

NATIONAL ASSEMBLY

OFFICIAL REPORT

SPECIAL SITTING

Tuesday, 20th December, 2016

The House met at 12.00 p.m.

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

PRAYERS

Hon. Speaker: Hon. Members, just observe the leadership sitting arrangement.

(Loud consultations)

Hon. Members making their way into the Chamber, take your seats.

*(Hon. Mutambu sat on the seat reserved
for the Whip of the Minority Party)*

It seems the issue is where the Member for Mwingi Central has sat. That row is reserved for the Leader of the Minority Party, the Deputy Leader of the Minority Party, the Whip of the Minority Party and the Deputy Whip of the Minority Party. You can sit anywhere else.

Hon. Members, as soon as the Whip of the Minority Party arrives, Hon. Joe Mutambu will move to another place. Let us not get excited about anything.

(Hon. Musyimi consulted Hon. Speaker)

Hon. Members, because of some business that is listed for this Special Sitting, I am requested by the Chairman of the Budget and Appropriations Committee to request Members of that Committee to meet with him at 12.30 p.m. in the small dining for purposes of considering the reports which have come from many of you, and enable him table that Report. I am told the business to be transacted is fairly short. So, at 12.30 p.m, Hon. Members of the Budget and Appropriations Committee, please, avail yourselves.

(Applause)

Hon. Members, let us proceed with the business on the Order Paper.

PAPERS LAID

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

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

The Report of the Auditor-General on the Financial Statements in respect of the following constituencies for the year ended 30th June, 2015, and the Certificates therein:

1. Rongai Constituency
2. Kipkelion West Constituency
3. Narok West Constituency
4. Bureti Constituency
5. Mogotio Constituency
6. Isiolo North Constituency
7. Mbooni Constituency
8. Central Imenti Constituency
9. Igembe Constituency
10. Kaiti Constituency
11. Kitui West Constituency
12. Mbeere North Constituency
13. Chuka/Igambang'ombe Constituency
14. Makueni Constituency
15. Kitui South Constituency
16. Mwingi North constituency
17. North Imenti Constituency
18. Moyale Constituency; and
19. Tharaka Constituency; and
20. Central Imenti Constituency.

The Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2016 and the Certificates therein:

1. Capital Markets Authority
2. Egerton University
3. Golf Hotel
4. Ewaso Ng'iro South River Basin Development Authority
5. Maasai Mara University; and
6. Kenya Marine and Fisheries Research Institute.

The Annual Report of the National Police Service Commission for the year 2015/2016
The Traffic (Minor Offences) Rules, 2016 and the Explanatory Memoranda therein pursuant to Section 117 of the Traffic Act.

Thank you.

Hon. Speaker: Let us now have the Chairperson of the Departmental Committee on Finance, Planning and Trade.

Hon. Langat: Hon. Speaker, I beg to lay the following Paper on the Table:

The Report of the Departmental Committee on Finance, Planning and Trade on its consideration of nominees for appointment as members of the Commission on Revenue Allocation (CRA).

Hon. Speaker: The Chairperson, Departmental Committee on Environment and Natural Resources, you have the Floor.

Hon. (Ms.) Abdalla: Hon. Speaker, the secretariat tells me that the Report is being approved in your office.

Hon. Speaker: What?

Hon. (Ms.) Abdalla: Hon. Speaker, the Report is in your office. That is what they told me. It is pending approval.

Hon. Speaker: Pending approval?

Hon. (Ms.) Abdalla: Yes, Hon. Speaker.

Hon. Speaker: Hon. Amina, you need to, at least, table it sometime this morning so that you can also give notice of Motion for debate to commence in the afternoon.

Hon. (Ms.) Abdalla: Yes, Hon. Speaker. I am aware of that, but I do not have a copy. We have approved the Report, but it has been taken by the secretariat to your office.

Hon. Speaker: You can send for it so that I allow you to table it after a few minutes. Hon. Members, we stand down that one.

I saw the Chairman of the Committee on Delegated Legislation, Hon. Cheptumo and the Vice-Chairman. I hope Hon. Cheptumo has not decided to go and relax.

Hon. Chepkong'a: On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Speaker. As you know, Hon. Cheptumo---

Hon. Speaker: The Vice-Chairman is there!

Hon. Chepkong'a: Hon. Cheptumo is in my Committee. I think he was running around to get the documents. If we can defer this one, he can come and present the Motion afterwards.

Hon. Speaker: The Vice-Chairman, Hon. Gitari, do you want to say something?

Hon. Gitari: Thank you, Hon. Speaker. I request that you give us 15 minutes so that we can table that Report.

(Hon. Cheptumo entered the Chamber)

Hon. Speaker: Hon. Cheptumo is making his way in, but does he have the Report by the Committee on Delegated Legislation?

Hon. Cheptumo: Thank you, Hon. Speaker. I am sorry that I had just walked out. I want to confirm to the House with your permission that we will table the Report in the next few minutes. The final Report is being done and it will be ready for tabling any time, say, in the next 30 minutes.

Hon. Speaker: Maybe less because we do not want to be here for too long. You have to table it and give notice.

Hon. Cheptumo: I will do it, Hon. Speaker. That is why I was outside.

Hon. Speaker: Work on it quickly. We stand down that and the other one.

Let us move on to the next Order.

