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By the Hon. Moses Cheseri
on Tuesday
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[Signature]

REPUBLIC OF KENYA

ELEVENTH PARLIAMENT
(FIFTH SESSION)

THE NATIONAL ASSEMBLY

FIFTH REPORT
OF THE PROCEDURE & HOUSE RULES
COMMITTEE ON AMENDMENTS
TO THE STANDING ORDERS

(Submitted pursuant to Standing Order 264)

Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

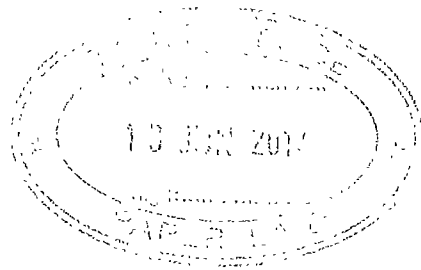
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PREFACE

The Procedure and House Rules Committee established under Standing Order 208 is mandated to, among other matters, “consider and report on all matters relating to the Standing Orders”. The Committee is also charged with the task of proposing amendments to the Standing Orders for consideration by the House. Further, the Committee may, from time to time, propose rules for the orderly and effective conduct of business of Committees.

Further, Standing Order 263 (1) stipulates that ‘*A Member may, with the support of at least fifty other Members, request the Procedure and House Rules Committee to consider an amendment to the Standing Orders,*’ while Standing Order 264 provides that ‘*at least once in every term of Parliament, not later than six months to the end of the term, the Procedure and House Rules Committee shall review the Standing Orders and make a report to the House recommending the Standing Orders, if any, to be amended.*’

Composition of the Committee

The Committee currently comprises of the following Members-

1. The Hon. Justin B. Muturi, EGH, MP - **Speaker of the National Assembly & Chairperson**
2. The Hon. (Dr.) Joyce Laboso, MGH, MP - **Deputy Speaker & Vice-Chairperson**
3. The Hon. Moses Cheboi, , CBS, MP - First Chairperson of Committees
4. The Hon. Rachael Shebesh, MP - Second Chairperson of Committees
5. The Hon. Jessica Mbalu, MP - Third Chairperson of Committees
6. The Hon. Christopher Omulele, MP - Fourth Chairperson of Committees
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. (Dr.) James Murgor, MP
9. The Hon. David Wafula, MP
10. The Hon. Robert Mbui, MP
11. The Hon. Abdikadir Omar Aden, MP
12. The Hon. (Dr.) Isaac Mwaura, CBS, MP
13. The Hon. David Kiaraho, MP
14. The Hon. Oscar Sudi, MP
15. The Hon. Peter Njuguna, MP

16. The Hon. Bare Shill, MP
17. The Hon. Alice Ng'ang'a, MP
18. The Hon. Johnson Many Naicca, MP
19. The Hon. Alice Wahome, MP
20. The Hon. (Dr.) James Nyikal, MP
21. The Hon. Abdullswamad Sharrif Nassir, MP

In order to facilitate the work of the Committee in discharging this mandate, given the limited timelines available, and the need to comprehensively review the entire Standing Orders, the Office of the Clerk established a Taskforce to undertake this review and report back to the Committee.

The Taskforce was to undertake the following functions under its terms of reference:

- (i) Review proposals presented by various Members;
- (ii) Collect and harmonize proposals from other stakeholders;
- (iii) Liaise with Senate colleagues on proposals regarding handling of business between the Houses, and changes to the Joint Rules; and
- (iv) Prepare the actual text for the amendments.

The Task Force was expected to conclude its work and present its Report to the Procedure and House Rules Committee for consideration, and subsequently for review by the House, before the *Sine Die* adjournment scheduled from June 16, 2017.

Composition of the Taskforce

The Taskforce comprised of the following officers:

- | | |
|----------------------------|--|
| 1. Mr. Samuel Njoroge | - Deputy Director, Legislative and Procedural Services(Chair) |
| 2. Mr. Martin Masinde | - Senior Deputy Director, Parliamentary Budget Office |
| 3. Mr. Michael Karuru | - Deputy Director, Legal Services |
| 4. Mr. Peter Chemweno | - Deputy Director, Committee Services |
| 5. Mr. Kipkemoi arap Kirui | - Principal Clerk Assistant I |
| 6. Mr. Rana Tiampati | - Principal Clerk Assistant I |
| 7. Ms. Wanjiru Ndindiri | - Senior Clerk Assistant |
| 8. Mr. Ronald Walala | - Legal Counsel II |
| 9. Ms. Anne Shibuko | - Third Clerk Assistant |
| 10. Ms. Pauline Nyambura | - Secretary |

