

NATIONAL ASSEMBLY

OFFICIAL REPORT

SPECIAL SITTING

Wednesday, 27th May, 2015

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

NOMINATION OF HON. WAMALWA AND AMB. (DR.) JUMA TO STATE OFFICES

Hon. Speaker: Hon. Members, I have Message No.6 of 2015 from the President on nomination of persons to State offices.

Hon. Members, Standing Order No.42 (1) relating to Messages from the President provides that the Speaker shall read in the House any Message from the President delivered to the Speaker for communication in the House. In this regard, therefore, I wish to inform the House that I have received two Messages from His Excellency the President.

In the first Message received by my office today, 27th May, 2015, His Excellency the President, in exercise of powers conferred upon him by Article 152(2) of the Constitution, has nominated Mr. Eugene Wamalwa to the position of Cabinet Secretary. The President, therefore, seeks the approval of the National Assembly on the same nomination.

(Applause)

Hon. Members, Article 152(2) of the Constitution provides that the President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries. Further, Section 5 of the Public Appointments (Parliamentary Approval) Act of 2011 requires that an appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant House of Parliament accordingly. Consequently, a proper notification in line with the above provisions has been received.

Hon. Members, I have also received a Message from the President regarding the nomination of Ambassador (Dr.) Monica Kathina Juma to the position of Secretary to the Cabinet. This nomination was made in accordance with Article 154(2)(a) of the

Constitution, which states that the Secretary to the Cabinet shall be nominated and, with the approval of the National Assembly, appointed by the President.

Hon. Members, the two nominations are subject to the provisions of the Public Appointments (Parliamentary Approval) Act, 2011. In this regard, I wish to guide the House as follows:

1. The relevant Committees referred to in the Acts are the Committee on Appointments in the case of the Cabinet Secretary and the Departmental Committee on Administration and National Security in the case of the Secretary to the Cabinet.

2. The relevant Committees are to consider the nominations and table their reports within 14 days from the date of today.

Hon. Members, pursuant to the provisions of Standing Order No.42(3)(c), I now refer the Messages from His Excellency the President containing the names of the nominees, together with their curriculum vitae, to the relevant Committees to conduct the approval hearings in accordance with the relevant laws and the Standing Orders of the House.

Thank you, hon. Members.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:-

The 2014/2015 Supplementary Estimates II Programme Based Budget of the National Government of Kenya for the year ending 30th June, 2015

The Annual Report and Financial Statements of Laikipia University for the year ended 30th June, 2013.

The Report of the Auditor-General on the Financial Statements of Export Promotion Council 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 Ministry of Interior and Co-ordination of national Government 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 Jaramogi Oginga Odinga University of Science and Technology 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 Revenue for the Ministry of Interior and Co-ordination of National Government for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on Coffee Development Fund Financial Statements for the 13 months ending 31st July, 2014 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on Coffee Board of Kenya Financial Statements for the three months period ending 31st July, 2014 and the Certificate of the Auditor-General therein.

Thank you, hon. Speaker.

Hon. Lang'at: Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 27th May, 2015:-

The Report of the Mediation Committee on the Public Audit Bill, 2014.

Thank you.

(Hon. Langat laid the documents on the Table)

Hon. Speaker: Hon. Mary Seneta, you have an intervention?

Hon. (Ms.) Seneta: It is a Notice of Motion.

NOTICES OF MOTIONS

ADOPTION OF MEDIATION COMMITTEE REPORT ON PUBLIC AUDIT BILL, 2014

Hon. Langat: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Mediation Committee on the Public Audit Bill (National Assembly Bill No. 38 of 2014) laid on the Table of the House today Wednesday, 27th May, 2015.

Thank you.

Hon. (Ms.) Seneta: Hon. Speaker, I beg to give a notice of the following Motion:-

THAT, the Motion on the approval of Estimates of Revenue and Expenditure of the National Government, Parliamentary Service Commission (PSC) and the Judiciary for the Financial Year 2015/2016 be amended on page 24 on reallocation by inserting the following new paragraph immediately after paragraph---

Hon. Speaker: Where have you got that from?

Hon. (Ms.) Seneta: The Chairperson of the Departmental Committee on Education, Research and Technology. I am reading on her behalf.

Hon. Speaker: Hon. Mary Seneta, a Motion of that nature has to be approved by the Speaker. I do not recall ever approving it. I am sure you are well aware that I do not have short memories. I am unlikely to have ever approved a Motion like that one today or anytime in the recent past. It is not there.

Hon. A.B. Duale: Hon. Speaker, there are PSC commissioners here. So I am wondering how my good friend, Hon. Mary Seneta, is today bringing an amendment on behalf of the Judiciary and the PSC, of which you are the Chairman and you are not aware of your own amendment, hon. Speaker.

Hon. Speaker: As far I can remember, there is one Motion that has been approved.

Next Order.

MOTION

ADOPTION OF REPORT ON BUDGET ESTIMATES (2015/2016)

THAT, this House adopts the Report of the Budget and Appropriations Committee on the Budget Estimates for the national Government, the Judiciary and Parliament for the Financial Year 2015/2016 laid on the table of the House on Tuesday, 26th May, 2015, and pursuant to the provisions of Section 39 of the Public Finance Management Act, 2012 and Standing Order Nos. 235 and 239, approves the issuance of a sum of Kshs1,508,517,181,340 from the Consolidated Fund to meet the expenditure during the year ending 30th June 2016 in respect of the Votes, as indicated in Schedule.

(Hon. Musyimi on 27.5.2015 (Morning Sitting))

(Resumption of Debate interrupted on 27.5.2015)

Hon. Speaker: Hon. Members, we will continue with that Motion as I await conclusion of the Communication.

Hon. Kubai Iringo: Thank you hon. Speaker, for giving me this opportunity to support the report of the Budget and Appropriations Committee, albeit with some reservations. The budget process in any country is the backbone of the economy. It is the kingpin which shows the direction in which the country is moving, especially in terms of development and finances. It has to be taken seriously and have full participation of all, especially us Members of Parliament, who are tasked to pass the same.

As it transpired this morning, many Members had reservations as to how the Budget and Appropriations Committee comes up with the estimates and concludes a report. Personally, I feel that we need to integrate, especially the Committees which do budgets, especially their chairmen, so that the final report is not punched holes by the various committees, which also participate in its making one way or the other. I strongly believe that the Budget and Appropriations Committee should do the secondary work of finalizing everything with the National Treasury having collected enough data from the departments, which are tasked to also give the estimates, if at all they are within their areas of operation.

Having said that, this year's Budget for 2015/2016, should have focused more especially on food production; we know that most parts of our country are arid. We should remember that His Excellency the President said that there will be a lot of investment in terms of doing irrigation and building dams. When I looked at this report, I found that the estimates given - I had even participated in a meeting where the President mentioned the issue of dams, especially in Meru region - did not have what the President said. Despite the Chairman of the Budget and Appropriations Committee having said that he had consultations with the President, he should have gathered the information which was given in particular meetings. Therefore, I emphasize that we need dams to irrigate our arid lands and those areas where we need to produce food. We need to supply water to our people because there is a perennial water problem in most parts of this country.

Tourism is an industry in this country which we tend to ignore. When I look at the estimates, the figures given for the promotion of tourism--- I have seen that tourism in Kenya is almost on its knees; we should have looked at it deeply, especially as far as

infrastructure is concerned. Roads to our tourist attraction centers, security and promotion of tourism through our embassies in our foreign missions should be looked at. What was given to the tourism industry--- Personally, I find that Kshs10 billion is not enough given that it is only Kshs7 billion that will go to the promotion of the industry with Kshs2.8 billion being for the Recurrent Expenditure.

Education is the backbone of our human resource development. We have had problems, especially when it comes to the issuance of bursaries to our school students. We have the Higher Education Loans Board (HELB), which is supposed to give our university students money, so that those who come from needy families get money. I am sorry to say that HELB is there in writing but whatever they give to our students is minimal to the extent that even if they are given something, some of them drop out of school and, therefore, we need to invest more in it.

I believe that education bursaries are there in writing because in my constituency we last received them last year in September. The National Treasury should be vigilant enough on some of these things. They should also be proactive; if there is a fund for education, it should be disbursed in time. Bursaries lose meaning if students are expelled from school because fees have not been paid.

The cash transfers for the aged are also not adequate. They should be increased because the amount of money given to the Ministry of Labour, Social Security and Services for the aged does not meet all the requirements of the country. Statistics should be taken of the number of people who fall in this category for cash transfers. The required amount should be allocated for their benefit. The cash transfer loses meaning if just an eighth of the people who qualify to get them benefit and the rest do not. Even the way it is managed is wanting. It has to be looked into critically. If we have to give cash transfers to our old people who have been working tirelessly for the development of this country, and when the time for them to benefit from the Government comes, a few of them get the benefit and others do not; it is against the rule of natural justice, which requires that everybody be considered equally.

