


**PARLIAMENTARY REFORM IN THE KENYA
PARLIAMENT SINCE 1963:
AN OVERVIEW**



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*If I have seen further
it is by standing upon the shoulders of Giants.*

Isaac Newton (1642 - 1727)



PARLIAMENTARY REFORM IN THE KENYA PARLIAMENT SINCE 1963: AN OVERVIEW

1.0 INTRODUCTORY BACKGROUND

Example of the British Parliament at Westminster

1.1 The known history of Parliament as practiced in the prevailing processes of governance hinge on the experiments of such process at Westminster. This remains the standard bearer notwithstanding the modifications infused by the development in human civilization. A cursory review of the evolution of Parliament and governance would quickly reveal that the Parliament arrived long after the Executive arm of Government was in place and functioning. Indeed, it is documented that the origins of Parliaments lay in the necessity for the Executive (read British monarchy) to legitimize the heavy Taxation it levied from the people to sustain its Government. At that point in time it was the Monarch / Executive in need to coax the commoners into supporting his needs; thus the relationship was by all standards friendly though tilted heavily in favour of the Executive.

1.2 In the course of time, the fledging Parliament at Westminster through thick and thin and with occasional courage and manipulation of the Monarch were able to attain irreversible status of legitimate existence. Thanks to the ever

rising costs, both material, human and moral which seemed to perpetually make the Monarch dependent on the proceeds from taxation to sustain his expansionist expeditions and wars for empire building. As long as the monarchs saw the rationale to wage the wars they could not resist the need to call upon the representatives of the people to sanction the ever growing levels of taxation and huge armies.

1.3 However, as creation of necessity and at the "invitation" of the Executive, the Parliament appear to have occupied a legitimate status but inferior to that of the Executive. Hence, as it was at Westminster, it was and has continued to be the norm for the Executive to not only provide for the operations of the Parliament but to set the limits of such provisions. This has been done over the centuries with such unparalleled subtle perfection that the House of Commons at Westminster came to embrace it as a way to operate. Indeed, the House of Commons has been often described as chronically unwilling to reform its procedures.

Every attempt made by some recalcitrant Members to effect reforms, however minute and in whatever aspect of the House of Commons, were always shot down.

1.4 This trend of affairs soldiered on at Westminster from one century to another. The situation was not made any better with the firm introduction of the parliamentary parties in the first quarter of the last century. The arrival of the firm transaction of parliamentary business through the influence of political parties "usual channels" meant that the wielders of power and authority to govern were now the majority party in the Parliament. Ironically, the history of parliamentary parties indicate that once in power, they sung a song diametrically different from what they sang while in the opposition. Examples exist where a party would espouse a particular policy framework while in the opposition and with change of fortunes at an election oppose the same policy once in Government. This see-saw perfected itself in Westminster, occasionally giving way to minimal and inconsequential reforms. And so when as early as 1949, when an Act to reform the voters roll was enacted/effected, its much hoped for change in the composition of the Parliament so as to bring in reform-minded members did not materialize.

1.5 This status was slightly improved by the enactment of the House of

Commons Commission Act of 1978. the changes ushered in by this enactment were insufficient to tilt the balance of power and influence over the operations of the House of Commons towards the House itself. The influence of the Executive remained, though supposedly reduced, but would appear to have shifted posts. However, by tact and persistence the Commons moved their reform agenda forward when in April, 1991, they adopted the recommendations of a committee by Sir Robin Ibbis. The Ibbis Report which, was of a committee constituted by the Commission following prolonged inundation by Members and the public at large on the need for further reforms, vested in the House, the control and responsibility for decision-making and implementation in the management and administration of the facilities and services of the House.

The Colonial Heritage

1.6 This rather lengthy background which draws almost entirely on the evolution of Parliament at Westminster is deemed necessary to underpin why the cry for reforms in Parliament remain elusive to carry through. From the foregoing, I would be appropriately

understood when I say that just as the former British colonies inherited most British institutions of governance, so did they inherit the shortfalls in their operations. It is little wonder therefore that attempts to reform Parliaments in Africa have followed the same track. The hindrances to reform and the manipulations by the Executive and sometimes to the detriment of parliamentarians themselves who have been vocal in opposing such reform have been labeled as radicals, saboteurs and daydreamers not capable of comprehending their very status given that what they call for took the British Parliament over 10 centuries to achieve.