Proposals reviewed

Pursuant to Standing Order 263, the Taskforce considered proposals to amend the Standing Orders presented on diverse dates by various Members and Directorates and Departments as follows:

1. The Hon. Aden Duale, MP, Leader of the Majority Party, on graduated penalties for disorderly conduct in the House, and the place of the Mace;
2. The Hon. Samuel Chepkonga, MP on the discharge of Members from Committees;
3. The Hon. Wafula Wamunyinyi, MP on the manner of reviewing money Bills by Departmental Committees;
4. The Hon. Patrick Musimba, MP on the introduction of a parallel debating chamber and recognition of independent Members in the definition of a parliamentary party;
5. The Hon. Nicolas Gumbo, MP on improving the oversight capacity of watchdog Committees;
6. The Hon. Janet Nangabo, MP and the Hon. Robert Pukose, MP on establishment of the Catering and Facilities Committee;
7. The Hon. Adan Keynan, CBS, MP on the membership of House Business Committee, the mandates of two Departmental Committees, and the chairing of the watchdog committees;
8. The Hon. Moses Kuria, MP on the merging of some committees, and service of Members in more than two committees;
9. The State Department of East African Community Integration on the mandate of the Committee on Regional Integration;
10. A draft National Policy on Public Participation from the Office of the Attorney General;
11. A Petition from a non-governmental organization, the Devolution Forum regarding enhanced public participation in the legislative process and Parliamentary business;
12. Proposals adopted from a meeting with the Senate Standing Orders Taskforce regarding business conducted between the two Houses and the Joint Rules; and

13. Proposals from various Directorates and Departments: Legislative & Procedural Services, Committee Services, Legal Services, Parliamentary Budget Office and Serjeant-at-Arms.

The Taskforce also considered amendments initiated internally on procedural developments and other issues noted during the life of the current Parliament, and made recommendations on comprehensive changes in its report. Subsequently, the report was adopted by the Taskforce on May 27, 2017, and presented to the Procedure and House Rules Committee for consideration and possible adoption.

The Committee was able to comprehensively review the proposed draft report and text, and make various observations, additions and refinements, before adopting the report for consideration by the House.

The report includes the Committee's deliberations on the proposals presented by various individuals or groups, plus a summary of the proposed changes to the Standing Orders. The Committee minutes are found under **Appendix 1**, while submissions from Members and external institutions are found under **Appendix 2**.

I wish to thank the office of the Clerk for the support accorded to the Committee in facilitating its work. It is therefore my pleasure to present this Report for consideration and adoption by the House.



THE HON. JUSTIN B.N. MUTURI, EGH, MP
CHAIRPERSON, PROCEDURE & HOUSE RULES COMMITTEE

Tuesday, June 13, 2017

CHAPTER ONE: INTRODUCTION¹

1. Standing Orders of a legislative body, also known as rules of procedure, regulate the proceedings of a House and its committees. A synopsis on amendments to the Standing Orders from the Parliament of Canada further states that, the continuing or “standing” nature of these rules means that they do not lapse at the end of a session or Parliament. Rather, they remain in effect until the House itself decides to suspend, change or repeal them. Such changes are usually effected once every parliamentary term.
2. These regular reviews of the procedures or rules and practices of the House ensure that the House and its committees continue to operate with efficacy and relevance. Continuous review and improvement allow for refinement of Parliament’s procedures and keeping pace with emerging practices or trends. Some of the topics covered in the Standing Orders include procedures for administration of oath or affirmation, election of office bearers like the Speaker, Deputy Speaker and Chairs of Committees, maintenance of order in the chamber and committees, manner of considering Bills and Motions, among others. Once formally adopted by the House, the Standing Orders are published for the guidance and use of all Members.
3. Standing Orders are typically derived from four sources: practice, which referred to matters established over the years that do not require to be formally written down or stated; general rules for conduct of business that are altered from time to time by the House; rulings from the Chair or precedents, which give guidance on new or emerging areas of procedure and for future Parliaments to draw upon; and Acts of Parliament, which govern how the House conducts proceedings on particular matters.
4. In the Kenyan case, Article 124 of the Constitution stipulates that the Houses of Parliament may establish committees and Standing Orders for the orderly conduct of their proceedings, including proceedings for committees. In fact, a number of procedures in our Standing Orders have been replicated from the Constitution, for instance, procedures for the appointment and removal of state officers, consideration of Bills concerning County Governments, Presidential Memoranda and formation plus operation of Mediation Committees, among others.