NOTICES OF MOTIONS

APPROVAL OF NOMINEES TO THE COMMISSION ON REVENUE ALLOCATION

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

THAT, pursuant to Article 215(2)(b) and (c), Section 6(1) of the Commission on Revenue Allocation Act, Section 8(1) of the Public Appointments (Parliamentary Approval) Act and Standing Order 45(1), this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on its

consideration of nominees for appointment as members of the Commission on Revenue Allocation and approves the appointment of the following as Members to the Commission on Revenue Allocation:

- (i) Prof. Edward Akong'o Oyugi;
- (ii) Mr. Peter Gachuba Njeru;
- (iii) Mr. Kishanto ole Suuji;
- (iv) Dr. Irene C. Koech Asienga;
- (v) Ms. Fouzia Abdikadir Dahir;
- (vi) Mr. Humprey Wattanga; and
- (vii) Mr. Peter Kiko Kimuyu

ALTERATION OF THE CALENDAR OF THE HOUSE

Hon. A.B. Duale: Hon. Speaker, I wish to give notice of the following Motion:

THAT, pursuant to the provisions of the Standing Order 28(4), relating to the calendar of the House, this House resolves to alter its Calendar for the Fourth Session so that-

- (i) the Fourth Session terminates on the 23rd Day of January, 2017; and,
- (ii) the House resumes for its regular sessions at the commencement of the Fifth Session on Tuesday, the 24th day of January, 2017 at 2.30 p.m.

Hon. Speaker: Who is seconding?

Hon. A.B. Duale: I was giving notice.

Hon. Speaker: Very well. Let us now have Hon. Amina.

PAPER LAID

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker.

I beg to lay the following Paper on the Table of the House today, Tuesday, 20th December, 2016:

The Report of the Departmental Committee on Environment and Natural Resources on its consideration of the nominees for appointment as members of the National Climate Change Council jointly conducted by the National Assembly and the Senate's Standing Committee on Lands and Natural Resources.

Can I give notice of the Motion?

Hon. Speaker: Very well.

NOTICE OF MOTION

APPROVAL OF MEMBERS TO NATIONAL CLIMATE CHANGE COUNCIL

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

THAT, pursuant to Section 7 of the Climate Change Act, 2016, Section 8(i) of the Public Appointments (Parliamentary Approval) Act and Standing Order No.45(4), this House approves the Report of the Departmental Committee on Environment and Natural Resources on its consideration of the nominees for

appointment as members of the National Climate Change Council, laid on the Table of the House today, Tuesday, 20th December, 2016, and approves the recommendation of the Committee as follows:

(i) Approves the appointment of Mr. Suresh Patel and Mr. John Kioli as Members of the National Climate Change Council;

(ii) Rejects the appointments of Ms. Cynthia Wechabe and Dr. Jane Mutheu as Members of the National Climate Change Council; and

(iii) Recommends that the appointing authority submits nominees of the female gender to represent the marginalised communities and the Commission for University Education as prescribed by the Public Appointments (Parliamentary Approval) Act.

Thank you.

Hon. Speaker: Very well.

Next Order!

MOTIONS

REPORT OF COMMITTEE OF THE WHOLE HOUSE ON COUNTY GOVERNMENTS (AMENDMENT) BILL

THAT, this House do agree with the Report of Committee of the whole House on its consideration of the County Governments (Amendment) Bill (Senate Bill No.4 of 2016)

The Speaker: Hon. Members, the business appearing as Order No.8 was considered on 1st December, 2016 up to the point where the Question was proposed. The Question could not be put due to lack of requisite numbers. For clarity, this is a Bill that originated in the Senate proposing to amend the County Governments Act in relation to county headquarters of Kirinyaga County and Taita Taveta County.

If there are any Members desirous of contributing---

Hon. Members: Put the Question!

(Question put and agreed to)

Hon. A. B. Duale: Hon. Speaker, I beg to move that the County Governments (Amendment) Bill (Senate Bill No.4 of 2016) be now read the Third Time. I also request Hon. Washiali to second.

Hon. Washiali: Thank you, Hon. Speaker. I rise to second.

(Question proposed)

Having ascertained that we have the necessary quorum, I now put the Question.

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

ADOPTION OF REPORT ON OWNERSHIP
OF MOMBASA CEMENT LIMITED LAND

THAT, this House adopts the Report of the Departmental Committee on Lands on its investigation into the ownership of Mombasa Cement Limited Land in Kilifi County, laid on the Table of the House on Tuesday, 24th November, 2015.

(Hon. Kihagi on 1.12.2016)

(Resumption of Debate interrupted on 1.12.2016 - Afternoon Sitting)

Hon. Speaker: This Motion was debated. Therefore, I call upon the Mover to reply. Is that the position?

Hon. Mwiru: Thank you, Hon. Speaker. The House will recall that the most versed Hon. Member of my Committee on this matter is the one who moved this Motion. Therefore, I request if possible, you give us some guidance on this matter. He has more information because he was leading that particular sub-committee. What is indicated on the Order Paper is resumption of debate and not a reply by the Mover.

Hon. Speaker: You are not ready to reply? If not, we can defer it so that you can reply next year. Very well, we proceed.

Hon. Mwiru: Hon. Speaker, we know the importance of this Motion. I am just requesting because most times the Mover is the one who is supposed to reply. Therefore, I am requesting your guidance on this particular matter.

Hon. Speaker: Very well. My guidance is that it is taken out of the Order Paper. We will proceed with it next year.

Next Order!

(Motion deferred)

ADOPTION OF REPORT ON RATIFICATION OF AGREEMENT
BETWEEN THE GOVERNMENT OF KENYA AND THE USA

Hon. (Ms.) R.K. Nyamai: Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Health on the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Co-operation in Threat Reduction Biological Engagement Programmes, laid on the Table of the House on Tuesday, 22nd November 2016, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the United States of America concerning Co-operation

in Threat Reduction Biological Engagement Programmes.

Hon. Speaker, the Cabinet Memorandum on the ratification of this agreement was tabled on 19th July, 2016 and committed to the Departmental Committee on Health for consideration. Once this is ratified, the agreement shall become part of the laws of Kenya as provided for under Article 2(6).