1.7 Given this kind of environment in which most Parliaments in Africa have operated, whatever reforms achieved have been through long and protracted struggles. Yet, it goes without saying that the drive for any reforms, whatever their nature and extent, the onus rests squarely on its Members. Reference to members covers the Presiding Officers who as in the examples of Lok Sabha in India, indicate clearly, the reform agenda stretching as far back as in the 1920s, 1950s was spearheaded by none other than the Speaker of the House. **The Speaker as the servant of the House and the head**

of the legislature must identify with the parliamentary reform movement that seeks to enhance the efficiency of Parliament. A Speaker would be ill-advised to undermine the reforms desired by the members who elect him or her to office.

1.8 No Speaker could ever stand on his own as indeed the once upon a time Speaker of the nascent House of Commons (the Long Parliament 1640 - 1660), William Lenthall in 1642 put it to the belligerent King Charles I when he stormed Parliament to arrest the perennially critical Oliver Cromwell and company that **"may it please Your Majesty, I have neither ears nor tongue to speak in this place but as the House directs whose servant I am."** And therefore, the House or the Parliament desiring reform would be best advised to pursue such agenda as a whole entity involving all members including the Speaker.

2.0 **CRITICAL AREAS OF REFORM**

The reform package should encompass all aspects and needs of the Parliament. In other words, it should be geared at reforming, modernizing and democratizing the entire institution. In a nutshell, this would entail:

- (i) Procedure and practices including, both the codified and the uncodified such as decorum, etiquette, dress-code, design of the structures, record keeping.
- (ii) Operational Mechanisms: management of the House and the Committee proceedings including outreach programmes, accommodation for Members, staff and guests (strangers).
- (iii) Capacity Buildings through systemized training and exposure programmes for the Members and staff by attachments to similar institutions and those offering studies in management and administration.
- (iv) Specific facilities and services for the use of Members, including, support staff in the area of research and information; transport, legal, among others.
- (v) Democratization of the parliamentary environment to make it conducive for effective and efficient delivery of appropriate and necessary services to the electorate. This would usher in a new culture and philosophy which would catapult the Parliament and parliamentarians into worthy representatives.
- (vi) Composition of membership and the electoral process as well as overall public administration.

3.0 STATUS OF PARLIAMENT IN KENYA

3.1 The present Parliament is the Ninth elected since attainment of Independence on December 12, 1963. It is also at the same time, the third since the return of multiparty political dispensation in 1991. Yet, it falls in line with the first Independence Parliament of June 11, 1963 to 28 October 1969 which was multi-party and bicameral.

3.2 However, Parliament has a longer history in Kenya than this. It stretches from the first sitting of the first colonial Legislative Council (LEGCO) on August 17 1906. By independence the colonial LEGCO was in its Tenth Council when it was dissolved to pave way for the first Independence Parliament. Throughout its nearly sixty years of existence the LEGCO made no pretences of being a representative institution of the majority Africans. In retrospect, one would forgive them for indeed the clarion call for its establishment was that, it was to fulfil the inalienable rights of every British citizen "no taxation without representation." Thus, it remained an all white Council which progressively incorporated the Indians and the Arabs only until 1943 when the first African was

nominated to directly represent the Africans. Hitherto, African interests in the colonial Government which included the LEGCO were represented by white clergymen.

3.3 The dismal presence and participation of the Africans in the LEGCO was deliberate and in keeping with the status of the LEGCO. For at that time and until quite recently, every effort appears to have been deliberately made to develop a truly Westminster model in Kenya. The model was exemplified in many aspects including the structure of the Legislative Building, the decorum, etiquette and dress-code of the Speaker and Members. This was crowned by the very meticulous manner in which the procedures were replicated. Indeed, such duplicity or transplant provided a near permanent annexure of the LEGCO to Westminster as was codified in the rules of procedure and related statute which demanded recourse to procedure and practice at Westminster to resolve certain unfamiliar occurrences in the proceedings of the LEGCO.

3.4 In addition to the foregoing, similar transplant was witnessed in the kind of staff and mechanisms

put in place for provisions of facilities and services. For, as it was at the start of the Legislature at Westminster, the Monarch "generously" provided for the staffing in the form of the Chancery Clerk to serve as the Clerk of the Legislature along with the other staff of the Court and so it was with the LEGCO. In addition to controlling its budget, security, accommodation etc. the LEGCO had a similar relationship with the Executive.

