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NATIONAL ASSEMBLY

17 JUN 2015
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Paper Laid on the
Table of the House by
the Chair finance
and Trade (Hon. Benjamin
Langat) on Wednesday
17/6/2015

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE CONSIDERATION OF H.E. THE PRESIDENT'S MEMORANDA ON THE
CENTRAL BANK OF KENYA (AMENDMENT) BILL, 2014 AND THE RETIREMENT BENEFITS
(DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) BILL, 2013

PARLIAMENT BUILDINGS

NAIROBI

JUNE, 2015



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1.0 PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Finance, Planning & Trade and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on the approval for appointment of **Mr. Jairus Mohammed Nyaoga, Dr. Patrick Ngugi Njoroge and Mrs. Sheila Mmbijewe** as the Chairperson, Governor and Deputy Governor of the Central Bank of Kenya (CBK) respectively

1.1 Mandate

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:

- (a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) To study and review all legislation referred to it.;
- (d) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.2 Membership

The Committee on Finance, Planning & Trade was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. The Hon. Benjamin Langat, MP (Chairman)
2. The Hon. Nelson Gaichuhie, MP (Vice Chairman)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP

6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP
10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sunra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo-Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

1.3 Message from H.E the President

On Wednesday 3rd June 2015 and pursuant to Standing Order 42(1), the Speaker of the National Assembly communicated the message from H.E. the President to the House regarding nominees to the positions of the Chairperson, Governor and Deputy Governor of the Central Bank of Kenya. He informed the House that Pursuant to section 11 of the Central Bank Act, H.E. the president had nominated Mr. Jairus Mohammed Nyaoga to the position of Chairperson of the Board of Directors of the Central Bank of Kenya.

Further, pursuant to section 13 and 13B of the same Act, H.E. the President had nominated Dr. Patrick Ngugi Njoroge and Mrs. Sheila Mmbijjewe to the positions of Governor and Deputy Governor of the Central Bank of Kenya, respectively. The President therefore sought the approval of the National Assembly on the said nominations.

1.0 PREFACE

Mr. Speaker,

It is my pleasure to table the report of the Departmental Committee on Finance, Planning & Trade on its consideration of the Presidential memoranda on the Central Bank of Kenya (Amendment) Bill, 2014 and the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013. A memorandum from H.E. the president on the two Bills was committed to the Committee on 29th June, 2015 and it is on the basis of H.E. the President's reservations that the Committee makes this report pursuant to Standing Order 154.

1.1 Mandate

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated:

- (a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) To study and review all legislation referred to it.;
- (d) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.2 Membership

The Committee was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. The Hon. Benjamin Langat, MP (**Chairman**)
2. The Hon. Nelson Gaichuhie, MP (**Vice Chairman**)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP

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19. The Hon. Mary Emase, MP
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21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
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24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

1.3 Message from the President

On 29th May, 2015, the Speaker of the National Assembly informed the House that he had received a memorandum dated 27th May 2015 from His Excellency the President referring the Central Bank of Kenya (Amendment) Bill, 2014, the Public Procurement and Disposal (Amendment) Bill, 2013, and the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013 Bills to the National Assembly for reconsideration pursuant to the provisions of Article 115(1)(b) of the Constitution. The Speaker further informed the House that the President's refusal to assent to the three bills was:-

(a) Central Bank of Kenya (Amendment) Bill, 2014

The amendment proposed in the Bill is not necessary since its purpose can be achieved administratively. The Central Bank of Kenya has already implemented the proposals in the Bill administratively.

(b) The Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013

The President was of the opinion that conferment of benefits to the state officers was discriminatory in the commencement period hence locking out some legitimate beneficiaries; the definition of the “retired deputy prime minister” ought not to have been included since the bill had not conferred any benefits on the office; the Bill is at variance with the Presidential Retirement Benefits Act from which it borrows heavily from with regard to limitation of beneficiaries from engagement in political activities and the exact benefits to be enjoyed.

(c) The Public Procurement and Disposal (Amendment) Bill, 2013,

H.E. the President observed that Sections of the Act which the Bill was proposing to amend have since been repealed by the passage of the Public Procurement and Asset Disposal Bill, 2014. The Act which will replace the current procurement law adequately covers the matters addressed in the amendment Bill.

At the Conclusion of his communication, the Speaker of the National Assembly referred the memoranda on Central Bank of Kenya (Amendment) Bill, 2014 and the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013 to the Departmental Committee on Finance, Planning & Trade for consideration. He further directed the Committee to report on or before Thursday 18th June, 2015.