In consideration of the agreement, the Committee held five sittings and received comprehensive brief from the Legal and Budget departments. Pursuant to Article 118(1)(b) of the Constitution on public participation, Section 8(3) of the Treaty Making and Ratification Act 2012, the Committee placed advertisements in two local dailies on Thursday, 4th August, 2016.

Hon. Speaker, the Committee also invited the Cabinet Secretaries (CSs) for Health, National Treasury, Foreign Affairs, International Trade, Defence, Interior and Co-ordination of National Government and the Attorney-General on 18th August, 2016 to deliberate on the Agreement. The CS for Health as a key stakeholder in the matter attended the sitting while the Principal Secretary for Defence represented the CS, Defence. The Attorney-General's Office and the National Treasury sent representatives to the meeting.

On 14th December, 2016, the Committee also held consultative meetings with the Ministry of Health and key stakeholders with regard to the Agreement. Hon. Speaker, the Agreement desires to establish a cooperation programme to facilitate mutual benefit efforts to reduce biological threats of common concern between the two countries.

The purpose of the cooperation programme is to facilitate efforts to reduce the threats from naturally occurring diseases, biological attacks and unintentional release of biological pathogens and toxins and the risks posed by non-state actors. The objectives of this agreement are to enhance the Government of Kenya---

Hon. Midiwo: On a point of order, Hon. Speaker.

Hon. Speaker: There is a point of order from Hon. Midiwo.

Hon. Midiwo: Hon. Speaker, I do not want to interrupt my good friend *Daktari*, the Chair of the Departmental Committee on Health. The Report she is attempting to move is talking about American military forces in the Departmental Committee on Health.

We are in a Special Sitting of Parliament. This is how we pass bad laws for our country because nobody is even interested. I have had a casual look at that Report. It authorises the American military to do some research in our country. We need time to read it and not in a Special Sitting. This is bio-technology. We cannot come here on a Special Sitting to talk about something which may have serious and adverse effects on our people and casually pass it. So, we should oppose it because it cannot be done in a Special Sitting.

Thank you, Hon. Speaker.

Hon. Speaker: Sorry Hon. Midiwo. Hon. Rachel Nyamai, proceed.

Hon. (Ms.) R.K. Nyamai: Hon. Speaker, this Report is very important because it is about our international obligations on issues regarding threats which concern bio-terrorism. It is extremely important that the House considers it. The Report was tabled a while back and the expectation was that Members had time to look at it.

Hon. Speaker: The Leader of the Majority Party, you have the Floor.

Hon. A.B. Duale: Thank you, Hon. Speaker. Again, with a lot of respect to the Chair of the Departmental Committee on Health, I happened to be aware of this Report two days ago. Ratification is not a small matter. It is what took some of our friends to the International Criminal Court (ICC). This Parliament must be very careful.

Hon. Speaker: Order Members! There are some Members who have forgotten within three weeks that they are supposed to put their mobile phones on silent modes. Some County Women Representatives appear to be doing something on their phones.

Hon. A.B. Duale: Hon. Speaker, I agree with Hon. Jakoyo that we should debate this Motion for two days when we come back so that Members can read the Report. We want to know what we are engaging the Government and the people of Kenya. Even if we are being given Kshs20 billion, it is not important. What we will do is commit future generations.

Hon. Speaker, I will indulge you with a lot of respect to the Committee that we should put it in the Order Paper for the First Session when we come back next year, with your permission.

Hon. Ng'ongo: Thank you, Hon. Speaker. I am actually taken aback because a Special Sitting is usually summoned in a way that is provided for under the Standing Orders.

Hon. Speaker, I understand that the request for this Sitting came from the Hon. Leader of the Majority Party and, therefore, I thought that the agenda---

(Hon. (Ms.) Odhiambo-Mabona blocked Hon. Ng'ongo)

Hon. Speaker: The Hon. Member for Mbita, or is it Suba?

Hon. Ng'ongo: No, she is the Member for Mbita up to next year. After next year she is likely to be the Member for Suba North.

Hon. Speaker: You have very long hair and you are not supposed to block me from seeing the Member for Suba.

Hon. Ng'ongo: She will be Member for Suba North from next year, but for this year she is the Member for Mbita. That is if she wins, and chances are that she may.

Hon. Speaker, I am taken aback because I thought the convening of this Special Sitting was occasioned by a request from the Hon. Leader of the Majority Party. Therefore, I thought that the agenda for the Sitting was also from him. So, if this Motion No. 10 found its way to the Order Paper on a Special Sitting, I thought that this was after some consideration. However, it baffles me that the Hon. Leader of the Majority Party was not even aware that this matter should come. Therefore, it means it was not a matter that was urgent that should have been transacted through a Special Sitting of Parliament.

Hon. Speaker, I also agree with Hon. Jakoyo. I do not understand how matters that affect foreign and international relations would be handled by the Departmental Committee on Health. If there is an input that would be required from that Committee, it should be a joint committee sitting because I expect the Departmental Committee on Defence and Foreign Relations, which deals with our international relations, and more particularly such important treaties, to also be involved. Otherwise, I agree with my colleagues that if we transact this Motion, chances are that we may do something that this House should not do for the benefit of the country.

I beg that this Motion is removed from the Order Paper.

Hon. Speaker: Well, once the Hon. Leader of the Majority Party receives a request from the various committees indicating the urgency of business to be transacted, he is obligated to also communicate with the Hon. Speaker. However, more importantly, this Report by the Committee is shown to have been tabled on 22nd November, 2016. The assumption is that unless Members were busy doing other things, they ought to have, by now, thoroughly read it and should be having it at their fingertips. However, it appears like the Chairperson does not have the Report at

her fingertips. Hon. Chairperson, you are only supposed to make reference and not read. It may well be that the Cabinet document you talked about came from the Ministry of Health.