3.5 Upon independence, apart from membership or composition of the Assembly where the majority electorate achieved dominant representation, most other aspects of the Parliament were a carry over of the LEGCO. **This status became the immediate concern of the majority African members who progressively felt that they had not achieved their total independence as the remnants of the colonial regime remained prevalent in their midst.**

4.0 THE URGE TO REFORM PARLIAMENT IN KENYA

The urge to reform the parliament in Kenya could easily be seen as the carry over of the nationalist struggle to regain total independence and repudiate

anything inherently colonial and perceived as unnecessary for the emerging status. In that way, one would say that the physical replacement of the colonial governors with the indigenous Africans was ineffectual.

Thus, there was the need to extend that independence to the nitty gritty of the governance process. Be that as it may, the urge for reform remain alive long after independence. That drive for reform may be discussed under various segments.

4.2 THE FIRST PARLIAMENT 1963 - 1969

In our discussion on the reform agenda in the First Parliament we will look at it under the following Subjects.

(i.) Management of Proceedings

(a) The procedure, practice and the entire processes of the working of parliament remained virtually as it was in the Tenth and last Council of the colonial Legislative Council (LEGCO). The Standing Orders as, indeed, the Speaker were a direct carry over of the LEGCO. Speaker Humphrey Salde had assumed speakership in 1960; and was to remain in position until retirement

in February, 1970. Thus it would be asking a lot to have expected him to effect radical or dramatic changes in the procedure he had use and seen applied by previous Speakers since he had become a member in early 1950s.

(b) A cursory look at the Standing Orders and the forms of procedure indicate that by the time the First Parliament was dissolved, in November 1969; little changes had been effected, save for convenient and crisis solving measures meant to address emergencies. For instance, prior to 1964 there was only one functional Committee that was a standing committee. The business of the House was agreed through "usual channels" There was no systematic and predictable process as was to be put in place in the Second Parliament. In a nutshell, the participation of the backbench in the formulation and disposal of the Business was dismal.

(c) The participation of the backbench was limited to reacting and reviewing the Business as set out by the Executive. The provisions that would enable the backbench introduce or indeed make appreciable contributions to the parliamentary process was minimal and often ineffectual. As in the LEGCO where the parliamentary process was ideally for proposals of

the Executive so was the situation in the First Parliament. **That notwithstanding, the indigenous members of that Parliament found themselves entangled in a canopy in which they could not advance proposals geared at serving the interests of their electorate.**

- (d) It is against this backdrop, which was exacerbated by the political maneuvers adumbrated by the ruling elite first to achieve a de facto one party state between 1964 and 1969 and second to abolish the Senate in 1967; in the midst of growing executive dominance and dictatorship. The net effect of this was that, the State and the Government were effectively emasculated and became victims of an Executive averse to the processes of governance that would be in keeping with the popular mandate of the people.

(ii) Management and Administration Of Parliament

- (a) The management and administrative mode of the LEGCO was again as in the above case, carried over to the First Parliament. In brief that style whereby the provision of funding, staff, services and facilities were under the Control of the Office of

The Governor (read the President) continued. Indeed, Members had virtually all their needs e.g payment of allowances, including the preparation of the payment vouchers done and finalized in the Office of the President.

- (b) The same applied to other aspects of the needs of Members and the staff. The levels of the funding and staffing as well as facilities were decided upon arbitrarily and without any tangible reference to the members. As was with the Speaker, the Clerk of the Assembly had served in the Tenth Council his eventual successor in 1996 had joined the staff of the LEGCO in 1962. The first Parliament had a complete carry over of their administrative set up.
- (c) In the midst of growing executive hegemony and the obviously deliberate machinations to complaint legislature, the enlightened and vibrant members expressed their discontent in ways that within time attracted the wrath of the Executive resulting in the discontinuation or maiming their infant political careers. In this way , therefore not much of the expected reform agenda could be achieved as the Parliament lacked the capacity under the burden of an emerging antireform Executive..