1.4 Committee meetings

The Committee held two sittings during which it considered the two memoranda from H.E. the President.

1.5 Committee observations and recommendations

(a) The Central Bank of Kenya (Amendment) Bill, 2014

Having considered the President’s memorandum for non-refusal to assent to the Bill, the Committee concurred with the H.E. the President that the amendment proposed in the Bill is not necessary considering that the Central Bank is in the process of administratively implementing Treasury Mobile Direct a measure that will enable electronic of Government trading securities. Further, there already exist legislative frameworks for payment through electronic means through the National Payment System Act and the Kenya Information and Communications (Amendment) Act, 2013.

(b) The Retirement Benefits (Deputy President and designated State Officers) Bill, 2013

The Committee having considered H.E. the President's reservations and recommendations to clauses 2, 3, 4, 5(b), and 7(b), by a MAJORITY concurred with H.E. the president. However there were two dissenting views from the Hon. Timothy Bosire, MP and the Hon. Sumra Irshadali, MP on clause 4(d) which provides that one should not enjoy the stated benefits if he/she is actively engaged in the activities of any political party. The said Members were of the opinion that the inclusion of this amendment is aimed at locking out some former top government officials who had served in the now defunct offices of the Prime Minister and Vice President under very difficult political environment.

1.6 Acknowledgement

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sitting. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this Report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its Report in the House on the consideration of H.E. the president's memoranda on the Central Bank (Amendment) Bill, 214 and the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2015 for consideration.

Signed B. Langat Date 17-06-2015

(HON. BENJAMIN LANGAT, MP)

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

2.0 CONSIDERATION OF H.E. THE PRESIDENT'S MEMORANDA

2.1 Background information

During the months of February, and April, 2015, the National Assembly passed the Central Bank of Kenya (Amendment) Bill, 2014, and the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013, respectively. Thereafter, the Speaker of the National Assembly presented the Bills for assent to H.E. the President on 13th May, 2015. However, on 27th May, 2015, H.E. the President, by way of a Memorandum, referred the two Bills to the National Assembly for reconsideration, pursuant to the provisions of Article 115(1)(b) of the Constitution.

Parliament was obligated to consider the H.E. President's reservations/recommendations in line with Article 115 (2)-(5) of the Constitution. Since the two Bills do not concern counties and therefore their considerations do not require approval from the Senate, the National Assembly could only proceed pursuant to Standing Order 154, within twenty one days of the date when the House next meets.

The Speaker on 29th June, 2015 referred H.E. the President's memoranda to the Committee for consideration and reporting to the House.

2.2 Central Bank of Kenya (Amendment) Bill (National Assembly Bill No. 32 of 2014)

In his memorandum to Parliament, H.E. the President pointed out that he did not assent to the Bill since the proposed amendment in clause (2) of the Bill seeks to obligate the Central Bank of Kenya to place mechanisms that will allow the public to trade in securities electronically and lower minimum investment denominations. The amendment is not necessary since its purpose can be achieved administratively. The President asserted that there already exist legal framework which allows for electronic payments, namely, the National Payment System Act and Kenya Information and Communications (Amendment) Act 2013.

Further, CBK will launch in July this year Treasury Mobile Direct (TMD), a system which will enable the public to trade in government Securities electronically. The System will enable more retail investors to access government fixed income securities at their convenience and it is proposed that a minimum investment denomination of Kshs. 3,000 will be introduced.

From the foregoing, the Committee concurred with H.E. the president's reservations and recommendations for deletion of clause 2 of the Bill

2.3 The Retirement Benefits (Deputy President and Designated State Officers) Bill No. 38 of 2013

In his Memorandum to Parliament on the Bill, H.E. the President that he had reservations to the long title, clauses 2, 3, 4(1)(b), 5(1)(b) and 7(b). He specifically pointed out the following:

(a) Long title:

Cut-off Date– The bill proposes a cut-off date for retirement for entitled persons who can be conferred benefits by the bill to be **15th January, 2008**. This effectively locks out any person who served in the respective office before the said date. He therefore recommended amendment of the cut-off date to **1st January 1993** so as to allow any office holder who retired after the onset of the multi-party democracy to benefit.

The Committee concurred with this amendment.

(b) Clause 2

The definition of a “retired Deputy Prime Minister” has been provided in the Bill erroneously considering that the Bill has not conferred any benefits on this Office. He therefore recommended deletion of this definition.

The Committee concurred with this amendment.

(c) Clause 3

This clause puts the cut-off date of the beneficiaries to 15th January, 2008 thus effectively locking out some beneficiaries as explained in the proposal of the long title. He therefore recommended amendment of the cut-off date from 15th January 2008 to 1st January, 1993.

