

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

-----  
ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

.....  
REPORT ON THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL,  
2015

CLERK'S CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

NOVEMBER, 2015

## TABLE OF CONTENTS

1.0	PREFACE.....	4
1.1	Mandate of the Committee.....	4
1.2	Committee Membership.....	4
1.3	CONSIDERATION OF THE BILL.....	5
1.4	ACKNOWLEDGEMENT.....	6
2.0	CONSIDERATION OF THE BILL.....	7
2.1	BACKGROUND INFORMATION.....	7
2.2	ENGAGEMENT WITH THE STAKEHOLDERS.....	7
2.2.1	KENYA CHARITY SWEEPSTAKE.....	7
2.2.2	KENYA PRIVATE SECTOR ALLIANCE (KEPSA).....	8
2.2.3	ASSOCIATION OF GAMING OPERATORS OF KENYA.....	8
2.2.4	BETTING CONTROL AND LICENSING BOARD.....	8
2.2.5	THE NATIONAL TREASURY.....	9
3.0	SUMMARY OF THE CONTENTS OF THE BILL.....	10
4.0	COMMITTEE RECOMMENDATION.....	10

## ABBREVIATIONS

KEPSA	-	Kenya Private Sector Alliance
KRA	-	Kenya Revenue Authority
BCLB	-	Betting Control and Licensing Board
AGOK	-	Association of Gaming Operators of Kenya

## 1.0 PREFACE

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 its consideration of the Betting, Lotteries and Gaming (Amendment) Bill, 2015. The Bill was committed to the Committee on 25<sup>th</sup> June, 2015 and it is on the basis of this that the Committee makes this report pursuant to Standing Order 127.

## 1.1 Mandate of the Committee

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) 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) study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) study and review all legislation referred to it;**
- (d) 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) 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) 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) reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

## 1.2 Committee Membership

The Committee was constituted by the House on Thursday 16<sup>th</sup> May, 2013 and comprises 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 ShakeelShabbir Ahmed, MP
7. The Hon. JoashOlum, MP
8. The Hon. Dr. OburuOginga, MP
9. The Hon. Patrick MakauKing'ola, MP
10. The Hon. Abdullswamad Sheriff, MP

11. The Hon. SumraIrshadali, 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 NuruAngwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. LatiLelelit, 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 CONSIDERATION OF THE BILL**

The Betting, Lotteries and Gaming (Amendment) Bill, 2015 was published on 11<sup>th</sup> June 2015 and read a First Time on 25<sup>th</sup> June, 2015 and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration, pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on 26<sup>th</sup> June, 2015 pursuant to Article 118 of the Constitution. The Committee held meetings with the National Treasury, and several stakeholders whose views are captured and contained in the body of the Report.

The Committee held a retreat from 13<sup>th</sup> to 16<sup>th</sup> August 2015 where it met several stakeholders including the following:

- (i) Kenya Private Sector Alliance (KEPSA)
- (ii) Charity Sweepstake
- (iii) Association of Gaming Operators of Kenya
- (iv) The National Treasury

The Committee having held meetings with the various stakeholders and analyzed their views, observed that the Bill seeks to widen the country's tax base by bringing on board the gaming operators of lotteries, gaming and prize competition in Kenya who do not pay tax currently.

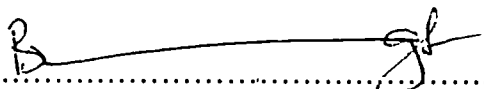
#### 1.4 ACKNOWLEDGEMENT

Mr. Speaker, Sir,

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. 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 made useful contributions towards the preparation and production of this report.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its Report on the consideration of the Betting, Lotteries and Gaming (Amendment) Bill, 2015 pursuant to Standing Order 127.

