



REPUBLIC OF KENYA

TWELFTH PARLIAMENT (FOURTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

(No. 05 of 2020)

**ON CONFLICT OF MANDATE BETWEEN TWO DEPARTMENTAL
COMMITTEES ON THE SUBJECT OF "IRRIGATION"**

Honourable Members,

I wish to report to the House that my office is in receipt of a letter from the Chairperson of the Departmental Committee on Environment and Natural Resources dated February 18th, 2020. In the letter, the Hon. Member for Maara Constituency seeks guidance of the Speaker on the appropriate Committee mandated to consider items relating to "Irrigation" in the Budget Policy Statement for the financial year 2020/2021 in light of the reorganization of the National Government as outlined by the H. E. the President in Executive Order No. 6 of 2019 and related matters.

Honourable Members, in his letter the Chairperson notes that, as per the provisions of the National Assembly Standing Orders, the Second Schedule lists "irrigation" as a subject falling within the mandate of the Departmental Committee on Agriculture and Livestock. Conversely, as per Executive Order No. 6 of 2019 the State Department of Irrigation was merged with the State Department of Water and Sanitation in the Ministry of Water, Sanitation and Irrigation. Currently, the Standing Orders mandate the Departmental Committee on Environment and Natural Resources to handle all matters relating to the subject of "water resource management".

This, on close inspection, reveals a conflict between the mandates of the two Committees on the subject of "irrigation". The issues raised by the Hon. Chairperson are very material and merits my considered guidance.

Honourable Members, The immediate question that arise in the prevailing circumstances relates to **which Committee, between the Departmental Committee on Environment & Natural Resources and the Departmental Committee on Agriculture & Livestock, ought to exercise the delegated functions of Departmental Committee as contemplated in the Standing Orders in respect of the Irrigation aspects.** This includes the exercise of the functions falling under the following provisions of the Standing Orders-

- (a) Standing Order 45 (*vetting of appointments by Committees*)
- (b) Standing Order 114 (*pre-publication security of proposed legislation*)
- (c) Standing Order 127 (*committal of Bills to Committees and public participation*)
- (d) Standing Order 216(5) (*functions of Departmental Committees*);
- (e) Standing Order 227 (*Committal of Petitions*);
- (f) Standing Order 232(5) (*Committal of the Budget Policy Statement to Departmental Committees*); and,
- (g) Standing Order 235(4) (*Presentation of Budget Estimates and Committal to Committees*), amongst others.

Honourable Members, In seeking clarity on this matter, the following further issues arise-

- (a) Is the establishment of Departmental Committees of the House based on the structure of the National Government in terms of Ministries/Departments?

- (b) Since August 2019 was not the first time reorganization of the Structure of Government took place, what has been the practice of the House with regard to this issue?
- (c) Is there a difference between the August 2019 reorganization and the previous ones?
- (d) Is it prudent for officials of a State Department under a Ministry whose oversight is assigned to a particular Departmental Committee to also be appearing before another Departmental Committee?
- (e) More so, should the House require a Ministry with one Vote and one Accounting Officer to be splitting its representation and responses regarding the annual Budget related items between the Departmental Committees, merely on account of disparity in the subject mandates of two or more Committees? What should be the prudent situation in this case and what should follow if the particular Ministry has more than one Vote and more than one Accounting Officer?

Honourable Members, I will attempt to address these questions in a consolidated manner. From the onset, the oversight role of the House over the Executive through Committees must be clear and consistent.

The Standing Orders attempt to instill clarity and consistency by outlining the functions that may be discharged by Departmental Committees in their interaction with the Executive. You will note that the mandate of the Departmental Committees of the House **is subject-based** and does not necessarily mirror the structure of the Executive and whereas other Parliaments structure their sectoral committees in line with the structure of the Executive, the National Assembly has preferred a subject-based approach for oversight by its Committees.

This approach, which is not unique to our Parliament but is replicated in various other jurisdictions, is informed by the fact that the structure of Executive is likely to change from time to time.

Further, as Hon. Members are aware, our current budgeting system is programme-based and budgetary allocations are guided by the nature of the activities performed within a programme. Consequently, basing the mandate of Committees on subject-matter certainly enhances the exercise of oversight by the House and ensures consistency.

Hon. Members, Reorganisation of the structure of the Executive should not continuously necessitate a variation of the mandate of the Committees of the House. Indeed, during the 11th Parliament, the International Trade function was moved from the then Ministry of East African Community and Regional Development to the Ministry of Foreign Affairs. Despite the move to the Ministry of Foreign Affairs, the State Department for International Trade was still subject to oversight by the then Departmental Committee on Finance, Planning and Trade and not the Departmental Committee on Defence and Foreign Relations. Similarly, Hon. Members, you will recall that despite the reorganization of the Ministry of Public Service, Youth and Gender, all matters relating to the Youth and Gender, including the vetting of its Principal Secretary, continue to be considered by the Departmental Committee on Labour and Social Welfare, as opposed to the Departmental Committee on Administration and National Security which exercises oversight over all other affairs of the Ministry.

Hon. Members, The experiences from the 11th Parliament would, ordinarily, apply to any reorganization of the structure of the Executive. However, the concern raised by the Hon. Chairperson of the Committee on Departmental Committee on Environment and Natural Resources presents a slightly unique scenario.