The Committee concurred with this amendment.

(d) Clause 4

Engagement of the beneficiaries in political activities are at variance with Sections 4(1)(b) and Sections 6(1) of the Presidential Retirement Act from which the Bill heavily borrows. While it is clear in the Presidential Retirement Act that one forfeits his/her retirement benefits if he or she engages in political activities, this Bill is silent on it. For harmony, H.E. the President recommended insertion of an express provision under 4(d).

Though the Majority of the Committee members concurred with H.E. the President recommendation, the Hon. Timothy Bosire, MP and the Hon. Sumra Irshadali, MP dissented. The two Members differed with the recommendation for the following reasons:

- *Those who served the Country during exceptional and extraordinary times should be appreciated by the nation for the work they did and for bringing the nation together during difficult moments. They should be allowed to enjoy the benefits even if they still hold political party offices or engaging in active politics until such a time these persons may come to power then they can stop enjoying the benefits as they wait for their retirement.*
- *Some of the offices like the office of the Prime Minister are defunct and therefore their former office holders should not be bared from political activities.*
- *The Bill should clearly spell out that any person who enjoyed the benefits and came back to active politics will not be barred by IEBC from vying for any political position in the country for illegal use of public funds.*

(e) Clauses 5 and 7

Lump sum payment - The bill has provided for a lump sum payment on retirement for each entitled person equal to one and a half years' salary paid for each term served. H.E the President pointed out that this was at variance with the Presidential Retirement Act that calculates the lump sum payment on retirement as equal to one year's salary for each term served. H.E. the president therefore recommended the amendment of this clause to be in harmony with the Presidential Retirement Benefits Act, 2013. This will reduce the skyrocketing wage bill.

The Committee concurred with H.E. the president's memorandum.

3.0 COMMITTEE RECOMMENDATION

Having considered the H.E. the President's memoranda, the Committee concurs and recommends introduction of the following amendments to the Central Bank of Kenya (Amendment) Bill, 2014 and the Retirement Benefits (Deputy President and Designated State Officers), 2013 to the two Bills:

(a) The Central Bank of Kenya (Amendment) Bill, 2014

Clause 2

THAT clause 2 of the Bill be deleted

(b) The Retirement Benefits (Deputy President and designated State Officers) Bill, 2013

Clause 3

THAT clause 3 of the Bill be amended by deleting the expression "15th January 2008" and substituting therefor the expression "1st January 1993"

Clause 4

THAT clause 4 of the Bill be amended by inserting a new sub-clause 4(d) immediately after paragraph (c)

4(d) has, since ceasing to hold office, held office in, or actively engaged in the activities of any political party:

Provided that this provision shall come into operation on the date of commencement of this Act.

Clause 5

THAT clause 5 be amended in sub-clause 1(b) by deleting the expression "one and a half years salary" and substituting therefor with the expression "one year's salary".

Clause 7

THAT clause 7 be amended in sub-clause (b) by deleting the expression "one and a half years salary" and substituting therefor with the expression "one year's salary".

Clause 2

THAT clause 2 be amended-

- (1) By deleting the definition of the “retired Deputy Prime Minister”
- (2) In the definition of the “retired Speaker” by deleting the expression “15th January, 2008” and substituting therefor with the expression “1st January 1993”.

Long title

THAT the Bill be amended in the Long Title by deleting the expression “15th January, 2008” and substituting therefor with the expression “1st January 1993”

MINUTES OF THE 37TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON THURSDAY 12TH JUNE, 2015 IN COMMITTEE ROOM, 5TH
FLOOR, CONTINENTAL HOUSE, AT 10:00 AM

Present

1. Hon. Benjamin Langat, MP (Chairperson)
2. Hon. Nelson Gaichuhie, MP (ViceChairperson)
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Alfred Sambu, MP
6. Hon. Daniel Epuyo Nanok, MP
7. Hon. Ogendo Rose Nyamunga, MP
8. Hon. Lati Lelelit, MP
9. Hon. Sammy Koech, MP

Apologies

1. Hon. Dr. Oburu Oginga, MP
2. Hon. Anyanga Andrew Toboso, MP
3. Hon. Sakaja Johnson, MP
4. Hon. Kirwa Stephen Bitok, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Tiras Ngahu, MP
7. Hon. Dennis Waweru, MP
8. Hon. Sumra Irshadali, MP
9. Hon. Jones Mlolwa, MP
10. Hon. Timothy Bosire, MP
11. Hon. Sakwa John Bunyasi, MP
12. Hon. Mary Emase, MP
13. Hon. Shakeel Shabbir Ahmed, MP
14. Hon. Ronald Tonui, MP
15. Hon. Joash Olum, MP
16. Hon. Iringo Cyprian Kubai, MP
17. Hon. Eng. Shadrack Manga, MP
18. Hon. Joseph Limo, MP
19. Hon. Abdullswamad Shariff, MP
20. Hon. Patrick Makau King'ola, MP

