

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE MISCELLANEOUS FEES AND LEVIES BILL, 2015

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2015

v. 29.

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ABBREVIATIONS

EAC	-	East African Community
EACCMA	-	East African Community Customs Management Act
E&P	-	Exploration and Production
FoB	-	Free on Board
IDF	-	Import Declaration Form
KAM	-	Kenya Association of Manufacturers
KEPSA	-	Kenya Private Sector Alliance
KG	-	Kilogram
TAK	-	Tanners Association of Kenya
KRA	-	Kenya Revenue Authority
PSC	-	Production Sharing Contract
PwC	-	PriceWaterHouseCoopers
RDL	-	Railway Development Levy

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 Miscellaneous Fees and Levies Bill, 2015. The Bill was committed to the Committee on 25th 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 16th 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 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. Sumra 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 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 Miscellaneous Fees and Levies Bill, 2015 was published on 11th June 2015 and read a First Time on 25th 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 26th June, 2015 pursuant to Article 118 of the Constitution. The Committee also met 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 13th to 16th August 2015 where it met several stakeholders including the following:

- (i) Kenya Association of Manufactures (KAM)
- (ii) Price Warehouse Coopers (PwC)
- (iii) Kenya Private Sector Alliance (KEPSA)
- (iv) Tanners Association of Kenya (TAK)
- (v) The National Treasury

The Committee having held meetings with the various stakeholders and analyzed their views, observed that the Bill has been necessitated by the need to anchor into legislation the provisions for charging various miscellaneous fees and levies such as Export Levy, Import Declaration Fee (IDF), and Railway Development Levy which are currently anchored in the Customs and Excise Act (Cap 472) which will stand repealed by enactment of the Excise Duty Bill, 2015. Majority of the Stakeholders pointed out that

the Fees and Levies charged on IDF within the EAC should be harmonized (clause). KEPSA and PWC also submitted that the Exploration and Production companies should be exempted from paying RDL and the 2% of the IDF. The Committee is considering all the stakeholder views with a view to introducing appropriate amendments during the Committee of the Whole House.

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 Miscellaneous Fees & Levies Bill, 2015 pursuant to Standing Order 127.

Signed B. Langat 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 principal object of the Miscellaneous Fees and Levies Bill, 2015 is to provide the legal basis for the continued imposition of duties, fees and levies on imported and exported goods and for connected purposes. The Bill is necessitated by the need to anchor in legislation the provisions for charging Export Levy, Import Declaration Fee and the Railway Development Levy which are currently in the Customs and Excise Act (Cap 472) that upon enactment of Excise Bill, 2015 will be consequently repealed. The repeal of the Customs and Excise Act (Cap 472) implies that the Railway Development Levy, Export Levy and Import Declaration Fees will have no legal basis charged since they do not fit in the Excise Bill, 2015.

Currently, Export levy, Railway Development Levy and Import Declaration Fees that constitute the Miscellaneous Fees and Levies Bill are contained in the Customs and Excise Act (Cap 472). In the principal Act, the prevailing rates for the fees and levies are; Export levy is charged at 20% of the customs value, Import Declaration Fees at 2.25% of the customs value and the Railway Development Levy at 1.5% of customs value.

The East African Community Customs Management Act, 2004 also has provisions touching on Export levy and Import Declaration Fees. Currently, hides and skins attract an Export Levy rate is 20% under the Customs and Excise Act (Cap 472) whereas under EACCMA, 2004, it is either 80% of the Customs Value or USD 0.52 per Kilogram, whichever is higher. The proposed change will therefore lead to harmonization of the export levy.

The three categories of fees and levies constitute taxes on International Trade and transactions and have registered performance trend as indicated in the table 1:

Category/Period	2013/2014 Actual Receipts	2014/2015 Revised Estimates	2015/2016 Estimates
Export Levy	67,851	77,048	82,497
Import Declaration Fees (IDF)	26,678	27,640	32,210
Railway Development Levy(RDL)	19,455	22,922	25,672
Total Miscellaneous Fees & Levies	113,984	127,610	140,379
Total Ordinary Revenue	927,006	1,070,515	1,254,867
% Contribution of Miscellaneous Fees and Levies	12.30%	12.00%	11.20%

Data Source: National Treasury (Estimates of Revenues, Grants and Loans 2015/2016 Financial Year)

The Fees and Levies referred to under the Bill are Export levy (20% and 80% of the customs value or US Dollar 0.52 per Kg as indicated in the First Schedule of the Bill; Railway Development Levy (1.5% of the customs value); and Import Declaration Fees (IDF) at 2 % of customs value.