This is a people's Budget. Therefore, when public participation is undertaken, it has to be across the board. Let us go to all the counties because every county has its own problems and issues which it needs to raise. When the Chairman of the Budget and Appropriations Committee mentioned the counties they visited, my county of Meru was not mentioned. I do not know why Meru was avoided, or why they did not go there. In Meru County, we have the right to give our views on our Budget as we are part and parcel of this country; we are one of the 47 counties in this country.

I expect that we will enhance the Constituencies Development Fund (CDF) in the CDF Act, having seen that CDF has done a lot in this country, and having seen that the CDF has worked across the board to assist people in our constituencies in terms of education, infrastructure development, putting up of classrooms and even paying fees for needy children. We need a bigger kitty, so that we can put up administrative offices for our chiefs, policemen and other critical public servants. This will enhance our contribution to the economy.

Let me finalise by saying that I strongly support an all-inclusive Budget preparation process where all the committees of Parliament are involved and the final tally gives a clear picture that the National Assembly participated in the whole exercise.

Hon. Speaker, I beg to support.

Hon. Speaker: What is your point of order, Hon. Chepkong'a?

Hon. Chepkong'a: Hon. Speaker, unfortunately, I could not attend the sitting this morning because I had some urgent matters I was dealing with. Having gone through the Report of the Budget and Appropriations Committee, I noticed that there are very serious discrepancies. I have a lot of respect for the Committee Chair.

Hon. Speaker, it will be useless for us, as Members of the Justice and Legal Affairs Committee, to travel from our constituencies to Nairobi, spend our valuable time on a sitting and pass resolutions, only for another parliamentary committee to reject our Committee's resolutions. We are not mad people. Some of us are lawyers. If we do not have anything to do, we have no business attending committee meetings. We can as well leave the Justice and Legal Affairs Committee matters of dealing with the Budget to the Budget and Appropriations Committee. We do not have a problem. I will not waste my time. I spent a lot of time in the Justice and Legal Affairs Committee, discussing the Budget and then I come here in the morning and, even without courtesy, I am told that the Budget allocations that we proposed to be removed from the Judiciary Vote---

We did a lot of examination and found out that in the Development Expenditure for last year alone, the Judiciary just spent 61 per cent. There are other Departments which have serious problems. We said that Kshs502 million should be removed from the Vote of the Judiciary. That is very little money. We said that it should be given to other departments which have serious problems. I have been asked by Members of the Justice and Legal Affairs Committee to ask you to rule that matters dealing with departments that fall under the Justice and Legal Affairs Committee be transferred to the Budget and Appropriations Committee, so that we do not deal with them anymore. There is no point for us to deliberate on these matters.

More importantly, we have two Members of the Justice and Legal Affairs Committee who also sit in the Budget and Appropriations Committee. My own Vice-Chair presented this Report and then, even without courtesy, it was rejected. We spend so much time sitting and trying to resolve certain issues. Some hon. Members are saying that the same happens with all the Departmental Committees. I do not know about other committees. I know about the Justice and Legal Affairs Committee.

On the Kshs100 million that we removed from the Judges and Magistrates Vetting Board, which was an allocation within the Attorney-General's Office, we said that Kshs44 million should be put in legal education and the remaining amount to be allocated to pupillage programmes. We have over 800 students who leave law school annually, and who need legal pupillage. We agreed with the Solicitor-General and we were merely doing a reallocation. This House decided that the term of the Judges and Magistrates Vetting Board must end by 31st December 2015. The allocation they were given was for a whole year. We merely removed the part that they were not going to use but, without being asked, we are told---

Hon. Speaker, I apologise but I am a little bit upset because it is very unfair for me to waste my time, sitting in a committee meeting whose resolutions are not respected. We were trying to beat a deadline. We were told that we must present our proposals to the Budget and Appropriations Committee by 21st May 2015. That was why I left my constituency for Nairobi. That was why, maybe, some of us are rated at 53 per cent and

others are rated more than 70 per cent. This is because we spend all our time in the House. Then when we spend all our time in the House, somebody comes and waves our resolutions away. I must also go and spend my time in my own constituency. It is not that I do not have anything else to do there.

Hon. Speaker, can you give us guidance on what we should do with these people, who have become rogue? I seek your direction. I have stood on a point of order. I have the Report of the Justice and Appropriations Committee. I have duly signed it. It contains the views of all the 29 Members, who represent most of the constituencies across the country. They are not from Ainabkoi Constituency, so that you just look at it and say, "Leave this which comes from hon. Chepkong'a". That is not true. We seek your guidance, so that all the proposals of the Justice and Legal Affairs Committee can be included in this Report.

I thank you.

Hon. Speaker: Have we gone back to the morning session? Hon. Musyimi, this is becoming too much.

Hon. Musyimi: Thank you, hon. Speaker. I have heard what my good friend, Hon. Chepkong'a, Member for Ainabkoi and the Chairman of the Departmental Committee on Justice and Legal Affairs, has said. He is a man whom I have a lot of respect for, as I have for all the other Members. We have a problem. He was not here in the morning. The English people have a phrase; there is something they call "honest mistakes". Honest mistakes are those made in good faith. In other words, there is no agenda but it is a mistake. It is very possible that honest mistakes have been made and this would be a case in point; it is about the Judiciary.

As you consider your ruling, one of the things I would like you to consider is a *Kamukunji* on this document, so that we do not make any final determination today because there is still time. We should have a *Kamukunji* here, but before we get to the *Kamukunji*, we should have a meeting of the Budget and Appropriations Committee and the chairpersons of the committees and have a negotiated position. There is need for some in-house discussions which might lead to a *Kamukunji* before we make a final decision, so that the budget process, the timing and the numbers are done in a manner such that there is ownership and buy-in. I have heard.

Let me tell you, at the risk of repeating myself, that the timelines we are working with are animal timelines. They are not human. They put incredible pressure on the Committee to make decisions. I do not know whether I can get the understanding of this House because they are animal timelines. They are just not human. So, it is possible that wrong decisions have been made, but they were honest mistakes. I have no other way of putting it because that is the honest truth. But it does not take away from us the need to find a way of mediating. This document needs to be mediated before we bring it for final determination. I am very open, because I know I acted in good faith as the Chairman of the Budget and Appropriations Committee.

Hon. Speaker: Hon. Mutava Musyimi, do I understand you to be then seeking an adjournment of debate?

Hon. Musyimi: Hon. Speaker, you hear me to be saying that I think it is important to give it enough time because information is coming out that we need to hear. It is part of the Constitution we adopted. This is not an easy Constitution to implement.

Anybody else sitting in the position I am in would either be dealing with the problems I am dealing with several times over or different kinds of problems. I would say that we debate. We need it. It may be unpalatable but it is necessary and then we do not make a final determination. We defer that final determination for another day, so that we have time to mediate these numbers. That is my honest request.

Hon. Speaker: I hear you but remember that the only timeline that you need to have in mind is 26th June because after that you would have to use the procedure known as “Vote on Account”. I agree with you that there is need for greater consultation. In fact, I do not even think the greater need is for a *Kamukunji*. The greater need is for the chairpersons of the various Departmental Committees to have a session, or sessions, with the Budget and Appropriations Committee, possibly also in the presence of the Cabinet Secretaries, especially those who have not found it appropriate to appear before committees.

Cabinet Secretaries must appreciate that budget making is such a momentous occasion; this House has the capacity to reject the total budget of a Ministry. That Cabinet Secretary would have no option but to just go back to the village, away from Nairobi. What else do they have if their budgets are rejected by the House? They must know that, so that whether they have other engagements--- Members also have a lot of engagements; it is not right for a Cabinet Secretary to claim that they have a lot of work. So are Members in the respective Departmental Committees. Perhaps, it is something that your Committee, Hon. Mutava Musyimi, will need to have more sessions with the various chairpersons of committees.

I would also want to encourage the chairpersons of committees to involve several of their Members in their decisions. I like what Hon. Chepkong’ a said, that his report is signed by all Members of his Committee. I would wish to hope that all the others are likewise owned by all Members of Committees, so that we do not start hearing one Member saying that they want to move a Motion that so much be reduced from this vote; we need a dam here or a kiosk there. Whatever it is that is agreed on is something that reflects collective thinking of each Committee as well as whatever consensus might be reached.