(Loud consultations)

Hon. (Ms.) R.K. Nyamai: Hon. Speaker, I will listen to your guidance but this Report is extremely important. It does not concern Kenya only but many other countries, and we are meeting our international obligations. However, I will go by the guidance that you give this House that the Report will be given the opportunity as soon as we are in the next Session because it has to do with funding that will be given to our country. Hon. Speaker, I will go by your guidance.

Hon. Speaker: Let us have Hon. Kimaru, the Member for Laikipia East.

Hon. Kimaru: Hon. Speaker, I tend to concur with the Members who spoke earlier on. As much as this Bill has to deal with health, there is an element of foreign affairs and defence in it. The input from the Departmental Committee on Defence and Foreign Affairs, just like the British Army Bill that we had about Nanyuki, you will not just look at it in isolation. There are issues of defence and foreign affairs. So, it is also important that that committee gives its input even as they prepare to give a full Report.

Hon. Speaker: Let us have the Chairman of the Departmental Committee on Defence and Foreign Relations.

Hon. Gethenji: Thank you, Hon. Speaker. We are not only taken aback, but quite perplexed because the mandate of committees, treaties, agreements and bilateral and so on fall squarely under the Departmental Committee on Defence and Foreign Relations. We have made several requests about this matter, for example, when we see the Committee on Transport, Public Works and Housing dealing with bilateral agreements and so on. These agreements and bilateral treaties fall squarely under the Committee on Defence and Foreign Relations.

Secondly, on defence and military matters - research within the Kenya Defence Forces (KDF) or visiting forces in Kenya must appropriately be put under the Departmental Committee on Defence and Foreign Relations. The matter should be placed before us for deliberation and participation. So, for this Report to have been taken to the Committee on Health and be tabled without the participation of the Departmental Committee on Defence and Foreign Relations is irregular and we need your direction as we have requested in the past with regard to the mandate of committees, and specifically the mandate of bilateral agreements and treaties that are brought to this House.

Hon. Speaker: I am seeing that the said agreement relates to Co-operation in Threat Reduction and Biological Engagement Programmes. Maybe that is what gives it some health component just like we have seen bilateral air service agreements being brought through the Committee on Transport, Public Works and Housing. You may not understand threat reduction and biological engagement programmes.

(Loud consultations)

Maybe Hon. Gethenji could clarify.

Hon. Gethenji: Hon. Speaker, being a trained professional with a degree in Applied Biology and Biomedical Sciences, I think I am capable. The point, however, is that the Standing Orders explicitly provide for agreements, treaties and bilateral agreements to be placed before

the Departmental Committee on Defence and Foreign Relations. If there is an element of expertise that another committee should bring to a particular report, then in the minimum that should have been a joint Committee of those two relevant committees of the House, so that we can deliberate with the knowledge of both sides of our expertise.

Hon. Speaker: Very well. Hon. Nyamai, can we hear from you?

Hon. (Ms.) R.K. Nyamai: Thank you, Hon. Speaker. The agreement between the Government of the Republic of Kenya and the Government of the United States of America (USA) concerning Co-operation in Threat Reduction Biological Engagement Programmes is majorly a health matter. We also appreciate what the Chair is saying---

It was signed by Mr. James Macharia, the then Cabinet Secretary for Health on behalf of the Kenyan Government and the US Ambassador, Robert F. Godec on 24th July, 2014. The agreement came to the House, and the reason the Parliamentary Committee considered it is because it was directed to the Departmental Committee on Health.

In terms of consideration, all the relevant ministries were invited, including the Ministry of Foreign Affairs and Defence. In terms of arrangements---

(Loud consultations)

Hon. Speaker, protect me so that I can give the information.

Hon. Speaker: You are absolutely protected.

Hon. (Ms.) R.K. Nyamai: In the Kenyan situation---

Hon. Speaker: I have no way of seeing Members who are claiming to rise on points of order.

Hon. (Ms.) R.K. Nyamai: Hon. Speaker, in the Kenyan situation, the Ministry of Health is in charge of health matters. In the American situation, it is the Ministry of Defence. However, with regard to consultations, as a Committee, we have done our best in terms of public participation, including publishing in the national dailies and asking for any memorandum. There is no memorandum that was presented to us. In terms of consideration, participation was done to the best of our ability, including an invitation to the Cabinet Secretary for Foreign Affairs.

Hon. Speaker: I think the issue was preparedness of the House.

(Loud consultations)

I do not need to be addressed by you. Please, just relax. The issue raised by the Member for Gem, who is also the Deputy Leader of the Minority Party, is that the matter is of great importance and should not be the subject of debate on a special sitting day.

(Hon. Ababu raised his hand)

I am unlikely to get any assistance from the Member for Budalang'i. Please, do not raise your hands here. That may have been done in high schools and primary schools, but not here.

Hon. Members, I agree with the Member for Gem that this is a serious matter. Nevertheless, the matter is weighty and needs consideration by the House on a normal sitting day, and not a special sitting day. I, therefore, direct that this business be taken out of the Order Paper for today, but it be accorded priority. Those Members of the other Committees who may wish to give their input, please, go and look at the report. Remember you could be in any

Committee, including the committee of netball or the committee of football that is headed by Hon. Wamunyinyi. You all qualify. Therefore, do not doubt the ability or capabilities resident in any of you.

That business is taken out. Come prepared whenever it will appear on the Order Paper, read through and raise whatever issues you wish to raise. If you want to object or oppose it, you are at liberty to do so. One committee has gone ahead and taken evidence from various witnesses. Let us just go through the Report and make what we may out of it.

Before we move to the next Order, let us have Hon. Cheptumo.

PAPER LAID

Hon. Cheptumo: Hon. Speaker, I beg to lay the following Paper on the Table:

The Report of the Committee on Delegated Legislation on its consideration of the Election Campaign Financing Regulations, 2016.

