

**ANALYSIS AND REVIEW OF STANDING ORDERS\***

**BY**

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\* Reference: *National Assembly, Standing Orders* as amended upto and including November 10, 1997; Government Printer, Nairobi.

## INTRODUCTION

The last review of the Standing Orders was done in 1996 and 1997 and they became operational on 10<sup>th</sup> November 1997.

The Standing Orders were implemented during the 8<sup>th</sup> Parliament at the peak of the authoritarian presidential system. The imperial presidency was characterized by the domination and control and the restriction of the freedom of the citizens.

The Constitution and the Standing Orders contained glaring inconsistencies and contradictions whose net effect was to restrict the freedom and independence of the Members and the National Assembly in the exercise of their constitutional powers of representation, legislation and oversight. By the president and the exclusive government controlling the calendar and the agenda of the National Assembly, Parliament became a rubberstamp institution whose role was to legitimize decisions made outside the August House.

Following numerous frustrations in the exercise of their constitutional functions, a caucus of the members of the National Assembly undertook a study and analysis of the Standing Orders. They held several workshops during the 8<sup>th</sup> Parliament in collaboration with the Institute Economic Affairs. This paper is the culmination of their collective endeavors to further democratize the proceedings in the plenary sittings and in the Committees of the House.

The sole aim of the paper is to recommend a review of the Standing Orders to facilitate effective and meaningful debate to enable the National Assembly to make enlightened public policies and legislations and to promote responsible, transparent and accountable government.

This paper is not exhaustive. It does not consider the changes that have been recommended in the draft constitution of Kenya, which is under discussion at the Bomas of Kenya. When the draft constitution is enacted into Law by Parliament, there will be the need to further review the Standing Orders to strengthen the democratic culture and tradition. Not only in Parliament but in the society as a whole.

# ANALYSIS AND REVIEW OF THE STANDING ORDERS

## PART I: INTRODUCTION

### Rationale

*To encourage parties form coalition that will ensure growth of Parliamentary democracy.*

Standing Order 1: No amendment proposed

Standing Order 2: Interpretation

### Amendment proposed

Include Definition;

### Official Opposition Party

Means a party offering to form an alternative government.

### Party

Means a Parliamentary Party consisting of not less than seven members.

## PART II: MEETINGS OF THE HOUSE

*Standing Order 3:* No amendment proposed

*Standing Order 4:* No amendment proposed

*Standing Order 5:* No amendment proposed

*Standing Order 6:* No amendment proposed

## PART III: DEPUTY SPEAKER AND CHAIRMAN OF COMMITTEES

Standing Order 8: No amendment

*Standing Order 9:* No amendment

*Standing Order 10(1):* Chairman's Panel

### Amendment Proposed

Delete the Words "Mr. Speaker shall with approval of the House nominate three members" and substitute "The House shall elect four members (not being ministers) who shall be known respectively as the First, Second, Third and Fourth Chairman of Committees at the commencement of every Parliament".

### Rationale

*The election/Appointment of temporary presiding officers should be by the House to give legitimate authority to them. The House should have powers to appoint those presiding at any of its sittings. Their decisions have direct impact on the functions and operations of the House. Their term should be for the life of parliament to give them continuity and expertise.*

**PART IV: PRESIDENT OF THE REPUBLIC**

*Standing Orders 11 – 16:* No amendment proposed

**PART V: SITTING AND ADJOURNMENT OF THE HOUSE**

*Standing Order 17:* Hours of Sitting

Amendment proposed

The Hours of the House be amended as follows:

Tuesday 9:00 – 12:30 p.m. 2:30 – 6:30 p.m.

Wednesday 9:00 – 12:30 p.m. 2:30-6:30 p.m.

Thursday 9:00 – 12:30 p.m. 2:30 – 6:30 p.m.

*Standing Order 18:* No amendment proposed

*Standing Order 19:* No amendment proposed

*Standing Order 20:* Adjournment on definite matter of National Importance.

Delete 20 (2) and renumber (3) (4) (5) as (2) (3) and (4) respectively.

*Standing Order 20:* The essence of this Standing Order 20 is to facilitate the House deliberate on emergency issues that may come to the House from time to time. By retaining S.O. 20(3) the Speaker has the discretion to guide and at the same time facilitate members raise matters that may be considered of National Importance.