I appreciate that we could proceed under Standing Order No.96 but I also wanted to be sympathetic to the proposal. I do not know what the House thinks of the proposal by Hon. Musyimi; that Members of his Committee and him would want to hear more contributions from Members. This will enrich subsequent meetings, after which we can proceed under Standing Order No.96. Is the House inclined to go that route? Let us hear Hon. Mutava Musyimi.

Hon. Musyimi: If you are open to the suggestion that the Budget and Appropriations Committee meets with the chairpersons of the committees and some Members of those committees, together with Cabinet Secretaries and Principal Secretaries, as the case may be, then that to me would be a priority. Once those consultations – I prefer your word over mine – are held, then I will table a document. We can debate that document because discussing the current document, you can tell, has a lot of issues. That would be more fruitful for us as a House, and for the country going forward.

So, if you rule that you want the Budget and Appropriations Committee to give you our report having held consultations by Thursday next week, or you set a date since you are our Speaker, we shall comply and do the needful. It is important that that report be with you and be signed by myself before we come back here on Tuesday, 9th June. We can then prosecute the matter that afternoon. It will not take long. That will be my humble suggestion.

Hon. A.B. Duale: Thank you, hon. Speaker. I wish Hon. Chepkong'a was here this morning. These matters were canvassed by Hon. Jakoyo and many of us here. You made a serious Communication because you tasked chairpersons of committees to bring amendments on behalf of Members. I want to take the House through the timelines in the budget making process and the reason why we recalled the House to a special session. That is because Kenya signed certain obligations to its neighbours. The Budget will be read on 11th June this year. We are resuming on 9th June.

Parliament usually gives the Cabinet Secretary (CS) for National Treasury between seven to 10 days to adjust the estimates based on the various adjustments the Parliamentary committees have suggested. What he will read to the country on 11th of June will be something that carries the input of the Parliamentary committees as presented by the Budget and Appropriations Committee. We have agreed this morning and I am sure we need to move ahead because if we postpone this debate today and we are on a special session - we are coming back on 9th of June - that means we will have only one day left because the day he is coming to read the speech, he must also bring the printed estimates with all the adjustments of the Budget and Appropriations Committee. He cannot do that in one or two days.

I would ask, as per the direction you gave this morning, that as we debate, Hon. Chepkong'a and the Budget and Appropriations Committee Chair--- What he raises is valid, but I wish he was here in the morning. In future as you said, and that is why we have the Liaison Committee in this House that brings together all the chairs of all committees. So, the Liaison Committee and the CS should sit down in the presence of the Budget and Appropriations Committee Chair. I agree that all of us in respective committees take consideration of Members' contributions. If they say "reduce" in their report, they have reasons why a reduction is being done. If they say "increase", they have reasons.

There is no provision in the Standing Orders where Budget and Appropriations Committee has a veto power. That must come out very clearly. The Budget and Appropriations Committee must undertake consensus-building with other committees based on what they present. Because of the timeline and the 11th of June being the Budget Day for the whole of the East African Community (EAC), which we are members of, I would ask the chairs to bring in their proposed amendments. I am sure the Chair of the Departmental Committee on Defence and Foreign Relations has prepared the necessary amendments. I would ask the---

Hon. (Dr.) Pukose: *(Inaudible)*

Hon. A. B. Duale: Hon. Pukose is talking to me. I think he should talk to the Chair. He is telling me even the Higher Education Loans Board (HELB). I am saying, as an example, Hon. Chepkong'a can go back, talk to the Chair and agree because the Speaker has given the leeway this morning for the Chair to consult. We then continue and

approve the Budget because more delay means more delay even for our own constituencies.

If you look at the Report, the Salaries and Remuneration Commission (SRC) is being given Kshs1 billion. That is not even what was in the Budget Policy Statement (BPS). So, next year, with your guidance Hon. Speaker, the budget-making process must be very consultative within the precincts of Parliament. Under your leadership, we must take charge of the process so that we know what is happening and give good reasons. I want to indulge my colleagues because the 11th of June is a Budget Day for all East Africans. Let us continue to debate, agree and bring the amendments.

Hon. Musyimi: On a point of order, hon. Speaker.

Hon. Speaker: Yes, what is your point of order, Hon. Mutava Musyimi?

Hon. Musyimi: Given the importance of the Budget to the country, would I be in order, Hon. Speaker, to humbly suggest that this House be recalled on Tuesday next week so that we have time to consult?

(Applause)

My fear, and that is what a lot of colleagues here may not appreciate, is that we can sit here, make amendments which can burst the ceilings. So, we need the Treasury with us as we consult so that we do not burst the ceilings and begin to create macro-economic problems for this country going forward. It is not enough to just say we have powers as the National Assembly to make the final decisions. That we can do. However, we need the Treasury with us as we make those consultations so that we observe certain fiscal disciplines. My plea is that this House be recalled next week around Tuesday or thereabout. That will give us time to suspend everything we are doing so that we can do the consultations and then I table a report. However, the Treasury must be there.

(Applause)

Hon. Speaker: Is there sufficient time for you to meet and do the consultations? Even as you do so, remember tomorrow--- It is fair to bring you back to spiritualism because I can see some of you have run away from that.

(Laughter)

Tomorrow is the National Prayer Breakfast Day, starting at 7 a.m., at the Safari Park Hotel. We want to be through by 10 a.m.

Hon. (Ms.) Abdalla: *(Inaudible)*

Hon. Speaker: I am assuming that Hon. Amina Abdalla's spirituality will have revisited her so that she can communicate with her maker throughout tonight and by the time we have these consultations, there will be some white smoke.

Did I hear Hon. Midiwo wanting to propose something?

Hon. Midiwo: Thank you, hon. Speaker. I do not think you are suggesting that Hon. Mutava Musyimi's spirituality has dissipated. Remember he used to be a great man of God.

(Loud consultations)

My leader here wants to prove that Hon. Mutava is still spiritual. I do not know how you test another person's spirituality.

However, we are making progress. The time we took off for lunch has enabled people to think. Hon. Duale has made a good proposal based on facts. Hon. Mutava is also appealing appropriately.

It is important that we set a good precedent. It may have happened differently in the last couple of years. The Constitution was still new to us and many Members were also new. My only appeal would be that as we go to consult, we know what the procedure is. We know that you have to consult the CS for the National Treasury, but these other ones, leave them to the committees to figure it out. Let the Budget and Appropriations Committee not do what is not in their purview.

I would like to meet the CS for Foreign Affairs and give her my piece of mind because I am her boss generally in the Committee. We need to talk to her. We give them another chance. It is not us to hurt anybody. However, for Budget and Appropriations Committee to say we may burst the ceiling while they are adding money to Ministries whose budgets we have slashed, I do not understand how contradictory that would be. However, we want to give you a chance.

What I want us to agree on is the mandate of Budget and Appropriations Committee. We must agree as a House between now and the date we come back. I am attracted, for concession purposes, to Tuesday so that we can meet Hon. Duale halfway and meet Budget and Appropriations Committee halfway. The most important thing why we are in this controversy is the mandate of Budget and Appropriations Committee. If you talk about ceilings, we put an upper ceiling for the SRC but you have surpassed it. So, they are bursting the ceiling without coming back to the House. Are you sure of your mandate? We must know if the committees can make suggestions.

I can tell you in this Budget, the Departmental Committee on Education, Research and Technology, now that it dawned on them after I raised the issue that something unusual was happening--- Some universities, for example, are being given Kshs300 million. A big institution like Moi University, which we have even collapsed Garissa University College to join it, is being given Kshs40 million. Something is amiss in the---

Hon. Angwenyi: *(Inaudible)*

Hon. Speaker: Hon. Angwenyi, this is the plenary Chamber of the National Assembly and not Kitutu Chache North.

(Laughter)

Hon. Midiwo: So, some issues are not taken care of. For example, I may remind Members that the national bursary which concerns your constituencies has not been disbursed to date because there is no budget for it. This Budget does not have that bursary again.

Hon. Musyimi: On a point of order, hon. Speaker.

Hon. Midiwo: I am on a point of order, please. The bursary which we have been accustomed to – it has been there even before I came to Parliament - is missing currently in your constituency. I am not sure if Members of the Budget and Appropriations Committee are not getting those phone calls. Again, we cannot preside over Budget where we have total power to make and omit bursary money. We need to go back and consult within reason. We have to do that. It is our mandate and it behoves us. I want to insist on a negotiated Budget. When the Committee goes and slashes the budget of the Departmental Committee on Justice and Legal Affairs---I am now in the know that even the money for voter registration has been slashed and yet the Constitution talks of continuous voter registration.