¹This introduction was adapted from remarks made by the former Clerk, Mr Justin Bundi at the May 2016 retreat of the Procedure & House Rules Committee

5. A study of various jurisdictions reveals that reviews of the Standing Orders by a House of Parliament are commonplace. It is actually a necessity, given the fast-changing landscape of the political arena, both locally and internationally, to ensure that the House is able to regulate itself adequately and in a transparent manner.

Current Review of the Standing Orders

6. There are two main avenues for amending our Standing Orders as stipulated in Standing Order 262 and 263: proposals by the Procedure and House Rules Committee, which are allowed at any time, and by the initiative of a Member, which has to be supported by at least fifty other Members when forwarded to the Procedure and House Rules Committee for review.
7. A comprehensive review of the rules of procedure by the Procedure and House Rules Committee of the National Assembly in the Eleventh Parliament began in May 2016. It is the fifth such review since Kenya gained independence in 1963. For this reason, it is important to provide a synopsis of the history of the review of our Standing Orders, to better appreciate the significance of the process.

Experiences and Lessons from past reviews of the Standing Orders in the Kenyan Parliament

Pre-1966 and the First comprehensive Review of the Standing Orders

8. The First comprehensive Review of the Standing Orders of the House was made in 1966 following the amendment of the Constitution to abolish the Senate and therefore transit from bicameralism to unicameralism. It will be recalled that Kenya's 1963 Constitution established a Senate that consisted of 41 senators elected for six years, with one-third of the members retiring every two years. Timothy Chokwe served as the first speaker of the Senate. The Senate was abolished in 1966, when its membership was combined with that of the House of Representatives to form a unicameral legislature, the National Assembly.

What followed was almost a comprehensive review of the rules of procedure of the National Assembly later that year. That review focused mainly on deleting procedures relating to the relations between the two Houses and incorporating new procedures to entrench unicameralism. At the time, the Standing Orders booklet, which was red in colour, was barely 15 pages. Despite the size, available literature and *Hansard* proceedings of the House at the time indicate that it was not easy for most Members to recall or understand most of the rules of procedure.

The 7th Parliament: Second comprehensive review

9. For a long time after that, minimal amendments were made to the rules of procedure. It was not until 1991 when the Constitution was also amended to return to multi-party politics that a further review was done. This was the amendment of Article 1 of the then Constitution and repeal of the infamous Article 2A. What followed was a comprehensive amendment of the Standing Orders of the National Assembly to facilitate transaction of business in the House comprising of more than one party. The office of the Leader of Official Opposition, Opposition whips and opposition or “back-bench days” were some of the new provisions that were incorporated just before the commencement of the 7th Parliament in 1992. The composition and chairing of the Public Accounts Committee was also changed to recognize the evolving times. This was the Second comprehensive review of the Standing Orders of the National Assembly.
10. It may be recalled that the repeal of Article 2A of the independence Constitution instantly rejuvenated the clamour for constitutional reforms, mostly from within Parliament. At the same time, there was outcry and sometimes subtle protests, mostly from the then opposition to also amend the Standing Orders further to allow more space for heated debate in the Chamber, invigorate the Committee system, recognize political party caucuses and provide facilities to parties and indeed, to Parliament. Towards the end of that Parliament in 1997, some amendments were made to the Standing Orders to establish the Public Investments Committee and Departmental Committees as we know them today. However, the Committee on Estimates was also deleted from the Standing Orders on 10th November, 1997 as it was felt that the Committee was “meddling too much” into the national budgeting process, which was essentially a prerogative of the Executive.

The 8th Parliament: The Ghosts, evil symbols and demystifying Parliament

11. It will be recalled that, in the 8th Parliament in 1998, the clamour for constitutional reforms had reached its peak. At the same time, there was renewed vigour to also comprehensively re-do the rules of procedure of the House. Indeed, there was almost unanimous agreement from across the political divide that something urgent needed to be done to the Standing Orders, which were viewed as mostly inhibitive as opposed to being facilitative to Members. The focus of the proposed changes was mostly on demystifying Parliament, allowing gender receptive rules, invigorating the Committees, opening Chamber proceedings and Committees to the public,

including allowing live broadcast of proceedings and institutionalizing *multi-partyism* in all Parliamentary aspects.

