



REPUBLIC OF KENYA
TWELFTH PARLIAMENT
THE NATIONAL ASSEMBLY - (SECOND SESSION)
COMMUNICATION FROM THE CHAIR
(No. 66 of 2018)

**COMMUNICATION ON MANDATES OF THE BUDGET AND
APPROPRIATIONS COMMITTEE AND THE DEPARTMENTAL
COMMITTEE ON FINANCE AND NATIONAL PLANNING**

Honourable Members,

You may recall that on Tuesday, 4th December 2018, the Member for Kitui Central Constituency, Hon. Makali Mulu, rose on a point of order seeking my guidance on the mandate of the Budget and Appropriations Committee, and that of the Departmental Committee on Finance and National Planning, with particular reference to coordination and processing of key aspects of the Budget.

Honourable Members,

In his submission, the Honourable Member did refer to various articles of the Constitution, the Public Finance Management Act (No. 18 of 2012), and in particular section 39 of the Act, and the National Assembly Standing Orders 207 and 216. Hon. Makali postulated that the guidance given to the House by the Budget and Appropriations Committee in scrutinizing and approving the Government's fiscal framework includes the purview of projected revenue and revenue raising measures such as taxation, loans and grants that are introduced through the Finance Bill. Consequently, he observed that any additional revenue raising measures or tax incentives introduced after the passage of the Appropriations Bill should be deemed as having a distorting effect on the fiscal framework

already approved by the House through the Budget and Appropriations Committee.

It is in this regard, **Honourable Members**, and on account of these concerns, that the Member for Kitui Central Constituency sought guidance and clarification on the following three broad areas:

- 1) What aspects of taxation and revenue are shared between the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning? How can those shared aspects be processed in an efficient, effective and amicable manner to ensure that the fiscal framework represents the true facts.
- 2) Which of the two Committees is charged with the responsibility of assessing the implications of Members' proposed amendments to the Finance Bill?
- 3) Is there a distinction between tax policy and tax revenue raising measures in the Finance Bill? If so, which Committee is charged with the responsibility of addressing them?

Honourable Members,

I did undertake to issue a Communication to guide the Member and indeed the House on the matters raised by Hon. Makali Mulu, which I hereby do.

Honourable Members,

This is not the first time that this August House is having to address matters of mandate of Committees. Those among you who served in the Eleventh Parliament may recall that in December 2013, several Members sought guidance on the apparent conflict of mandates between the Public Accounts Committee and the Public Investments Committee on one hand and the Departmental Committees on the other. Additionally, it is not the

first time either that the mandate of the Budget and Appropriations Committee has come into focus in this House. You may, in this regard, recall that in May 2015, then Member for Gem, the Hon. Jakoyo Midiwo, rose on a point of order and raised several issues regarding the place of the recommendations of Departmental Committees regarding Budget Estimates for line Ministries and Departments in the Report of the Budget and Appropriations Committee. The ruling made by the Chair in both instances helped in addressing the issues raised at the time.

Honourable Members,

As you are all aware, this August House relies primarily on the existing legal framework and established practice in addressing issues of this nature in a bid to ensure that the eventual solution is practical and sustainable. I therefore wish to commence my Communication today by highlighting the mandate and responsibilities of the two Committees regarding which Hon. Makali Mulu sought guidance.

To begin with, the mandate of the Budget and Appropriations Committee as provided for in Standing Order 207 entails the following:

- (i) to investigate, inquire into and report on all matters related to coordination, control and monitoring of the national budget;
- (ii) to discuss and review the estimates and make recommendations to the House;
- (iii) to examine the Budget Policy Statement presented to the House;
- (iv) to examine Bills related to the national budget, including Appropriations Bills; and
- (v) to evaluate tax estimates, economic and budgetary policies and programmes with direct budget outlays.

Based on these areas of mandate, the Budget and Appropriations Committee has been identified by this House as the **‘relevant Committee of the Assembly’** referred to in Article 114 of the Constitution. Thus, the

Budget and Appropriations Committee is further mandated by the Constitution:

- (i) under Article 114(2) to guide the Speaker in determining the action to be taken on a Motion that makes provision for a matter listed in the definition of a 'Money Bill'; and
- (ii) under Article 221(4) to discuss and review Estimates of Revenue and Expenditure of the National Government and make its Recommendations to the National Assembly. These Recommendations, upon approval by the House, become the basis of the Appropriations Bill. This role is also provided for in Section 39(2) of the Public Finance Management Act, 2012. Further, clause 6 of the same Article 221 provides, and I quote, *“when the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to authorise the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill”***