Signed  Date 12-11-2015

**(HON. BENJAMIN LANGAT, MP)**  
**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING &**  
**TRADE**

## 2.0 CONSIDERATION OF THE BILL

### 2.1 BACKGROUND INFORMATION

The Bill seeks to amend the Betting, Lotteries and Gaming Act (Cap131) to introduce tax to be paid by gaming operators of lotteries, gaming and prize competition in Kenya, who currently do not pay any tax. The various types of taxes proposed in the Bill include:-

- **Betting Tax** chargeable at the rate of 7.5% of the gross betting revenue. This tax shall be paid to the collector by the licensed bookmaker on the 20th day of the month following the month of collection.
- **Lotteries Tax** chargeable at the rate of 5% of the lottery turnover. This tax shall be paid to the collector by the authorized person on the 20th day of the month following the month of collection.
- **Gaming Tax** chargeable at the rate of 12% of the gross gaming turnover. This tax shall be paid to the collector by person carrying on a gaming business 20th day of the month following the month of collection
- **Prize Competition Tax** chargeable on the cost of entry to a competition which is premium rated at the rate of 15% of the gross turnover. This tax shall be paid to the collector by the licensed person by the 20th day of the month following the month of collection.

The Bill further makes it clear that the authorized collector of these taxes will be the Commissioner- General of the KRA appointed under the KRA Act.

### 2.2 ENGAGEMENT WITH THE STAKEHOLDERS

The Committee held a retreat from 13<sup>th</sup> to 16<sup>th</sup> August 2015 in Mombasa to receive and consider stakeholders views on the Betting, Lotteries and Gaming (Amendment) Bill, 2015 among other Bills. This section provides detailed submissions on the Bill by the various stakeholders.

#### 2.2.1 KENYA CHARITY SWEEPSTAKE

The Kenya Charity Sweepstake Ltd is the first and the only Lottery in Kenya. The company has been operating since the inception of betting, lotteries and gaming Act 131 laws of Kenya in 1966.

The Kenya Charity Sweepstake submitted the following:

#### Amendments to clause 4

That clause 4 of the Bill be deleted and replaced therefor with the following new clause-

4. The Betting, lotteries and gaming Act is amended by inserting the following new section immediately after section 44—

44A.(1) A lottery shall be charged a ten percent charge on the gross lottery turnover.

(2) The charge shall be paid to the collector by persons authorized to promote the lottery on the 20<sup>th</sup> day in the month following the month of collection.

*Justification: best practice worldwide is that lotteries are charged at 10% of the gross.*

### **Amendments to clause 5**

THAT clause 5 of the Bill be amended in the proposed new section 55A, in subsection (1) by deleting the words “gross gaming revenue” and substituting therefor the words “gaming taxable value (stakes less winnings)”

#### **2.2.2 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)**

The Kenya Private Sector Alliance (KEPSA) submitted the following:

#### **Clause 4**

THAT clause 4 of the Bill be amended in the proposed new section 44A, in subsection (1), by deleting the words “lottery turnover” and substituting therefor the words “lottery taxable value (bets less(prizes +charity);

*Justification: This will give definitive identity to the precise tax base on lottery.*

#### **2.2.3 ASSOCIATION OF GAMING OPERATORS OF KENYA**

The Association of Gaming Operators-Kenya (AGOK) is the umbrella body that brings together business operators in the gaming industry. It liaises with regulator, stakeholders, interest groups, government departments and agencies both at National and County level to articulate issues that concern the industry.

The association of Gaming Operators submitted the following:

THAT clause 4 of the Bill be amended in the proposed new section 44A, in subsection (1), by deleting the words “lottery turnover” and substituting therefor the words “lottery taxable value (bets less(prizes +charity).

*Justification: This will give definitive identity to the precise tax base on lottery.*



#### 2.2.4 BETTING CONTROL AND LICENSING BOARD

The Betting Control and Licensing Board presented the following to the Committee:-

Betting Control and Licensing Board is mandated under the Act, Cap 131 Laws of Kenya to license and control betting and gaming premises and to authorize public lotteries and for connected purposes. This is aimed at protecting members of the public against fraud; stimulate economic tourism/economic growth; create employment; eradicate illegal gambling; and promote responsible Gambling.

Implementation of existing VAT proposals had presented a myriad of challenges among them being complex in tax administration especially defining gaming as a value added Tax component and applying the use of ETR and also introduction of Withholding tax at 20% on winnings caused difficulties in the criteria or mode of implementing the tax policy since January 2014; no clear implementation strategy was taken into account.