Hon. Speaker: Hon. Cheptumo, proceed to give notice.

NOTICE OF MOTION

ADOPTION OF REPORT ON ELECTION CAMPAIGN FINANCING REGULATIONS, 2016

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

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Election Campaign Financing Regulations, 2016, laid on the Table of the House today Tuesday, 20th December 2016 and, pursuant to the provisions of Sections 18 and 19 of the Statutory Instruments Act and Standing Order No.210 (2) (b), resolves not to approve for publication the Election Campaign Financing Regulations, 2016 as they contravene Section 5 of Election Campaign Financing Act, 2013 and Section 13 (a) of the Statutory Instruments Act; amend relevant sections of the Election Campaign Financing Act, 2013, particularly Sections 5 and 18, to give proper timelines for compliance to enable the IEBC submit fresh regulations for approval.

Hon. Speaker: Very well. Let us move to the next Order. Leader of the Majority Party, the Floor is yours.

MOTION

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE ELECTION LAWS (AMENDMENT) BILL

Hon. A.B. Duale: Hon. Speaker, in accordance with the provisions of Standing Order No.136 (3), I beg to move that the Motion for agreement with the Report of the Committee of the whole House be amended by inserting the following words: “subject to recommittal of Clauses 4, 7, 11, 14, 32 and the Long Title.”

I am moving this amendment because I have received several requests as per the Order Paper, one being from my office on Clause 7. The other clauses are from the Departmental

Committee on Justice and Legal Affairs and other Members of this House, indicating their desire to introduce amendments under these five clauses and the Long Title.

We had a *Kamukunji* this morning where we discussed this matter. This matter is in line with the Elections Act that we passed and which was submitted to the House by the Joint Select Committee on the Independent Electoral and Boundaries Commission (IEBC). We have a number of amendments to various principal Acts currently before the House, such as the Insurance Act, Competition Authority Act and various other Acts. With the provisions of Standing Order No.136 (3), recommittal is allowed. This Bill was in the House before the Report and the Bill of the Joint Select Committee on IEBC. It is the House Business Committee that had stepped down this Bill so that we can complete the one that was from the Joint Select Committee.

So, this Bill has gone through all public participations. It has gone through the Committee hearings and it has been subjected to all those procedures within the reading of the Standing Order.

Finally, Hon. Speaker---

Hon. Midiwo: On a point of order, Hon. Speaker.

Hon. A.B. Duale: Hon. Speaker, I am justifying my recommittal. So, Hon. Midiwo should hold his horses. He will have his chance but for now, the microphone belongs to me until the Speaker denies me a chance to contribute.

Basically, I am asking for the recommittal of the clauses which I have mentioned. There are people who have raised the issue of six months. This House is alive to the fact that we amended the Anti-Doping Bill after two weeks of its assent. I ask for that recommittal.

Clause 7 is proposed by the Leader of the Majority Party. Clauses 4, 11, 14, 32 and the Long Title have been proposed by the Chair of the Departmental Committee on Justice and Legal Affairs and Members, as shown in the Order Paper.

I beg to move for the recommittal within the reading of Standing Order No.136 (3). I beg to rest my case.

Hon. Speaker: Hon. Midiwo.

Hon. Midiwo: Hon. Speaker, this is why we are here and we are here unnecessarily. Hon. A.B. Duale must not and should not think that we Kenyans are fools! What is he talking about? Is there a Bill before this House? The Leader of the Majority Party has even a Statute Law (Miscellaneous Amendments) Bill which has been tabled before this House.

You cannot do something so substantial to any existing law or a new law without public participation. Nothing has been published for the general public or even for Hon. Members to look at.

Hon. Speaker, I plead with you not to allow anybody to misuse the law-making organ or body in this country to make wrong laws. The clauses he is proposing to amend, Hon. Chepkong'a and Hon. Kaluma had amendments to them during that debate. That is what he now purports to raise hypocritically. Hon. Chepkong'a had very good amendments and this side said, "*Baba amesema*" and the other side said "*Uhuru amesema.*" It is not six months yet.

The Anti-Doping Bill which he is referring to and which I am on a point of order on came back here because the President sent it back. It had issues. This is an issue that we cannot treat Kenyans to a couple of days before Christmas. It is unnecessary and uncalled for. I have spoken to the Members of the Departmental Committee on Justice and Legal Affairs. The things Hon. Chepkong'a was telling us in the *Kamukunji* have not gone before them. These are all your Members, Hon. Speaker. You are our father here. Members of the Departmental Committee on

Justice and Legal Affairs are saying that they have no idea of what Hon. Chepkong'a is talking about.

Whatever Hon. A.B. Duale has brought before this House is what he was debating in funerals. He is misusing his power which is constitutional to bring us here. I beg and plead with you to give Kenyans Christmas. Let these Members go home and we build consensus. There is enough time for Hon. Chepkong'a to resolve the issues if they are there.

There is no possibility that bungled elections can only be seen by Jubilee and not by the Coalition for Reforms and Democracy (CORD). Elections are for all of us. If there are issues, that Bill came here by way of a bipartisan Committee. I am happy Hon. Moses Kuria is sitting here. They should go back. If it must be changed, they should agree on the changes.

(Loud consultations)

You can do all the heckling. Today, we do not even have water to give you because Gladys is in the House. It is okay. Relax. *Si ni wakati wa Christmas?* Just relax. Logic will always be logic. After four months---

Hon. Speaker: Sorry, Hon. Midiwo. As you know, we must observe our own rules. I direct that we will sit up to 1.30 p.m. in accordance with Standing Order No.30, so that we are not seen to have sat beyond 1.00 p.m. when we were supposed to have adjourned. Proceed.