12. At the time, whereas the public paid a lot more attention to politicians in the House and even appeared to have a lot more faith in them, there was evident public cynicism towards how Parliament worked. Indeed, there were open rumours of the existence of ghosts, evil images and symbols such as dinosaurs, snakes, frogs, mysterious reptiles and amphibians in prominent places within Parliament Buildings, the Chamber and even on the Speaker's Chair. The beautiful, culture-rich murals that existed at the entrance of the Chamber at the time were even said to be demonic!
13. Clearly, it was time for massive transformation aimed at demystifying the House and its proceedings. The House established an *ad hoc* committee, led by the then Member for Cherangany Constituency, the Hon. Kipruto arap Kirwa to study other parliamentary jurisdictions and propose necessary infrastructural changes and procedural provisions that would facilitate broadcast of House proceedings. The Committee tabled a Report which was unanimously adopted by the House. However, its implementation did not take place until the 10th Parliament.
14. At that time, there was a general expectation that a new Constitution would be in place before the end of the term of the 8th Parliament. In this regard, the much needed comprehensive review of the rules of procedure of the House was deferred to await enactment of a new Constitution. By the time the House was dissolved on October 25, 2002, the elusive new Constitution was still a mirage, and so was the review of the Standing Orders. However, there was a lot of research, memoranda and proposals that had been received from the public, Members, political parties and officers of the House that were compiled into a Draft Report.

The 9th Parliament - The uncompleted 3rd comprehensive review

15. The Draft Report of the 8th Parliament was to become the primary document for the Third comprehensive review of the Standing Orders that commenced in the 9th Parliament. On June 20, 2006, a sub-committee of the Standing Orders led by the then Deputy Speaker, Hon. David Musila and comprising of Hon. Paul Muite, the late Hon. Otieno K'ajwang, the late Sen. Mutula Kilonzo, Hon. Nyagah Wambora, nominated Members Hon. Njoki Ndungu and Hon. Esther Keino was established. The sub-committee received memoranda from individual Members as

well as political parties through the then Government Whip, Hon. Norman Nyagah and the Opposition Party Whip Hon. Justin Muturi. The sub-committee visited five countries within and without the Commonwealth. It should be noted that this was the first time that proposed amendments were initiated and driven by Members of the House as opposed to the Executive.

16. The most notable of these amendments was the review of the process of introducing Bills by private members by removing the cumbersome requirement of a **motion seeking leave** to introduce a Bill. Amendments were also considered and texts developed on a number of fundamental aspects such as -
- recognizing political party caucuses;
 - allowing recall of the House during recess by the opposition, so long as they could garner signatures of a majority of the Members;
 - opening up of Committees and the House to the public;
 - recognizing visiting dignitaries and allowing them to address the House;
 - petitioning Parliament, which was seldom done those days;
 - insertion of Swahili prayer in the rules of procedure;
 - introducing requests for statements to Ministers;
 - limiting speaking time on debate on bills, committee reports, Sessional papers and Bills, which were hitherto unlimited; and
 - modest changes on the budgeting process to increase the role of Parliament.

Some amendments were somehow amusing

17. At the time, some amendments were seen to be somehow amusing, for instance, there were proposals for new provisions aimed at punishing members who would clandestinely “disappear” whenever their listed Questions were about to get reached in the House so as to avoid asking them.

Simple language and gender responsiveness

18. The rules of procedure were also amended to simplify the language used, for instance, from “*that Mr Speaker doth leave the chair*” to “*that Mr Speaker does leave the chair*” or “*mutatis mutandis*” to “*with necessary modification*” etc. Further, the languages were also made to be more gender-responsive, from use of the phrase “**he**” to “**he or she**” and even allowing the lady members to carry hand-bags into the House, for the first time (never mind that they must be of

reasonable size)! There was also the agreement to change the motto of the House, which was inscribed at the top of the bar of the House and read as such “*For the welfare of society and the just government of men*”. In the end, the version of Standing Orders advanced in the 9th Parliament was lauded as the Standing Orders of the 21st Century. The Report had however not been tabled by the time the House was dissolved on Monday, October 22, 2007. The 3rd comprehensive review of the Standing Orders was therefore not concluded until the subsequent Parliament.