4.3 THE SECOND AND THIRD PARLIAMENTS 1970 - 1979

The experience of the First Parliament seems to have not quite lived up to the expectations of the Executive. For no sooner had the Second Parliament (1970 - 1974) settled to business than the voices of reform began to be heard. The agenda was for reform of both the management of proceedings and the administrative set up. Such moves greatly upset the Executive. Nevertheless, and in brief the following changes were attempted and some effected.

- (a) The Executive agreed to establishment of a fully fledged self accounting unit for the National Assembly with the elevation of the Clerk to the status of a Permanent Secretary and Accounting Officer starting July, 1970. However, the National Assembly did not yet have control over the level of staffing, remuneration, funding and facilities. These were still sanctioned by the Office of the President.
- (b) The remuneration for the members of the Assembly had to be decided by a committee appointed by the President. The first such committee was appointed in 1979

chaired by the immediate former Speaker Humphrey Slade. This committee produced a report in which they appear to have constrained themselves to addressing the familiar aspects of mileage, sitting, constituency allowances, salary and nothing more. The report did not address the need for members to have facilities to enhance their capacity e.g. office, research and information. Needless to say with the immediate former Speaker being the Chairperson and the Executive perfecting it's muscle flexing, one would not have expected more. Incidentally the trend set in the Slade Report was to be repeated in the subsequent reports i.e. the Omolo Okero Report of 1984, the Julia Ojiambo Report of 1989 and the Omamo Report , 1992.

- (c) The Standing Orders were amended in 1974 and 1979, the effect being the creation of more committees; the Public Investments, the Implementation, the Sessional and the eight General Purpose Committees; and the creation of the position of the Panel of Chairmen (Assistant Speakers).
- (d) A resolution was adopted by the House calling for the establishment of a Parliamentary Service

Commission in 1972, which would enable Parliament wrest the power to budget and staff the Parliament away from the Executive.

4.4 **FOURH AND FIFTH PARLIAMENTS 1980 - 1990**

The gains made in the preceding Two Parliaments, by and large remained in place though any effort made to augment them did not succeed. The influence and dominance of the Executive over both the State and the Government was near perfection. Indeed, any wavering desires for reform were put to rest as the Parliament and the nation were subjugated to the unlimited and unquestionable power and control of the Executive through all instruments or institutions in the country. For instance, the erstwhile de facto one party was legalized into a de jure one party on June 09, 1982. In our attempt to discuss the dismal achievements of the drive for reform, here below are some of the key developments.

- (a) The resolution of 1972 was not revisited and any attempt to reintroduce it came to no avail.
- (b) The establishment of additional committees did not translate into their operation. The

Implementation Committee was scrapped in 1980, the Public Investments and the General Purpose Committees made false start.

- (c) The management and administrative set up remained intact. The Executive continued to flex its muscle as the case demanded and in the life of these parliaments some key staff were transferred to Central Government and those who remained and appeared reform friendly were kept under close security surveillance.
- (d) The management of the proceedings of the House was almost not in the hands of the presiding Officers and the House. Frequently and as it appeared to serve the interests of the Executive, vital rules of procedure and the law were ignored, exposing prying members to illegal handling including arrest of members within the precincts of Parliament and detention without trial for contributions made in the house.
- (e) The stage for the foregoing had already been set by the manipulation of the electoral process whereby individuals who had not made it at all but were perceived to be pliant to facilitating the agenda of the Executive were declared the winners. A case in

point is the now infamous queue voting system (mlolongu), which was used by the executive to rig elections and distort the electoral process.

4.5 SIXTH, SEVENTH AND EIGHTH PARLIEMENTS 1991 - 2002

The obviously dismal reform gains in the midst of reversions seemed to be seed planted that were to germinate and sprout with unstoppable vigour in the lives of the sixth, seventh and eighth parliaments. In these Parliaments, the increasingly domineering activities of the Executive coupled with deteriorating governance and economic slump, brewed discontent among the electorate. Inevitably, the Parliaments saw little gains in persisting in promoting the agenda of the declining Executive. It responded and spearheaded the fast growing clamour for an all out reform. In effect the following would be the key posts for reform gains of this period.