The imposition of the Miscellaneous Fees and Levies seek to harmonize the charges as much as possible with the East Africa Community member states as per Clause 6, 9, 10(2) of the Bill.

Railway development Levy has registered good performance since its inception in 2013/14. Being chargeable on imports for home use. The rate remains unchanged at 1.5% of customs value of goods imported for home use.

Inflation-linked Indexation of the export duty rates will be annually done. This is to adjust the rate accordingly to factor in the annual average inflation rate –Clause 5(4) and Part III of First Schedule.

2.2 ENGAGEMENT WITH THE STAKEHOLDERS

The Committee held a retreat from 13th to 16th August 2015 in Mombasa to receive and consider stakeholders views on the Miscellaneous Fees and Levies Bill, 2015 among other Bills. This section provides detailed submissions on the Bill by the various stakeholders.

2.2.1 KENYA ASSOCIATION OF MANUFACTURERS (KAM)

The following is a summary of the issues raised by Kenya Association of Manufacturers (KAM) on the Miscellaneous Fees and Levies Bill, 2015:

Clause 7 (2): Import Declaration Fee

Issue: The import declaration fee for Kenya has been set at two percent (2% CIF) while Tanzania and Uganda charges an IDF of 0.8% on Free on Board (FOB). This makes Kenya imports more expensive.

Proposal: - Reduce the rate to 0.8% FOB

Justification: This is to harmonize the IDF rate with other EAC countries. Where raw materials are 0% duty and/or zero rate, then IDF should be zero to boost manufacturing in the country.

2.2.2 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

The following is a summary of the issues raised by the Kenya Private Sector Alliance (KEPSA) on the Miscellaneous Fees and Levies Bill, 2015:

(a) Clause 7 on Import Declaration Fee:-

Issue: Charging import declaration fees on Oil and Gas exploration companies

Proposal: Exempt oil & gas companies from IDF in line with provisions of the Production Sharing Contracts (PSC).

Justification: Imports by exploration and petroleum companies are exempt from duties under the provision of the East African Community Customs Management Act (EACCMA) and the PSC. Duties as defined in the Production Sharing Contracts (PSC) and EACCMA to include levies such as IDF. Petroleum operations require significant imports which are primarily acquired through service contracts and are re-exported on completion of the service. The imposition of IDF results in increase in cost.

(b) SECOND SCHEDULE

THAT the Second Schedule be amended-

(i) in Part A by inserting the following new paragraph immediately after paragraph (xx)-

“(xxi) goods destined for approved exploration and production companies in the oil and gas sector.”

(ii) in Part B by inserting the following new paragraph immediately after paragraph (iv)-

“(v) for goods destined for approved exploration and production companies in the oil and gas sector.”

Justification: Imports by exploration companies are exempt from duties under the provision EACCMA (East African Community Customs Management Act) and the PSCs (Production-Sharing Contracts). Duties as defined in the PSC and EACCMA include levies such as import declaration fee. Petroleum operations require significant imports which are primarily acquired through service contracts and are re-exported on completion of the service. The imposition of import declaration fees results in increase in costs

2.2.3 PRICE WATERHOUSE COOPERS (PWC)

The following is a summary of the issues raised by Price WaterHouse Coopers (PwC) on the Miscellaneous Fees and Levies Bill, Bill, 2015

Clauses 7 (2) and 8 on Import Declaration Fees and Railway Development Levy on Oil and Gas Companies

Issue: Goods imported by Oil and Gas and Power sector companies are subject to Import Declaration Fee (“IDF”) and the Railway Development Levy (RDL)

Proposal: Exemption of Oil and Gas and Power sector companies from payment of IDF when importing or purchasing goods and RDL.

Justification: This is in line with the government’s initiatives aimed at attracting investment into this sector and reducing the costs of doing business.

