIII on page 29 of the Report (Financing Measures) and substituting thereof with the new Part VIII (Recommendations and Financing Measures);
(b) insertion of the following new Part IX immediately after new PART VIII.

The Committee, having reviewed the Senate's Resolution on Budget Policy Statement, 2015, further recommends that, in the finalization of the Estimates for 2015/2016 financial year, the National Treasury also takes into account the Senate's Resolution on the Budget Policy Statement, 2015 as contained in the THIRD SCHEDULE herein attached;

(c) insertion of the THIRD SCHEDULE in the Report, immediately after the SECOND SCHEDULE. (proposed new Third Schedule is herein attached)

(Hon. Musyimi on 10.3.2015)

(Resumption of Debate interrupted on 10.3.2015)

Hon. Speaker: Who was on the Floor?

Hon. (Eng.) Gumbo: On a point of order, hon. Speaker.

Hon. Speaker: Yes. What is your point of order?

Hon. (Eng.) Gumbo: Thank you, hon. Speaker. I notice that order No. 8 is a continuation of debate on the Budget Policy Statement. Yesterday, hon. Jakoyo Midiwo had drawn your attention to a provision on page 28 of the Report of the Committee and the First Schedule. This has to do with the item that the National Treasury be allocated some money for public hearings. You had advised that we could propose an amendment to this Report, which I did.

However, I have just received a comment from your office directing me, and rightly so, that since this one touches on a money Bill, it has to pass through the Budget and Appropriations Committee.

I have no problem with that. However, I need a clarification from you. Since this is a Report of the Committee and from my experience, reports such as this do not go to the Committee of the whole House, I was wondering at what point the Committee will engage on the issues that I raised with regard to the amendments I was proposing.

Hon. Speaker: In fact, the comments are not from my Office, but from me. There is a difference between my Office and myself. It is fair that we appreciate what is a money Bill. In Article 114(3), a money Bill means a Bill other than a Bill specified in Article 218 that contains provisions dealing with--- It is fair to appreciate that Article 218 deals with the requirement that the Cabinet Secretary shall submit before Parliament not later than two months to the end of the financial year, 218(1)(a), Division of Revenue Bill and 218(1)(b), County Allocation of Revenue Bill. So, it is not this one. But, any Bill that makes provisions dealing with:-

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investments or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; and,
- (e) matters incidental to any of those matters.

Your proposal is to provide for not a reduction, but for re-allocation from one Vote Head to another. Is there a provision in terms of where all those resources will come from? It is not a re-arrangement. You are not proposing a re-arrangement, which is why the best place to take that matter is before the Budget and Appropriations Committee. If we pass it the way you are proposing merely by acclamation and then the Cabinet Secretary, who is supposed to take on board or into account the resolution of the House on the Budget Policy Statement raises the issue of where the resources are going to come from, which you indicate to move from one place to another, then obviously, it becomes another problem. Can you explain what you wanted?

Hon. (Eng.) Gumbo: Hon. Speaker, I stand guided. I read Article 114, which I am conversant with and my understanding was that in essence, we are not really appropriating. We are just re-allocating from one Vote to another. I understood you to mean that being a Motion, it could be amended. The direction, which I am kindly asking you to give me is: At what point? Looking at where we are now, it is possible that we are going to conclude debate on this Motion. I am just wondering what then would happen to this amendment. It is an amendment which concerns quite a number of us. In my view, it has some substance and the House should be seized of it and have an input.

Hon. Speaker: Whether it is like that or not, as you have explained, hon. Gumbo, I saw your proposal quite early in the morning. I made the remarks that given the provisions of Article 114 of the Constitution, it is a proposal that requires to be taken before the Budget and Appropriation Committee. You can go and sit with the Committee, discuss, agree and report to the House. If it is approved without the benefit of consideration by that Committee, we will obviously land into trouble when it comes to the Budget Estimates and the preparations of the Appropriations Bill, which is anticipated under Article 221. That is why I made my remarks early in the morning. You had indicated yesterday. I was quite happy to see your proposal early in the morning and recommend that, please, consult the Budget and Appropriations Committee, so that you

can discuss. I do not know whether at this stage it is possible for the plenary to make re-arrangements. As you rightly pointed out, this is not the kind of Motion that the House will dissolve itself into a Committee of the whole House. The resolution will be carried one way or the other by the plenary without dissolving itself into a Committee of the whole House. It is for that reason that I made that direction that you, please, consult with the Committee. I do not know whether it has not been possible to consult with the Committee.

Hon. (Eng.) Gumbo: Hon. Speaker, I sat here the whole morning and I got this response just before 1.00 p.m. So, it was not even possible to consult. I would have loved to see my good friend, hon. Mutava Musyimi, but I got it just before we broke for the morning Session. That is why I find my hands tied. What do I do with it? We are likely to conclude debate on this Motion and I have this amendment, which I believe will benefit the Members. But I just do not know what to do.

Hon. Speaker: Even for me, save for the fact that I noticed that you are proposing certain appropriations to be done in a particular way, I do not know which particular Votes are affected. That is why I thought that an engagement with the Committee would be appropriate. I did it quite early in the morning. I had a meeting at 10.00 a.m. and by the time I left, I had already dealt with that. I had expected reasonably that there should be an engagement between you and the Committee. It appears then that you did not visit my Office to pick your proposal.

Hon. (Eng.) Gumbo: Hon. Speaker, I thought you would approve it, unfortunately.

Hon. Speaker: In my opinion, I felt that it is a matter that in terms of Article 114, needed an interaction with the Budget and Appropriations Committee. That is why I made the proposal that you go to the Committee at that time. I do not know how else it can be done. There is no procedure provided where we can start it here in the plenary. Maybe, hon. Eseli Simiyu wants to propose some way forward.

Hon. (Dr.) Simiyu: Hon. Speaker, thank you for this chance. This kind of situation calls on you to do a precedent setting review of the whole matter. With the new constitutional dispensation, this Budget Policy Statement will be coming to the House every year. The way things appear, we are not privy to that Budget Policy Statement until it is tabled by the Chairman of the Budget and Appropriations Committee. Once it has been tabled, the only thing we can do on our side would be to bring amendments. If we were to consult the Chairman and his Committee to look at our amendments before they are brought to the Floor, perhaps, you would set a precedent ruling that would, therefore, determine how best the House will be tackling such situations. Such situations will arise almost every year. We should have a clear direction as to how we will be dealing with such a situation whenever it arises. If he has tabled the amendment, maybe, you can give us a window period within which those who might have amendments can sit with the Committee, so that then the Committee can either reject or incorporates them and the Chairman brings them to the House. That window period; the time scale involved is, perhaps, of essence here.

Hon. Speaker: Hon. Members, one thing which may be factually a bit incorrect is that the first time you interact with the Budget Policy Statement is when the Chair of the Budget and Appropriations Committee presents it. That is not correct. The Chair of the

Budget and Appropriations Committee does not even present it. It was tabled by the Leader of the Majority Party. He is the one who laid it on the Table. As you know, the requirement in our Standing Orders is that we need to have it here before 15th February every year. I have seen proposals from the Budget and Appropriations Committee proposing that it comes slightly earlier than that period. That will enable us to address some of these concerns.

Another more important point is that the current Report of the Budget and Appropriations Committee on the Budget Policy Statement was laid on the Table on Thursday last week. Like we all know, proposals for amendments will then be allowed. From that date, there will be an opportunity to amend the Report of the Committee on the Budget Policy Statement itself, which is what hon. Gumbo is proposing to do. The opportunity may not have been too long. That, I must admit. However, given that some of the provisions regarding this process are in the Constitution, it is not feasible that the Speaker will make any precedent-setting ruling because such ruling will have to go outside the Constitution. As we all know, anything that infringes on the Constitution will be challenged. That is the only handicap. Hon. (Dr.) Simiyu, I appreciate what you have said and I agree. It is for the same reason that the Committee is proposing an earlier date than 15th February of every year. Of course, some of those things will require an amendment of not just our own Standing Orders, but also the Public Finance Management Act. This is the fifth year of the Constitution. We are expected to have come up with better mechanisms.

Do I see the Temporary Leader of the Minority Party, hon. Kipyegon? The Member for Emurua Dikirr has assumed the seat of the Leader of the Minority Party. Where he is seated is clearly marked "Leader of the Minority Party". Has he assumed that role for some reason or another? Hon. Midiwo, what is your contribution? Hon. Midiwo, what is your point of order?

Hon. Midiwo: Thank you, hon. Speaker. I find what is before us rather interesting. This is because my understanding of what hon. (Eng.) Gumbo is trying to do is that there is no financial effect. This is horizontal mobility. We are increasing or reducing nothing. If this is the precedent we want to set, I do not understand it to be the meaning of the Constitution. However, the activity and the conduct of this Committee is one that should concern us in terms of the Constitution. Away from tinkering with the Estimates from the Cabinet Secretary of the National Treasury, the Committee would be allowed in law, to have a kitty to either help their constituency or my constituency. To me, this is the crux of the matter. It will be nice for us to be clear. This particular event or aspect of Budget process went on last year without a Member picking it up, but it cannot be constitutional. We need to clarify it. It is my thinking that if this particular Committee was to be let free to use Kshs3 billion, it means that if this House was to have no way of moving that particular money around, and the Committee would, then it must be in the custody of the Clerk or the Speaker of the National Assembly. This is my understanding of it. If it were to happen, I would still find that it would be money like our car loans and our health monies, but only for the purpose of this particular Committee to sort out the inadequacies of the Budget.

Hon. Speaker, this is a constitutional matter, which we cannot kick away on a technicality. We would be opening a Pandora's Box today and in the future. The least we

could do is to give this money to the Office of the Clerk. However, to let 50 out of 349 Members of Parliament to have powers to give us Budget, as other members of this House, in our constituencies, something would be constitutionally very wrong. It is a matter that even the courts would have to interpret. I believe in what I am saying because I have thought about it. As usual, I put my mind and thought to raise a matter like this one.

Hon. Speaker, I beg you. We can revisit this issue but it is an issue that your able office needs to apply itself to, and not be casual about it because it means a lot. It would mean a lot to the process of legislation. I see nowhere in Article 221 where any Member of Parliament has the powers that the Budget and Appropriations Committee abused last year and would be given unfettered powers to do it again this year.

I thank you, hon. Speaker.

Hon. Speaker: Hon. Members, this is a proposal by hon. (Eng.) Gumbo. It says that the Motion be amended by deleting the full stop at the end and insert the following words:-

“Subject to:-

(i) deletion of item “v” appearing on page 28 of the Report.
(ii) deletion of figure “Kshs2” appearing immediately after the word “additional” and item “viii” appearing in line two on page 28 of the Report and substitute thereof with the figure “Kshs5”.

(ii) amendment to the First Schedule to the Report by:-

(a) deleting the figure “35,470 million and “92,911 million” appearing under Vote 107 (The National Treasury) and substituting thereof with figures “Kshs32,470 million” and “Kshs.89,911 million” respectively and further deleting figures “Kshs3,000” appearing under caption “Change” and the words “additional Kshs3 billion for public hearing” in the same line.