Hon. Midiwo: Thank you, Mr. Speaker. Mine is to plead with all of us that good sense prevails. What Kenyans expect of us is good and credible elections. Both sides have an interest. Nothing stops us; even as the House leadership. I want Hon. Duale and anybody supporting him to know that we in the House Business Committee (HBC) have not discussed this matter. Under your chairmanship, a matter this grave cannot come to the Floor without deliberation in the HBC. Otherwise, what is the purpose of HBC?

I want to plead with you, please, send us home. Let us pass the Motions on appointment of Members to the Commission on Revenue Allocation (CRA) and appointment of commissioners to the Independent Electoral and Boundaries Commission (IEBC). Let us go home. Let us not leave this town when members of this nation think they are divided because their leaders are doing wrong things. This is not something that Hon. Duale can force on us. I can tell you that people on this side, even the ones who have come to mark us today, must know we will not be cowed. We are not cowards. Let us agree.

(Applause)

There are no cowards here. We have come here, unfortunately today, there is no water. You have reduced the weapons.

(Laughter)

For Hon. Duale to bring General Service Unit (GSU) to barricade Parliament, nothing can be so wrong! You cannot scare us with GSU, police or the army. It is not right. It will not happen. Police do not make laws; we make laws to guide the police. Members of Parliament here, including those on the other side, will never be scared of the army, police or GSU. Let us just reason. I plead with you. Please, do the right thing. Give us a solomonic ruling.

Hon. Speaker: I have heard you. All of you rising on points of order, can I urge that you take minimum time so as to allow as many of your colleagues a chance to say something? Before that, there is an issue that Hon. Midiwo has raised about the Committee. Could Hon. Chepkong'a address it? The Leader of the Majority Party is saying that he is the originator of Clause 7.

Hon. A.B. Duale: *(Inaudible)*

Hon. Speaker: You have already moved a Motion, which has not been seconded. If we go to the issue of weapons, we will not be discussing the right things. Before we hear from Hon. Chepkong'a, let us first hear the Members of the Departmental Committee on Justice and Legal Affairs. Do I see the Member for Emurua Dikirr?

Hon. Kipyegon: Hon. Speaker, I am a member of the Departmental Committee on Justice and Legal Affairs. I am also a member of this House. I am also a Kenyan.

Hon. Speaker: Nobody has any doubts about that. That is why you are here – as of right.

Hon. Kipyegon: Notwithstanding that, I am also a citizen of this country. Just like what my colleague has said, let us not use the powers given to us by the Constitution and the people of this country to make laws that will drive this country to anarchy.

(Applause)

Let us use this House and the powers that God gave us to make laws that will make this country accommodative for everybody. We are approaching elections and I know each of us is trying to find a way of coming back to this House or the other---

Hon. Speaker: Please, address me on the issue at hand.

Hon. Kipyegon: I am coming to it, Hon. Speaker.

Hon. Speaker: No! No! If you are not addressing that one, I will just---

Hon. Kipyegon: Like I said, I sit in the Departmental Committee on Justice and Legal Affairs. This matter has not been brought to the Committee. We have the mandate to look at it and commit it to this House.

(Loud consultations)

Hon. Speaker: Allow Hon. Ngeno to say what he has to say. Some of you are telling him that he does not attend meetings. You are not members of that Committee.

Hon. Kipyegon: Hon. Speaker, protect me! You know, some Members are excited because they want to see their godfathers; they want to make their godfathers happy.

Hon. (Ms.) R.K. Nyamai: I know your godfather is Ruto.

Hon. Kipyegon: I am a godfather of my own. Hon. Speaker, allow me and protect me from these Members.

Hon. Speaker: Conclude because I do not want to go beyond 1.30 p.m.

(Hon. (Ms.) R.K. Nyamai nudged Hon. Kipyegon)

Hon. Kipyegon: Hon. Speaker, can you protect me from my great friend here? Just like I said, these laws have to be subjected to proper scrutiny by the necessary committees. We cannot just stand here in the morning only for someone to tell us that we are amending this law. When we were here, I remember some of us tried to bring some amendments to this very document. It was rejected in totality. Some of us left desperate. Today, somebody just woke up somewhere

and said: “I will just present this recommendation or amendment to the National Assembly”. You expect us to just come here, sit down, clap and vote? We should follow the rules of this House. We should follow the Standing Orders. We should allow this nation to look at the document we are tabling here. If the people agree with it, who are we not to agree with it? If they do not agree with it, who are we to pass a law that will put this country into jeopardy?

Hon. Speaker: Hon. T.J. Kajwang’.

Hon. Kajwang’: Thank you, Hon. Speaker. I am a ranking member of the Departmental Committee on Justice and Legal Affairs. Until recently, I was also the Fourth Chairperson of Committees. So, you can trust on my honesty on the words that I want to say. Let me relate the sequence of events so that we help each other to understand where we are.

There has been a raft of amendments and Bills which have been churned by the Departmental Committee on Justice and Legal Affairs. One of them is the Election Laws (Amendment) Bill (National Assembly Bill No. 3 of 2015). When this matter came before the House, it went through the motions until the point at which it was in the Committee. By your own wisdom, you stood down this Bill, having made a reasoned ruling to allow the reconstituted Joint Select Committee to do its job.

If you look at the original Bill and the amendments that the Committee proposed – because there was a Report we brought to the House – it is there in the annals. Anybody can read it. You will not find this proposal. I challenge anyone to look at the Report which was tabled in this House and look at all the amendments, to see if there are any provisions that touch on what we have here today.

But, fair enough, the Joint Select Committee made proposals, which were presented to this House and which the House transacted in the manner we did.