Honourable Members,

On the other hand, the mandate of the **Departmental Committee** on Finance and National Planning as provided for by the National Assembly Standing Order 216, and to single out subjects related to matters raised by the Hon. Makali Mulu, include but not limited to investigating, inquiring into, and reporting on all matters relating to the mandate, management, activities, administration, operations and **estimates** of the assigned Ministries and departments; studying the programme and policy objectives of Ministries and departments and the effectiveness of the implementation; and, making reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

Consequently, the Second Schedule of the same Standing Orders, further provides on the mandate encompassing the following:

- (i) Public finance and monetary policies;
- (ii) Public debt;
- (iii) Financial institutions (excluding those in securities exchange);
- (iv) Investment and divestiture policies;
- (v) Pricing policies;
- (vi) Banking;
- (vii) Insurance;
- (viii) Population;
- (ix) Revenue policies including taxation;
- (x) National planning and development.

Further, Standing Order 245 mandates the Departmental Committee on Finance and National Planning to introduce to the National Assembly the Finance Bill in the form submitted as a legislative proposal by the Cabinet Secretary, together with the report of the Committee on the Bill.

Honourable Members,

Having highlighted the mandates of the two Committees, I now wish to observe as follows.

First, you will recall that the **Sessional Committee on Fiscal Analysis and Appropriation** was established by a resolution of this House in 2005, which was by itself a historic resolve that eventually led to the establishment of the Budget Committee through the Fiscal Management Act of 2009 and finally the re-establishment of the Budget and Appropriations Committee by the Public Finance Management (PFM) Act of 2012. It is thus observed that the Budget and Appropriations Committee is the only Committee having additional functions through legislation. The Budget and Appropriations Committee has a wider mandate when it comes to budget matters as follows:

(a) Providing general direction on budget matters:

The Budget and Appropriations Committee as provided for in the PFM Act 2012 as well as the Standing Orders of National Assembly is required to provide recommendation on the overall macro-economic framework expected to guide the annual Budget as well as in the medium term. The Committee is expected to do this through a review of the Budget Policy Statement (BPS) and the medium term Debt Strategy Papers which are laid in this House annually. In doing so, the Committee enables the Assembly to set ceilings on the overall fiscal framework as well as ceilings on expenditure. Departmental Committees, on their part, review the BPS pertaining to their respective line Ministries and Departments, and submit their recommendations to the Budget and Appropriations Committee for review and consolidation.

(b) Providing direction on the vertical and horizontal distribution of nationally-raised resources

The PFM Act 2012 and the National Assembly Standing Orders mandate the Budget and Appropriations Committee to review the Division of Revenue Bill as well as the County Allocation of Revenue Bill and propose to the House the level of resources to allocate horizontally (that is, at the national level) and vertically (that is, between the two levels of government). The intent and spirit of designating this role to the Budget and Appropriations Committee is premised on the fact that as the Committee gives recommendation on the overall direction of the budget it also resolves and guides on the overall resource envelope that is to be raised both domestically as well as externally.

(c) Examining Bills related to the National Budget including Appropriation Bills

The function to examine bills related to the National Budget including Appropriation Bills is provided for by the National Assembly Standing Order 207(3)(d). The Budget and Appropriations Committee has always

reviewed Appropriation Bills. However other budget related bills are reviewed and scrutinized by the Departmental Committee on Finance and National Planning. This includes the Finance Bill that is introduced in the National Assembly every year.

(d)Evaluating tax estimates, economic and budgetary policies and programs with direct budgetary outlays

The Budget and Appropriations Committee is expected to review the overall resource envelope that is expected to identify total revenues as per each category of sources. Hence, upon the submission of the BPS by the Government, the Budget and Appropriations Committee reviews the macro framework especially the financing proposals and policies that are expected to underpin the realization of all the resources. The Committee is also expected to review the Estimates of Revenue that are submitted within the overall Estimates and propose any necessary amendments. It is important to note this is not a review of the individual measures but a review of the Estimates i.e. the total absolute amounts. This is the major departure between what the role of Budget and Appropriations Committee regarding Revenues and that of the Finance and National Planning Committee. While the former looks at the absolute overall amounts, the latter looks at each and every measure i.e. proposal to tax or not to tax.

(e)Examining estimates of expenditures and carry out monitoring of overall expenditure

The review of Estimates of expenditure is a function that the Budget and Appropriations Committee performs annually. The review is done in consultation with other departmental committees and culminates in recommends to the House by way of a Report. The Committee also reviews the in-year reports on budgets and if necessary submits recommendations, which in turn forms the basis of Supplementary Estimates.