- (i) On December 10, 1991 the National Assembly enacted a constitutional amendment to reintroduce multiparty political dispensation.
- (ii) Parliamentarians were fully awakened to their roles as representatives of the people as

opposed to being loyal party members. As a result, they were unanimous in pushing an all encompassing reform agenda including the use of non parliamentary processes such as lobbying through the NGO's and civil society, caucus of parliamentarians (Inter Parliamentary Parties Grouping, "IPPG" of 1997). The IPPG was Instrumental at gaining agreements on the short- term and and long term reforms (amendments) to facilitate "level playing grounds" for all parties at the 1997 General Election.

- (iii) There were deliberate use and collaboration between the parliamentarians (outside the confines of procedure) and civil society, development partners, the media and professional bodies, to expose, highlight and sensitize the public on the shortfalls of the then government and at the same time indicate the way forward. The net effect was the fusion and expansion of democratic governance and space.
- (iv) The enhanced collaboration between Parliamentarians and development partners which saw the steady invigoration of the committee system in total and

especially, those mandated to oversight the governance process. The invigoration engaged processes like mounting the capacity building seminars and workshops and exposure trips to similar institutions in North America, Europe, Asia and Africa.

(v) The crescendo of the reform agenda was quickened by the specific steps the house took as follows:

(a) A resolution to establish the parliamentary service commission and the parliamentary service adopted on July 07, 1993. This resolution was, however, not implemented (the Shikuku Resolution). A second resolution for the above was adopted on July 28, 1999(The Aringo resolution). This resolution was followed by the introduction of a Public Bill by the member and the enactment of the Bill into law on November 17, and assented to by the president on November 18, and commenced operation on November 19, 1999.

(c) The parliamentary service commission as duly constituted upon election of its seven backbench members by the house on December 06, 1999 and effectively commenced on 19December 1999.

(d) Under the Act, the Parliamentary Service Commission has a statutory mandate to recruit and fire staff of the Assembly, to budget for and control the expenditure of the National assembly, including independent sourcing for funds from other "Friends of Parliament" for the development of programmes and activities in line with its Strategic Plan (2002 - 2012)

(e) The Parliamentary Service Act was enacted on October 18, 2000. This act facilitates the creation of a service as distinct from other services within the Public Service of Kenya.

(f) Pursuant to provisions of the Constitution of Kenya (Amendment) Act, 1999 No. 3 Of 1999, the Commission promulgated the Rules and Regulations of the Parliamentary Service.

(g) As a part of enhancing outreach of Parliament, the House constituted a select committee to study the need for Audio Visual Broadcasting. In 2000 the report of the committee was subsequently adopted and provision has been made in the 2003 - 2004 Parliamentary Service Commission Budget for its implementation. To further enhance its outreach to the public,

- the Parliamentary Service Commission has ensured the creation of the Public Relation Office in Parliament . This office will help to improve the public perception and understanding of the institution of Parliament
- (h) Pursuant to provisions of the Parliamentary Service Commission Act , the Commission appointed an independent Tribunal to review the terms and conditions of service for the members and the staff. The report of the tribunal was approved by the House and is currently under implementation.
- (i) The Parliamentary Service Commission has published a Strategic Plan (2002 - 2012) which outlines its vision, mission and a series of activities to be undertaken within the reform agenda.
- (j) In keeping within the desires to democratize and enhance the participation of Members in the business of the house, the Commission has, as stated in the Strategic Plan, embarked on capacity building measures including provision of:
- (i) Research and information services and facilities.
- (ii) Enhanced budgetary allocation to enable members hire personal / research assistants.
- (iii) Enhanced budgeting for mounting workshops / seminars on targeted aspects of Parliamentary work overseas and local travel in Kenya for members and staff .
- (iv) Office accommodation for members both at precincts of Parliament and in their constituencies.
- (v) Provision of a specific budget under the Constituency Development Fund to enable Members spearhead development of community based projects at the grass roots / constituency level. This will free Members from the now highly abused Harambee system of resource mobilization for development.
- (vi) Access to information by installation of information technology services (internet, e-mail, fax, personal computers, printing press and a modern resource center.
- (vii) Enhanced welfare packages for members and staff such as creating special fund on pensions, mortgage, transport, medical insurance, health club and sports, a

second members' restaurant including increased parking and security.