Hon. Chepkong'a and his Committee, thanks to their tenacity, have sat and said that we are putting in money for voter registration as per the requirement of the Constitution. Where would another Committee get the mandate or even the idea of just slashing? Where? Please, just indulge us. What we are doing here is fundamental to the future of the Budget-making process of our country. So, in order to meet all interests and take the country along so that nobody is offended, I want to plead with Hon. A.B. Duale to allow us to be recalled here on Wednesday, next week. I have consulted with Members. Many Members want the long weekend because it is a holiday on Monday. Members can come back here on Wednesday. If it is one day, you can even make it to be on Thursday as per the wishes of the House in consultation with the Speaker.

Hon. Jakoyo, for President! Thank you, very much

(Laughter)

Hon. Speaker: So, do I understand Hon. Midiwo to have proceeded under Standing Order No.96?

Hon. Midiwo: Hon. Speaker, I was going to say that we adjourn the debate on this Motion under Standing Order No.96 (1).

Hon. Speaker: To when?

Hon. Midiwo: To Wednesday, next week, at 9.00 a.m.

Hon. Speaker: 9 a.m or 9.30 a.m? Yes, Hon. A.B.Duale.

Hon. A.B.Duale: Hon. Speaker, consensus is always very good. So, I support we adjourn and make sure that our colleagues, that is the Liaison Committee, the Cabinet Secretaries and National Treasury sit from tomorrow afternoon, Friday, Tuesday and then through the procedures, I will write to you to recall the House on Wednesday, next week.

Hon. Speaker: At 9.30 a.m. That is okay. Hon. Mutava Musyimi, you wanted to say something.

Hon. Musyimi: I am very glad that we have finally drawn a conclusion to this debate. My only concern is that I am not sure that the ingredients are in place as to who meets who. We need to hear your guidance, Hon. Speaker. We know that we will be here on Wednesday as the National Assembly, but between now and Wednesday, who meets who so that we are clear. We do not want more problems.

Hon. Speaker: Hon. Sakaja. Give hon. Sakaja the microphone.

Hon. Sakaja: Hon. Speaker, the Leader of the Majority Party is saying that my card has a virus. I do not know where that has come from. I want to thank you first for

reminding us that tomorrow we have the prayer breakfast. Many had forgotten about it. I appeal to Members that before attempting to sing tomorrow let us practise. Let us find those who can practise. Last year, it was a very interesting show when hon. Members attempted to sing. So, just find time to practise before we sing before the nation. Hon. Wambugu should direct us on how to do that.

Hon. Jakoyo has raised a very fundamental question. It is two years since we started this new role of making Budget by Parliament. The one thing that needs to be clarified is the relationship between the Departmental Committees and the Budget and Appropriations Committee as regards the budget-making process. You have heard Hon. Chepkong'a very emotionally expressing his frustrations over the length of time he has taken in his Committee. Many other chairmen concur that we take so much time with Members. Even during recess hon. Members have sat down and listened to officials from Ministries and departments. Cabinet Secretaries have come and they have given their submissions. I do not think it is correct that such deliberations can just be arbitrarily ignored by the sitting of one Committee. This is because the precedent we will set is that these Cabinet Secretaries and heads of these departments will directly be going to lobby with the Budget and Appropriations Committee. There will be no need for them to talk to the different departmental Committees.

Hon. Speaker, I urge you that when you give your ruling, kindly give a considered ruling. There is a lot of precedent around the world, especially in Presidential systems as to the relationship between Departmental Committees that are scrutinised and have considered the different budget estimates for different departments and ministries. A lot of the re-allocations have not even gone beyond the ceiling. They are just re-allocations within the same total. If you look at the Report, even those re-allocations within the same total are being ignored. So, I urge you because this is a fundamental issue. It will set the precedent going forward into the future as to how we make Budgets in this House. When a Committee has brought a Report to the Budget and Appropriations Committee, should it be considered just as an opinion, taken more seriously or can it be arbitrarily ignored by the sitting of one Committee? Is there a super Committee in this House when it comes to budget-making? We urge you to consider that when you make the ruling.

Hon. (Eng.) Gumbo: Hon. Speaker, I want to thank you for the opportunity to allow me also to weigh in on this important matter. I want to thank both Hon. Jakoyo Midiwo and Hon. Chepkong'a for bringing the issue. I also want to plead with my good friend, Hon. Mutava Musyimi to understand the concerns of Members. In the morning, he spoke about the culture of suspicion and mistrust among Members, but I think that would not happen if we observed the first principle of public finance which requires openness and accountability. The provisions that we make here should have a relation with the reality that we know. I was just going through, and I hope my good friend, Hon. Ndung'u Gethenji will look at this, the budget for the Ministry of Defence and I noticed that you have allocated a Development Budget of Kshs42million. However, even as we speak now, most of our soldiers do not live--- It is Kshs42million unless it is a typographical error. I was wondering how you can allocate the Ministry of Defence Kshs42million, when most of our soldiers do not even have houses to live in. So, these sorts of things are the ones that we are talking about.

Again, as the Public Accounts Committee, we have been concerned about the development allocations that are going to the Treasury. If you look at what is going on today, in the table that we were given the Treasury, which in my view is mainly a policy formulating and co-ordination Ministry, has been allocated a development budget of nearly Kshs50 billion. We are asking ourselves: “What sort of allocations are these?” It is being said that the allocation of Kshs50 billion is for public finance management. How do you require Kshs50 billion to undertake public finance management? Really, these are the anomalies that we are talking about; that when you go to the global arena and look at this allocation, there is no comparison. I want to believe that this belongs to my friend, Hon. Benjamin Langat. I want to know why the Treasury needs Kshs50 billion to undertake public finance management. As the Public Accounts Committee (PAC), we are querying the allocations that have gone to the Integrated Financial Management Information System (IFMIS) and yet, we are not seeing the results. The original intentions of IFMIS are not being achieved and yet, as a House, we are about to approve Kshs50 to a Ministry which is mainly concerned with policy formulation. Honestly, it does not make sense at all!

This is a good opportunity for us, as Members of Parliament, and especially those of us who do not belong to any Departmental Committees and who, therefore, did not have an opportunity to present budget proposals to the Budget and Appropriations Committee. I would request all Members to go through the schedule that we have been given. It shows a lot of anomalies that we can flag out and raise with the relevant Departmental Committees before they eventually go to the Budget and Appropriations Committee.

After two years of doing this, we need to find a relationship. I understand the frustrations of my good friend, Hon. Chepkong’a. If the work of his Departmental Committee can just be an exercise in futility, then it does not make sense. First of all, it tends to show that as Members, we do not even respect each other. We can be working here and then, after we present our decisions to the Budget and Appropriations Committee, nothing is taken on board. So, these things are of concern. Please, let us know that ultimately we have to do it in the interest of the Kenyan public.

Thank you, hon. Speaker.

Hon. Speaker: Could the hon. Members who are standing, please, resume their seats?

COMMUNICATION FROM THE CHAIR

PLACE OF DEPARTMENTAL COMMITTEES RECOMMENDATIONS IN BUDGET AND APPROPRIATIONS COMMITTEE REPORT

Hon. Speaker: Hon. Members, this morning the Member for Gem, Hon. Jakoyo Midiwo, rose on a point of order and raised several issues regarding the place of the recommendations of Departmental Committees in the Report of the Budget and Appropriations Committee. He was supported by contributions from several Members, including the Leader of the Majority Party, hon. A.B. Duale, Hon. Eseli Simiyu, Hon. Benjamin Langat, Hon. Peter Kaluma, Hon. Ndung’u Gethenji and Hon. Richard

Onyonka, among others. The Chairman of the Budget and Appropriations Committee, Hon. Mutava Musyimi, argued that the Committee, in his understanding, is not obligated to take in its entirety the recommendations of the Departmental Committees when submitting its Report to the House. From the points raised by Members, I have deduced the following as the issues for determination:-

(i) Whether the Budget and Appropriations Committee is at liberty not to take into consideration the recommendations of Departmental Committees on the Budget Estimates of line Ministries and Departments under their purview when discussing and reviewing the Estimates of Revenue and Expenditure.

(ii) Whether the Report of the Budget and Appropriations Committee on the Estimates of Revenue and Expenditure can be amended by the House.

(iii) The power of Committees to summon persons including Cabinet Secretaries. Hon. Members, on the first question of whether the Budget and Appropriations Committee is at liberty to take into account the recommendations of Departmental Committees, I am guided by the provisions of Standing Order No.235 and, particularly, paragraphs (4) and (5), which states as follows:-

“235(4) Each Departmental Committee shall consider, discuss and review the Estimates according to its mandate and submit its report and recommendations to the Budget and Appropriations Committee within twenty-one-days after being laid before the House.