IN ATTENDANCE

- | | | |
|------------------------|---|-----------------------|
| 1. Mr. Robert Nyaga | - | Fiscal Analyst |
| 2. Mr. Benjamin Ngimor | - | Fiscal Analyst |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Ms. Doreen Karani | - | Legal Counsel |
| 5. Mr. Eric Ososi | - | Research Officer |

MIN.NO. DCF/160/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.28 am followed by a word of prayer from Mr. Fredrick Otieno

MIN.NO.DCF/161/2015: VETTING OF THE NOMINEES TO THE CENTRAL BANK OF KENYA

The Chairperson informed the Committee that it will vet the nominees of the Central Bank of Kenya on the positions of Chairperson, Governor and Deputy Governors on 16th June, 2015 and Members needed to prepare for the activity. He then asked the legal counsel and the budget office to brief Members on the legal aspect of the approval of the nominees and the areas of importance that Members may want to know from the nominees respectively.

Briefing by the Legal Counsel

The Legal Counsel briefed the Committee on the procedure for the appointment as follows:

1. She informed the Committee that Section 11(1) of the Central Bank of Kenya Act provides for a Chairperson of the Board of Directors of the Central Bank of Kenya among other members of the Board. Section 11(2) provides that the directors, including the Chairperson, shall be appointed by the President with the approval of Parliament. Persons eligible for appointment may hold office for a period of four years and are eligible for re-appointment for one further term of four years.
2. Section 13 of the Central Bank of Kenya Act provides for a Governor of the Central Bank of Kenya who is appointed by the President through a transparent and competitive process and with the approval of Parliament. Persons eligible for appointment may hold office for a period of four years and are eligible for re-appointment for one further term of four years.
3. Section 13B of the Central Bank of Kenya Act provides for a Deputy Governor of the Central Bank of Kenya who is appointed by the President through a transparent and competitive process and with the approval of Parliament. Persons

eligible for appointment may hold office for a period of four years and are eligible for re-appointment for one further term of four years.

Qualifications for appointment as a Chairperson of the Board of Directors, the Governor and Deputy Governor of the Central Bank of Kenya

1. Under Section 11(7) of the Central Bank of Kenya Act, a person shall be eligible for appointment as a member of the Board of Directors if he is a citizen of Kenya and if he is knowledgeable or experienced in monetary, financial, banking and economic matters or other disciplines relevant to the functions of the Bank.
2. The general disqualifications for appointment as a Chairperson, Governor or a Deputy Governor of the Central Bank of Kenya are outlined under section 14 of the Central Bank of Kenya. The following persons are disqualified from appointment-
 - a) a member of the National Assembly or a member of a local authority established under the Local Government Act (Cap. 265);
 - b) a salaried employee of any public entity (except on a secondment basis);
 - c) a director, officer, employee, partner in or shareholder of any specified bank or specified financial institution
3. Notably, the President may in exceptional cases waive any of the above provisions with respect to any Director (other than the Governor or Deputy Governor) if it is in the interests of the Bank and likely to promote the objects of the Bank. Additionally, paragraph (b) is not applicable to the representative of the Treasury.

Procedure for Vetting

She further briefed the Members on the procedures for vetting as follows:

1. Section 5 of the Public Appointments (Parliamentary Approval) Act provides that the appointing authority shall, in writing to the Clerk, notify the House upon nominating a person for appointment. Upon receipt of the notification for appointment, the Clerk invited the relevant committee to hold an approval hearing as required under section 6 of the Public Appointments (Parliamentary Approval) Act. The Clerk shall notify the nominee and the public of the time and place for holding the approval hearing at least seven days prior to the hearing.