Honourable Members,

On its part, as earlier alluded, the role and mandate of the Departmental Committee on Finance and National Planning is outlined in the Second Schedule of the National Assembly Standing Orders. The Committee of Finance and National Planning performs several roles as listed earlier in this Communication. The specific roles that seem to have issues related to the roles of the Budget and Appropriations Committee are as follows:

(i) Revenue Policies including taxation

Specific bills related to the Budget, such as the Appropriation Bills and Supplementary Appropriations Bills, are, by statute, expected to be reviewed by the Budget and Appropriations Committee.

(ii) Public finance, monetary policies, banking, insurance and public debt

The National Assembly Standing Order 232(6) mandates the Budget and Appropriation Committee with the task of consideration of the Debt Management Strategy. This is a matter which has a bearing on the role of the Departmental Committee on Finance and Planning concerning public debt.

Honourable Members,

In consideration of the foregoing, I wish to respond to the three areas of inquiry from Hon. Dr. Makali Mulu as follows:

- 1) Regarding the inquiry as to what aspects of taxation and revenue are shared between the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning, it is not advisable to attempt to segment taxation or revenue into different categories for purposes of legislation since taxation and revenue matters are extensively broad and intricately linked. Consequently, the

question as to which aspects of taxation and revenue are shared by the two Committees can only be addressed by future comprehensive reviews of the Standing Orders following intensive consultations and research. In the meantime, however, the Budget and Appropriations Committee ought to confine itself to evaluating the overall estimates of revenue and expenditure whereas the Departmental Committee on Finance and National Planning ought to focus on revenue raising measures per portfolio.

- 2) Regarding the inquiry on which of the two Committees is charged with the responsibility of assessing the implications of Members' proposed amendments to the Finance Bill, the Departmental Committee on Finance and National Planning is mandated under Standing Order 245(1) to introduce to the House the Finance Bill in the form in which the Bill was submitted as a legislative proposal by the Cabinet Secretary, together with the report of the Committee on the Bill, as a departmental committee would be expected to do. By practice, a Committee to which a Bill is charged, or which introduces a Bill, and which additionally reports on the Bill, is typically expected to be the same Committee that handles any amendments to the same Bill. Consequently, amendments to the Finance Bill are under the purview of the Departmental Committee on Finance and National Planning.

However, this arrangement notwithstanding, Standing Order 245(2) requires the Departmental Committee on Finance and Planning to ensure that its Recommendations to the Finance Bill, and, by interpretation, any proposed amendments by Members on revenue matters in the Finance Bill or any other Bill, are in such a manner that the total amount of revenue raised is consistent with the approved fiscal framework. The Departmental Committee on Finance and National Planning is therefore obligated to ensure that any amendments to the taxation proposals and revenue matters in the Finance Bill do not negatively impact the macro economic and fiscal

framework. It might thus be necessary for the Finance Committee to ensure that any amendments to the Finance Bill is accompanied by a statement on the financial implications of the amendments before it can be considered by the House.

- 3) Regarding the third and final inquiry on whether there is a distinction between tax policy and tax revenue raising measures in the Finance Bill, it is my considered view that the two issues are invariably and inextricably intertwined. They cannot be separated whether for legislative or implementation purposes. Regarding the second part of this inquiry, namely, which Committee is charged with the responsibility of addressing tax policy and tax revenue raising measures, the Departmental Committee on Finance and National Planning retains this mandate based on the reasons highlighted herein.

Honourable Members,

In conclusion, it may be argued that there are valid concerns when it comes to the specific differentiation of the mandate of the Budget and Appropriations Committee vis a vis the mandate of the Departmental Committee on Finance and National Planning. In particular, the key areas of apparent overlap involves the evaluation of budget related bills and the analysis of public debt. Nevertheless, the minor areas of apparent overlap should not constitute a reason for inability, delay or inefficiency of any of the two Committees in carrying out their respective roles and responsibilities. Should the issues recur or worsen with time, it might then become imperative for this August House to consider reviewing the Standing Orders to define and address all areas of concern regarding the mandate of these two Committees based on what obtains in other jurisdictions particularly in the USA Congress and the German Bundestag.

Such a review, however, should be undertaken only after comprehensive and extensive research and consultations among all stakeholders.

The Member, and indeed the House, is guided accordingly.

I thank you!

THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
Thursday, December 6, 2018