5.0 CONCLUDING REMARKS

- 5.2 The Parliament in Kenya has been criticized by Members of Parliaments and the public on several fronts. For example, the backbench members of the house, whether they are in the government or in the opposition, do not have sufficient opportunity to participate and influence the government. This has led to frustration and alienation of the Members and their constituents and loss of respect for Parliament and Parliamentarians.
- 5.2 The authoritarian presidential system undermined all institutions including Parliament. The imperial Presidents manipulated some Presiding officers to block sensitive questions, motions and Private Members Bills raised by Members and this undermined the representative, legislative and oversight functions of the members. The presidential control of the calendar and agenda of Parliament converted the institution into a rubber stamp to legitimize decisions made outside Parliament by the President and the government. This authoritarian centralism was replicated in the management and administration of the National Assembly until the creation of the PSC restored democratic centralism in the administration of the House.
- 5.3 The December 2002 general election in Kenya created a transition and ushered in a new government and Parliament both elected on the reform agenda. The on going constitutional reform also addresses the role of Parliament in a democratic Society. This has provided an opportunity to re-evaluate the standing orders and the practices and procedures of Parliament to strengthen the participation of the backbench members and to balance the right of both government and opposition parties to ensure the effective and democratic management of the legislature.
- 5.4 The beacons and the roadmap to enable the Parliament in Kenya achieve participatory democracy and development are clearly in place.
- 5.5 The outstanding task is to sustain the passion and impetus of actualizing the tenets of parliamentary democracy in its most dynamic form. Towards this end, the Ninth Parliament has already signaled its resolve by

adopting a resolution for the creation of a Parliament Budget Office which in addition to enhancing the oversight capacity of Parliament will pave the way for the enactment of a Budget law. The enactment of the Budget Law will achieve the democratization of power in the country.

- 5.6 The Ninth Parliament must assert its role and control the calendar and agenda of the business of Parliament. The parliamentary calendar should provide for a fixed term for the life of parliament and the date of the general election in the constitution. It should also provide for the sessions of Parliament and the extension of sitting hours for orderly debate on motions, legislation and the budget.
- 5.7 The review of the Standing Orders should seek to fortify the independence and the impartiality of the Speaker in a multi-party Parliament and to create the post of Assistant Speakers elected by the House to assist the Speaker and the Deputy Speaker in the management of the proceedings of the plenary sittings of the House and the Committee of the Whole House.
- 5.8 The Constitution, the laws of Parliament and the Standing Orders

should strengthen the management capacity of the office holders of the Parliament; the Leader of Government Business; the Official Leader of the Opposition; Parliamentary Party Leaders; Parliamentary Service Commissioners; Party Whips. This will lead to devolution and the democratization of power in Parliament and in the country as a whole.

- 5.9 The proposals for parliamentary reforms are timely, moderate and achievable. They require open, free and wide consultation to lay a firm foundation for a parliamentary system of government in a progressive and democratized legislature in which authoritarian rule will be abolished. It is this democratization of power that will ensure that Parliament and the executive government deliver on their constitutional functions and the promises to the people.

THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILL, 2002.



This draft bill provided for the framework calendar within which the National Assembly may regulate its sittings for the orderly and effective discharge of its business. The bill was introduced in the National Assembly and was debated during the second reading on July 25th, August 1st and 8th 2002, and the proceedings are contained in the relevant Hansard Reports.

Some of the provisions of this bill are provided for in the draft constitution of Kenya currently under discussion at the NCC meeting in the Bomas Of Kenya. If the bill is enacted into law Parliament will control its agenda and calendar.

The workshop by members should also discuss the reform of the Standing Orders and consider how to enhance the participation of the backbench majority in the government and in the opposition in the exercise of the democratic control of the business of the House. This will end the frustration of the members and their electorate caused by the Executive domination and control of Parliament.

THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILL, 2002

A bill for An act of Parliament to amend the Constitution of Kenya ENACTED by the Parliament of Kenya as follows:

1. This act may be cited as the constitution of Kenya (Amendment) (No. 2) Act, 2002.
(*Short Title*)
2. The constitution is amended by the repeal of part 3 of chapter 111 and the substitution therefore of the following new part 3:
(*Repeal and replacement of part 3 of chapter 111*).

PART 3

Calendar of Parliament

Summoning and, Adjournment of National Assembly

58. (1) Subject to this Part, each session of Parliament shall be held at such place within Kenya as the National Assembly may appoint.

(2) The sittings of the National Assembly in a session of Parliament shall be held at such time and on such days as may be determined by the Parliamentary Service Commission and approved by the Assembly.