2. Section 6(7) of the Public Appointments (Parliamentary Approval) Act provides that “ *an approval hearing shall focus on a candidate’s academic credentials, professional training and experience, personal integrity and background*”
3. Section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that “*any person may, prior to the approval hearing and by a written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated*”.
4. Section 6 (10) further provides that “*a candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate’s nomination shall thereupon lapse.*”
5. Section 7 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that the issues for consideration by the relevant House in relation to any nomination shall be:-
 - a) the procedure used to arrive at the nominee;
 - b) any constitutional or statutory requirements relating to the office in question; and
 - c) the suitability of the nominee for appointment proposed having regard to whether the nominee’s abilities, experience and qualities meet the needs of the body to which nomination is being made.
6. Pursuant to provisions of Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act and Standing Order 45(3), the general public was also notified in the print media by the Clerk of the National Assembly of the intention of the Committee on Appointments to conduct the vetting and approval hearing of the nominee on Tuesday 16th June, 2015;
7. The Clerk of the National Assembly had received academic certificates and curriculum vitae from each of the nominees;
8. The Clerk of the National Assembly had received clearance certificates from the Higher Education Loans Board, Kenya Revenue Authority, Ethics and Anti Corruption Commission, Criminal Investigations Department and the Credit Reference Bureau with respect to each of the nominees; and
9. None of the nominees had notified the Clerk of the National Assembly of withdrawal from the approval process as outlined under Section 6(10) of the Public Appointments (Parliamentary Approvals) Act.

Briefing by the Budget Office

The Parliamentary Budget Office briefed the Members on the matters concerning economy that might be of interest to know from the nominees.

Key areas that were pointed out in their brief were:

1. The economic growth which declined to 5.3% in 2014 from 5.7% in 2014
2. The Government spending for 2014/2015 which include the two supplementary budget,
3. The debt stock; Kenya's public debt rose to 305.1 billion to close at kshs. 2.675 trillion in March, 2015 of which domestic debt amounts to 1.397 trillion and the rest is external debt.
4. The underperformance in revenue which is very critical to the economy. The total revenue by March, 2015 amounted to Ksh. 761.4 billion against the target of Ksh. 829.3 billion hence underperformance of Ksh. 67.9 billion.
5. The exchange rate; Kenya shillings exchange rate has been depreciating in the recent weeks to about Ksh. 97 to USD.
6. Interest rates; lending rates declined from 16.9% in March 2014 to 15.5 in March 2015, Central Bank recently increased the CBR from 8.5% to 10%, a signal for tighter monetary policy. Also the interbank rates had risen to 13.51% by 3rd June, 2015. Further the spread or the gap between average lending rates and deposit rate in Kenya is so high.

MIN.NO. DCF/162/2015 COMMITTEE RESOLUTION

The Committee resolved to proceed with the approval hearing as scheduled on the 16th June 2015 at 10:00 a.m as required and in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011).

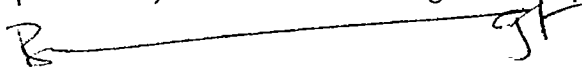
The Chairperson therefore asked the secretariat to prepare guiding questions for Members.

MIN.NO. DCF/163/2015 ANY OTHER BUSINESS

The Chairperson requested Members to come early for the meeting to enable the Committee start and completes the work in time and prepare a report for tabling on or before 18th June, 2015.

MIN.NO. DCF/164/2015 ADJOURNMENT

The Chairperson adjourned the meeting at 12.15 p.m.

Signed.....

Chairperson

Date.....17-06-2015.....

**MINUTES OF THE 39TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE,
PLANNING & TRADE HELD ON TUESDAY 16TH JUNE, 2015 IN COMMITTEE ROOM, 4TH
FLOOR, CONTINENTAL HOUSE, AT 2:30 PM**

Present

1. Hon. Benjamin Langat, MP (**Chairperson**)
2. Hon. Nelson Gaichuhie,MP (**ViceChairperson**)
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Sammy Mwaita, MP
5. Hon. Alfred Sambu, MP
6. Hon. Ogendo Rose Nyamunga, MP
7. Hon. Abdul Rahim Dawood ,MP
8. Hon. Tiras Ngahu, MP
9. Hon. Dennis Waweru, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Jones Mlolwa, MP
12. Hon. Timothy Bosire, MP
13. Hon. Sakwa John Bunyasi, MP
14. Hon. Mary Emase, MP
15. Hon. Ronald Tonui, MP
16. Hon. Iringo Cyprian Kubai, MP
17. Hon. Patrick Makau King'ola, MP

Apologies

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8. Hon. Eng. Shadrack Manga, MP
9. Hon. Joseph Limo, MP
10. Hon. Abdullswamad Shariff, MP
11. Hon. Lati Lelelit, MP
12. Hon. Sammy Koech, MP

(b) Dr. Patrick Ngugi Njoroge


Though he emerged Second in the interview after Dr. Haron Sirma, he has both the educational qualifications and professional experience to serve in the position of the Governor of the Central Bank of Kenya. He is an honest and independent minded economist who will bring a lot of the experience gained while working at the IMF. However, he may not be conversant with the Kenyan working environment considering that he has been worked abroad for almost entire his life. He will therefore have to create a good working rapport with his team and the stakeholders to help him govern.