The Bill will go a long way in eradicating the above tax administration challenges and achieve the following:-

- Simplify taxation by avoiding tax systems which are confusing and resulting to inaccurate tax reporting, disputes, litigation. Complex tax system may also allow for evasion by using unintended loopholes to reduce their tax liability.
- Enhance revenue generation model thus achieving economic development
- Regulate and control the industry

To fully address the above challenges, the following definitions should be incorporated into clause 2 of the Bill:

- i. **Gross Betting Revenue:** Means the amount wagered less amount paid for winnings by the players/punters in betting
- ii. **Gross Gaming Revenue :** Means the amount wagered less amount paid for winning by the players/punters in public gaming
- iii. **Gross Lottery Proceeds:** Means the total amount collected or raised in sales by the lottery operator before any deductions are made.

#### 2.2.5 THE NATIONAL TREASURY

In line with Article 114 of the Constitution, the Principal Secretary for the National Treasury through his letter dated 15<sup>th</sup> October 2015, made the following submission on the proposed amendments by the stakeholders:

**(a) Clause 3 - taxation base of bookmakers**

The Principal Secretary informed the Committee that the proposed amendments would massively erode the betting revenue base considering that the payouts would include expenses, winnings and other payments made by bookmakers.

**(b) Clause 4 - taxation base of lottery**

In his submission the Principal Secretary informed the Committee that the proposed amendments by Association of Gaming and KEPSA will massively erode the lottery revenue base. In addition, if the proposal were accepted it would pose an administrative challenge in its implementation.

He further submitted that the intention of the proposed amendment to the Bill was to make the tax collectable as exchequer revenue therefore the Clause remains as in the Bill

**(c) Clause 5 - taxation base of gaming**

The Committee was informed that the proposed amendments would massively erode the gaming revenue base. In addition, if the proposal is accepted it would pose an administrative challenge in its implementation.

**3.0 COMMITTEE OBSERVATIONS**

The table below itemizes the Committee observations arising from its interactions with stakeholders and its own analysis of the Bill:

<b>Clause</b>	<b>Subject</b>	<b>Committee remarks</b>
	Title	Agreed to
2	Defines the collector of the revenue as the "Commissioner General" of KRA	Agreed to
3	Introduces the betting tax chargeable at 7.5% of gross betting revenue	Agreed to
4	Introduces the lotteries tax chargeable at 5% of lottery turnover	Amendment proposed for further discussion with the Cabinet Secretary for the National Treasury
5	Introduces the gaming tax chargeable at a rate of 12% of gross gaming revenue	Amendment proposed on the taxable value gaming tax for further discussion with the Cabinet Secretary for the National Treasury
6	Introduces the prize competition tax chargeable on the cost of entry to a competition which is premium rated at 15% of total gross turnover.	Agreed to

#### 4.0 COMMITTEE RECOMMENDATION

Having held meetings with the Stakeholders, and through its analysis of the Betting, Lotteries and Gaming (Amendment) Bill, 2015 the Committee has consolidated the following amendments for further discussion with the National Treasury pursuant to Article 114 of the Constitution:

##### CLAUSE 4

- a. That clause 4 of the Bill be deleted and replaced therefor with the following new clause-

4. The Betting, lotteries and gaming Act is amended by inserting the following new section immediately after section 44—

44A.(1) A lottery shall be charged a ten percent charge on the gross lottery turnover.

(2) The charge shall be paid to the collector by persons authorized to promote the lottery on the 20<sup>th</sup> day in the month following the month of collection.

**Justification:** international best practice demands that lotteries are charged at a rate of 10% of gross lottery turnover.

- b. THAT clause 4 of the Bill be amended in the proposed new section 44A, in subsection (1), by deleting the words “lottery turnover” and substituting therefor the words “lottery taxable value (bets less(prizes +charity)).

##### CLAUSE 5

THAT clause 5 of the Bill be amended in the proposed new section 55A, in subsection (1) by deleting the words “gross gaming revenue” and substituting therefor the words “gaming taxable value (stakes less winnings)”

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 12/11/2015 TIME 10.00AM

AGENDA MEETING WITH CENTRAL BANK GOVERNOR ON BANKING SUPERVISION; CONFIRMATION OF MINUTES OF 55<sup>TH</sup>, 56<sup>TH</sup>, 57<sup>TH</sup>, 58<sup>TH</sup> & 59<sup>TH</sup> SITINGS