(b) deleting the figures “Kshs56,701million, Kshs79,432 million and Kshs5,492 million” and substituting thereof with figures “Kshs59,701 million, Kshs82,432 million and Kshs8,492 million” under Vote 135 (State Department for Planning), and further deleting figures “Kshs5.5 billion and Kshs2 billion” appearing in the first line of the Comments/Justification column and substituting thereof with the figures “Kshs8.5 billion and Kshs5.5 billion”, respectively.

Honestly, in fairness, even when you read this - that is why I was asking hon. (Eng.) Gumbo if, indeed, what you are saying is just like virement; transferring this to the other – do you understand it? Who will understand? It needs to be explained. That is why---

Hon. Omulele: We know!

Hon. Speaker: Do not tell me you know. Hon. Omulele, do not tell me you know. You have no authority. In fact, if you speak like that, you will be out. Take it seriously. No, you will go out. You cannot sit there and start responding to me. You will go out. Reading this without further explanations and without sitting with the Committee so that what is brought to the House is clear to every hon. Member would obviously be bad. If I was to allow this without a Report from that Committee, I would be violating the processes contemplated both in our Standing Orders and even in the Public Finance Management (PFM) Act. It is only fair that this be explained to the entire plenary. It is

immaterial that one hon. Member – is it for Butere or other constituency near there - claims to understand. It is not enough.

Hon. (Eng.) Gumbo knows exactly what it is that he is proposing here and that is why it would have been necessary that--- That is why I said that I approve this. I said that this matter goes before the Committee so that there is a sitting and then you come and explain that when you say over Kshs5 billion and the over Kshs2 billion, then we know what it is. When you say “from the State Department or National Treasury and State Planning” and you want to do it in plenary without the benefit of a Committee engagement, this is not the way. This is not budgeting, surely. It is not budgeting. This will be some voodoo practice which I will not allow to happen in the plenary of this House. Give this to hon. (Eng.) Gumbo. Let him explain.

Hon. (Eng.) Gumbo: Hon. Speaker, I quite agree with you that it should go that way. The only problem that I was seeing is, of course, I got some technical help from our clerks on those insertions. The only thing I was requesting is if we could get the latitude to discuss this with the Committee because I really think it is important that the Committee is seized of this proposal that we are making. That is the only latitude. I am aware that if it is read as it is now we are going to conclude debate and we will not have time to look at it. So, that is the only latitude I was kindly requesting if I could get even if it means re-arranging the Order Paper so that we are able to engage the Committee and explain to them. But as to the technical input, I engaged the clerking staff and we did it together. It is not something that I did on my own. That is the only latitude I am requesting.

Hon. Speaker: Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I totally agree with you in one way. The process that led to the tabling of the Budget Policy Statement (BPS) is provided for in the Constitution and in the Standing Orders where Committees of this House and the National Treasury engaged for weeks and they came up with this Report.

Hon. Speaker, the only controversial item following the uproar hon. Washington brought yesterday--- It is different from the many other amendments hon. (Eng.) Gumbo is bringing. I agree with you that it is going to be over Kshs8 billion. Let me read the Constitution because this House must be guided by the Standing Orders and the Constitution.

(Hon. Midiwo consulted loudly)

I want hon. Jakoyo to listen to me. Somebody must provide evidence when he says that a Committee of this House has allocated itself Kshs3 billion. There is Kshs3 billion for public hearing. Yes, in my opinion, that is provided for in the Constitution, unless we do not want to follow it. Article 221 (5) says:-

“In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.”

Hon. Members: Yes.

Hon. A.B. Duale: Unless somebody is telling us that public participation has been equated to 51 constituencies and empirical evidence provided, what we were doing

since yesterday is not very good. Why am I saying so? Maybe, this House should have asked the Budget and Appropriations Committee that. That is because if you did public participation, then you should have attached, as provided for under Article 221(5) of the Constitution, the Kshs3 billion as annexure for projects based on the public participation and show us the rationale. That annexure will be the basis on which the National Treasury will have the leeway to say that “we can do that this year”.

Hon. Speaker, if the money for public participation will not be allocated this year, then that is unconstitutional. There is no way our Budget and Appropriations Committee Chairman can go to our constituencies, counties and across the country, get views from Kenyans and come here and say there is no money.

(Hon. Midiwo consulted loudly)

Relax, hon. Jakoyo! You will have your day. You had the whole of yesterday. Two, if the bone of contention is this Kshs3 billion, then the Chairman of the Budget and Appropriations Committee should be given an opportunity to list and give us the areas they feel, following public participation, this Kshs3 billion will be earmarked for.

Finally, hon. Speaker, you said it yesterday and I want to repeat it that what we are dealing with is BPS. What will come to this House are the Estimates on whose basis this House is going to produce the Appropriations Bill. As part of the leadership, I want to ask all our colleagues not to throw words. If you have any evidence to show that this--- That is because it is unconstitutional and I agree with hon. Jakoyo. This House cannot allocate money meant for public participation to any other constituency. That is there. So, the question that we need to ask the Budget and Appropriations Committee - so that we can continue with the debate is: You have Kshs3 billion for public participation. Where is the summary and the annexure of the areas based on your public hearings that you feel the Kshs3 billion should finance? The Budget and Appropriations Chairman can then answer that. But I do not think and it is not fair to assume since yesterday that among our colleagues--- You know we are fighting for our integrity. We already have a serious issue with another Committee. It should not be our everyday business to smear a Committee of this House with this and that unless---

(Hon. Kaluma consulted loudly)

Hon. Kaluma please, you will have your time. In fact, you should be reading the Standing Orders because you went and discussed this.

Thank you.

(Hon. Mirenga consulted loudly)

Hon. Speaker: Hon. Ken Obura, you know I see all of you. You can laugh and smile as you normally do but, please, stop passing words across the aisle carelessly.

Hon. A.B. Duale: Hon. Speaker, in conclusion, I totally agree with you on the billions that hon. (Eng.) Gumbo wants to reallocate here and there. It was Kshs3 billion yesterday. When he started speaking, I knew because I am a good student of politics that

hon. Jakoyo was on his way and so, I was ready to support him on the Kshs3 billion of yesterday. But now he went to Kshs8.9 billion.

He is claiming that it is the clerks who have given him. The clerks have no powers to give him an amendment. We can agree on the Kshs3 billion. The Chairperson can explain the projects identified through public participation that will be financed using that money.

(Several hon. Members stood up in their places)

Hon. Speaker: Hon. Members, points of order are not necessarily just to advance arguments. We want to consider the issue raised by hon. (Eng.) Gumbo. I have just read out to you several proposed amendments; this affecting this department or the other one. Surely, at this point, when you are dealing with the Budget Policy Statement (BPS), is it right that we can allow it at the plenary without the benefit of his explanation and whatever decisions by that Committee? Look at your own Standing Orders and the Public Finance Management (PFM) Act. Would it be fair for us to allow somebody to just come here and another to come and say a figure of Kshs4.3 billion or deleting something? At the end of the day, the resolution of this House would be so convoluted that even expecting those who will come with budget estimates to come up with something that is understandable, would be expecting miracles to happen. The point I want us to resolve is: How do we deal with the proposal by hon. (Eng.) Gumbo? Let us hear the Chairman of Budget and Appropriations Committee.

Hon. Musyimi: I am much obliged, hon. Speaker. It is difficult for me to exceed your exposition and understanding of the law and that of the Leader of the Majority Party on this matter. You are absolutely spot on except that I want to add the following. We are in the process of implementing a new Constitution and I beg that I be heard by those who are contesting that position.

The first time we went out as the Budget and Appropriations Committees soon after the elections, we visited about 13 counties because we had made a decision that we would do public hearings at county level. I repeat: Public hearings were to be done at the county level. That is a decision we have made as the Budget and Appropriations Committee. To date, we have visited about 32 or 33 counties. We are determined to go round the 47 counties for purposes of 2016/2017 Financial Year. When we give money for public hearings, that money is given at the county level. It will end up in a constituency but the platform is the county platform.

After our first visit, we came back. I was privileged to lead a delegation that went to Isiolo County and we came back. We were all very new; not quite knowing what to do with those public hearings, save that they were required by the Constitution and rightly so. I pleaded with my Committee that if we do nothing else as the Budget and Appropriations Committee, let us take the killer bridge in Isiolo and let us recommend to the House that we give that bridge Kshs200 million.

(Applause)

Hon. Members will recall in the Budget reading that year, by the Cabinet Secretary(CS) in the National Treasury, we had a couple seated up there as guests of the Committee. We had Mohammed and Zainab. We had brought them here from Isiolo because they are young people we met. Mohammed was the chairman of the hawkers in Isiolo. We met him during the public hearings. As we listened to everybody, people were concerned about the killer bridge. For that financial year, we set aside Kshs200 million. For the following year, we went round. I chose to go to Homa Bay and the other Members of the Committee went to the other 12 counties. We went to Rusinga, the causeway that connects the mainland to Rusinga Island because there were problems that the production of fish was beginning to incur because of the flow of water that the causeway had hampered. We saw the bridge that was being built by the Chinese. We went to Tom Mboya Memorial and we were told about Road C210 that moves from Mbita to Nyatike that was being tarmacked, but had stopped. We were told about the problem of the fishermen with respect to security on Rusinga and Mfangano islands. I personally called the OCPD of Mbita to assure me that, indeed, that problem was there. He told me it would help if we can do something about security provided by the boats.

What point do I want to make? We came back and we sought the advice of the Parliamentary Budget Office. We are professionals in our own right. We are not just politicians. We asked the Parliamentary Budget Office: "What do we do? We have just come from Isiolo. We have gone to the House and placed an amendment to the Budget amounting to Kshs200 million." The advice we got was that we should have, at least, Kshs3 billion for public hearings for the places that you go to. Otherwise, public hearings make no sense. So, we took the advice of the Director herself. She was sitting next to me. These are not ideas that we have pulled out of the rut. We have sought professional advice on this matter.

May I also add that we are, at the moment, still dealing with ceilings. We have not come to the appropriations stage. We have not come to the Estimates. We are not even done with the public hearings. We are yet to listen to the public here in Nairobi. What do I mean by that? We have been to Nairobi before but we realized that every time we went to the KICC, it was Government agencies that came to have a second bite at the cherry; to try and lobby us to give them more money. Parastatals and other institutions came. So we said that this time round, we will go to constituencies. The point that I want to make is this: The public hearings for 2015/2016 are not yet over. We cannot table any report here because we have not completed that process. When we complete that process, we will table that report alongside the Estimates. You were quite right in reminding us, as you have sought to do, that we are still dealing with ceilings. We have not come to the details because we are not dealing with the Estimates.

May I also say that with respect to the projects that we recommend to this House, they are development projects. If we talk about putting money in the Parliamentary Service Commission (PSC), there are things that we can put money in the PSC for. For example, I hope this will happen eventually, the Kshs1 billion for monitoring and evaluation (M&E) is for the Senate. If you are talking about building a road or a bridge of Kshs200 million in Isiolo, that money needs to be factored in by the National Treasury and needs to find its way to the Ministry of Transport and Infrastructure. That is because

they are the ones who build roads. Parliament does not build roads. Those are development projects.

As I sit down, I want to say that your understanding and exposition on this matter is very fair. Just before we came in, hon. Angwenyi called me and told me: “We have an amendment we wish to make. I need to see you so that I can bring it to the Floor of the House.” This was around 2:15 p.m. Indeed, you have seen it because you have said and I quote: “Proposal should go--- (*Technical hitch due to power failure*) ---half of the committee.” My fear is that this request is time barred because the Committee cannot meet now. I suspect that is the same thing that is happening with the other amendment that you read.