(5) The Budget and Appropriations Committee shall discuss and review the Estimates and make recommendations to the National Assembly, taking into account the recommendations of the Departmental Committees, the views of the Cabinet Secretary and the public.

Hon. Members, my understanding of “taking into account” is that the Budget and Appropriations Committee is expected to consult and acknowledge the views and recommendations of Departmental Committees when submitting its final Report to the House. Given the critical role that Departmental Committees play, the House has assigned them key functions to enable them oversee Ministries and Departments of Government that fall under their mandates. Indeed, Standing Order No. 216 (5) outlines the functions of the Departmental Committees, which include to investigate, inquire into, report on all matters relating to their mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation; study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives, among others.

Consequently, the Departmental Committees have capacity to objectively assess the successes of Ministries and Departments in their implementation of the budget in which programmes, objectives and expected results would have been stated.

Hon. Members, it is, therefore, my view that the contributions of Departmental Committees contained in their reports to the Budget and Appropriations Committee ought to be treated with the seriousness they deserve, and not just swept under the carpet because the Departmental Committees are deemed to be experts in the relevant line Ministries that they oversee.

(Applause)

I am aware that the Budget and Appropriations Committee has the onerous task of balancing the requests to fit within the Budget envelope. However, they must take into account recommendations of the Departmental Committees when making their final Report to the House. If the Budget and Appropriations Committee wants to deviate from such recommendations, civility demands that they consult the relevant Departmental Committees and explain justification for their decision to deviate.

As regards the second issue, as to whether the Report of the Budget and Appropriations Committee on the Estimates of the National Government, the Judiciary and Parliament can be amended by the House, I am again guided by the provisions of Section 39 (3) of the Public Finance Management Act, 2012, which provides *inter alia*, that the National Assembly may amend the Budget Estimates submitted so long as an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation, or a proposed reduction in expenditure is used to reduce the deficit.

In addition, Article 221 of the Constitution of Kenya and, in particular, paragraphs 3 and 6 in part state that the National Assembly shall consider the estimates of revenue and expenditure which will have been approved.

The use of the words “consider” and “approved” in the said Article of the Constitution connotes that the House, when considering the estimates, has power to amend the estimates.

From the foregoing, it is my view that the Report of the Budget and Appropriations Committee is amendable provided that the amendments are informed by a decision of the relevant Departmental Committee and the requisite balancing is achieved.

Hon Members, on the issue of failure by the Cabinet Secretary (CS) for Foreign Affairs to appear before the Departmental Committee on Defence and Foreign Relations, the Constitution is explicit on this matter. Article 125 read together with Article 153(3) empower Committees to summon Cabinet Secretaries (CSs) before them to answer questions concerning any matter for which the Cabinet Secretary is responsible. Indeed, Committees have unfettered powers to ask and receive information and demand appearance of the CS as contemplated by Article 125 of the Constitution, which gives the Committees the powers to summon as those of the High Court.

The CSs should note that failure to appear before a Committee of the House when required to do so contravenes the provisions of the Constitution stated above and, more so, failing to appear before the relevant Committee to present the budget estimates of the Ministry is so grave that the consequences arising thereof are far-reaching.

(Applause)

I take this opportunity to advise CSs to accord the business of the House the seriousness that it deserves and inform them that the House will not hesitate to take the necessary sanctions provided in the Constitution.

As elucidated above, I rule that amendments submitted by the Departmental Committee on Defence and Foreign Relations, having sat and resolved to do so, could be admissible in the circumstances.

(Applause)

Finally, Honourable Members, the critical role played by the National Assembly in the budget-making process has presented a new experience to all of us. New matters arise each time we are considering estimates and related legislations. It, therefore, follows that we might have to continuously update our manuals and procedures to respond to the changing environment in financial procedures and the challenges that come with it. Indeed, you will notice that for the first time in three years, the Report of the Budget and Appropriations Committee and the Order Paper contain a schedule showing the money proposed to be granted to various Votes, and which is the reason why Members have been able to pinpoint what they are calling allocations to organizations which they had reduced their monies in the Budget Policy Statement (BPS).

Hon. Members, be this as it may, I want to direct that having heard the request put forward, and which I think everybody seems to be agreeing with, that the Budget and Appropriations Committee meets with all chairpersons and vice-chairpersons of the various Departmental Committees tomorrow at 2 p.m. in this plenary Chamber to consider the various reports of the Committees as reflected in the Report of Budget and Appropriations Committee. Thereafter, if the need arises, the Budget and Appropriations Committee may agree with the chairpersons of committees when to meet next. It is also directed that the CS for the National Treasury and all his technical team make themselves available to the consultations that will be taking place here and then.

I thank you honourable Members.

(Applause)

Sorry, hon. Members! Hon. Duale, who is the Leader of the Majority Party, has kindly agreed to write to the Speaker to request that there be that Special Sitting again on Wednesday at 9.30 a.m. Hon. Eseli.

Hon. (Dr.) Simiyu: Thank you, hon. Speaker.

(Several hon. Members left the Chamber)

Hon. Speaker: Sorry, Hon. Eseli! Maybe, just in case some Members may--- Do I need to put the Question?

Hon. Members: Yes.

(Question put and agreed to)

Hon. Speaker: Hon. Eseli, sorry.

Hon. (Dr.) Simiyu: Thank you, hon. Speaker. Today, I am very proud to be a Member of the 11th Parliament that from morning to now, you have actually guided this House right in front of our eyes and all Kenyans to form a consensus.

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members! The Hon. Eseli is on his feet and there is still further business for the House to deliberate. It is the Report of the Mediation Committee. Yes, Hon. Eseli.

Hon. (Dr.) Simiyu: Hon. Speaker, you have prudently guided this House until this afternoon at plenary. We have actually been able to build consensus under your guidance.

I was privileged to be in the last Parliament - the Tenth Parliament - which was a post-conflict Parliament. That Parliament rose to the occasion to, by and large, implement the Agenda 4 Items. This Parliament is tasked with implementing the Constitution which was part of the Agenda 4 Items. This afternoon, I am very proud that I am a Member of this House, especially with the ruling which you have given, and that has given this House impetus to now continue serving the country.

Thank you.

Hon. Speaker: Thank you, Hon. Eseli. Next Order.

MOTION

CONSIDERATION OF MEDIATED VERSION OF PUBLIC AUDIT BILL, 2014

MEDIATED VERSION OF THE PUBLIC AUDIT BILL, 2014

The Mediation Committee identified Clauses 5, 11, 19, 24, 32 and 39 as being contentious and agreed on the following version:

(i) Clause 5 – mediated version

Qualification for
appointment as the
Auditor-General

5. (1) A person shall be qualified for appointment as the Auditor-General if such person:-
- (a) is a citizen of Kenya;
 - (b) holds the respective qualifications for the office specified in Article 229 (2) of the Constitution;
 - (c) holds a degree in finance, accounting or economics from a university recognized in Kenya and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications;
 - (d) meets the requirements of Chapter Six of the Constitution; and

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(e) is a practicing member of good standing of a professional body of accountants recognized by law.

(ii) Clause 11 – mediated version

Vacancy
in office.

11. (1) The office of the Auditor-General shall become vacant, if the Auditor-General—

- (a) dies;
- (b) by a notice in writing addressed to the President, resigns from office; or
- (c) is removed from office under any of the circumstances specified in Article 251 or Chapter Six of the Constitution.

(2) Where a vacancy occurs under subsection (1), the President shall within seven days, by notice in the Gazette, in at least two newspapers of national circulation and in at least two national radio and television stations, declare vacancies in the office of the Auditor-General and invite applications.

(3) An application under subsection (1) shall be forwarded to the Public Service Commission within fourteen days of the notice and may be made by any—

- (a) qualified person;
- (b) person, organisation or group of persons proposing the nomination of any qualified person;

(4) The names of all applicants under subsection (2) shall be published in the Gazette.

(5) The President shall, within fourteen days of the expiry of the period prescribed under subsection (2), constitute a selection panel comprising a chairperson and one representative from —

- (a) the Ministry for the time being responsible for matters relating to finance;
- (b) the Office of the Attorney General;
- (c) the Ministry for the time being responsible for matters relating to the public

service;

- (d) the Institute of Certified Public Accountants of Kenya;
- (e) the Association of Professional Societies of East Africa; and
- (f) the Law Society of Kenya, for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor General: Provided that for the purpose of selection and short listing of the said three persons, the selection panel shall hold its proceedings in public and submit to Parliament a report of the interview proceedings, which should include inter alia the scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded.

(6) The selection panel shall within seven days of the selection of candidates under subsection (4), forward the names of the selected candidates to the President for nomination.