The 10th Parliament - The conclusion of the 3rd comprehensive review

19. The amending of the Standing Orders in the 10th Parliament was mainly to incorporate the amendment of the Constitution to incorporate the coalition government and the subsequent National Accord. Under the leadership of the then Speaker, Hon. Kenneth Marende, in its first meeting of May 30, 2008, a six Member sub-committee comprising of the then Deputy Speaker and led by the Speaker’s Panel Members; Hons. Ekwee Ethuro, GitobuI manyara and Prof. Margaret Kamar (who was later replaced by Hon. Joyce Laboso), was mandated to consider progress made by the Ninth Parliament on the review of the Standing Orders, receive submissions and submit a report to the Committee on the review of the Standing Orders. The Standing Orders Committee enriched the Report prepared in the 9th Parliament by including rules on Parliamentary Broadcasting, and opening up House Plenary sessions and Parliamentary Committees to the public, recognition of whips and electronic ways of tabling Papers in the House, amongst other measures.

20. There was also the introduction of Prime Minister’s Time where the Prime Minister would make a Statement or questions would be put to him relating to matters of Government policy or the general performance of the Government and government agencies. The budgeting process was also reviewed comprehensively. The House Business Committee expanded to not more than twenty one Members from 11 and provided for inclusion of Party whips. The quorum of Public Investments Committee and Public Accounts Committee was reduced from 5 to 3 Members. Six additional Committees were formed as follows:-
 - Local Authorities and Funds Accounts Committee (LAFAC);
 - Budget Committee;
 - Committee on Delegated Legislation;
 - Committee on Implementation;

- Committee on Equal Opportunity; and
- Library Committee.

21. The number of Departmental Committees was increased from 8 to 12 by splitting some of the Committees with wider mandates such as Health, Housing, Labour, Sports and Social Welfare which was, at the time, one Committee. The review process was delayed briefly so as to give way to new and more important matters. For instance, the House was involved in “recruitment” and vetting of persons for appointment to some offices including acting as a HR recruiting agency for various Commissions such as the Interim Independent Electoral and Boundaries Review Commissions (IIEC & IIBRC), the Truth Justice and Reconciliation Commission (TJRC) and Kenya National Commission on Human Rights (KNCHR). The ultimate adoption of the report on 8th December 2010 marked the conclusion of the 3rd Comprehensive review of the Standing Orders.

The 10th Parliament- The New Constitution and the 4th comprehensive review

22. The promulgation of the Constitution of Kenya, 2010 heralded the 4th comprehensive review of the Standing Orders. The process focused mainly on actionable aspects of the Constitution which gave new roles to Parliament as opposed to new ways of doing things. The Procedure and House Rules Committee jointly with the Committee of Experts analyzed the impact of the proposed Constitution on the workings of Parliament with particular focus on: Vetting processes; Removal of persons; Committee on Appointments; Budgeting Process; Bicameralism; Phasing out of Question Time, etc. It is worth noting that the process was mostly initiated by officers as opposed to the Members themselves.

23. It appeared that at the time, the House was more engrossed in other equally important business such as the enactment of over 210 pieces of legislation, which had to be passed within the first 2 years following the enactment of the new Constitution, and the nascent vetting of persons to be appointed to new offices, such as the Chief Justice, the Attorney General, the Director of Public Prosecutions, the Auditor General, the Controller of Budget, and Members of the various Constitutional Commissions. There was an evident rush to conclude the review of the Standing Orders of the National Assembly and the making of new rules for the incoming Senate. The Report was tabled in January 2013, a few weeks before elections, concluding the 4th comprehensive Review of the Standing Orders.