(c) Mrs. Sheila MMBijjewe

Though she emerged third in the interview behind Mr. Gerald Arita and Ms. Rose Detho, she has the requisite knowledge, skills and experience to serve as the deputy governor of the Central Bank of Kenya. She was honest and open-minded.

MIN.NO. DCF/176/2015 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 3.10pm

Signed..... 

Chairperson

Date..... 



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT - (THIRD SESSION)

THE NATIONAL ASSEMBLY

MESSAGE (NO. 21 OF 2015)

REFERRAL BY H.E. THE PRESIDENT OF:

- i. THE CENTRAL BANK OF KENYA (AMENDMENT) BILL, 2014
- ii. THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL, 2013; AND
- iii. THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) BILL, 2013.

Honourable Members,

You may recall that during the months of February, March and April, 2015, the National Assembly passed the Central Bank of Kenya (Amendment) Bill, 2014, the Public Procurement and Disposal (Amendment) Bill, 2013, and the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013, respectively. Thereafter, I presented the Bills for Assent to H.E. the President on 13th May, 2015, in accordance with the provisions of the Constitution and our Standing Orders. However, on 27th May, 2015, H.E. the President, by way of a Memorandum, referred the Bills back to the National Assembly for reconsideration, pursuant to the provisions of Article 115(1)(b) of the Constitution.

Honourable Members,

On the Central Bank (Amendment) Bill, 2014, which was sponsored by the Member for Mukurweini, Hon. Kabando wa Kabando, MP, H.E. the President has recommended the deletion of sub-section (2) of Clause 2. Consequently, should the House concur with the President's recommendation, it follows that there will be no amendment to the Central Bank Act. The Departmental Committee on Finance,

Planning and Trade to which this Memorandum is hereby referred to, is therefore guided accordingly.

Honourable Members,

The Second Memorandum by H.E. the President, is asking the House to set aside the enactment of the Public Procurement and Disposal (Amendment) Bill, 2013, which was originally sponsored by the Hon. Johnson Sakaja.

H.E. the President is of the view that the Sections to which this Bill was proposing to amend have since been repealed by the passage of the Public Procurement and Asset Disposal Bill, 2015. I will therefore, not refer the Memorandum to any Committee as its effect is *fait accompli*.

Honourable Members,

The Third Memorandum by H.E. the President relates to the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2013, which I therefore refer to the Departmental Committee on Finance, Planning and Trade. Since the House has up-to twenty one (21) days within which to consider the President's recommendations, the Committee should report to the House on or before Thursday 18th June 2015.

Thank you!



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

9th June 2015

THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE PUBLIC PROCUREMENT AND DISPOSAL (AMENDMENT) BILL, 2015

MEMORANDUM

By His Excellency the Honourable Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled “A Bill for An Act of Parliament to amend the Public Procurement and Disposal Act, 2005 to facilitate affirmative action for disadvantaged groups in accordance with Articles 27, 54 and 55 of the Constitution and to advance their participation in the procurement process in accordance with Article 227 of the Constitution”, the short title of which is “The Public Procurement and Disposal (Amendment) Bill, 2005”, was passed by the National Assembly on the 5th May, 2015;

AND WHEREAS the Public Procurement and Disposal (Amendment) Bill, 2015, was presented to me for assent, in accordance with the provisions of the Constitution, on the 13th May, 2015;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115(1)(b) of the Constitution, I refuse to assent to the Public Procurement and Disposal (Amendment) Bill, 2015, for the reasons set out hereunder:

Proposed amendment of the Public Procurement and Disposal Act, 2005

Parliament has just passed the Public Procurement and Asset Disposal Bill, 2015, which is one of the Constitutional implementation Bills required under the Fifth Schedule to the Constitution. The Bill, set to be enacted shortly, repeals the above Act thereby rendering the proposed amendment nugatory. The Act, which will replace the current procurement law, adequately covers the matters addressed in the amendment Bill.

RECOMMENDATION:

In view of the foregoing, I recommend that the National Assembly sets aside the Public Procurement and Disposal (Amendment) Bill, 2015.

Dated the 27th 7 MAY, 2015.

A handwritten signature in black ink, appearing to read 'Uhuru Kenyatta', written in a cursive style. The signature starts with a large 'U' and ends with a horizontal line.

UHURU KENYATTA,
President.