(3) Notwithstanding subsection (2), the National Assembly may by consensus adjourn itself to a specified day other than the normal sitting day:

Provided that where consensus is not obtained the Assembly may adjourn itself as aforesaid by a resolution supported by the votes of a majority of all the members of the Assembly (Excluding the ex-officio members) and not opposed by the votes of more than twenty per cent of all the members of the Assembly (excluding the ex-officio members).

(4) Whenever the National Assembly stands adjourned in a session or Parliament stands prorogued, as the case may be, the Speaker shall at the request in writing of not less than twenty per cent of all members of the Assembly (excluding the ex officio members) convene a meeting of the Assembly on the day appointed and for the purpose specified in the request.

(5) If between a final prorogation of Parliament but before a general election and the first session of the new Parliament an emergency arises of such nature that it is necessary to recall

Parliament, the Speaker shall at the request in writing of not less than sixty five percent of all members of the National Assembly (excluding the ex officio members), convene a meeting of the Assembly on the day appointed and for the purpose specified in the request:

Provided that notwithstanding anything to the contrary appearing in part 2 of this Chapter, any question proposed for decision in the Assembly shall be determined by votes of not less than sixty five percent of all members Assembly (excluding the ex officio members).

*Summoning,
prorogation and
Dissolution of
Parliament*

59. (1) Parliament shall stand prorogued on 30th November in every year and the new session shall commence on the first Tuesday of February in the following year.

(2) Without prejudice to the generality of subsection (1) which relates to normal prorogation, Parliament shall stand finally prorogued on 30th November of the fifth year after Parliament first meets after a general election and all business of the National Assembly shall lapse.

(3) Whenever Parliament stands finally prorogued in accordance with sub section (2), a general election of members of the National Assembly shall be held and the Speaker shall convene the first session of the new Parliament on the first Tuesday of February the following year.

(4) Parliament shall continue for five years from the date when the National Assembly first meets after dissolution and shall then stand dissolved.

(5) At any time when Kenya is at war, Parliament may, by a resolution which is supported by the votes of not less than sixty five percent of all the members of the National Assembly (excluding the ex officio members), extend the period of five years specified in subsection (4) for not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection by more than five years.

59. A. (1) If the National Assembly passes a resolution which is supported by the votes of majority of all the members of the Assembly (excluding the ex officio members), And of which not less than seven days notice has been given in

accordance with the standing orders of the Assembly, declaring that it has no confidence in the Government of Kenya, the president shall thereupon be deemed to have resigned from his office.

(2) Notwithstanding section 6(2), whenever the office of the president is vacant by virtue of subsection (1), the functions of the office shall be exercised:

A) by the Speaker of the National Assembly; or

B) If there is no speaker, or if the Speaker considers that he is for any reason unable to discharge the functions of the office of the president, by such member of the Assembly (not being the minister, an assistant minister or the Attorney General) as the Assembly may elect for that purpose by a resolution which is supported by the votes of a majority of all the members of the Assembly (excluding ex officio members).

(4) Where the Speaker of the National Assembly is exercising the functions of the Office of the President by virtue of subsection (2), the functions of the office of the Speaker shall be exercised by the Deputy Speaker of the Assembly.

(5) No person shall be a candidate for president while he is exercising the functions of the office of the president by virtue of subsection (2).

3. The provisions of the Constitution specified in the first column of the schedule to this act are amended in the manner specified in relation thereto in the second column of the schedule.

SCHEDULE

Provision
Section 5.

Amendment

Delete the words "is dissolved" and substitute therefore the words "stands finally prorogued" in section (3).

Section 6.

Delete paragraph (b) of section (3).

Section 16.

Delete proviso to sub section (2).

Section 17.

Delete paragraph (b) of sub section (4).

Section 19.

Delete the proviso to subsection (1).

Section 193.

Delete the definition of "session" and substitute therefor the new definition:

"Session" means the period beginning when the National Assembly first meets after having been finally prorogued and ending when parliament is prorogued or dissolved after having been finally prorogued.

MEMORANDUM OF OBJECTS AND REASONS

The Bill represents yet another step in the consolidation of the dignity, authority and independence of Parliament.

It establishes a framework calendar within which the National Assembly may regulate its own sittings for the orderly and effective discharge of its business.