Can I, as I finish, say that - and it is a pity that hon. Members are missing it - there is an opportunity to deal with some of these problems that we are raising. This, with the greatest respect, is a storm in a tea cup. We recommended, in the amended Motion yesterday, that the National Treasury takes these recommendations into consideration in finalization of the Estimates for 2015/2016 Financial Year.

That is a redemptive provision and that is why - and I will say it again - this is a storm in a tea cup with an agenda whose objective is not clear to me. It keeps coming back through strange ways. There is no matter here for us to debate. Let us move to the Motion, prosecute it and finish. We have an opportunity to redeem any wrongs that we may have done. Can I remind these Members that after the Budget Policy Statement was tabled here, we burned the candle on both ends working under pressure cooker conditions as the Budget and Appropriations Committee. We could not move until we had received the reports from the committees of the House. We serve this House. It took us a whole day sitting nearly 12 hours non-stop. We have sat not less than seven times with the National Treasury, and one of those times with the Head of this Government, President Uhuru Kenyatta. These are not light matters. We do not just come here to play games. When you talk about the Budget, it is the lifeline of this country. We get it wrong and we create enormous problems. If we interfere with macro-economic stability, there are consequences with domino effect down the road for all of us. So, the Constitution demands that before we make any final determination, we must sit with the National Treasury, which we have done countless times. So, when we bring these recommendations, hon. Speaker, we have prosecuted our mandate to the best of our ability and in good faith.

I rest my case, hon. Speaker.

Hon. Speaker: Hon. Members, some of you think that unless you have spoken the House has not spoken. Listen to me. Hon. Mutava Musyimi has made very valid points. I reminded you yesterday that this is the Budget Policy Statement. There is a Report on it. Your resolution as a House in terms of what the Constitution demands will go to the National Treasury which will take into account that resolution in preparing the Budget Estimates which will be tabled before this same House in accordance with Article 221. As a House, you will still have the opportunity to make whatever amendments that will come with those proposals, including the proposals and provisions contained in the Appropriations Bill. Indeed, I want to agree with hon. Mutava Musyimi.

Hon. Onyonga, what is burning? Let me hear you, but we need to move on.

Hon. Onyonka: Hon. Speaker, I want to say this with a lot of humility and in appreciation of the fact that hon. Mutava Musyimi is one of the very highly respected Members of this House. I have also served in the Budget and Appropriations Committee before my party removed me from it. The truth is, we need clarity from the perspective that constitutionally, is the Budget and Appropriations Committee allowed to allocate money for an event or events which are supposed to be taking place during public hearings? For example, now that I am a Member of the Departmental Committee on Defence and Foreign Relations, is my Committee entitled to allocate money for us to go and have meetings in London? Constitutionally, hon. Speaker, the Kenyan public would like to know.

Secondly, with regard to the figures which have been put here - and you can see the resentment that is being brought forth by the Committee Members - the reality is that there are many people in this House who are questioning the validity of the amount of money requested for the Committee to hold public hearings, that is, Kshs3billion.

Hon. Speaker, it is a critical issue. We cannot be rail-loaded in this House because 50 individuals have decided that they are going to share this money. We must interrogate this money and it must be discussed by the same public that is going to ask. We held meetings in Kisumu in the year, 2014. In the Kisumu meeting, not a single project was given. Another meeting was held in Nakuru and not a single project was given. So, which criteria is the Committee going to use to allocate money, say, for construction of bridges? I rest my case.

Hon. Speaker: Hon. Members, other than just getting yourselves angry for nothing, I think you are flogging a dead horse. I do not see anything new in what is being said because you are the same people who will deal with the Estimates when they are brought here. You will be looking at what it is that has been allocated to which Ministry. Your own resolution on this Report will still be with you. You will be following through the Estimates on what has been allocated to which Ministry and to do what. When you deal with the Budget Estimates, that is what you will be looking at. What is it that has gone where? Indeed, when the Appropriations Bill comes, you will be asking whether the resources---You will be looking through it with a tooth-comb to see whether the monies which you passed have, indeed, gone to the various Ministries and departments as indicated in the Budget Policy Statement resolution.

Hon. Members, this was not meant to be a debate. In any event, like I keep reminding you and the rest of the country, I am lucky in the sense that the Constitution in Article 122 says I have no vote. So, it is you, hon. Members, from across the aisle, who will have the final say on this. Yes, it is a resolution. Indeed, if you can make your own resolution and go to sleep so that when the Budget Estimates are brought here, your mental faculties will have taken leave of absence, then you can only blame yourselves.

Hon. Members, allow the Motion to go on. Debate the Motion and if you want to defeat it, you are within your right. Hon. Midiwo, you have spoken since yesterday. Let us hear hon. Kamama. Let us be fair. Let us hear people from both sides and those who have not spoken, if you want to debate this.

Hon. Abongotum: Thank you, hon. Speaker. We have heard your sentiments on this matter. I want to, first of all, say that I have absolute respect for the Chairman of this Committee, but we must be candid on certain issues such as this one.

(Applause)

Hon. Speaker, it is constitutional pursuant to the provisions of Article 221 to have public hearings. It is constitutional. However, if our brothers and sisters, the Members of that specific Committee take advantage and allocate money to their constituencies, this is going to be unfair. We need to promote fairness in this. So, I would propose that the Kshs3 billion, forget about the amendment on the loan that was read--- We are only interested in the Kshs3 billion. It should go to each and every constituency. That money should go to the Constituencies Development Fund (CDF) and, therefore, to the 290 constituencies. That will rest this matter.

As I finish, unless we know the list of the beneficiaries that Kshs3 billion will have to be suspended until we agree on this matter. The devil resides in the detail. So, we want a list of those constituencies and we can have a middle ground. We can say this time members of that Committee get 25 per cent and then 75 per cent goes to the other constituencies. I rest my case.

Hon. (Eng.) Gumbo: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Members, listen. There is no point of order when I am the one speaking. You would be out of order, engineer, and I know you are a respectable Member of this House.

Hon. Members, I read to you the proposal from Eng. Gumbo, which is the one that has raised all the heat. The Member for Luanda; a new constituency and a new Member, but he is a great man, has said that he understood. A few Members appeared to agree with him. I think it is fair that we hear from hon. Gumbo.

Hon. (Ms.) F.I. Ali: No!

Hon. Speaker: You cannot say “no” merely because you have a *Hijab*. That cannot be reason for you to protest. Relax. Hon. Members, it is fair that we allow hon. Gumbo to explain those many figures. When I read out, a number of you appeared to be lost at sea. Let me allow hon. Gumbo to explain what his proposed Motion intends to do after which I will make a decision immediately.

Hon. (Eng.) Gumbo: Thank you, hon. Speaker for giving me the opportunity to explain. I wish hon. Members could just listen. They hold their horses.

I want to assure hon. Members - and hon. (Eng.) Mahamud will agree with me - that, as engineers, our lives revolve around numbers. So, I cannot mislead people on numbers. Those figures appeared many, but they are not. It is the figure Kshs3 billion which is moving. It is the wording which says that the National Treasury be allocated an additional Kshs3 billion for public hearings. I deleted that.

If you go to the Schedule at the back, which was the First Schedule that was causing the amendments, if you come to the National Treasury, this allocation was under development. If you go to the First Schedule, it affects the column on capital, which was initially Kshs35 billion. If you remove Kshs3 billion, it comes to Kshs32 billion; the first figure. Then you move it to the next level on the total which was initially Kshs92 billion. You take out Kshs3 billion and it becomes Kshs89 billion. In the comments column, additional Kenya shillings for public hearings, you delete the Kshs3 billion, which was in my amendment. Then you come down to the State Department for Planning, you add it in

the first column, which was initially Kshs56 billion and it becomes Kshs59 billion. Then you move it to the total, which was initially Kshs79 billion and it becomes Kshs82 billion. When you move to the note which was allocating Kshs5.5 billion, you add Kshs3 billion and it becomes Kshs8.5 billion. On the other note which was allocating Kshs2 billion, you add Kshs3 billion and it becomes Kshs5 billion. It is only numbers moving. There is nothing else.

In short, the net effect is that I am allocating it, so that we can move it from the allocation and we take it to the CDF. *Kwisha maneno!*

Hon. Speaker: Hon. Members, we are required to conduct our affairs in the open. That is a principle contained in both Article 10 and Article 125. It is for that reason that I took the liberty to permit hon. Gumbo to explain those many figures that are contained in his proposed amendment, so that I will decide whether or not to approve the proposed amendment to be incorporated. It was submitted early in the morning.

Hon. Abongotum: Put the Question!

Hon. Speaker: Hon. Asman Kamama, everything is not a question. The few years you have been here, you must have learnt that. On this one, I do not require to put any Question. I do not require your assistance.

(Laughter)

The decision is solely mine. So, even as I hear you, this is not the one that you have to say “Ayes” or “Noes”. It is me who has to make the decision. I can see the Member for Balambala, who is a Member of the Budget and Appropriations Committee. Let us be fair to others.

Hon. Aden: Thank you, hon. Speaker. I only wish to address myself to the issue raised by Eng. Gumbo. Much as that amendment looks logical, it will be unconstitutional according to Article 114 of our Constitution. Please, if you may address yourself to that.

Under that Article, in terms of a money Bill, if, in the opinion of the Speaker of the National Assembly, a Motion makes provision for matters mentioned in the definition of a money Bill - which is defined and I do not need to read the others - the Assembly may proceed only in accordance with the recommendation of the relevant Committee, which in this case is the Budget and Appropriations Committee of the National Assembly, after taking into consideration the views of the Cabinet Secretary responsible for Finance.

It will be unconstitutional for us to pass that amendment unless the Budget and Appropriations Committee in consultation with the Cabinet Secretary for the National Treasury, address the issues that hon. Gumbo has addressed. It is obviously a money Motion.

Hon. Speaker: Hon. Abdikadir, are you through with your point of order?

Hon. Aden: Hon. Speaker, in no doubt, the approval of the Budget Policy Statement is a money Motion. There is no doubt about that. This Bill is only the beginning of the Budget process. You had rightfully addressed this issue. I beg hon. Jakoyo Midiwo to understand that this is a process of budget-making, which is only at the beginning stage. We are not appropriating the money now. Details of what will be where will not be at this stage. This particular Budget Policy Statement has shown us five key

areas that the Government needs to address in terms of policy. They have shown the money that they want to put in those five places. Wait for the time of appropriation when we will put the money and the dots.

Hon. Speaker: When you began reading Article 114, you started very well and that must have made your mind very clear. Let us also be fair. I heard you clearly. We then move to what a money Bill is. What is it? Hon. Abdikadir avoided going into that aspect. We need to know so that we see whether it is imposing taxation or expenditure. Another Member of the Committee is also burning. Let me give him a chance to burn.

(Laughter)

Hon. Ng'ongo: Thank you, hon. Speaker. Let me say that the Budget process must be an organized process. You should make a ruling that is not going to set a bad precedent in this House. My Chair mentioned how long it took us to go through these Budget Estimates. I listened to one of my friends, hon. Onyonka saying that, as a Member of the Defence and Foreign Affairs Committee, that you do not change proposals. The truth of the matter is that while in his Committee, he is allowed by law to change money from local travels to international travels whatever way he wants.