	NAME	TITLE	SIGNATURE
1	Hon Benjamin Kongat	Chairman	
2	Hon. Eng. SR MANGO	Member	
3	Hon. Jones Mbulwa	member	
4	Hon. TIM E. BORING	"	
5	Hon Mary Emaas	"	
6	Hon. Daniel Ebujo Namok	"	
7	Hon. KIRWA STEPHEN BITOK	"	
8	Hon. Anyoga Andrew Toboso	"	
9	Hon Sammy Mwele	"	
10	Hon. Kate Lelele	"	
11	SAKWA BRUNYANI	"	
12	HON. SAMMY MWAITA	"	
13	Hon. Abdul Kahim DAWOOD	"	
14	Hon ROOSE NYAMUNGA	"	not
15	SHAKEL SHABBIR	"	
16	Hon. Dr. Obwaroginga	"	
17	Hon. Kusai Inigo	"	
18	Hon Joseph K. King	"	
19	Hon Patrick Makau	"	
20	Hon Nelson Gachui'a	V/Chair	
21	Hon JIMMY ANAWENI	member	
22	HON DENNIS WAWERU	member	
23			
24			
25			
26			
27			
28			
29			

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE	TIME	12:00 (NOON)	
AGENDA			
13/10/2015			
CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON THE EXCISE DUTY BILL, 2015 & ADOPTION OF REPORTS ON BILLS BEFORE THE COMMITTEE			
NAME	TITLE	SIGNATURE	
1 Hon Benjamin Lungu	Chair		
2 Hon Nelson Gaidime	Y/Chair		
3 Hon. Sunny Mwata	Member		
4 Hon Rose Nyamungu	Member		
5 Hon. James Mbulwa	"		
6 Eng S.R MANGA	"		
7 Hon. Jimmy Aramweni	Member		
8 Hon RONALD TONDI	"		
9 Hon. A. RAHIM SAWOOD	"		
10 Hon Patrick Mwakazi Kiyaga	"		
11 Shakeel Shabbir Ahmed	"		
12 Hon Mary Emeaso	"		
13 Hon Joseph LIMO	"		
14 Hon. SAKWA T. BUNYIA	"		
15 Hon. T.M.E. FOSHE	"		
16 Hon. Joseph Oluo	"		
17 Hon Ismael Sumra	"		
18 Hon. Antanga Andrew Toboso	"		
19 Hon. A.S. NASSU	"		
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			

**MINUTES OF THE 56<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 13<sup>TH</sup> OCTOBER, 2015 IN CPA ROOM, PARLIAMENT BUILDINGS AT 12:00 (NOON)**

---

**PRESENT**

- |                                    |                         |
|------------------------------------|-------------------------|
| 1. Hon. Benjamin Langat, MP        | <b>Chairperson</b>      |
| 2. Hon. Nelson Gaichuhie, MP       | <b>Vice-Chairperson</b> |
| 3. Hon. Sammy Mwaita, MP           |                         |
| 4. Hon. Jimmy NuruAngwenyi, MP     |                         |
| 5. Hon. Ogendo Rose Nyamunga, MP   |                         |
| 6. Hon. ShakeelShabbir, MP         |                         |
| 7. Hon. Eng. Shadrack Manga, MP    |                         |
| 8. Hon. Anyanga Andrew Toboso, MP  |                         |
| 9. Hon. Ronald Tonui, MP           |                         |
| 10. Hon. Mary Emase, MP            |                         |
| 11. Hon. SumraIrshadali, MP        |                         |
| 12. Hon. Patrick MakauKing'ola, MP |                         |
| 13. Hon. Joseph Limo, MP           |                         |
| 14. Hon. Jones Mlolwa, MP          |                         |
| 15. Hon. Sakwa John Bunyasi, MP    |                         |
| 16. Hon. JoashOlum, MP             |                         |
| 17. Hon. Timothy Bosire, MP        |                         |
| 18. Hon. Abdul Rahim Dawood ,MP    |                         |

**ABSENT WITH APOLOGIES**

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Daniel Epuyo Nanok, MP
4. Hon. Lati Lelelit, MP
5. Hon. Kubai Iringo, MP
6. Hon. Sammy Koech, MP
7. Hon. Tiras Ngahu, MP
8. Hon. Sakaja Johnson, MP
9. Hon. Kirwa Stephen Bitok, MP
10. Hon. Dennis Waweru, MP
11. Hon. Abdullswamad Shariff, MP