(7) The President shall, within seven days of the receipt of the names of the selected candidates under subsection (5), nominate one candidate for appointment as the Auditor-General and forward the name to the National Assembly.

(8) The National Assembly shall consider the nominations and may approve or reject the nominations.

(9) Where the National Assembly:

(a) approves the nominee, the Speaker shall, within three days of the approval, forward the names of the approved nominee to the President for appointment;

(b) reject the nomination, the speaker shall, within three days of the rejection, communicate the decision to the President, who shall submit a fresh nominee from amongst the candidates forwarded by the selection panel under subsection (6).

(10) If the National Assembly rejects all or any subsequent nominee submitted by the President for approval under subsection (8), the provisions of subsections (1) to (7) shall, with the necessary modifications, apply.

(11) The President shall, within seven days of the receipt of the approved nominee from the National Assembly, by notice in the Gazette, appoint the Auditor-General approved by the National Assembly.

(12) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the selection panel convened under subsection (5).

(13) Despite the foregoing provisions of this section, the President may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

(iii) Clause 19 – mediated version

Budget estimates and plans of the office of the Auditor-General.

19. (1) The accounting officer shall prepare annually budget estimates of revenue and expenditures and work plans for the next financial year for consideration.

(2) The budget estimates of revenue and expenditure referred to under sub-section (1) shall be submitted to the Cabinet Secretary responsible for finance not later the 30th March each year for submission to the National Assembly, with Cabinet Secretary's comments, in accordance with Article 221 of the Constitution, and National Assembly shall, pursuant to Article 249 (3) of the Constitution, allocate adequate funds to the office of the Auditor General.

(3) The budget estimates submitted under sub-section (2) shall include the following—

(a) estimates of revenue and recurrent expenditure for the coming fiscal year;

(b) estimates for the development expenditure for the coming fiscal year; and

(c) any other matter considered relevant by the Auditor-General in the consideration of the budget and plans of the Office.

(iv) Clause 24 – mediated version

Establishment and composition of the Audit Advisory Board.

24. (1) There is established an unincorporated board to be known as the Audit Advisory Board which shall comprise of—

- (a) the Auditor-General or a person nominated by him or her;
- (b) the Attorney-General of Kenya or a person nominated by him or her;
- (c) a nominee of the Institute of Certified Public Accountants of Kenya;
- (d) a nominee of the Association of Professional Societies of East Africa;
- (e) a nominee of the Law Society of Kenya;
- (f) the Chairperson of the Public Service Commission or his or her

nominee:

Provided that the nominee under paragraph (d) shall not be a member of a professional body provided for under subsection 1(c) and (e).

(2) A person shall be qualified to be nominated under subsection (1) (c) to (e) above if such person—

- (a) has a degree from a university recognised in Kenya;
- (b) has a minimum of fifteen years' experience in matters relating to public finance, auditing, accounts, law, governance or public management ; and
- (c) meets the requirements of Chapter Six of the Constitution

(3) The Auditor-General may co-opt two other members with the necessary expertise.

(4) The members of the Audit Advisory Board shall elect a chairperson from among themselves, who shall not be the Auditor General.

(5) The nomination and appointment of members under this section shall take cognisance of regional, ethnic, and gender balance and people with disabilities and marginalised groups.

(6) The Auditor-General shall, within fourteen days of receipt of names of qualified persons pursuant to subsection (1), by notice in the Gazette, appoint members of the Board.

(7) The members of the Audit Advisory Board shall hold office for a term not exceeding three years from the date of appointment and may be eligible for reappointment for a further one term of three years.

(v) Clause 32 – mediated version

Use of work of internal auditor.

32. (1) The final report by an internal auditor which has been deliberated on and adopted by an audit committee of a State Organ or public entity, may be copied to the Auditor-General.

(2) The Auditor-General shall have unhindered access to all internal audit reports of a State Organ or any public entity, under subsection (1) above, which is subject to audit by the Auditor-General as provided for under Article 229 (4) of the Constitution.

(vi) Clause 39 – mediated version

Auditing of
national security
organs

39. (1) In auditing national security organs, the Auditor General and his or her representatives shall hold an inception meeting, at the highest level, pursuant to section 30(1) (b), to agree on areas which may touch on national security and determine the appropriate audit approach that shall ensure confidentiality of information.

(2) The audit reports on national security organs may be redacted to shield identities of persons as well as assets and liabilities as the case may be.

(3) All staff of the Auditor-General carrying out audit under this section shall be vetted by the authorised Government vetting agency.

Hon. Speaker: Order! Order, hon. Members! All of you cannot be up and standing. Hon. Gumbo, Hon. Ndung'u Gethenji and Hon. Naomi Shaban I now know most of you even by appearances, your heights and respective body sizes. Hon. Langat is moving a Motion. Hon. Langat.

Hon. Langat: Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No. 150(3), this House approves the Report of the Mediation Committee on the Public Audit Bill, (National Assembly Bill No. 38 of 2014).

The Mediation Committee on the Public Audit Bill, (National Assembly Bill No. 38 of 2014) was constituted by the Speaker of the National Assembly and the Speaker of the Senate on 26th May, 2015, pursuant to Standing Order No. 149(2) of the National Assembly and Standing Order No. 154 of the Senate, which outlines the functions of the Committee.

The members of the Committee were:- Myself as the Chairperson, Senator Billow Kerrow, Hon. Sakaja Johnson, Hon. Senator Stephen Sang, Hon. Makali Mulu and Senator Mutula Kilonzo Junior.

The Mediation Committee derives its mandate from Article 113 of the Constitution of Kenya, Standing Order No. 149 of the National Assembly and Standing Order No. 154 of the Senate.

The Committee was established to develop a version of a Public Audit Bill (National Assembly Bill No. 38 of 2014) and, in particular, Clauses 5, 11, 19, 24, 32 and 39 that would be presented to both Houses for approval as provided for under National Assembly Standing Order No. 149 (6) and Senate Standing Order No.154. The specific clauses of the Bill that were in contention were Clauses 5, 11, 19, 24, 32 and 39.

Hon. Speaker, the Committee held one sitting on 27th May, 2015. During the sitting, the Committee conducted the election of the chairperson and the vice-chairperson, where I was elected the Chairman and Hon. Senator Billow Kerrow the Vice-Chairman.

At that meeting, the Committee made reference to the Report of the pioneering Mediation Committee that recommended that, in future, the chair of the Mediation Committee should be elected from amongst members of the House that originated the Bill. The Committee thereafter deliberated on Clauses 5, 11, 19, 24, 32 and 39 of the Public Audit Bill (National Assembly Bill No. 38 of 2014), which were in contention.

Hon. Speaker, as I have said, the Committee deliberated on the contentious clauses and unanimously agreed on a version of the Bill to be presented to both Houses for approval. The agreed version of the Bill is hereby attached to this Report. Those Members who have the Report, you may want to check, it is annexed there.

The Committee thanks the offices of the Speakers and Clerks of the National Assembly and the Senate for the necessary support extended to it in the execution of its mandate. I wish to thank all the Members of the Committee for their sacrifice, commitment and selflessness to the course of the mediation process that culminated in the concurrence Report by the Mediation Committee.

Hon. Speaker, it is my pleasant duty, pursuant to Senate Standing Order No. 155 (1) and National Assembly Standing Order No.150, to present a Report of the Mediation Committee on the Public Audit Bill (National Assembly Bill No. 38 of 2014) for consideration and adoption.

Having given that background, I will now briefly go over the contentious clauses and explain what we have agreed upon.

Hon. Speaker, initially, there was a contention. This House rejected an amendment by the Senate and, therefore, there was contention on Clause 5. This was about the qualification for appointment as the Auditor-General. The Senate had proposed that for a person to qualify to be the Auditor-General, he or she should have a postgraduate degree and this House said no. When we went to the mediation process, we were in agreement that the earlier position taken by this house be carried. Therefore, the Senate agreed to stand down their proposed amendment which was rejected by the House. So, we agreed that we go back to what the House had earlier resolved, which provided that for appointment as the Auditor-General, one will have only the first degree so that we open room for many Kenyans. But if you have a postgraduate degree, nobody is preventing you from applying for the job. However, what is required is the minimum requirement.

Under Clause 11, which relates to the selection panel which is appointed to select candidates for nomination as Auditor-General, the Senate had said that, that selection panel will elect a chairperson of the panel, but this house rejected that. When we went to the mediation process, we unanimously agreed that since - and it is in the Constitution - it is the mandate of the President to nominate an Auditor-General, what we are only doing is facilitating the President so that he is able to nominate a person through a competitive process. We said that we give him the power to nominate the chairman and the members of the selection panel. So, the only thing that we agreed on unanimously is that we just have the President appoint the chairman and the membership of that selection panel. Therefore, we have a mediated version of that clause.