2.2.4 TANNERS ASSOCIATION OF KENYA (TAK)

Through its memorandum to the Committee, the Tanners Association of Kenya submitted that export levy of 80% or USD 0.52 per kg on various hides and skins (raw and semi-processed, tanned or crust etc) was too high. TAK indicated that this levy will adversely affect the growth of the leather industry and undermine the gains and achievements made by the Government through the Finance Act, 2012 which imposed export tax of 80% on raw hides and skins and removed export tax on semi-processed hides and skins, leather and leather products to encourage growth of the leather industry. Imposition of the export levy will discourage value addition to hides and skins and increase export of raw hides and skins causing collapse of the leather industry, loss of thousands of jobs and loss of revenue to the government.

Due to the forgoing, TAK proposed exemption of raw hides and semi processed hides of various codes from the export levy of 80% of USD 0.52 per kg as indicated below.

FIRST SCHEDULE

That the First Schedule Part I be amended by deleting Tariff Numbers 4101.19.00, 4105.10.00, 4105.30.00, 4106.21.00, 4106.22.00, 4106.31.00, 4106.32.00, 4106.40.00, 4106.91.00, 4104.11.00, 4104.41.00, 4104.49.00 and 4106.92.00 and their corresponding descriptions

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 15th October, 2015, had the following comments on the proposed amendments by the stakeholders:

(a) Proposed amendments to clause 7 on import declaration fees

The National Treasury does not support all the proposed amendments (KAM, PWC, KEPSA) on import declaration on the grounds that Cost Insurance Freight (CIF) value unlike Free on Board (FOB) value is determined under the fourth schedule of the EAC Customs Management Act. FOB value is therefore subjective and will be difficult to administer as importers and KRA will have different values for the same import.

(b) Proposed amendments to the First Schedule on export levy on hides

The National Treasury concurs with the amendments from the Kenya Tanners Association so that the value added leather should not be subjected to export levy. Further, the proposal is consistent with the existing export duty rates on hides and skins under the fourth schedule to the Customs and Excise Act Cap 472

(c) Proposed amendments to the second schedule on import declaration fees for oil exploration companies

The National Treasury opposed the proposed amendments indicating that except for accredited organizations and foreign missions who are exempt by virtue of Vienna Convention and the Privileges and Immunities Act, IDF is payable on all imports. Exempting oil and gas sector from IDF will open a flood gate for requests from other sectors of the economy.

3.0 SUMMARY OF CLAUSE BY CLAUSE ANALYSIS OF THE BILL

The following section provides clause by clause review and observations

Clause	Highlights	Remarks
PART I : PRELIMINARY		
1.	Provides for a short title of the Act	The title is proper.
2.	Provides for interpretation of terms and phrases used in the Bill	The terms and phrases in the Bill are clearly interpreted
PART II: ADMINISTRATION		
3.	Sets out the Functions and Powers of the Commissioner and other Officers	The functions and powers are well provided
4.	Outlines the powers of authorized officers	Authorized officers to have powers of police officers to make them effective in carrying out the provisions of the Act.
PART 111: IMPOSITION OF LEVIES OR FEES		
5.	Provides for the imposition of export levy	Legally establishes the export levy. It also provides for the basis of charging (rates and time it is due)
6.	Gives provisions for exemption	Exonerates goods exported to the East African Community Partner States from being charged export Levy
7.	Import Declaration Fee(IDF)	Establishes the IDF , sets out rate at 2% of customs value of imported goods for home use, provides for the exemptions and the timing when the IDF is

		payable. There is need to harmonize rate with EACCMA
8.	Establishment of Railway development levy	Sets the rate at 1.5% of customs value of imported goods for home use for the purpose of raising funds for construction of standard gauge Railway.
9.	Application of East African Community Customs Management Act,2004	Provisions in the Act are applicable in determination of value of imported goods, collection and enforcement of the payment of Import Declaration Fee, Railway Development Fee and Export Levy
10.	Provides for the usage of information technology in the customs computerized system	Formalities or procedures under the Act may carried out by information technology
PART IV: MISCELLANEOUS PROVISIONS		
11.	Offence and penalty	Provides that any contravention to the Act is an offence attracting a penalty of not exceeding Ksh.500, 000 or imprisonment not exceeding 3 years or both.
12.	Provides for the making of regulations	The Cabinet Secretary to make regulations of the Act. However, no timeline for doing this is given nor approval of the regulations by National Assembly is provided for.