*Standing Order*

**MEMBERS STATEMENTS**

*20 (A) (1)*

Delete 6:30 p.m. – 7 p.m. and insert 3:30 p.m. – 4 p.m.

This amendment will enable members seek statements every Thursday afternoon as opposed to 6:30 p.m. when the House is expected to adjourn.

**PART VI: QUORUM OF THE HOUSE**

**Rationale**

*This amendment will increase the quorum requirement to reflect the increased membership of the House.*

**Standing Order 24: Amendment Proposed**

- (i) Delete 30 members and insert at least 1/3 of all members of the House.
- (ii) Proposed Standing Order 24 (ii) Publication of Members Present/When A Quorum Is Called

As in other Parliaments, the list of members present when a quorum is called shall be published in the votes and proceedings and made available to the public.

**PART VII: JOURNALS AND RECORDS**

**Standing Orders 26-29:** No amendment proposed

**PART VIII: ORDER OF BUSINESS**

**Standing Order 30:** Circulation of Order Paper

No amendment proposed

**Standing Order 31:** Order of Proceedings

- (i) By Adding New 31 (a) (VI) Statements

Ministerial Statements: Before Commencement of Business the House should Provide provision for statements by Ministers of Policy matters. The members will then seek clarifications on those statements. The statements shall be taken between 3:30 p.m.-4 p.m. Leader of Govt. Business – By adding New 31(13) The Leader of Govt. Business shall every Thurs. before commencement of business Inform the House of the Govt. Business of the Week.

**Standing Order 32:** No amendment proposed

**Standing Order 33:** Amendment proposed

Proposed Standing Order 33 (ii)

- (i) Wednesday Morning

Shall be reserved for Private Motions.

- (ii) Thursday Morning

Shall be reserved for the consideration of

**Rationale**

*This is to provide for ministers to give policy statements and afford members an opportunity to question those policies. Currently there is no provision in the Standing Orders and policy statements are regularly given in public rallies or press conferences.*

**Rationale**

*This will facilitate members to prepare for the coming week and the public would be made aware of the business forthcoming.*

**Rationale**

*Private Members Bills will get a slot just like private motions.*

Private Members Bills and in their absence Government Bills will be considered.

**Standing Order 34:** No amendment proposed

**Rationale**

*This standing order should provide for questioning of the Head of Government. This will bring accountability on the part of Parliament as the watchdog of the nation will be enhanced. This practice is universally acceptable throughout the commonwealth.*

**PART 1X: QUESTIONS**

**Standing Order 35:** Be amended to include questions to be put to the President on matters relating to general Government Policies.

Proposed insertion of Standing Order 35(4) to read:

35(4) Questions may be put to the President relating to state affairs and general performance of Government Agencies.

35(5) Questions to the President shall be taken every Tuesday between 3 p.m.-3:30 p.m.

35(6) Questions to the President shall be without notice.

**Rationale**

*The House is entitled to every information it may need to discharge its functions. If the matter is secret then the House can go into Camera and the question is answered in accordance with S.O. 169.*

**Standing Order 37:** Delete S. O. 37(11)

That is "A question shall not seek Information which is in nature Secret.

**Standing Order 38:** No amendment

**Standing Order 39:** No amendment

**PART X: MOTIONS AND AMENDMENTS**

**Standing Order 40-52:** No amendment

**PART XI: DIVISION**

**Standing Order 53-61:** No amendment

**Standing Order 63:** No amendment

**Standing Order 65-73:** No amendment

**Standing Order 74:** Matter that is sub-judice

"To be deleted." This Standing Order has inhibited debate in the House and it is also self limiting. Commonwealth Parliaments such as Australia and Canada have removed it from their statute.

**Standing Order 75-80:** No amendment

**PART XIII: LIMITATION OF DEBATE**

**Standing Order 81:** No amendment

**PART XIV: ORDER IN THE HOUSE AND IN THE COMMITTEE OF THE HOUSE**

**Standing Order 82-93:** No amendment

**Proposed**

**Standing Order 90 (3):**

"A member who is suspended from the sittings of the House shall forfeit all allowances during the period of such suspension.