Under Clause 19, this house had rejected the amendment of the Senate which, in effect, said that the Auditor-General will take his estimates directly to the National Treasury whereupon the Cabinet Secretary will transmit the Budget as it is without

altering. After consultations, we agreed that we go by what the Senate has approved, but with a further amendment that says that the Cabinet Secretary shall submit the Budget as submitted by the Auditor-General, but with his own comments. So, he will make the comments when he is submitting to the National Assembly so that it can see the comments of the national Treasury regarding the budget of the Auditor-General. We have an amended version to Clause 19, as an attachment here.

Hon. Speaker, Clause 24 deals with the Audit Advisory Board which the Senate says it will be chaired by the Auditor-General himself, but this House rejected it. When we went to the mediation process, we agreed that in order for the advice to be objective--- The Auditor-General will have a choice to take or not take the advice. We agreed that we make the Advisory Board a bit independent so that the advice can be objective. We said that they elect a chairperson of their own. That is the version we agreed upon unanimously.

Clause 32 was also in contention. We only took one second to agree on this one. I think it was an oversight in the Senate. It was just about making copies of internal audit reports of any State organ. The Senate wanted it to be a must. However, they had not seen the subsequent Clause 32(2) which gives the Auditor-General the power to call any internal audit report whenever he wants. So, we agreed that, that amendment was superfluous. It was not adding any value. We agreed that we go as per what the House resolved - that is rejecting the amendment by the Senate. That was also unanimous.

Clause 39 was about the deletion of Sub-clauses (1) and (2). After consultations, we agreed that we go back to the original version of the National Assembly, but with a small amendment to it so that the fears of Senate about limiting the scope of the Auditor-General can be allayed. We said that the purpose of meeting the heads of security agencies at inception is simply to get to know which areas can touch on national security for the purposes of enabling the Auditor-General to determine an audit approach that will ensure confidentiality in security matters. That is the version we agreed upon and it was also unanimous.

If you look at the Report at Page 7, we have attached the mediated version of the clauses that were in contention as they will appear in the Bill. I thank you very much. We were very open-minded. We discussed and agreed. The spirit was very positive.

I want to encourage even the mediation which is currently in a stalemate. I want them to adopt our spirit so that we move the country forward. Otherwise if we take hard-line positions, we risk losing that very important Division of Revenue Bill. That is a very fundamental Bill in this country. If we lose it, God forbid, I do not know what will happen to our counties. Therefore, I would want to encourage them that they adopt our spirit so that we move everything forward very fast for the benefit of the people of Kenya.

With those few remarks I call upon Hon. Sakaja to second me. If you allow me I will request you to give Hon. Makali Mulu who was also a member of the Committee an opportunity to contribute. I was only lobbying for Hon. Makali Mulu to speak after Sakaja but Hon. Sakaja will second me.

Hon. Sakaja: Thank you very much. I rise to second the Report of the Mediation Committee that was set up to find mediation on the Public Audit Bill. As the Chairman has noted very ably, this mediation was done in record time. In less than two hours we

were in agreement and we proposed that in other such cases you can use the same team to find consensus quickly. I think even the staff were shocked that we finished very first and we agreed. Because of that I would like to thank the able leadership of Hon. Benjamin Langat and also the Senator, Hon. Billow Kerrow Senator, Hon. Sang and Hon. Makali. I cannot thank myself.

Hon. Speaker, if you look at the issues that were of contention, they were not very heavy issues but they needed clarity. This is because public audit is such an important facet of public finance that the legal framework must be very solid and there must be clarity as to who does what, when and how. That is why we felt that certain provisions that had been amended by the Senate could not have gone unnoticed. It was important for us to give them a second look. Of course on all of them we agreed later together with the team from the Senate.

The first issue was on the academic requirements in Clause 5. We agreed that we should not lock out anyone who might have qualifications and experience but does not have a postgraduate degree from being the Auditor-General (AG). Additionally, the Constitution is very clear about the qualifications that are required for the AG. It does not talk about these postgraduate degrees. It talks more about the kind of experience that the holder of that office has. We were saying that even for the President who is senior to the AG, the only qualification required is a first degree. So, for us to be able to get as much experience ---There are many auditors who are very good in this country who do not even have a degree. They have accountancy qualifications and they have been practising for many years and that is a practice within this field.

The second issue was on the selection panel. On this one I was really out-voted by the Members because I felt that the Constitution says that the President shall nominate a person to be the AG and after nominating that person the name shall be forwarded to the National Assembly for approval. It is as simple as that. However, the Bill had created an entire selection panel with representatives from different organs of Government and the private sector. It had said that they would choose amongst themselves. The Member of the Senate was designating them to choose a chair. So, we felt that if we must retain that panel just to ensure that professionalism as well as merit is considered on appointing the AG, then at least let us make sure that the Chairperson of that panel is chosen by the President. So, the President shall choose the Chairperson and members as stipulated in the law to select and give him a couple of names on the person to become the AG.

Clause 19 was an issue that we felt fundamentally had to be looked at. The Senate was proposing that the Budget estimates of the AG's office find an almost direct route to the National Assembly for consideration. We understand the need for financial independence within the AG's office. This is because for a long time, I can say not in this regime but in the previous ones, the AG's office was starved of funds because the person approving the funds was the client of the AG. We felt that it is important for them to have some form of financial independence but not at the same level as the organs that represent the separation of power and the three arms of Government.

The only organs that have the mandate and the ability to send their budgets straight to the National Assembly is the Parliamentary Service Commission (PSC), the Judicial Service Commission (JSC) and the Executive through the National Treasury. We agreed with the Senators that the AG sends his budget through the Treasury but the

Treasury would not make adjustments but send it forward with the comments from the Treasury so that the relevant Departmental Committee that looks at the budget of the AG can then look at it in the form that he sent it to the Treasury. Also for consideration, we shall look at the comments made by the Treasury because the Treasury has bird's eye view of the entire micro-economic framework of the country.

The next issue was that of the Audit Advisory Board. This Bill creates an Audit Advisory Board which is a new thing. I am glad that in Clause 26 the Senate had clarified the extent to which the Advisory Board is only and purely advisory. Section 10 of the same Act states clearly that the AG shall be independent and shall not be directed by anybody, office or any authority. So, you find that the Audit Advisory Board must be purely advisory. However, the paradox was that this purely Advisory Board which was advising on issues of recruitment, budget estimates and of the functioning of the AG was being chaired by the AG himself and we asked: How can you chair a Board that is advising you? The difference we made was that this is not an executive board. If it was, for instance the Parliamentary Service Commission (PSC) is chaired by the Speaker. The Judicial Service Commission (JSC) is chaired by the Chief Justice because they perform executive functions within those institutions but these being purely advisory, we felt that it will not make sense for the AG to chair it. We put clearly and we agreed that the AG can sit there or a person nominated by him or her. Also if you look at Clause 24 (4), it talks about members of the Auditors Advisory Board electing a Chairperson from amongst themselves and that person whom they elect to be the chair of the Audit Advisory Board cannot be the AG.

I can see Hon. (Eng.) Gumbo waving his hand frantically. This is not like the JSC or the PSC. It is just advisory. If for example they start giving advice that is not palatable to the AG and he is chairing it, he will stop calling the meetings. We want somebody else to be calling the meetings and giving the advice but the AG shall sit in.

On Section 32, Hon. Langat has explained very clearly. We said that internal audit of the State organs audit reports, it is not mandatory for them to be forwarded to the AG. However, he has unhindered and unfettered access to all of these reports. The Senate had sought to make it mandatory for these State organs to forward those internal audit reports and that would not be necessary.

Finally, on auditing of national security organs, in principle we all agreed that all national security organs must be audited to the full extent but this auditing of national security organs must be done in a very guided way. The first thing we want to reiterate was that at the inception, and which is the practice in auditing, there must be an inception meeting and at the highest level of both organs. That is the highest levels in the AG's office and in the relevant security organ.

That meeting agreed on areas which may touch on national security but, not to reduce the scope, but to make sure that they agree on the appropriate audit approach that will ensure confidentiality of information. So, we want to make it clear because we have seen comments all over the place that Parliament was trying to make sure that national security organs are not audited. We are saying that they must be audited, but it must be done within a certain framework where confidentiality is maintained when it comes to audit approach.

Hon. Speaker, we also said that all the staff of the Auditor-General, who are carrying out an audit under this section, need to be vetted by the authorized Government vetting agencies. To make it clear, the authorized vetting is not necessarily that one which is being audited. But the authorized vetting agency would probably be the National Intelligence Service (NIS) or the CID as the case may be. But this auditing will be done in a periodic time.