THE CONSTITUTION OF KENYA

**REFUSAL TO ASSENT TO THE RETIREMENT
BENEFITS (DEPUTY PRESIDENT AND
DESIGNATED STATE OFFICERS) BILL, 2015**

MEMORANDUM

By His Excellency the Honourable Uhuru
Kenyatta, President and Commander-in-Chief
of the Kenya Defence Forces.

Submitted to the Speaker of the National
Assembly.

WHEREAS a Bill entitled “A Bill for An Act of
Parliament to provide for the granting of pension and other
retirement benefits to persons who hold the office of the
Deputy President and persons who have served as Prime
Minister, Vice-President or Speaker after the 15th January,
2008 and for connected purposes”, the short title of which
is “The Retirement Benefits (Deputy President and
Designated State Officers) Bill, 2015”, was passed by the
National Assembly on the 30th April, 2015;

AND WHEREAS the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2015, was presented to me for assent, in accordance with the provisions of the Constitution, on the 13th May, 2015;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 of the Constitution, I refuse to assent to the Retirement Benefits (Deputy President and Designated State Officers) Bill, 2015, for the reasons set out hereunder:

LONG TITLE

The long title of the Bill states as follows:

AN ACT of Parliament to provide for the granting of pension and other retirement benefits to persons who hold the office of the Deputy President and persons who have served as Prime Minister, Vice-President or Speaker after the 15th January, 2008, and for connected purposes.

The long title provides for the cut-off date for persons entitled to the benefits under the proposed law to be the 15th January, 2008. This effectively locks out persons who served in the Government starting from the 1st January,

1993, at the onset of multiparty democracy, which ushered in a new era of pluralism and of which we are still reaping the benefits as a nation. It should be noted that this was not only unprecedented moment but also the most difficult time in Kenya's political and economic history. These persons were instrumental in holding the country together by offering dynamic and focused leadership that ensured meaningful and responsible democratization and economic prosperity of this country. Their exclusion is therefore unfair and inappropriate in my opinion, given their contribution to the history of this nation during the stated time.

Accordingly, the long title of the Bill should be amended to extent the period of coverage for entitled officers to the 1st January, 1993.

RECOMMENDATION:

For the foregoing reasons, I recommend that the long title of the Bill be amended by deleting the expression “the 15th January, 2008” and substituting therefor the expression “the 1st January, 1993”.

CLAUSE 2:

The definition of the words “retired Speaker” states as follows:

“retired Speaker” means a person who, having held the office of Speaker of the National Assembly or Speaker of the Senate, at any time after the 15th January, 2008, has ceased to hold office as such in the manner specified in the Constitution;

As explained above, the cut-off date under this definition excludes Speakers who served in the Government before this the cut-off date, which in my opinion is unfair, given the stated circumstances.

RECOMMENDATION:

✓ For the foregoing reasons, I recommend that Clause 2 of the Bill be amended by deleting the expression “the 15th January, 2008” and substituting therefor the expression “the 1st January, 1993”.

CLAUSE 2 (EDITORIAL):

Clause 2 of the Bill further defines retired Deputy Prime Minister as follows:

“retired Deputy Prime Minister” means a person who, having held office of the Deputy Prime Minister, has ceased to hold office as such in the manner specified in the Constitution”

This definition is not necessary given the fact that the Bill has not conferred any benefits on this office.

RECOMMENDATION:

In view of the foregoing, I recommend that the definition of **“retired Deputy Prime Minister”** under Clause 2 of the Bill be deleted.

CLAUSE 3:

Clause 3 of the Bill provides for persons entitled to the benefits as follows:

Persons
entitled to
benefits.

3. Subject to sections 5 (3) and 15, the persons entitled to the benefits conferred by this Act shall be persons who, at

any time after the 15th January, 2008, retire as Deputy President, Prime Minister, Vice- President or Speaker.

For reasons already proffered above, I propose an amendment to this clause to extent the period of coverage for entitled officers who served in the Government from the 1st January, 1993.

RECOMMENDATION:

For the foregoing reasons, I recommend that Clause 3 of the Bill be amended by deleting the expression “the 15th January, 2008” and substituting therefor the expression “the 1st January, 1993”.

CLAUSE 4:

Section 4(1)(b) of the Presidential Retirement Benefits Act, 2013, which Act appears to have largely informed the content of this Bill, specifies active engagement in the activities of any political party as one of the circumstances under which the benefits under the Act may be forfeited. Section 6(1) of that Act further defines such engagement

as holding office in any political party for more than six months after ceasing to hold the office of President. In contrast, this Bill contains no bar from such engagement, which may have been an oversight since, as observed, the content of the Bill appears to be largely based on the Act. Accordingly, I am of the view that Clause 4 of the Bill should be harmonised with the said provisions of the Presidential Retirement Benefits, 2013.