**Rationale**

*A member who has been suspended from the service of the House should not continue to get allowance during the period of suspension*

**PART XV: PUBLIC BILLS**

**Standing Order 94:** No amendment proposed

**Standing Order 95:** Amendment proposed

**Proposed S.O.95(b)** Proposed proviso to Standing Order 95 to cater for public bills introduced by members other than the Ministers to read as follows:

- (i) A Legislative proposal for which a private member is in charge shall, together with a memorandum on setting out its objectives be submitted to the Speaker.

- (ii) The Speaker shall refer the proposal and the memorandum to the Parliamentary Committee on Legal Affairs.
- (iii) The Committee shall recommend either that the proposal be not proceeded with or that it be accepted.
- (iv) If the Committee recommends that the proposal is accepted and the member in charge of these has complied with the rules regarding the format and style of Bills and memorandum there on, the Bill shall thereof be tabled for the First Reading.
- (v) The proviso of Standing Order 100-115 shall *mutatis mutandis* apply to private members public bills.

**Standing Order 96-100:** No amendment proposed  
**Standing Orders 101-100(1)A:** Amendment proposed

Amendment proposed to delete 1001 (a) (1) and (2) and (3) (4) and (5) to provide all Bills on First Reading shall be Committed to relevant Department Committees.

Proposed New Provisions as:

101 (a) The Committee shall have thirty days to consider the Bill and shall report its recommendations to the House on the thirtieth day.

101 (b) The Committee may make an Interim Report and seek leave to extend its sitting.

101 (c) The House shall have the power to recall any Bill from the Committee at any time it deems necessary.

*Standing Orders 102-115: No amendment proposed*

**PART XVI: PRIVATE BILLS**

*Standing Orders 116-125: No amendment proposed*

**PART XVII: COMMITTEE OF THE WHOLE HOUSE**

*Standing Orders:* No amendment proposed  
*126-131:*

**PART XVIII: SUPPLY AND WAYS AND MEANS**

*Standing Order 132(b)* To be deleted as it is prohibitive and in any case every motion proposed by a member has financial implications.

*Standing Order 133:* To be amended to include Annual Draft Estimates be submitted to the proposed Estimates Committee (Budget Committee) not later than 15<sup>th</sup> April.

*Standing Order 134-135:* No amendment

*Standing Orders 136-140:* Committee of ways and means  
No amendment

*Standing Order 141:* Committee of Supply  
Amendment proposed  
To be amended to provide for the Minister to present estimates to the relevant Departmental Committee.

**Rationale**  
*To ensure that the estimates are subjected to specialized committee scrutiny.*

**Rationale**

*This procedure will empower the Committee to scrutinize more critically the estimates falling within their portfolio.*

*The Ministers will prepare their estimates more thoroughly. Each vote in the estimate will be considered and Parliament's role will be more enhanced and the government will be more accountable.*

**Standing Order 142:**

*Amendment Proposed to include:*

- (i) Ministers to be required to table their annual estimates before their respective Departmental committees.
- (ii) The Chairman of the respective Departmental Committee shall table its recommendations to the House for consideration.
- (iii) Each Ministers shall allocate one allotted day in the House to present the estimates.
- (iv) The House shall consider and approve each vote in the printed estimates.

**SUGGESTED REORGANIZATION OF COMMITTEE OF SUPPLY**

The committee in its present form is not effective and debate tend to be general and not issue oriented. In view of the operations of the Committee system and their role to examine issues in details, there is need to re-examine these Standing Orders more critically. In other parliamentary jurisdictions, Committee of Supply is taken by individual Subject (Departmental) Committees and these Committees are given each a day to present their consideration to the House. In the United States Congress and Germany Bundestag, the Departmental Committees have played this role effectively.

**SUGGESTED AMENDMENTS**

**Standing Orders 141-**

**143:**

To be amended to give each Departmental Committee power to scrutinize votes in their respective areas of oversight. The Ministers to be required to present their votes to the respective Departmental Committees. The Chairman of each Committee to present the Report to the House; the Minister to be allotted a day to present his vote in the House.

The House to consider all votes in the Estimates, (one day each).

The guillotine procedures to be abolished (S. O. 142(7) so that the House is enabled to consider every vote. This procedure where the committee would examine the budget of each ministry will give the House Power to truly authorize expenditure and to take ministers to account.