With those many remarks, I second.

(Question proposed)

Hon. Speaker: Hon. Makali Mulu.

Hon. Mulu: Thank you, hon. Speaker. I was also a Member of the Mediation Committee and it was my first experience to sit in a Mediation Committee. In agreeing with my colleagues who are also Members of the Committee, I must thank the Members of the Committee because it did not take us very long to agree on these issues of concern.

Hon. Speaker, I will only focus on Clause 39 because the rest have been explained quite well. Clause 39 focuses on the audit of security organs. To me, this clause is very important because, in this country, there have been a lot of secrets in terms of what happens to those agencies. As a Mediation Committee, we have agreed that in terms of auditing and in terms of scope, we are not going to restrict the Auditor-General on what they need to look at. But what will be a bit restrictive is confidentiality of the information so that, even though the Auditor-General will look at the information and get information, the information he captures in his report, to some extent is controlled, so that we do not expose our security details a lot. I think that is why it is important to have those auditors who will be auditing the security organs vetted by the relevant Government agencies. So, to me, that is one of the clauses which will help this country in terms of trying to know what happens in those agencies. That is because most times, Kenyans believe that there is a lot of corruption in security matters. But I think with this kind of clause, Kenyans are able to believe that the right things are being done.

Hon. Speaker, what I learnt in this Mediation Committee is that, in future, the two Houses need to come up with a mechanism - whether informal - of some consultations before the Senate formally writes a Memorandum to you. My belief is that if the Chairman of the Departmental Committee on Finance, Planning and Trade was informally invited to the discussion of the Senate, we would not have got to this level. That is because I could see Hon. Langat and Senator Billow Kerrow were in agreement informally that this thing should have been done before going to the two Houses. To save the House this important time, in future, the two Speakers could say that before you finalize whatever you are doing, they can compare notes. So, where we were saying replace the word "may" and "shall" could be sorted out at that level before it comes to the House.

With those comments, I want to plead with my colleagues hon. Members to support the Mediation Committee so that we could this Bill can become an Act of Parliament.

Hon. Speaker: Hon. Njogu Barua.

Hon. Barua: Thank you, hon. Speaker for giving me this opportunity to contribute to this Report on Mediation between the National Assembly and the Senate. First and foremost, I would like to commend the good work that has been done by Members of the mediation team. They have, very quickly, come up with a compromised position and enabled us to have this Bill tabled today.

Hon. Speaker, I would like to mention a few things: One is on qualification of the Auditor-General. I think the disparity was on the level of qualification required. I would like to propose that nobody should be discriminated from holding any position in as far as they are capable of doing the work. So, by putting the ceiling or the minimum requirement to be a first degree in Finance, Accounting and other relevant disciplines, to me, is acceptable. I would like to commend the Committee for agreeing with that. However, I would like to comment that it is also important for us to encourage people who have attained higher degrees and higher levels of education to get priorities in serving positions. I do not see any problem in raising the bar a bit higher to a postgraduate degree. I think in future, we may be forced to relook at this because, nowadays, the first degree is a basic qualification. In future, maybe in four to five years to come - we may be forced to raise this bar to, maybe, a postgraduate degree with other relevant qualifications.

The second comment I would like to make is on the selection panel. I agree with the mediation team that the President should appoint the members of the panel and the chairman. That is because the President is elected by the majority of Kenyan voters. I think the President has a lot of wisdom and he should be given the opportunity to appoint the chairman and members of the selection panel in the event that vacancy arises in the Office of the Auditor-General.

My final comment is on the advisory board and I think it makes sense for the Auditor-General to sit in it. But it does not make sense for him or her to be the chairperson of the board since it is the Auditor-General who will be receiving the advice.

With those few remarks, I would like to agree with the report of the Mediation Committee that the chairmanship of the advisory board should not be held by the Auditor-General himself.

Thank you, hon. Speaker for the opportunity.

Hon. Speaker: Hon. Maanzo.

Hon. Maanzo: Thank you, hon. Speaker for giving me this opportunity to comment on the Report of the Mediation Committee. I have looked at it carefully and I have also followed part of what was happening in the Mediation Committee. The replacement---

(Loud consultations)

Hon. Speaker: Hon. Members, I think it is fair to appreciate the reason why you came for the Special Sitting. If, at the end of the day, we cannot be able to put the Question, then we would have sat in vain. There is a deadline that if we are in agreement - like the Mediation Committee has brought a Report on the Bills, they must be signed not later than midnight tonight.

Proceed, hon. Maanzo.

Hon. Maanzo: Hon. Speaker, on Clause 5, there is a bit on budgeting. That is because after a financial year, it is good to know that the monies of a country have been used well. Therefore, in future, it could be that although the current qualifications are good - and I support them - it is good to go for the highest possible standards in the accounting profession. Nowadays, people have a degree in accounting. They have also gone on to do other courses in relation to accounting. Even if they have Masters or doctorate degrees, the best suited candidate should be given the opportunity, even though the guidelines provided currently by the law are good.

On the part of the vacancy in the Office of the Auditor-General, the mediated version is good and follows the law, save for the duration of the replacement. In future, when we improve this law, because I am sure it will come again it is good to make it even much more efficient in terms of the time the person should be replaced to go on with the good work of auditing. That is because in audit, time is of essence. If you lose in terms of time, then the country stands to suffer, at times, irreparable damages.

On the Budget Estimates and the audit of the same, it is very important for the Auditor-General's Office to confirm that the Budget has been appropriated, how it has been used and what has not been completed so that development can be hastened. So, that office is very important in ensuring that there is efficiency in the utilization of public funds.

On the establishment and composition of the advisory committee, the proposal is a good one. It also includes the Institute of Certified Public Accountants of Kenya (ICPAK), the Association of Professional Societies of East Africa (APSEA) and, most importantly, the Law Society of Kenya (LSK). That is because of the laws that are involved in that. This is good because it will make sure that, whatever happens, there will be transparency. It will generally reflect on more serious issues concerned with audit. On the use of internal audit reports, the only thing we could improve - in future though I support - is to thoroughly scrutinize them. They could also be checked by the relevant Committee of Parliament. It will help to make sure that there was auditing. The question is: Who audits an auditor? Whatever is audited falls within our expectation and efficiency in terms of taking care of revenues.

Finally, on the issue of auditing national security, of course, there are laws relating to public secrets, and security is one of the things whose operations need to be taken care of, so that Government's security secrets do not leak unnecessarily. Therefore, the audit has to fall under the Official Secrets Act or part of the documents which need to be secret are handled in a better way. So I support the way the Mediation Committee agrees in total.

Thank you.

Hon. Dido: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Rasso, what is your point of order?

Hon. Dido: Thank you very much, hon. Speaker. We debated this Bill as a House exhaustively. Looking at what has come out of the mediation, it has not substantively changed what this House agreed in totality. Therefore, will I be in order to ask the Mover to reply?

Thank you.

Hon. Speaker: Hon. Members, is it the case that I call the Mover to reply?

Hon. Members: Yes.

*(Question, that the Mover be now called upon to reply,
put and agreed to)*

Hon. Langat: I thank the Members and I urge them to support the Report.
Thank you.

(Question put and agreed to)

Hon. Speaker: Hon. Mutava Musyimi, I will use Standing Order No.1 to allow you to lay your Paper and give Notice of Motion.

PAPER LAID

Hon. Musyimi: Much obliged. Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Wednesday, 27th May, 2015:-

The Report of the Mediation Committee on the Division of Revenue Bill, 2015.

Hon. Speaker: Yes! Table the Report.

(Hon. Musyimi laid the document on the table)

NOTICE OF MOTION

ADOPTION OF MEDIATION COMMITTEE REPORT ON DIVISION OF REVENUE BILL

Hon. Musyimi: Thank you, hon. Speaker. I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Mediation Committee on the Division of Revenue Bill, 2015 laid on the Table of the House today, Wednesday, 27th May, 2015.

I thank you.

ADJOURNMENT

Hon. Speaker: Hon. Members, the time being 4.33 p.m., and there being no other business, this House stands adjourned until Wednesday, 3rd June, 2015 at 9.30 a.m. The business to be considered, being among others, the Report of the Budget and Appropriations Committee on Estimates of Revenue and Expenditure for the National Government, the Judiciary and Parliament; the consideration of the mediated version of the Division of Revenue Bill, 2015 and any other business that the Leader of the Majority Party may include for consideration by the House on that day in his letter to the Speaker.

The House is adjourned.

The House rose at 4:35 p.m.