Members will note that, before the reorganization of the structure of the Executive in August 2019, the State Department for Irrigation was domiciled in the Ministry of Agriculture, Livestock, Fisheries and Irrigation with its own dedicated Principal Secretary. The Executive Order essentially merged the State Department for Irrigation with the State Department of Water and Sanitation in the new Ministry of Water, Sanitation and Irrigation under one Cabinet Secretary and, **most significantly, one Principal Secretary**. This implies that, all accounting matters fall under one accounting officer.

Hon. Members, The question that this scenario poses with regard to oversight is the reporting line for this sole Principal Secretary in the new Ministry which is assigned functions that straddle the mandate of two Departmental Committees. At present, the Ministry of Water, Sanitation and Irrigation is assigned the functions of—

- (1) Water and Sewerage Infrastructure Development;
- (2) Water Resource Management;
- (3) Water Storage and Flood Control;
- (4) Land Reclamation; and
- (5) Water Harvesting for irrigation.

Hon. Members, The Second Schedule to the Standing Orders outlines "*Agriculture, livestock, irrigation, fisheries development, production and marketing*" as the core mandate of the Agriculture and Livestock Committee. Conversely, the Schedule outlines "*Matters relating to climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management*" as the core mandate of the Environment and Natural Resources Committee.

This effectively makes the Ministry of Water, Sanitation and Irrigation answerable to the two Committees on the subjects of Irrigation, and Water and Sanitation, respectively. Ideally, **Hon. Members**, this would not present a conflict of oversight. With two or more Principal Secretaries assigned to designated State Departments, each would report to the relevant Committee charged with its oversight seamlessly. However, with only one Principal Secretary assigned all these functions, a conflict arises as to which Committee he or she would be required to answer to for purposes of **efficiency and consistency** in oversight.

Hon. Members, A perusal of the Budget Policy Statement for the financial year 2020/2021 reveals that, with regard to the programmes of the Ministry, the programme of *Irrigation and Land Reclamation* and that of *Water Harvesting and Storage* are assigned to the Ministry's **single vote**. This adds to the conundrum of the manner in which the Principal Secretary, as the Accounting Officer, would be required to make representations on the Ministry's budget and other oversight matters before the two Committees of the House. Even though a split of the functions may be contemplated, requiring the Principal Secretary to continually "dove-tail" between the two Committees remains an untidy option as it exposes the officer to concurrent summons of the two Committees and may render the particular oversight function of the House to appear vague and inefficient.

Hon. Members, The Standing Orders contemplated a scenario where a conflict of oversight would occur and the need for a process to resolve such conflict. Standing Order 217 establishes the Liaison Committee and mandates it to, and I quote—

" (f) determine, whenever necessary, the committee or committees to deliberate on any matter; and,

(g) give such advice relating to the work and mandate of select committees as it may consider necessary."

In the present case, however, the ongoing consideration of the Budget Policy Statement is subject to timelines governed by the Constitution and the Standing Orders. The strict timelines necessitate an urgent resolution of the conflict highlighted by the Committee. It is with this in mind that, **Hon. Members**, I give the following guidance-

- 1. THAT,** all subjects relating to "*Irrigation*" in the Budget Policy Statement for the financial year 2020/2021 shall henceforth be considered by the Departmental Committee on Environment and Natural Resources;
- 2. THAT,** the Departmental Committee on Environment and Natural Resources is similarly henceforth mandated to also consider **all** matters relating to the subject of "*irrigation*" in terms of the following provisions of the Standing Orders-
 - (a)** Standing Order 45 relating to committal of public appointments to Committees;
 - (b)** Standing Order 114(7) relating to prepublication scrutiny of proposed legislation;
 - (c)** Standing Order 227 relating to Committal of Bills to Committees and public participation;
 - (d)** Standing Order 216(5) relating to the general functions of a Departmental Committee in respect of investigations, inquiries and consideration of legislation;
 - (e)** Standing Order 227 relating to petitions committed to a Departmental Committee;

(f) Standing Order 232(5) relating to Committal of the Budget Policy Statement to Departmental Committees); and

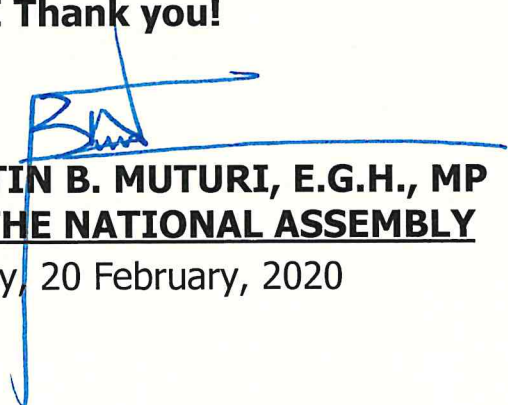
(g) Standing Order 235(4) in respect of Presentation of Budget Estimates and Committal to Committees.

3. THAT, this guidance shall subsist so long as no substantive Department is assigned the "Irrigation" function with a separate Accounting Officer and separate votehead. In the event such an assignment is undertaken, it stands without question that the Department and its Accounting Officer would fall under the oversight mandate of the Agriculture and Livestock Committee.

Hon. Members, I have given this guidance noting the unique circumstances currently obtaining in the Ministry of Water, Sanitation and Irrigation which has only **one** Principal Secretary charged with functions straddling the oversight mandate of two Committees of the House.

The guidance is also premised on the notion that majority of the functions of the Ministry, and indeed, its planned programmes and budget, fall under the oversight mandate of the Committee on Environment and Natural Resources.

I Thank you!



THE HON. JUSTIN B. MUTURI, E.G.H., MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, 20 February, 2020