Hon. Speaker, you asked me a specific question: What is a money Bill? A money Bill includes taxation. By the way, the law says that if the Motion, in the opinion of the Speaker--- You are right! It is you who is going to decide, but you will decide based on the law.

(Laughter)

A money Bill deals with taxes, imposition of charges on a public fund or variation. That is the word that some of us are forgetting. If you take a certain amount of money from one Vote to another, that is variation. This is simple English, in my view. What hon. Gumbo is doing is varying the amount meant for public hearings and putting it at zero and taking that money to the Constituencies Development Fund (CDF) Vote, which was Kshs35 billion. It is now going to be Kshs38 billion. He has varied the amounts. That is a money Bill. There is no escape route. It has to be taken to the Budget and Appropriations Committee.

Hon. Speaker, I listened to hon. Jakoyo. I was surprised and shocked at the same time. He said that what the Committee of this House did is unconstitutional, and that it cannot purport to do the work of the Executive – which, in his view, is appropriation. Our Committee is Budget and Appropriations Committee. We are responsible for appropriating funds. We can even change all the figures from the Executive, if we want. Theoretically, we can do it. In fact, some people are living in the old constitutional dispensation. Unfortunately, hon. Midiwo is turning out to be one of those people who have refused to leave the old Constitution, where Parliament was just a rubber-stamp. We now have a Committee of Parliament that is supposed to scrutinise the Budget in detail.

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members!

Hon. Ng'ongo: Hon. Speaker, I would appreciate if you could restrain hon. Abass. He is my friend, but that is the way he talks even in the Public Accounts Committee (PAC). That is why we have a problem in PAC.

(Laughter)

Hon. Speaker: Hon. John Mbadi, do not introduce that matter.

Hon. Ng'ongo: Hon. Speaker, I withdraw and apologise to my friend, hon. Ababu. This is a point we have belaboured. But I think if you could restrain hon. Abass, it would be good. He knows that we are very good friends.

Hon. Speaker, why is it necessary for us to capture this figure in the Budget Policy Statements? Let us accept the fact that we are not at the Budget Estimates stage. Article 221 of the Constitution affects the Budget Estimates, and not the Budget Policy Statement. The reason for making these provisions is so that by the time we present Budget Estimates, we will have captured this figure. My Chair talked about visiting Homa Bay. Our Committee visited Mbita. They did not visit my constituency. If I were selfish, as a Member of the Committee, I would have told them: "Do not take money to Tom Mboya Mausoleum, because that does not affect my constituency. Bring the money to my constituency". We took the money to Mbita. If the Budget and Appropriations Committee of this House is going to be so toothless that it cannot provide even a shilling for any activity, I do not think it is necessary. Why do we not just bring the Budget Estimates here and amend them as we wish?

Hon. Speaker, there are only two Committees of Parliament that are mentioned in the Constitution. The others are provided for in the Standing Orders. The Constitution says that we will provide for Committees in the Standing Orders. Constitutionally provided Committees are the Constitutional Implementation Oversight Committee (CIOC) and the Budget and Appropriations Committee, which is referred to as a Committee of the House. The Committee has been given weight for good reasons. The good reasons are---

Hon. Members: So, what?

Hon. Ng'ongo: Hon. Speaker, they are asking "so what?"

Hon. Speaker, I urge you to rule hon. Gumbo out of order. When we give them additional Kshs2 billion for CDF, they feel that we have power as the Budget Committee. We are the ones who increased the CDF allocation from Kshs33 billion to Kshs35 billion. Why did they not dispute that variation? When we do not add more money to the CDF, Members argue that we have no powers. We have the power. That is why we gave you the money. Members must accept that power belongs to Budget and Appropriations Committee.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, finally, let me hear the Chair of the Finance, Planning and Trade Committee. This is not a matter of life and death.

Hon. Langat: Thank you very much, hon. Speaker. I want to request Members to listen to me.

Hon. Speaker: Hon. Langat, you will be heard. I have heard two Members, including Mr. Mbadi, from the side to my left. Let me hear two Members from the side to my right too.

Hon. Langat: Hon. Speaker, at the stage where we are, this cannot be carried as a money Bill because even if we pass the Budget Policy Statement, the Cabinet Secretary cannot use it to remove money from the Consolidated Fund. At this stage, this one remains a Motion. I am also a Member of the Budget and Appropriations Committee. At this stage, this is a Motion, and can be amended; it is not a Money Bill. However, having said so, it does not mean that I support the amendment. The figure in contention is Kshs3 billion and the narration is "Public Hearings". I see that the interest of hon. Members is that, if this money has to go to any constituency, then it has to go to all the constituencies.

(Applause)

We do not have to cause unnecessary commotion. This is only the first stage. We still have the most important stage, which is deliberation on the Budget Estimates. This provision is available for amendment at the Budget Estimates stage. The most important thing is to get to the appropriations stage. Currently, we have issues with the CDF and our roads. The money should easily go to roads, through the Kenya Rural Roads Authority (KERRA) so that our dilapidated roads can be fixed. Hon. Members can disagree with me on that one, but I know where they come from roads are bad. May I request hon. Members that we carry this figure the way it is? We can still amend it and take the money where hon. Members feel that it should go.

I want Members to also be very strategic. With the issues that we have in Constituencies Development Fund (CDF), we may never survive.

Hon. Speaker: Let us hear from hon. (Eng.) Mahamud.

Hon. (Eng.) Mahamud: Thank you very much.

(Loud consultations)

Hon. Speaker: Order, Members! Hon. Members, this is healthy because it is about public resources which you, as a House, have the power to appropriate. So, it is healthy. We have not even got into the business. It is healthy that as many people as possible are given a chance. If we can then allow that we listen to each other---

Hon. Speaker: Hon. Mahamud, please, proceed.

Hon. (Eng.) Mahamud: Thank you very much. This matter is generating a lot of interest. First of all, we are proposing that we increase the Budget Policy Statement (BPS) ceiling by Kshs14.7 billion. So, the money we have is not even there with us, according to the ceiling of the Treasury. Having said that, the Budget Policy Statement that we are discussing is programme-based. Programmes are defined. Public hearing is not a programme, to be frank.

(Applause)

So, we are not being consistent in the way we are dealing with the BPS. If the idea is to deal with the public hearing projects, list the programmes and put them in the various programmes as they are. However, if we put it this way, it is suspect and Parliament will be put in very bad light. Therefore, it is not fair for us to put a blanket of Kshs3 billion when we do not know which sector or programme is going to benefit. I agree with what hon. (Eng.) Gumbo has proposed as the amendment. Thank you.

Hon. (Ms.) Otucho: On a point of information, hon. Speaker.

Hon. Speaker: Hon. Members, it is fair that you also --- When you rise in your place and claim a point of information, who do you want to inform? You should indicate who you want to inform. This is because you cannot just inform generally. So, hon. Mary Emaase, the Vice-Chair of Budget and Appropriations Committee, I am sure you want to make a contribution. But you want to claim it is a point of information. Please make your contribution.

(Laughter)

Hon. (Ms.) Otucho: Thank you, hon. Speaker. The hon. Member has just alleged that public hearing is not a programme. I know there are accountants in this House just like myself. You must make a provision for every expenditure that you intend to undertake. The stage at which we are at the moment is the policy direction. We are simply trying to anchor our intentions in the policy at the policy stage. To say that public budget hearings are not programmes is wrong in the sense that, by the time the Budget estimates are drafted, the Budget and Appropriations Committee will be seized of the public hearings. The projects that we intend to undertake are already known. They will be appearing in the Budget estimates as specific programmes with defined outputs. So, alleging that it is not a programme is wrong in itself.

What I want to say as to the amendments proposed by hon. (Eng.) Gumbo is that he will have to explain or interpret to us the meaning or the import of Article 221(5). Why should we be told that the recommendations of the public should not be incorporated in the budget statements? The Budget and Appropriations Committee must be seen to have done something about the views of the public. Hon. Members, we are forgetting too fast. This House has been called and branded names from pigs to anything. When we begin talking of taking another Kshs3 billion and adding it to the CDF, then we are not being realistic and honest with ourselves. Yes, let the money be appropriated by the Ministry to the budget hearing projects. That is my contribution. Thank you.

Hon. Speaker: Hon. Midiwo you appear to be holding your Constitution. I see the one you want to read.

Hon. Midiwo: Thank you. Hon. Speaker, as you know, my noisy Chairman of Orange Democratic Movement (ODM) has accused me of living in the old Constitution. He is a noisy Chairman and this is why they say the Speaker of this House must be a lawyer so that you can carry some of us along and educate people like Mbadi

(Laughter)

Hon. Speaker, I am so impressed today by the arguments made by hon. (Eng.) Mahamud and hon. (Eng.) Gumbo. That is because they are the opposite of lawyers. Last week, I asked you for a ruling and the issue which is being canvassed here is not where the money will go. We know it will go to CDF. The issue here is the impropriety by public officers, issues of Chapter Six. The key words in Article 221, which I had asked you to guide us on - and I think yesterday you alluded to them - was the Financial Estimates tabled by the Cabinet Secretary. The Article says that---

(Hon. Ng'ongo interjected)

Hon. Speaker: Hon. John Mbadi---

Hon. Midiwo: Hon. Mbadi, you were thrown out yesterday over the same noise. I mean really---

Hon. Ng'ongo: I have been thrown out many times.

Hon. Midiwo: Hon. Speaker, kindly, protect me!

Hon. Speaker: Just proceed. Ignore him.

Hon. Speaker: Article 221(1) says:-

“At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.”

Then, the work of this Committee will kick in after the BPS. When it kicks in, they are only dealing with estimates of expenditure and revenue. The power they have is to tinker those estimates of revenue and expenditure. That the Budget and Appropriations Committee would further go and intimidate the Cabinet Secretary, including the President that they need Kshs3 billion--- In the last financial year, a Member who is calling me a rumour-monger because I am saying what he told me, said in his constituency, which is in Eastern Province, that he got Kshs300 million for a dam. He is the same person who is now shouting.

(Laughter)

The point we are trying to say is this: Three years on, it is the same Budget and Appropriations Committee. When will hon.Nyenze here and hon.Wamalwa here get Kshs 300 million? You have heard them say that they went to Mbita. When they were in Mbita, they only saw a mausoleum. As a voter, a representative of the people and a leader from Nyanza, I would rather they build a road if they had that power in Gwasssi. That is because my car always has flat tyres when I drive in his constituency.

(Laughter)

Hon. Speaker, the Members of this House are representatives of the people. No other representative can purport to go and hold public hearings in my constituency without my presence. I represent the views of the people of my constituency.

Hon. Members: Yes.

Hon. Midiwo: Exactly.

Hon. Speaker, yesterday there was admission by the Leader of the Majority Party that this Kshs3 billion was meant for use by these Members when they visit some areas to get suggestions. This idea is of a subjective nature. The Committee has put in their heads the idea that they can subjectively appropriate funds. That in itself is criminal. The Public Officer Ethics Act says that no State Officer can give themselves a benefit of any nature.

An hon. Member: Even a mausoleum?

Hon. Midiwo: A mausoleum, when you are doing politics is a benefit to you.