RECOMMENDATION:

For the foregoing reasons, I recommend that Clause 4 of the Bill be amended by adding the following new paragraph immediately after paragraph (c) -

(d) has, since ceasing to hold office, held office in, or actively engaged in the activities of any political party:

Provided that this provision shall come into operation on the date of commencement of this Act.

*Two members disagreed
(Cancelled)
Basire
Sivara*

CLAUSE 5:

✓ Clause 5 (1) (b) of the Bill provides as follows:

“(b) a lump sum payment on retirement, calculated as a sum equal to one and half years’ salary paid for each term served in office”.

This Clause, again, is in contrast with section 5(a) of the Presidential Retirement Act, 2013, which provides as follows:

“(a) a lump sum payment on retirement, calculated as a sum equal to one year’s salary for each term served as President”.

I therefore propose that Clause 5(1)(b) of the Bill be harmonised with the Presidential Retirement Act, 2013. This will result in a significant reduction in Government expenditure on retirement benefits under the proposed law.

RECOMMENDATION:

For the foregoing reasons, I recommend that Clause 5 (1) (b) of the Bill be amended by deleting the words **“one and a half years’ salary”** and substituting therefor the words **“one year’s salary”**.

CLAUSE 7:

Clause 7 (b) of the Bill states as follows:

a lump sum payment on retirement, calculated as a sum equal to one and half years salary paid for each term served in office.

This provision is also in contrast with section 5(a) of the Presidential Retirement Act, 2013, which provides as follows:

“(a) a lump sum payment on retirement, calculated as a sum equal to one year’s salary for each term served as President”.

I therefore propose that Clause 7(b) of the Bill be harmonised with the Presidential Retirement Act, 2013.

RECOMMENDATION:

For the foregoing reasons, I recommend that Clause 7 (b) of the Bill be amended by deleting the words **“one and**

half years' salary" and substituting therefor the words
"one year's salary".

Dated the 27th 9 MAY....., 2015.

A handwritten signature in black ink, appearing to read 'Uhuru Kenyatta', written over a horizontal dotted line.

UHURU KENYATTA,
President.

THE CONSTITUTION OF KENYA
REFUSAL TO ASSENT TO THE CENTRAL
BANK OF KENYA (AMENDMENT) BILL,
2015

MEMORANDUM

By His Excellency the Honourable Uhuru
Kenyatta, President and Commander-in-Chief
of the Kenya Defence Forces.

Submitted to the Speaker of the National
Assembly.

WHEREAS a Bill entitled “A Bill for An Act of Parliament to amend the Central Bank of Kenya Act to enable the public to participate in Government securities through electronic means and lower minimum investment denominations”, the short title of which is “The Central Bank of Kenya (Amendment) Bill, 2015”, was passed by the National Assembly on the 18th February, 2015;

AND WHEREAS the Central Bank of Kenya (Amendment) Bill, 2015, was presented to me for assent, in accordance with the provisions of the Constitution, on the 13th May, 2015;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 of the Constitution, I refuse to assent to the Central Bank of Kenya (Amendment) Bill, 2015 for the reasons set out hereunder:

CLAUSE 2:

Clause 2 (1) of the Bill provides for amendments of section 45 of the Central Bank Act by-

(a) re-numbering the existing provisions as subsection (1); and

(b) inserting the following new subsection immediately after subsection (1) –

(2) Subject to subsection 1 (c), the Bank shall put in place mechanisms to enable the public to participate in Government securities through –

(a) electronic means; and

(b) lower minimum investment denominations”

This provision is, in my considered opinion, not necessary since its purpose can be achieved administratively. The legal framework for payment through electronic means is already in place through the

National Payment System Act and the Kenya Information and Communications (Amendment) Act, 2013. In addition, the lowering of minimum investment denominations is usually done administratively by the Central Bank and therefore this does not need to be legislated.

Indeed, the Central Bank of Kenya is in the process of introducing the Treasury Mobile Direct (TMD), a system which will enable the public to trade in Government securities through electronic means and which will be launched in July 2015. TMD will enable more retail investors to access Government fixed income securities at their convenience and is proposed to have a minimum investment denomination of Ksh 3,000.00 only.

RECOMMENDATION:

In view of the foregoing, I recommend that subsection (2) of the Bill be deleted.

Dated the 27th May....., 2015.



UHURU KENYATTA,
President.