**IN ATTENDANCE**

- |                         |   |                                 |
|-------------------------|---|---------------------------------|
| 1. Mr. Micheal Karuru   | - | Deputy Director, Legal Services |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant           |
| 3. Mr. Fredrick Otieno  | - | Third Clerk Assistant           |

4. Ms. Annsettah Gacheri - Research Officer
5. Ms. Doreen Karani - Legal Officer

#### **MIN.NO. DCF/238/2015: PRELIMINARIES**

The Chairperson called the meeting to order at 12:30pm followed by a word of prayer. He further reminded Members that the Committee had following pending business:

**i) 4 bills that have already gone through first reading**

- The Public Finance Management (Amendment) Bill, 2015
- The Tax procedures Bill, 2015
- The Betting, lotteries and Gaming (Amendment) Bill, 2015
- The Miscellaneous Fees and Levies Bill, 2015

Considering that the Committee had considered all the above Bills and tabled a report on the Tax Procedures Bill, the Secretariat was asked to urgently process reports on the remaining Bills (public Finance Management Amendment Bill, Betting, Lotteries and Gaming Amendment Bill, and the Miscellaneous fees and levies Bill) and attach consolidated amendments for tabling by the Chairman the following day. Consolidated amendments to the above Bills will only be considered for adoption once comments on the same have been received from the Cabinet Secretary for the National Treasury in line with Article 114.

**ii) 6 legislative proposals for prepublication scrutiny**

- Inclusive growth and coordination bill, 2015
- Tobacco control (Amendment) bill, 2015
- Parliamentary pensions (Amendment) Bill, 2015
- 2 Banking (Amendment) Bills, 2015
- Equalization Fund Bill, 2015

On legislative proposals, it was noted that the Committee has met with most of the sponsors and received comments the Attorney General, Kenya Law Reform Commission and Commission on Implementation of the Constitution. The Secretariat was asked to invite the remaining sponsors to brief the Committee when it next sits.

**iii) 6 petitions**

- degazettement of Legal Notice No.103(2) by Hon. Meruaki, MP
- Privatization of Muhoroni Sugar Factory by Hon. Kemei
- Amendment of the Constitution by Joel Kiprop
- Images on Kenyan currency by Mr. Muchiri
- Amendment of the Accountants of Kenya Act by Mr. Kariuki Musa

- Operationalization of Consumer protection Act by Cofek

**MIN.NO. DCF/239 /2015: CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON EXCISE DUTY BILL, 2015**

Mr. Michael Karuru, Deputy Director Legal Services, informed the Committee as follows regarding the Presidential Memorandum:

- The President had expressed reservations on part 1 of paragraph 1 of the First Schedule of the Bill and consequently recommended amendments to various items in this schedule relating to fruit juices, cigarettes, motor vehicles and motorcycles.
- Article 115 (1) offers the President a limited role in the legislation, that is; assent or referral of a Bill to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.
- The Standing Order 154 requires the National Assembly to consider the President's reservations within 21 days. The amendments by a Committee or an individual Member that have the effect of fully accommodating the presidents reservations will not attract two thirds requirement for passage and only Clauses of the Bill that have reservations will be considered.

**Committee Concerns**

- i) The Committee noted that the President has a limited legislative role under Article 115. However the referral of a Bill with effect of reverting it to the original format as it was presented to the house in effect raises the voting threshold for passing Bills.
- ii) The Legislative power of Parliament is constitutionally enshrined under article 94 (5) and its power exercised under Article 109 (1) through Bills passed by Parliament and assented by President.
- iii) There is worrying trend of the executive usurping Parliament's legislative powers. Members should therefore be firm and reclaim what is rightly hers.

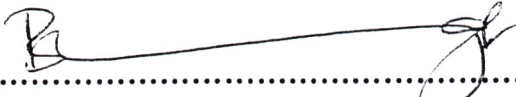
**Committee's Resolution**

The Committee resolved to make a statement on the floor of the House regarding the President's Memorandum on the Excise Duty Bill, 2015 highlighting the following:

- Due process was followed in passing the bill
- Undermining of Parliament's legislative mandate by the Executive.
- The Committee disagrees with all the President reservations.
- Seek support of all Members of Parliament in rejecting the President's recommendations

**MIN.NO. DCF/240/2015: ADJOURNMENT**

The Chairperson adjourned the meeting at 1.30 pm

Signed..........date.....12-11-2015.....  
 Chairperson