Hon. Speaker, I want to urge Members to see how this thing is being quoted. We are on a recommitment trying to recommit that which was stood, but bringing new proposals entirely which were neither in the Report nor in the original Bill, but under the pretext that they are amendments on re-commitment to stand the test of these amendments being sought. But worse, some of them are one or two words amendments. The specific ones which are purported to have come from the Departmental Committee on Justice and Legal Affairs are new clauses; meaning they are new pieces of legislation.

I have no problem in making legislations or with whatever text legislations come before the House because then we can process them. But, I beg that legislation is done in this House with decorum and procedure, that if it is an entirely different or new legislative proposal, then this House takes Reports to Committees where they are debated and taken for public participation and benefit from experts. In fact, we may not even need to re-engineer our way. We may use those Committees to get to where we want. But, there must be a report debated by that Committee and brought before the House to enable us to process it. I can challenge anyone on this; that there is nothing like that.

Hon. Speaker, I do not want to go to the merits of these amendments. They can be sound. In fact, in the *Kamukunji*, I listened to my senior Hon. Chepkong’ a and the Leader of the Majority Party, speak very eloquently on some of these subjects. There may be merit in what they were saying, but there could also be alternative merit on what other people may also be saying. The point I am saying is that the legislative mandate of this House will only be exercised if we follow the procedure of the House and to the extent that we do not have a Report. If you look at that Report, you will not see any Member’s signature.

If we do not have a Report, I do not see this country burning before 31st December 2016. What we are talking about are structural adjustments in the Independent Electoral and Boundaries Commission (IEBC) procedures. These are the issues. I heard the Leader of the Majority Party presenting a Motion bringing forward the calendar of the House. These are issues which can be brought to us in a normal sitting of the House. We can apply ourselves to them and process them according to the law.

I beg you Hon. Speaker, that your wisdom on this matter today, will help us have a Christmas which our children would want. I beg you that this matter be taken back to the relevant Committee and processed. For other things, whether inside or out there, it will be political re-engineering within which these legislative proposals will be harnessed and they will come before us so that we can process them.

Thank you, Hon. Speaker for giving me an opportunity. I am saying that this is wisdom which will unite this House and will go down as a legacy to your speakership in this Parliament.

Hon. Speaker: Member for Laikipia East, you are just standing. Say what you have to because you appear to be burning with something.

Hon. Kimaru: Thank you, Hon. Speaker, for noticing that I am a little agitated. I may not be a lawyer, but I am not sure that the procedure for re-committal is proper. That particular Bill came to the Committee of the whole House where it was passed. I do not know whether you can recommit what has already been accepted in the House.

I have tried before to recommit clauses in this House and I was told that the ship had already left the dock. I was not allowed to recommit. When the Report of the Committee of the whole House was being read, I was told I should have risen to say that I wanted to recommit. Now that this particular Report of the Committee of the whole House has come here and has gone the whole hog, how then do we recommit after it has been completed? This is a House of order and procedure and so, we must be consistent.

(Loud consultations)

Hon. Speaker: Finish! Finish!

Hon. Kimaru: Hon. Speaker, I would like you to give guidance on the procedure of recommitting clauses in Bills. If it, indeed, left the dock, we would wait for it to be assented to and afterwards, it would be brought back here to be amended according to our own laws and procedures.

Hon. Speaker: Order Members! There is too much din. The Member for Ugenya!

Hon. Ochieng': Thank you, Hon. Speaker for this opportunity. I am a very faithful Member of the Departmental Committee on Justice and Legal Affairs and I attend almost all its meetings, including the one that dealt with this issue. My father was sick in hospital here in Nairobi and I told my Chairman that I would leave early. The IEBC came and made a presentation. The following day, we came to this House with amendments as agreed by the Committee. They were amendments on what we had discussed in the Committee. The one that is here is not among them because we never discussed it. That is why it was not in the original amendments, which were moved by my able Chairman, Hon. Chepkong'a.

You need to ask him: If this amendment was so fundamental, why did it miss in the amendments that he brought that day? That is the issue. If this amendment was very fundamental, why was it not on the amendments that were brought on this Bill?

Hon. Speaker, what are we recommitting? Are we saying that this amendment was there on the Floor and we did not pass it or what was wrong? The amendment being proposed on manual voting was never discussed in the Committee. It was presented to us by the IEBC, but we never discussed it. What was discussed, and I need to tell you this very clearly, was the Biometric Voter Registration (BVR). I remember my colleague, Hon. Ngeno, and I spending more than 20 minutes on something called the Biometric Voter Registration (BVR) and not manual voting. So, what is being claimed to be part of the Report of the Committee is not.

Hon. Speaker, you may need to investigate whether we discussed this and whether this whole amendment was brought before this House. It will be a grave mistake for us to sit here and debate a matter purportedly from the Committee just because Hon. Duale went to the Press or to a rally and said that we have recommitted this amendment. It was never there. It is wrong and we cannot allow it to happen. It goes against the law. We will be throwing out the rules of Committees.

Hon. Speaker, Hon. Kajwang' has asked you whether there is a report. Does the report say this is what the Committee said on this matter? Is there a report saying that the Committee deliberated on this matter and on this issue, this is what the Committee resolved? There is no report like that because we never discussed it. This issue is here in vacuum. It is not supposed to be here and we cannot allow the Hon. Leader of the Majority Party and Hon. Chepkong'a to fill in for their failures as leaders.

Hon. Speaker: Because the issues you are raising are also weighty, this Motion is supposed to be from the Committee.

(Loud consultations)

Just a minute, Hon. Members. It is only fair that we hear from the Chair of the Committee because some Members have said that the Committee has not discussed this matter.