SUMMARY OF THE SCHEDULES

FIRST SCHEDULE (S.5(1)-		
PART I:GOODS SUBJECT TO EXPORT LEVY		
1.	Gives tariff Numbers, description and respective export levy rates	Rate on raw skins and hides harmonized at 80% or USD 0.52 per Kg with EAC Partner states (whichever is higher) to deter smuggling. The scrap metals to be charged
PART II		
	Exempts exports to Export Processing Zones from being charged export levy as indicated in Part I above	This is to give tax incentive to EPZ
PART III		
1.	Provides for the inflation linked indexation	This is to factor the erosion of money value over time
2.	Provides for formula for computing adjustments of levy duty at every beginning of the year	This is prudent but inflation needs to be contextualized by reference to Kenya National Bureau of Statistics (KNBS).
SECOND SCHEDULE		
Part A		
	Provides for goods Exempt from Import Declaration Fees when Imported or Purchased Before Clearance through Customs	The exemptions are in line with other tax legislations
Part B		
	Provides for goods Exempt from Railway Development Levy when Imported or Purchased Before Clearance through Customs	The exemptions are in line with other tax legislations

5.0 COMMITTEE RECOMMENDATION

Having held meetings with the Stakeholders, and through its analysis of the miscellaneous Fees and Levies Bill, 2015 the Committee is in the process of considering appropriate amendments for possible introduction during the Committee Stage of the Bill.

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 55TH, 56TH, 57TH, 58TH & 59TH SITTING

	NAME	TITLE	SIGNATURE
1	Hon Benjamin Longat	Chairman	
2	Hon Eng SR Mungo	Member	
3	Hon. Jones Mbulwa	member	
4	Hon. TIM E Boring	"	
5	Hon Mary Ennaso	"	
6	Hon. Daniel Eruyo Nankok	"	
7	HON. KIRWA STEPHEN BITEK	"	
8	Hon. Anyaga Andrew Tobeso	"	
9	Hon Sammy Mwele	"	
10	Hon. Kate Kelet	"	
11	SAKWA BUNYASI	"	
12	HON. SAMMY MWATA	"	
13	Hon. Abdul Rahim SAWOOB	"	
14	Hon ROSE NYAMUNGA	"	
15	SHAIKEEL SHABBIR	"	
16	Hon. Dr. Oburu Gisinga	"	
17	Hon. Kusai Iningo	"	
18	Hon Joseph K. Kimu	"	
19	Hon Patrick Makau	"	
20	Hon Nelson Gachuki	Chair	
21	Hon JIMMY ANAWENI	member	
22	HON DENNIS WAWERU	member	
23			
24			
25			
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DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 13/10/2015 TIME 12:00 (Noon)

AGENDA 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	Chair	
3	Hon. Sammy Mwata	Member	
4	Hon Rose Nyama	Member	
5	Hon. James Mbulwa	"	
6	Eng S.R Mangu	"	
7	HON. Jimmy Amweni	Member	
8	HON RONALD TONDI	"	
9	Hon. A. RAHIM SAWOOD	"	
10	Hon Patrick Mwaki Kiya	"	
11	Shakeel Shabbir Ahmed	"	
12	Hon Mary Emeaso	"	
13	Hon Joseph Lino	"	
14	Hon. SAKWA J. BUKIYA	"	
15	Hon. T.M.E. GOSINE	"	
16	Hon. Joseph Oluon	"	
17	Hon Issah Samra	"	
18	Hon. Antanga Andrew Toboso	"	
19	Hon. A.S. NASSU	"	
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**MINUTES OF THE 56TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE, PLANNING & TRADE HELD ON TUESDAY 13TH OCTOBER, 2015 IN CPA
ROOM, PARLIAMENT BUILDINGS AT 12:00 (NOON)**

PRESENT

- | | |
|------------------------------------|-------------------------|
| 1. Hon. Benjamin Langat, MP | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | Vice-Chairperson |
| 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. Anncettah 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..........
Chairperson