Hon. Speaker, as I finish, this particular Motion before us is just an intention. When you hide in an intention and hide Kshs3 billion in seeking authority, it means you have other ideas. Nothing is itemized on what these people seek to do with this money. If this Committee had authority to do what they want to do, I would have said it. However, they do not! I would have said this money be brought to you. If they get any information, let them bring it for debate and then we allocate the money. If you are too busy, or a bit withdrawn from administration, then we have an able Clerk and staff. With regard to what hon. Mutava said, really he is just preaching. What he has said is not based on law.

(Laughter)

This is the crux of Budget, estimates are based on revenue and expenditure. Those estimates, once they are brought before them, they can do anything just as hon. Mbadi said. I, as a Member of the Departmental Committee on Defence and Foreign Relations, can decide to move this from one embassy to another. That is the work of the Committee. The work of the Committee is to go after the nitty-gritty in order to help the Executive.

With regard to public hearing, this Committee even though mentioned in the Constitution, is only mentioned to define the work in Budget process. It is not more special than any other Committee. The Standing Orders are not also an import in the Constitution. To talk about the Standing Orders as if they were part of the Constitution is to be lawless and criminal in mind. I have consulted with the Chairperson of the Budget and Appropriations Committee, who is my friend. He is willing to indulge us tomorrow, so that we distribute this money equally to all the 290 Constituencies. Whatever they want to know we will tell them. I have applied my mind to this. My people will be happier.

Thank you.

Hon. Chepkong'a: Thank you very much. I totally agree with hon. Gumbo, Eng. Mohamud and hon. Jakoyo Midiwo except that he claims that hon. Mutava was preaching. I have tremendous respect for hon. Mutava. When I listened to him, he never mentioned any verse. I belong to the same fellowship as hon. Jakoyo Midiwo. He needs to differentiate between preaching and advancing or canvassing an argument.

I do not want to repeat what others have said. It is unfair to be lectured here and to be told that this BPS is a Bill. It is in simple English and everybody knows it, including hon. Kaluma. He knows what a Bill is and what a Motion is. We should not mislead the House. If the Constitution intended this to mean Budget Policy Statement, then it should have stated so very clearly. There is nothing hidden in terms of interpretation of the Constitution. Therefore, it can be amended because this is purely a Motion.

Secondly, we have been lectured here and told that there is a special Committee as if the one I sit in, the Departmental Committee on Justice and Legal Affairs, is not a committee. Are they now suggesting that we should disband all the other committees and head to the Budget and Appropriations Committee?

(Laughter)

If that is the intention, then, we should be told the importance of the Budget and Appropriations Committee. I would like to remind Members that under Article 95 of the Constitution, I was not elected to go to Committees; rather I was elected to represent people in their problems. The Departmental Committee on Justice and Legal Affairs makes recommendations just as others do. Therefore, we should not be told that there is a special Committee which makes decisions on behalf of this House. It cannot be true and it will be unconstitutional to advance that argument.

It is also unfair for Members who sit in the Budget and Appropriations Committee to go against the Articles of the Constitution which are very express and clear. There is nobody who has monopoly of ideas. We are being told, "You must listen to this only". No! It cannot be true. Article 73 of the Constitution is very clear. We are State Officers. When making decisions, we must be objective and impartial. No State Officer is expected to act unconstitutionally. Anybody who acts against Chapter Six of the Constitution should be ruled out of order. In fact, I expected you to send hon. Mbadi out of the House again.

(Laughter)

Hon. Speaker, I would like to read this for clarity, lest the things that I have---

Hon. Speaker: Order Members, let us hear what the hon. Member is saying.

Hon. Chepkong'a: I have a lot of respect for hon. Mbadi. He speaks very well it is just that he is misled. Article 73(2)(b) of the Constitution is very clear. It states as follows:-

"The guiding principles of leadership and integrity---"

We have a lot of serious integrity problems and people are trying to re-introduce those integrity issues which we are dealing with even through the Budget and

Appropriations Committee. I have said I have a lot of respect for the Chairman. He is acting in the best interest of this nation except that we have some people who have decided to capture--- I come from a background of regulation. Some Members must not capture the Chairperson. The Chairperson must be allowed to exercise---

Hon. Speaker, I know as of ---

Hon. Speaker: Hon. Members, after that brief period of mirth, let us hear him.

Hon. Chepkong'a: Hon. Speaker, as I conclude, the Constitution states clearly in Article 173(2)(b) that:

“ Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives and corrupt practices”

If you confer a benefit to your own constituency, you are engaged in corrupt practices. You are acting impartially and not objectively. The problem is that we do not want to disclose what some Members have been telling us in confidence. We would like to leave that because we are assuming they just did not think correctly.

Hon. Chepkong'a: I have a lot of problems in Ainabkoi Constituency. If my people had been asked to attend the meeting when Budget and Appropriations Committee visited Eldoret, they would have come in five lorries. As I sit here, I represent their interests. I know where their problems are because we hold public hearings. Nobody can tell us that they have a monopoly of holding public hearings yet I am a Member of Parliament. For us to be fair, we should go the route of hon. Gumbo, which is fair and objective. We remove subjectivity. I thank you, hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Members, including the Member raising his hand, we must come to an end. Several of you have read this, but it is fair to apply ourselves strictly to the provision of Article 114(3) which provides that:-

“In this Constitution, “a money Bill” means a Bill, other than a Bill specified in Article 218, that contains provisions dealing with—

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.”

Applying my mind fully to that Article, when I signed hon. Gumbo's Motion when it was brought to my attention in the morning, I indicated that, and that is what Article 114 says, this proposal is making provisions that have implications of a money Bill. That is clearly what I said. However, hon. Members, having made that observation, I

indicated that this proposal needed to be taken to the Budget and Appropriations Committee. We have all heard that the hon. Gumbo received this communication at 1.00 p.m.

Having listened to those of you who have spoken, and looking at the agitation and excitement in many of you, it would be in the interest of fairness that we adjourn debate.

(Applause)

Not necessarily adjourn. We shall stand down debate on the Motion appearing on the Order Paper as No. 8 to tomorrow afternoon at 2.30 p.m. in order to allow hon. Gumbo to appear before the Committee, so that he can discuss this matter and bring a report which will be included in the Order Paper. We will then have to allow the Chairman of the Committee, depending on what decisions the Committee will make, to put in their opinion for consideration by the entire plenary.

That is the fairest way to go, so that we do not also deny the hon. Gumbo the opportunity to sit with the Committee and prosecute this matter in an environment that is not charged as is the case in a plenary. The plenary appears to have many other considerations. However, I would really plead with the Committee to allow hon. Gumbo to explain himself. This is not a life and death matter. Listen to hon. Gumbo and make what you may of his proposals. Remember that the final verdict will be by the plenary.

So, hon. Members, we will stand down that business for the purposes of allowing the Committee to listen to hon. Gumbo. Please hon. Members, I want to suggest to the Committee--- We have seen, and that is why I allowed this debate to go on, that there are certain issues that need to be addressed by the Committee. The Committee will then bring a report to the plenary on what the position of the Budget Policy Statement (BPS) is in the budget-making process, because the BPS is not captured in the Constitution. What are captured in the Constitution are the estimates and the Appropriation Bill. We need to understand the position of the BPS and what it is that can be included in it. A clear reading of the Constitution compared with what is in the Public Finance Management (PFM) Act and our own Standing Orders appear to suggest that the BPS is a document that should play a key role in the budget-making process, including setting ceilings and such things.

(Applause)

However, as a House we need to debate and see how well it sits within the budget-making process as provided for in the Constitution. The problem seems to be where the BPS is placed, and the fact that only our Standing Orders and the PFM Act say that it must be tabled on or before 15th of February of every year. A lot of times we have

seen that Members do not have adequate time to interact with the BPS. If it is so important in the budget-making process then we need to propose amendments so as to allow this House to have adequate interaction with it.

(Debate on Budget Policy Statement deferred)

COMMUNICATION FROM THE CHAIR

COMMENTING ON AND PREMATURE RELEASE OF COMMITTEE PROCEEDINGS

Hon. Members, I indicated that I was to make some Communication. This Communication relates to the issue of commenting on and premature release of the proceedings of committees.

As you are aware, on 5th March, 2015, I directed that the Powers and Privileges Committee inquires into the matters of alleged breach of privileges and/or code of conduct of membership of the Public Accounts Committee (PAC), including recent claims of compromises, corruption and deceit, and submit a report to this House.

It is indeed true that the Committee has commenced the inquiry. However, my attention has been drawn by the Powers and Privileges Committee to the continued reporting and premature disclosure of the Committee proceedings and Members making comments contrary to provisions of the House rules. Standing Order No. 86 provides that:-

“No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the House.”

It is fair for me to restate that your committees are established on the authority of the Constitution and specifically Article 124. With regard to the Powers and Privileges Committee, the provisions of the Parliamentary Powers and Privileges Act apply.

Arising from the above, I wish to caution Members to refrain from commenting and/or disclosing matters before the Committee until such a time when the Committee has tabled its Report in the House. Any Member commenting on matters before the Committee or making disparaging remarks against their fellow Members in whatever forum in breach of the Standing Orders, will be held personally responsible, and will face the full wrath of the House. I urge Members with any information relevant to the inquiry to present it either before the Committee or to any Government investigative agency.

I wish to advise that some of these comments and/or remarks amount to libel. Given the fact that they are being peddled away from the Committee sittings, or in the Chamber and are, therefore, not privileged, they are actionable. Further, pursuant to Standing Order Nos.198 and No.252, I have also granted leave to the Committee to conduct its proceedings in camera, but may brief the media on the progress of the inquiry

without going into the substance of the proceedings. Therefore, Members who wish to make any presentations are at liberty to approach the Committee and give their comments and information, if any.

I thank you. Yes hon. Mutava Musyimi.

Hon. Musyimi: Thank you for indulging me, hon. Speaker. I stand to thank you for your ruling on the matter that we have discussed. I also thank the Members for enriching our thinking through the issues that they have raised. Would I be in order to ask if we can also allow hon. Jimmy Angwenyi to come before us tomorrow? There is an amendment that he wanted to be discussed today and we can meet him as we meet hon. Gumbo.

Hon. Speaker: Indeed, is hon. Jimmy Angwenyi in the Chamber? Those who will see him later this evening, as it usually happens, communicate to him that he can also appear before the Budget and Appropriations Committee alongside hon. Athanas Misiko Wafula Wamunyinyi, who I am also informed has a proposal to amend some of the areas. Listen to all of them and any other Member. Please, hon. Members, let us now use this opportunity. Any other Member who has anything that they would want amended in the Report should present it before the Committee. But make sure the proposals that you make also enhance the process of the Budget making process in the House. If you do not give your proposals now, it means you may not have the chance to appear before the Committee. Do not just walk on your two feet and claim to give proposals for amendments.

Yes, hon. Mutava Musyimi.

Hon. Musyimi: Hon. Speaker, would I then be in order to request that you allow us to hold the meetings here now that you have pronounced yourself on the matter, so that anybody and everybody can come? Otherwise, we will be struggling to communicate to the Members as to where we shall be tomorrow morning. Then we agree to meet here at 10.00 O'clock tomorrow and let us keep time.

Hon. Speaker: Hon. Mutava Musyimi, tomorrow morning there will be a joint *Kamkunji* for both Houses for Members to be taken through a health scheme by representatives of AON Insurance Brokers at County Hall at 10.00 a.m. Ten o'clock or nine?