(Loud consultations)

No, No! Maybe, we should hear from the Chairman of the Committee. If the Committee had not discussed this, the amendments can come in the name of Hon. Chepkong'a, as the Member for Ainabkoi, but not as the Chair of the Departmental Committee on Justice and Legal Affairs. Now that Members have raised that issue, let us have Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, Hon. Speaker. As you know, Hon. Chepkong'a does not work with IEBC. I am merely the Member for Ainabkoi Constituency, sitting as the Chair of the Departmental Committee on Justice and Legal Affairs and having been elected. We can all sit here and cast aspersions because of the political positions we have taken.

We sat in the Committee and Mr. Chiloba presented this report. It is in the name of the IEBC and not in the name of Samuel Chepkong'a Advocates. I am an advocate and I am capable of producing reports. I can write defences and complaints, but I have not authored this one. This has been authored by the IEBC. I will table the report. I have no problem. All Members of this House can attend all meetings of the Departmental Committee on Justice and Legal Affairs and can participate in the proceedings when the CEO of the IEBC himself is there. No one has been prevented from attending. He makes his own report and we take that information and bring it here. It is my responsibility to ensure that all things that come before the Committee are brought to the House. The Members of this House ought to know that.

(Loud consultations)

Hon. Speaker, I like what Hon. Ochieng' said. It is true that he participated in the meeting, but he left early. With regard to Hon. Ngeno, he was not there.

Hon. Kipyegon: I was there.

Hon. Chepkong'a: I cannot be accused by Hon. Ngeno of something that he did not participate in.

Secondly, let me just read from the IEBC report, so that it is not---

(Loud consultations)

Hon. Members: On a point of order, Hon. Speaker.

Hon. Speaker: You cannot rise on a point of order. He is on a point of order.

Hon. Chepkong'a, the issue is not about the report from the IEBC. It is whether that matter was discussed by your Committee and whether there is a report of it. This is because we may even argue---

Hon. Chepkong'a: I am coming to that, Hon. Speaker. Can I explain, so that you can raise your points of order?

(Loud consultations)

Hon. Speaker: Hon. Members, let Hon. Chepkong'a respond.

Hon. Chepkong'a: This is what the Commission said in this report:

“The Commission does not have comprehensive regulations on the use of ICT in elections. This is a fairly technical area that requires adequate professional input. The time allocated may not be adequate”.

They proposed that we amend Section 44 by deleting the period proposed. They recommended that we use manual transmission with regard to results.

(Loud consultations)

Hon. Speaker, can I be heard?

Hon. Speaker: He is just reading the IEBC Report.

Hon. Members, the question Hon. Chepkong'a is to respond to is, yes, the IEBC may have made that Report. That is the most critical thing.

Hon. Chepkong'a: Hon. Speaker, can I finish? I am tabling the IEBC Report.

Hon. Members: No! No! No!

Hon. Chepkong'a: I am tabling! They have made reference to it.

(Loud consultations)

Hon. Speaker: Hon. Chepkong'a, we may need to see the record of what transpired that day.

Hon. Chepkong'a: I will present it, Hon. Speaker. Can I be heard? I will try to resolve some of the issues they are raising.

(Loud consultations)

Can I be allowed to speak?

Hon. Speaker: Before we go to the substance, can you address the form?

Hon. Chepkong'a: Hon. Speaker, when I came here, I did not know that someone was going to say that this was not discussed in the Committee. We have a matrix that was prepared by the counsel to the Departmental Committee on Justice and Legal Affairs, Ms. Mugure, which I do not have with me here, but she has it. I can bring it here and it can be tabled. What we went through as amendments by the Committee forms the basis of the Report. This is a Report that was prepared by the counsel to the Departmental Committee on Justice and Legal Affairs. If I can be given time, I will table the Report. I have no problem.

(Loud consultations)

I have the Report.

Hon. Speaker: Order, Members!

Hon. Chepkong'a: The Report is available and I can also table the minutes. I can table all that.

An Hon. Member: Hon. Chepkong'a, you are a destroyer.

Hon. Chepkong'a: No! No!

(Hon. Simba consulted loudly)

Hon. Speaker: Order, Hon. Members! Hon. Simba Arati! I would like to encourage Members to, please, refer to one another with decorum. I have heard you being referred to by others as honourable. You cannot be honourable and yet you are referring to others without decorum.

(Hon. Wamunyinyi consulted loudly)

Hon. Wamunyinyi! Hon. Members, listen. This is the decision. The issue which has been raised by Members of the Departmental Committee on Justice and Legal Affairs is not a light one. I do not require guidance from any of you. Hon. Members, you know how Committees operate and there is a report. Committees make reports. When you make a report and there is a document which has been tabled before you in a form of an exhibit or annexure, you attach it to the report. So, Hon. Chepkong'a, when we reconvene, you will bring to the House a record showing what transpired on the day the IEBC appeared before you and the decision of the Committee in the normal way a decision is made, so that then, nobody says that your proposed amendments are personal and not those of the Committee.

(Applause)

I am saying this fully aware that you are also at liberty to bring amendments in your own name. More importantly, in this Order Paper, I do not see other proposed amendments from other Members that I have approved. Apart from this particular one that came from the Departmental

Committee on Justice and Legal Affairs and the one from the Leader of the Majority Party, I have approved other proposed amendments. Some of them were referring to some sections about dates and some county stuff.

In order for us to move with decorum and also to maintain the traditions and the precedents that have been established, we must get to see what actually transpired in the Committee. If it is a question of Members having sat and moved, that is a different matter. We will make a decision on that, but the Committee must show to have made a decision. The way a decision is made is with adoption of a report. That is our tradition. That is what we provide in our Standing Orders.

(Applause)

ADJOURNMENT

Hon. Speaker: Hon. Members, we will adjourn and resume sitting this afternoon at 3.00 p.m. and not 2.00 p.m. for the convenience of the House. For the time being, we will leave it at that.

The House rose at 1.30 p.m.