The Bill is not rewriting but amending the constitution. Hence, it necessarily adopts the format, language and style of the existing Constitution.

Clause 2 seeks to repeal and replace Part 3 of chapter 111 of the Constitution which relates to the summoning, prorogation and dissolution of Parliament.

Clause 3 refers to a schedule of consequential amendments necessary to harmonize the proposed changes in sections 58 and 59 with the rest of the Constitution. They relate to sections 5,6,16,17,19 and 123.

Henceforward, Parliament will stand prorogued or dissolved and reconvene on a definite date and may be called after prorogation. The National Assembly may also be recalled after an adjournment.

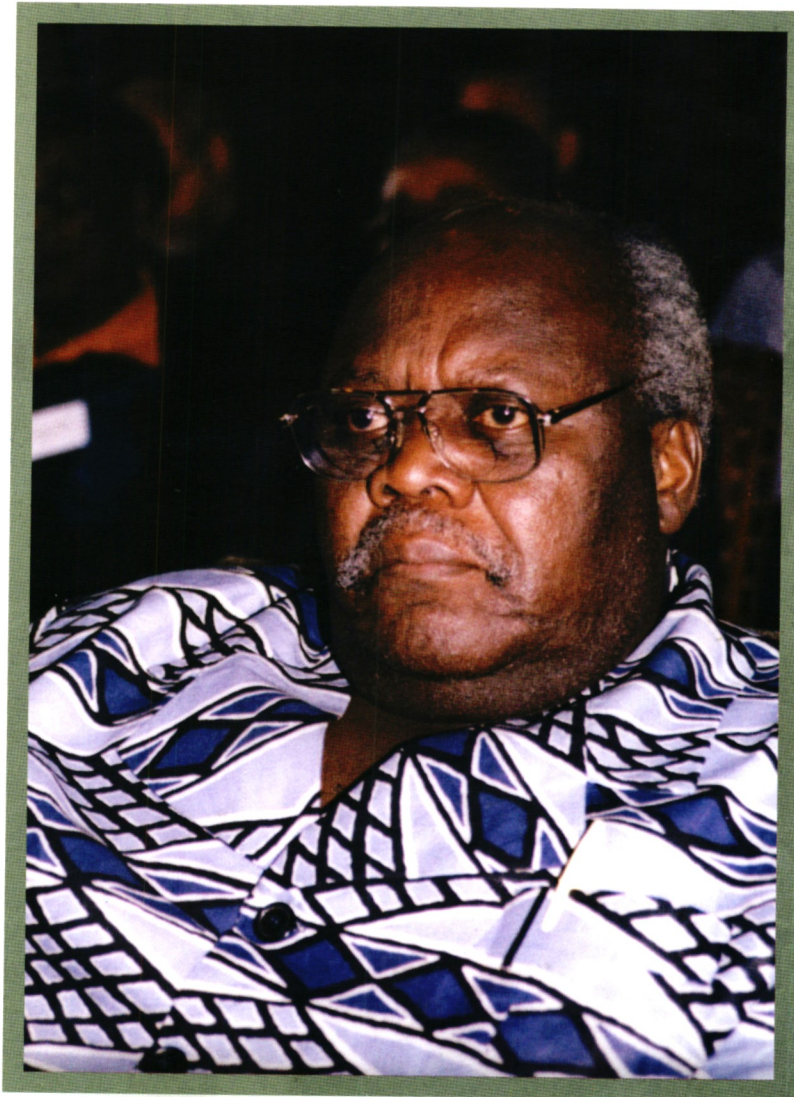
In the event that the President ceases to hold office following a resolution of no confidence in the Government, the Speaker shall exercise the functions of the office of President.

It will be necessary to make consequential amendments to the National Assembly and Presidential Elections Act, Cap. 7, and the National Assembly Standing Orders so as to ensure the symmetry of Parliamentary law.

No additional expenditure of public moneys will be directly incurred by reason of the enactment of this Bill.

Dated the 28th February, 2002.

P.O. ARINGO,
Member of Parliament.



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Peter Oloo
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Hon. Peter Oloo Aringo, E.G.H., M.P.
Vice-Chairman, Parliamentary Service Commission
COUNTY HALL, PARLIAMENT BUILDINGS, NAIROBI, KENYA

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