Hon. Musyimi: Hon. Speaker, 10.00 O'clock. Nine O'clock may be a bit difficult because a lot of the Members are not here, but I will be on the Chair at 10.00 O'clock German time.

Hon Speaker: Hon. Mutava Musyimi, can you allow Members to attend the *Kamkunji*. The matter of health is becoming very critical to Members. It is fair that as many Members as possible attend tomorrow's joint *Kamkunji*, because there are certain issues which are purely administrative that Members need to be taken through. Let us make it at 11.00 O'clock at County Hall, so that if there are any amendments, they can be included in the Order Paper.

Hon. Musyimi: Eleven O'clock. Thank you, hon. Speaker.

Hon. Speaker: Very well. Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[The Speaker (Hon Muturi) left the Chair]

IN THE COMMITTEE

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

THE PROTECTION AGAINST DOMESTIC VIOLENCE BILL

(Loud consultations)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, you have had enough time to clear yourself under the previous business. Order! May we restore order in the House now? Member for Rarieda, Member for Samburu, Member for Embakasi and Member for Suba, Order! Hon. Members, this is Committee of the whole House convened to consider the Protection Against Domestic Violence Bill, National Assembly Bill No.28 of 2013. We begin.

(Clause 3 agreed to)

Clause 4

Hon Chepkong'a: I beg to move:-

THAT clause 4 of the Bill be amended—

- (a) in subclause (1) by deleting paragraphs (b), (d), (e),(f),(g)and (h);
- (b) by deleting subclause (3);
- (c) by deleting subclause (4);

The reason is that some people are imported to be made members of the family when in actual fact they are not. For example, if you look at Clause 4, for the purposes of this Act, a person is defined to belong to a domestic relationship with another person, if that person has previously been married to the other person. That person cannot be defined to be part of the family.

Secondly, according to this clause, one is deemed to be in a domestic relationship if that person has been in a marriage with that other person, which has been dissolved or declared null. So, you cannot be part of that family because, first and foremost, the marriage has been nullified. Thirdly, this clause says that one is deemed to be in a domestic relationship if he or she has been engaged to get married to that person.

Hon. Speaker, if you have been merely engaged to get married to that person, you cannot be deemed to be a member of that family. You know that cannot be allowed. Fourthly, according to this clause, one is deemed to be in a domestic relationship if he or she has a close personal relationship with that other person. For example, if I merely relate with hon. (Ms.) F.I. Ali, who is my very good friend, she can be deemed to be part

of my family. That cannot be true. Therefore, we are suggesting that this clause be deleted. That is the proposal from the Committee.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Committee Chair, you have moved the deletions in paragraph (a), sub-clause (1). You have moved sub-clauses (3) and (4). So, you have handled the entire amendment on Clause 4, is it not?

Hon. Members, we will take it as it is on the Order Paper; paragraphs (a), (b) and (c). We will vote on them like that.

(Question of the amendment proposed)

Can I have the requests list cleaned out of my system first before I know who wants to contribute? If you are in the Chamber and you do not want either to request or intervene, will you just remove your card from this equipment? Hon. Nyikal and Member for Thika Town, is that deliberate? Where is the Member for Thika Town? Members for Homa Bay, Ugunja, Ainamoi and Suba, is that deliberate? I just want to clean up this, so that I know the order in which you are requesting. Members for Ndhiwa, Kibra, Marakwet East, Wajir, Kipkelion West and Ndaragwa, is that deliberate? Where is the Member for Ndaragwa? Is that deliberate? Member for Kiharu, is that deliberate? Let us start with the Member for Seme.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, my concern is about paragraph (e), which says “is a family member of that other person”. To my understanding, this Bill was not only dealing with persons in marriage. If all the paragraphs are deleted, the only one that will remain is paragraph (a). Therefore, the only valid relationship will be that of marriage. I am concerned because there will be children in households who can come to harm, and who may need protection. Therefore, I would like to be clear. If that is not the case, I would propose that paragraph (e) stays.

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chair, take notes so that you can respond. Yes, Member for Suba, the Floor is yours.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I want to oppose the amendment by the Chair of the Departmental Committee, hon. Chepkong’a. He is my friend but at times he surprises me. The issue here is domestic violence. It is about violence. Violence is actually meted out more on the people he is trying to remove from the Bill. As a matter of fact, serious violence is in a previous marriage or a marriage that has failed. You can meet the person you previously engaged with and start violence on her or him. If we remove this clause, we will be exposing the people with whom an individual has had previous relationship to violence. We are trying to avoid a situation of those with bad habits hurting such people. I do not suspect hon. Chepkong’a to be one of them.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Mbadi, since we have several deletions proposed by the Chair, would you point out the ones you are opposed to, or say if you are opposed to all.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I am opposed to everything that he is trying to delete. I do not see why he is deleting these provisions. The explanation that he gave us was centred on the definition of a family. I would like my

friend, hon. Chepkong'a, to be very careful. The people who are exposed to serious violence are the ones he is trying to remove from this Bill. As a matter of fact, violence is low on those who are still living with you. If you have too much violence, they will run away. Please, do not attempt it. The people on whom you can employ violence with impunity are the ones he is trying to remove from the Bill.

I oppose.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much, hon. hon. Mbadi.

Let us hear the Member for Ndhiwa.

Hon. Oyugi: Thank you, hon. Temporary Deputy Chairman. First, I declare that I am a Member of the Justice and Legal Affairs Committee. We gave consideration to some of these things in the Committee. Whereas I want to oppose some of the deletions of my Chair, not because I am going against---

The Temporary Deputy Chairman (Hon. Kajwang'): Just a minute, Member for Ndhiwa.

Departmental Committee Chair, have the minutes of the Committee been circulated to hon. Members. Hon. Members, do not approach this matter as though it is new, or that you are reinventing the wheel. You need to approach it from the point that you have read the Committee's Report, so that you are talking from a point of information. Otherwise, we will be going back to everything we discussed in the plenary during the Second Reading.

Proceed, Member for Ndhiwa.

Hon. Oyugi: Thank you, hon. Temporary Deputy Chairman.

I would like to oppose the deletion of paragraph (a) (1) of Sub-clause (4). The only part on which I agree with the Chair is that Sub-clause (3) be deleted. I will explain my understanding and interaction. I agree with hon. Ng'ongo, who has said that if you look at Clause (4) (a) (1), the persons who are always subject to violence are persons whose relationship has almost been truncated, people who were in a past marriage or people who are staying apart. You find that once or twice, a spouse still feels a sense of entitlement. Occasionally, spouses who are separated are subject to violence. So, whereas I agree that what Sub-clause (3) speaks to is totally different and can be dealt with in another regime of law, I request my Departmental Committee Chair to find that Sub-clauses (1) and (4) should remain part of the Bill.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you, hon. Neto.

Let us hear the Member for Kibra.

Hon. Okoth: Hon. Temporary Deputy Chairman, I also echo the same sentiments. In the title, the Bill talks about protection against domestic violence. In that context, the definition of "domestic violence" and the people who are most likely to be victims of domestic violence are the people whom we are talking about. Former relationships are relationships that are in trouble and are falling apart. Let us keep the definition of the people protected and the definition of the family to include this list.

I, therefore, oppose the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Marakwet East!

Hon. Bowen: Hon. Temporary Deputy Chairman, I support.

Let me, first, point out that this Bill is very important because we have seen domestic violence in our society, which has led to death of many people. Therefore, in the first place, this Bill brings sanity and defines who family members are. I am also a Member of the Committee and I support my Chair on the deletion of these clauses. When talking of domestic violence, let us not attach a lot of strings to a family. A family has a father, a mother and children. If we try to include in ex-wives, estranged wives and husbands, it is going to lose meaning.

I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Member for Wajir!

Hon. (Ms.) F.I. Ali: It is very unfortunate that this Bill has stayed for too long and many events have taken place.

Hon. Temporary Deputy Chairman, personally, I opposed this deletion on the grounds that we are all extended families and we live in large families. This deletion might cause a lot of suffering to people who are likely to be abused in the set up of large and extended families. In my context, I think all this deletion will affect anyone who might be violated and abused at the domestic level because of that extended family scenario. I oppose the deletion of all the sections in Clause 4(1)(b), (d), (e), (f), (g) and (h). I want it to be retained.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you, hon. Member for Wajir. We do not want to reinvent the wheel and start debating this thing. So I wish that you kept your comments very short.

Hon. Rop: Thank you, hon. Temporary Deputy Chairman. Going through the Bill and the meaning of “domestic relationship”, I want to agree with hon. Members who have said that this deletion should not be done because it does not state in this Bill who the members of the family are. We are talking of relationships that had taken place before. So, if we delete all these, what will happen to those victims who have been affected by the deletion?

I oppose.

The Temporary Deputy Chairman (hon. Kajwang’): Okay. The last on this is hon. Member for Kiharu.

Hon. Kang’ata: Hon. Temporary Deputy Chairman, let us not forget that we have a penal code which clearly sets out penalties for assaults. That means that even if you were to remove these people, people are still bound by the penal code and therefore punishable under the law.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. The Chairman of the Departmental Committee of Justice and Legal Affairs, can you respond to this?

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chairman. Thank you for the hon. Members who have contributed. Maybe I was not very clear but let me be clear. First and foremost, we are defining what a domestic relationship is. These are people who are living with you. A person who is living with you is either a married person or one who is living in the same household with that person.

Hon. Member: On a point of order.

Hon. Chepkong'a: A person who has previously been married to you and does not live with you does not have a domestic relationship with you because he or she lives in someone else's house or in their own house. That other person could even be married. You cannot define someone who has already been married or of a marriage that has been nullified and the person has ceased to be your spouse as one in your domestic relationship. You are saying that, that person is still part of domestic relationship?

As hon. Kang'ata has just said---

Hon. Oyugi: On a point of information.

Hon. Chepkong'a: No, I do not want to be informed, hon. Temporary Deputy Chairman. You know hon. Neto himself was in this meeting and I recognise that he has possibly not seen the minutes of the Committee but he was a Member of this Committee. I signed the minutes on 10th July, 2014. There is a possibility that there could have been lapses.

The Temporary Deputy Chairman (Hon. Kajwang'): Proceed.

Hon. Chepkong'a: I have the Report.

The Temporary Deputy Chairman (Hon. Kajwang'): If you see that the Chair is not paying attention, please, just proceed.

Hon. Chepkong'a: The Report was adopted unanimously and any Member of the Committee who is opposing it, is doing it with some other motives which I do not know.

Hon. Temporary Deputy Chairman, secondly, in (f), if you say that he or she has been engaged to get married to that other person - If you are engaged to get married to that other person, he or she is living in his or her own house. So, she is not part of your domestic relationship. You are not engaged in a domestic relationship.

Hon. Members: That is not clear.

The Temporary Deputy Chairman (Hon. Kajwang'): No, you cannot listen if all you are doing is raising points of order. You need to listen to what he is saying first then you can raise all those points of order because what is out of order is disruption of the House. I have not seen anything like that unless what you are talking about is that you may be disagreeing with him.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, if you look at (g) it talks of one that has a child with another person. If someone has a child with that other person and that other person is living in his or her own house, then you cannot be in a domestic relationship with them. This is what the Committee said. I am not reporting my own things. I know hon. Mbadi is still seething from the loss that he may have suffered in the previous---

(Loud consultations)

That is with a light touch. Some people should appreciate jokes and laughter sometime. You should be laughing and not be serious every time.