## **PART XIX: SELECT COMMITTEES**

**Standing Order 145: House Business Committee**

No amendment proposed

Proposed New Standing Committees

Amendment proposed that the following standing orders to be added to Part XIX - Select Committees

### **Proposed**

**Standing Order 146: Budget (Estimates) Committee**

#### **Rationale**

*The current practice on budget scrutiny lacks critical analysis and has turned to be an annual ritual that does not enjoy Members and even public confidence. The Budget (estimates) Committee as proved in other Parliamentary jurisdictions (South Africa, Ghana and Uganda) will bring a productive debate and a critical budget analysis.*

- (i) There shall be a Select Committee to be designated the Budget Committee which shall consist of a Chairman and not less than fifteen other members who shall be appointed at the commencement of every Parliament.
- (ii) The Budget Committee shall examine annual and supplementary estimates of expenditure presented to the House and shall report to the House what, if any, economies, should be made consistent with the proper carrying into effect of the policies implied in or by such estimates.

- (iii) The Budget Committee shall examine draft annual and supplementary estimate of expenditure which the Minister responsible for Finance shall table before the committee at least thirty days before the final estimates are presented to the House.
- (iv) The Budget Committee shall make and present quarterly budgetary returns to the House that will contain such recommendations.
- (v) The Budget Committee shall have powers to appoint sub-committees from among its members to inquire into any matter which it is empowered to examine under the provisions of these standing orders.
- (vi) Every such sub-committee shall submit the result of any such enquiry to the Budget Committee.
- (vii) The Committee shall evaluate tax expenditures, policies, and programmes with direct budget outlays and to report such results and recommendations to the House every quarter.
- (viii) A majority of the Budget Committee members shall constitute a quorum.
- (ix) The Committee shall elect a Chairman and Vice-Chairman, who shall not belong to the same Parliamentary Party.
- (x) In the absence of the Chairman, or the Vice-Chairman, the Committee shall elect one amongst the members to take the Chair.

- (xi) The Chairman or Vice-Chairman shall have not casting vote.
- (xii) The Committee shall establish Budget Secretariat Office, with such officers that are necessary to facilitate the committee discharge its functions. The officers appointed shall be employees of the Parliamentary Service Commission.

**Standing Order 147: Public Accounts Committee**  
No amendment proposed.

**Standing Order 148: Public Investment Committee**  
No amendment proposed

**Standing Order 149: Library Committee**  
No amendment proposed

**Standing Order 150: Speaker's Committee**  
Amendment proposed

Delete S.O 150

To be deleted in view of the establishment of Parliamentary Service Commission which is now in operation and the role of this Committee is now virtually redundant.

**Renumber the current**

**Standing Order 151: Departmental Committees**

To be amended to have the Committees re-organized and focused to reflect their portfolio.

Proposed amendments

- (1) Insert a new section (6) to require each Departmental Committee to make quarterly reports to the House, to read:

(6)(i) "Each Departmental Committee shall submit a quarterly report of the Ministry/Department under its consideration."

(6)(ii) "Each Ministry shall submit quarterly performance report to its responding Departmental committee. Such report shall include statement of expenditure and status of implementation of its stated objectives and programmes."

(6)(iii) Delete 4 (c) to require all Bills to be referred to Departmental Committees without exemptions, to read:

(c) "to study and review all bills after First Reading".

**Standing Order 151(a): Liaison Committee**  
No amendment proposed

**Standing Orders 152-160:** No amendment proposed

**Standing Order 162:** No amendment proposed

**PART XX: PETITIONS**

**Standing Orders 163-164:** Amendment proposed to delete the words:

"the unusual practice of the House of Commons of Great Britain and Northern Ireland". As the Parliamentary System continue to change and as the dynamics of representative institutions change, this reference to Britain and Northern Ireland should be deleted.

*New Standing Order 165:* The proposed amended S.O. 165 to read:

“Every member shall be responsible for the accuracy of facts stated in the Petitions.

*Standing Orders 166-167:* No amendment proposed

**PART XII: STRANGERS**

*Standing Orders 168-170:* No amendment proposed

**PART XIII: GENERAL**

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**END**

**JULY 2003**