In conclusion, hon. Members must make a decision on this matter, if this is what you want, you know it will be unfortunate for this country that people who are not necessarily in a domestic relationship are included when defining what a domestic relationship is. That is what we said.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. I will put it to Question. Hon. Mbadi, what is out of order?

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, is it in order for hon. Chepkong’a to mislead this House and in the process of misleading the House to go ahead and commit another offence of referring to past events? He is misleading the House because---

The Temporary Deputy Chairman (Hon. Kajwang’): No. What is it that you think the Chairman is misleading the House about?

Hon. Ng’ongo: That is where I am heading to. You see, hon. Chepkong’a is referring to definition or meaning of “domestic relationship” in general but we are specific. It starts by saying that for the purposes of this Act--- So, when we are making amendments, we must be alive to the Act we are amending. It is the Protection Against Domestic Violence Bill. So for the purposes of what we are legislating, then “domestic relationship” is defined. Hon. Chepkong’a is actually defining “living”.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Suba, what is it that he is misleading the House about?

Hon. Ng’ongo: He is misleading the House because he is not referring the House to the specific Bill we are legislating.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, thank you very much. That is all right.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, by the way, we are not defining “domestic living”, we are defining “domestic relationship”. You do not have to live with somebody for you to have a relationship with him.

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

Hon. Member: On a point of information.

The Temporary Deputy Chairman (Hon. Kajwang’): No. We are really trying and you have seen from the Speaker’s Chair and from the Chairpersons of Committees that we are really trying to push hon. Members to have a fair knowledge of what is out of order. We think that these points of order have been misused. That is why we are pressing you, as a ranking Member, to really rise on a point of order when it is a point of order. What you are raising, although you are putting it as misleading the House, is just his interpretation of the law which cannot be misleading. That is his opinion on an issue of law. It cannot be misleading. You can have yours but he can have his. So, learn. I think we want to get hon. Members to be bringing things which are out of order so that we help ourselves out of this.

All right, I will put the Question.

Hon. Member: Can I clarify it?

The Temporary Deputy Chairman (Hon. Kajwang’): No. I think it is well clarified. I think hon. Members are able to make a decision on this. So, let us put the Question in sections. There is paragraph (a), (b) and (c), if you look at your Order Paper. So, let us start with (a):

THAT, clause 4 of the Bill be amended—

- (a) in subclause (1) by deleting paragraphs (b), (d), (e),(f),(g)and (h);

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

(Clause 4(1) as amended agreed to)

(b) by deleting subclause (3);

The Temporary Deputy Chairman (Hon. Kajwang’): The hon. Temporary Deputy Chairman is in doubt, I will put that Question again.

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

(Clause 4(3) as amended agreed to)

(c) by deleting subclause (4);

Hon. Members: The Ayes have it.

The Temporary Deputy Chairman (Hon. Kajwang’): No. Again, the hon. Temporary Deputy Chairman is in doubt.

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

(Clause 4 (4) agreed to)

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

(Clause 4 agreed to)

Clause 5

Hon. Chepkong’a: I beg to move:-

THAT, clause 5 of the Bill be amended—

(a) in subclause (1)—

(i) by deleting the words “estranged spouse or former spouse” appearing in paragraph (a);

(ii) by deleting the words “in the opinion of the court and” appearing immediately after the words “person who” in paragraph (f);

(b) by deleting subclause (5);

(Question of the amendment proposed)

Hon. Kimaru: Hon. Temporary Deputy Chairman, I support that deletion for the sake of tidying it up just like the previous deletion wanted to do. It wanted to tidy up that particular part of the law. I am in support of that. It is unfortunate that the other deletion was defeated in spite of its very noble intentions.

Thank you.

Hon. Oyugi: Thank you, hon. Temporary Deputy Chairman. I hope that hon. Member for Laikipia East appreciates that we are tidying the Bill. I said before that being a Member of the Departmental Committee on Justice and Legal Affairs, there are a few things and various information that we got to research on. That is why some of the positions that we might be canvassing are slightly different from those we had in the Committee. I would like to oppose the deletion of Clause 5(1)(a). The reasons are similar to the ones I advanced earlier on deletion of Clause 4. What hon. Ng'ongo was trying to canvass, which I would like my Chairman to be alive to, is the definition of---

I would like to say that what hon. Ng'ongo wanted to speak to is that this Bill defines what a domestic relationship is. That definition is in Clause 4 of the Bill so that any other interpretation of a domestic relationship outside this Bill is not what we are dealing with. I think that Clause 5(1)(a) therefore expands the space of who is in a domestic relationship. That is why I am opposing the deletion of Clause 5(1)(a) whereas I agree with my Chairman in the deletion of Clause 5(1)(f).

I thank you.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. The last on this is nominated Member, hon. Mwaura.

Hon. Mwaura: Thank you, hon. Temporary Deputy Chairman. I rise to support the Chairman of the Committee. There is no way you can define a member of a family to be a former spouse. Honestly, for purposes of clarity, let us not just legislate because we want to be seen to be politically correct. Let us do what is proper. When you talk about members of a family, it is very clear who a member of a family is. Why are we trying to redefine membership of a family for purposes of domestic violence? How would this affect other provisions of the law with regard to the constitution of a family?

I rise to support the deletion.

Hon. Temporary Speaker (Hon. Kajwang'): Hon. Member for Kiharu.

Hon. Kang'ata: Hon. Temporary Deputy Chairman, there are two issues. One, there have been several rulings on the issue of Members of a Committee coming here during the plenary and changing decisions. I seek your guidance and direction on that matter taking into account the fact that one of our Members of the Committee did not dissent officially during our meeting. I seek your guidance on that.

Two, we should also ensure that any law we make rhymes with other pieces of legislation. I draw your attention to a problem that has been in the law of succession and the Marriage Act depending on the issue of some definition of marriage. That issue has been dogging courts and I foresee that same problem being imported into this law where you have a law defining that this is a member then another law says this is not a member. So, we should ensure that laws always rhyme. This is what I foresee.

The Temporary Deputy Chairman (Hon. Kajwang'): Okay, hon. Member for Kiharu, if I hear you properly, one, you are asking if it is in order that we are keeping fidelity to precedent and whether the amendments that we are seeking violate some other

legislation. Just before I pronounce myself on it, let me give you a fair chance. Can you draw my attention to these specific rulings that you are talking about? Can you also draw my attention to the specific sections of law you are talking about?

Hon. Kang'ata: Well, I have no specific dates but I know that there is a principle that when you are Member of a Committee, when you come to the plenary, you are supposed to adhere to it. In any event, there is also the legal principle which is called *estoppel* which means you are stopped from changing positions. I pray that if you do not find it in precedent, you find it under the principle of *estoppels* that my colleague here is *estopped* from coming and changing positions.

As to the issue of the specific law, I refer to the definition of “family members” under the Marriage Act which we passed recently and we see whether that law rhymes with the proposed amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): I appreciate your ingenuity and trying to keep us to the law but I will rule that the doctrine of *estoppel* will not apply for the specific reason that we are now dealing with a fresh Committee. What you may have said in a Select Committee may or may not have a bearing in the Committee of the whole House because this is Committee in plenary. Yes, there is some doctrine that if you are a Member of the Committee, it is not tidy to come and disagree with your report. Until I see the text very clearly, I am unable to make a decision on this issue.

About the sections of law, you have not raised them to my attention and so I am unable to make a decision on it. Therefore, the direction is that the Chair is unable to make a direction that you have requested. Let us move on. Where were we until that came? That was directions. I want to put this to vote. Member for Laikipia East, do not appear to be appealing on the decision of the Chair, is it a fresh issue?

Hon. Kimaru: Hon. Temporary Deputy Chairman, on that same issue, decisions have---

The Temporary Deputy Chairman (Hon. Kajwang’): It needs not be attached to what hon. Member for Kiharu has said.

Hon. Kimaru: Yes. It is just information that decisions that have been made before by the hon. Speaker, Members are at liberty---

The Temporary Deputy Chairman (Hon. Kajwang’): If you are very active and fastidious you would have quickly run to the HANSARD, pulled out one for me and expressed yourself on it. That is what they do in the courts of law. That is what I will uphold right now to be very clear. Let us step on, hon. Member for Wajir.

Hon. (Ms.) F.I. Ali: Thank you, hon. Temporary Deputy Chairman, I want to oppose 5(1) (i)---

The Temporary Deputy Chairman (Hon. Kajwang’): Just one minute, Member for Wajir. Member for Likuyani is on a point of order. He rarely does that so let me recognise him.

Hon. (Dr.) Kubunguchy: Thank you, hon. Temporary Deputy Chairman. My concern, as we go forward, is that we have just dealt with Clause 4 and we have negated the amendments. The Clause was defining “domestic relationship”. If we come to Clause 5 and we introduce the amendments to Clause 5 (1) (a), my view is that it will contradict what we have just done in Clause 4.

The Temporary Deputy Chairman (Hon. Kajwang’): That is now your contribution in either supporting or opposing the amendments sought by the Chairman. It is really not a point of order. I saw you were on an intervention. So, why do you not wait and then you will make that very good observation?

Member for Wajir, just finish what you were saying.

Hon. (Ms.) F.I. Ali: Thank you, hon. Temporary Deputy Chairman. I would like to oppose deletion of Clause 5(1) (a) because this law--- Many of you have been talking about nuclear families, but many of our communities are in an extended family set up. When you talk about domestic compound or set up, you might think that it is few families. However, where I come from, extended families at the domestic level are bigger and wider.

The Temporary Deputy Chairman (Hon. Kajwang’): So, that they include estranged spouses and former spouses.

Hon. (Ms.) F.I. Ali: Yes. We need to understand that when you are an estranged spouse, you are still married; you have not divorced and you still have a relationship. Sometimes, you can have a grace period to reconcile and could be living in the same compound to build the relationship.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Member for Embakasi South.

Hon. Sumra: Thank you very much, hon. Temporary Deputy Chairman. People have to take care of --- I share the sentiments of the Member of Parliament for Wajir especially when there are estranged spouses and people are living in separation. It is very rare in some cultures and religions. This should be taken care of. This Bill has to go back to the drawing board. I oppose the clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Let me express my frustration as the Chairman. I do not have a vote, but sometimes I see things here which Members are debating and if only they reflected a bit, they would come up with a different opinion. This is because at the end of the day, you may make a legislation which when you look at it again you wonder why you were in the National Assembly. For example, let us look at this particular one. I do not want to debate; it is not my part to debate. You need to know that this is a definitive part of the Act in which it says that for the purposes of this Act, “family member” means the people listed. The Chairman of the Committee seems to be saying that it should only be a spouse. However, when I listen to the debates, you want to include estranged and former spouses as part of family. Okay, if that is how you want to debate it then that is all right.

Member for Suba.

Hon. Ng’ongo: Thank you, hon. Temporary Deputy Chairman. When we attempt to legislate here, it is to cure some mischief. I look at this Bill from the point of protection against domestic violence. This Bill is supposed to protect some people against some domestic violence. So, we are not defining “family member” in general terms.

The Temporary Deputy Chairman (Hon. Kajwang’): But the Member for Kiharu said that Criminal Law has not stopped. There is still Penal Code and all the legislations which deal---

Hon. Ng’ongo: It is all right.

The Temporary Deputy Chairman (Hon. Kajwang’): If, for example, Member for Suba were to accost someone, and God forbid because he does not do those things, that he was a former spouse---Now, Member for Kiharu Constituency said that it would be quite easily solved within the Penal Code and normal punitive structures that we have. This is the point I had.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I would appeal to you not to debate.

The Temporary Deputy Chairman (Hon. Kajwang’): I was just expressing my frustrations as the Chairman.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I listened to all that hon. Member for Kiharu Constituency said. If that were the case, we know that we have the Penal Code which even covers the spouse anyway. Why are we legislating on domestic violence? Because we feel the laws that are there are not sufficient enough to deter this kind of misbehaviour. Therefore, that is why we are bringing even these other people you have had relationship with. We know that your level of interaction with them is higher than any other ordinary person. So, we are defining a family member in the context of protection against domestic violence not generally. That is why I oppose the amendment especially on Clause 5(a).

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

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chairman. I note what the Members are saying. I am a lawyer and I am also getting exceedingly frustrated. This is because when Departmental Committee on Justice and Legal Affairs considered this Bill, it was looking at it contradistinction with other Bills. The Sexual Offences Act is there. So, what we are seeking to do is not to reproduce what is already contained in other Bills. We do not want to re-define what “family member” is as defined in the Marriage Act. We might end up having two different legislations which have different definitions of what a family member is. What we just merely did is to import the definition of “family member” under the Marriage Act. So, you know you cannot have two--- Even the courts themselves, if they will have to interpret, they will be in a confused state because one legislation will be saying this and the other one something else.

Hon. Temporary Deputy Chairman, let me clarify this issue. When you talk about a family member as defined in the Marriage Act, it refers to a spouse and children of that particular marriage. It does not refer to an estranged spouse or a spouse who has already been divorced. Someone who has already been divorced has ceased to be part of your family. So, you cannot say that so-and-so who has been divorced is still part of my family. He or she cannot be!

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Members have now been persuaded enough. Just a minute before I put the Question, hon. Chairman. In paragraph (b) I see that you have a deletion on Sub-clause 5. When I look at the Bill, I do not see a Sub-clause 5. So, can you express yourself on the HANSARD?

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I do not wish to move that amendment because it is not in the Bill. So, I drop the amendment as contained in the Order Paper.

The Temporary Deputy Chairman (Hon. Kajwang’): So, you withdraw that.
Hon. Chepkong’a: Yes, I have withdrawn.

(Proposed amendment in part (b) withdrawn)

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT, Clause 6 of the Bill be amended by deleting sub-clauses 3 (a), (b) and (c).
If I may read for those who may not be having a copy of the Bill:-

(3) A police officer may without a warrant, arrest and prefer charges against any person---”

If you read (a), (b) and (c), the first words there are that a police officer may “reasonably suspect”. My worry there is that this is a relative and is prone to abuse by the police. We know the police have misused their powers.

(Question of the amendment proposed)

Hon. F. K. Wanyonyi: Hon. Temporary Deputy Chairman, I agree with the amendment. Our brothers in the forces sometimes are very interesting. Just on a mere suspicion, rumour or jealousy, they may arrest somebody. Given the practical things that we see out there, I agree with the amendment. I have had cases where I have been forced to go to the police station to bail out somebody. When you interrogate the officer in charge, sometimes he does not have very good reasons for arrest.

Hon. Chea: Hon. Temporary Deputy Chairman, I support that amendment. Without a valid court order, the police officer is likely to abuse the process and we may have the wrong persons arrested and charges preferred against them.

I support.

Hon. (Ms.) Mathenge: Hon. Temporary Deputy Chairman, I also support it especially considering the way our police officers behave. We should delete it until the police force becomes more efficient and reliable.

Hon. King’ola: Hon. Temporary Deputy Chairman, I support the amendment given how we have defined the term “family”. When a woman wants to divorce you, she may call her boyfriend who is a policeman to arrest you. We should do away with it. This Bill should be done like that.

The Temporary Deputy Chairman (Hon. Kajwang’): Nominated Member Johnson Sakaja. I think you will be the last to speak on this. No, I had promised the Member for Likuyani.

Hon. Sakaja: Hon. Temporary Deputy Chairman, I have nothing useful to add. I support the sentiments of the Members because of the abuse that it is prone to.

Hon. (Dr.) Kibunguchy: Thank you, hon. Temporary Deputy Chairman. I also support the amendment because of the issue of it being sometimes abused.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Wajir, I hear you are loudly opposed to it. Can I hear you?

Hon. (Ms.) F. I. Ali: Hon. Temporary Deputy Chairman, this proposal is meant to protect people against domestic violence. It is not just on police who can beat your son on the streets. I want to oppose this amendment because at the Committee level, this was highly supported by everybody. It was not part of the deletions proposed by the Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): But you have had a lot of Committee agreements here which you have changed on the Floor of the House. So, which side cuts? Is it not both ways?

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, I am opposing this proposal because the provision is very useful for the police to intervene to save the affected persons. This law is made for the long-term. It is not just about when our police are corrupt or not effective. This is for long-term purposes. We need an urgent intervention of the police in case of domestic violence. This section is very relevant for that circumstance.

I oppose the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Which other Member is loudly in opposition to this? Chairperson of the Committee on Justice and Legal Affairs, hon. Chepkong’a, now not as the Chairperson but as the Member for Ainabkoi.

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chairman. I was approached by hon. Mutura. As you know, he is an astute Member of the Committee on Justice and Legal Affairs. I totally agree with him that a police officer may not without a warrant arrest people. This is very clear. If you suspect that someone has committed a crime, you go and obtain a warrant and arrest the person.

I support the deletion.

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

(Clause 6 as amended agreed to)

Clause 7

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 7;

Since the procedure for reporting police disobedience, indolence and failure to perform is already contained in the legislation mentioned therein, as a Committee, we found that it was unnecessary to import other provisions of the law into this particular Bill. With regard to other issues such as if you are wishing to complain about a police officer who has refused to take your complaint, you can go directly to Independent Policing Oversight Authority. There are sufficient procedures of reporting. You can also

report directly to the National Police Service Commission, which will deal with it. We thought that this is totally superfluous. It was unnecessary.

(Question of the amendment proposed)

Hon. (Ms.) Changorok: Hon. Temporary Deputy Chairman, I want to support the deletion as moved. If you want to report a crime and you want the offender to be charged, you take it straight to the police and it is acted upon.

I support the deletion as mentioned.

The Temporary Deputy Chairman (Hon. Kajwang’): I will only give a chance to one person before I put the Question to vote. Member for Kibra.

Hon. Okoth: Thank you, hon. Temporary Deputy Chairman. I support the deletion as it is. In the interest of time, I will not add anything else.

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

(Clause 7 deleted)

Clause 8

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by deleting Clause 8;

The reason for the deletion is that the rules committee to deal with issues of promulgating policies and issues of domestic violence has already been established pursuant to Clause 46, which we are not proposing to amend in the Bill. So, to give the job to the Cabinet Secretary is just merely introducing politics.

Secondly, we would just be introducing issues of counties. This Bill will then have to be referred to the Senate. The Cabinet Secretary is expected to make policy in consultation with the County Executives. This is a national function.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, for purposes of hon. Mule’s amendment, you will appreciate that if the Chair’s amendment is carried, the amendment intended by hon. Mule will fall by the wayside. Of course, if it is negated, then we will go to the amendment proposed by hon. Mule. That is how we will proceed.

Yes, Member for Ndhiwa.

Hon. Oyugi: Hon. Temporary Deputy Chairman, I would like to support the particular deletion because the Chair has raised two fundamental things: Firstly, the rules committee has already been established to look into these particular regulations and secondly, due to the fact that this is a purely national function, which has nothing to do with counties.

Hon. Mwaura: Hon. Temporary Deputy Chairman, I wish to support the deletion as proposed by the Chair. The provisions are very good, as long as Clause 46 is retained and this committee is able to put this in regulations because this is over-legislating.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Thika Town.

Hon. (Ms.) A.W. Ng’ang’a: Hon. Temporary Deputy Chairman, I also support the deletion so that we can avoid conflict between the national Government and the county governments. If we are going to have that Committee, then things are going to be easier.

The Temporary Deputy Chairman (Hon. Kajwang’): Before I put the Question, let us hear hon. Johnson Sakaja.

Hon. Sakaja: Hon. Temporary Deputy Chairman, I appreciate the concerns of the Committee with regard to the two levels of government as well as the regulations. You realise that beyond that, Clause 8 is providing an essential part of this Bill; protection mechanisms. In order to be prudent, the Departmental Committee Chairman should have amended the offending Clause 8(i) to remove the conflict, but not to throw out the baby and the water and say that because of that small conflict of jurisdiction, we do not provide protection. The amendment is doing far more than what the Chair would like to do. If it can be further amended I would support.

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

(Clause 8 deleted)

Clause 9

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 9 of the Bill be amended—

(1) as (a) by deleting Sub-clause (1) and replacing with a new Sub-clause follows—

such “(1) Any person who reasonably suspects that an offence of domestic violence is being or has been committed may give information to the police officers or any other person in authority

providing (b) in sub-clause (2) by deleting the words “by virtue of such reporting attacks, intimidates or does any harmful act to the person information” appearing immediately after the words “person who” and substituting therefor the words “attacks, intimidates or harms a person who reports domestic violence”;

(c) by deleting sub-clause (3);

(d) by deleting sub-clause (4);

(e) by deleting sub-clause (7);

Hon. Temporary Deputy Chairman, what we are seeking to do is just to clean up that particular Clause. We are removing the untied words “by virtue of such reporting

attacks” and substituting therefore the words “attacks, intimidates or harms a person who reports domestic violence”.

Secondly, we are seeking for the deletion of sub-clauses 3, 4 and 7 which, in the opinion of the Committee, do not serve any purpose at all. They just negate what is intended to be legislated.

Thank you.

(Question of the amendment proposed)

Hon. (Ms.) F.I. Ali: Hon. Temporary Deputy Chairman, I would like to bring to your attention the fact that there is no sufficient quorum in the House to debate this crucial Bill.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, the issue of quorum having been brought to my attention, I order that the Quorum Bell be rung for 10 minutes.

(The Quorum Bell was rung)

The Division Bell may now stop. For HANSARD, I will enquire from the Clerk at the Table if we have quorum. I am informed that we do not have quorum to transact the business. Let us have the Chair.

PROGRESS REPORTED

THE PROTECTION AGAINST DOMESTIC VIOLENCE BILL

Hon. Chepkong’a: I beg to move that the Committee doth report to the House its consideration of the Protection Against Domestic Violence Bill and seeks leave to sit again another day.

Thank you.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Deputy Speaker
(Hon. (Dr.) Laboso) in the Chair]*

Hon. Kajwang’: Hon. Deputy Speaker, I beg to report that a Committee of the whole House is considering the Protection Against Domestic Violence Bill and has instructed me to report progress and seek leave to sit again tomorrow.

Hon. Ms. F. I Ali seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, we are not finishing this as this is not the right information. As we have not been able to get quorum, I now adjourn the business of the House up to tomorrow, Thursday, 12th March, 2015 at 2.30 pm.

The House rose at 5.40 p.m.