The 11th Parliament - the 5th review

24. The Committee endeavours in this report to conclude the 5th review of the Standing Orders, given the timeframe remaining before the House adjourns for a long recess to conduct campaigns. It is worth noting that the current Standing Orders have been criticized by some Members and indeed some courts, as failing to actualize certain provisions of our current Constitution, or just falling short of the constitutional thresholds in some areas. These include:
- (i) the financial procedures;
 - (ii) the interface between the two Houses of Parliament on some legislative aspects;
 - (iii) the processes of removal of persons from offices, including the removal of the Speaker.
25. In addition, various Members and other stakeholders have proposed a review of the following aspects:
- (i) Discharge of Members from Committees;
 - (ii) Expansion of the role of Departmental Committees to include the determination of “Money-Bill” aspects under Article 114 of the Constitution;
 - (iii) Introduction of a parallel debating chamber for conducting Second Reading of Bills;
 - (iv) Proposed amendments to the Standing Orders of both Houses regarding media related activities in the precincts of Parliament; and
 - (v) A Petition to provide for enhanced public participation in the legislative process and Parliamentary business.
26. The Standing Orders Taskforce was able to meticulously scrutinize the entire Standing Orders provisions, one after the other, commencing from Standing Order No. 1 to the last one, and each of the four schedules, recommend changes where necessary. This will greatly assist the Procedure and House Rules Committee, and subsequently the House, as consideration of the draft Standing Orders is done. This way, the House will ensure that all emerging issues noted or encountered during this term of Parliament have been addressed by the review.

a) **THAT**, there is need to define the Mace in terms of size and dimensions. This was in light of the incident that took place where the Mombasa County Assembly used a bed post as a Mace when the official Mace was missing;

b) **THAT**, there is need to make provision for a spare Mace to ensure business of the House runs uninterrupted in the event that the main Mace is missing.

c) **THAT**, one of the components of the current Mace was Ivory, which was in contravention of the CITES (Convention of International Trade in Endangered Species of Wild Fauna and Flora) treaty which Kenya is a signatory to.

d) **THAT**, the practice of Sergeant-At-Arms shouting “*hats off strangers*” during the Speaker’s procession should be substituted with a more modern and relevant phrase that would still recognize the authority of the Speaker.

31. Upon review of his proposal, the Committee proposed New Standing Orders 107A, 107B and 107C providing for graduated scale of disorderly conduct. The Committee further recommended recognition of the Mace in the Standing Orders.

II PROPOSALS BY THE HON. SAMUEL CHEPKONGA, MP ON DISCHARGE OF MEMBERS FROM COMMITTEES

32. The amendment follows a request to amend Standing Order 176 to allow the House to approve any proposals for discharging Members from Committees. This was brought about by a Communication from the Chair on discharge of Members from Committees issued on November 19, 2014 which was conveyed by the Speaker after receiving four letters dated November 13, 2014 from the Minority Party Whip communicating the decision of theCORD Coalition in the National Assembly to discharge the following four Members from Committees:-

i. The Hon. Ken Obura Mirenga, MP from the Departmental Committee on Defense and Foreign Relations and the Departmental Committee on Labour and Social Welfare;

ii. The Hon. Samuel Arama, MP from the Committee on the Implementation of the Constitution (CIOC) and the Public Accounts Committee;

iii. The Hon. Dalmas Oieno, MP from the Committee on the Implementation of the Constitution (CIOC) and the Departmental Committee on Administration and National Security; and

proposed amendments seek to ensure that the dignity of the 11th Parliament and indeed that of future Parliaments is guaranteed and protected.

The case against amendment

29. The proposed amendments to the Standing Orders generally seek to give the Speaker the power to name and discipline a member. The consequences of being named for disorderly conduct, grossly disorderly conduct or grave disorderly conduct under the proposed Standing Orders include suspension for a certain period of time from the sittings of the House and forfeiture of allowances payable to a Member during the period of suspension. This raises a number of issues-

(a) Article 236 of the Constitution provides that "a public officer shall not be dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law". The proposed amendment in effect does not give a Member the right to be heard or represented prior to being disciplined. In this case the proposed amendments to the Standing Orders offend the provisions of the Constitution.

(b) Article 40 of the Constitution provides that "every person has the right, either individually or in association with others, to acquire and own property of any description in any part of Kenya." Article 260 of the Constitution further provides that "property" includes any vested or contingent right to, or interest in arising from (d) money, choses in action or negotiable instruments. In view of the foregoing, forfeiture of the allowances of a Member who allegedly offends the provisions of Standing Orders 107A, 107B, 107C arguably contradicts Article 40 of the Constitution. Allowances constitute money which is this case and pursuant to Article 260 of the Constitution fall with the definition of property.

(c) Article 50 of the Constitution espouses the right to a fair hearing and constitutes the right not to be condemned unheard. The proposed amendments to the Standing Orders prescribe disciplinary procedures which may be defined as being summarily in nature. The proposed amendments therefore not only offend the provisions of Article 50 of the Constitution but the rules of natural justice as well.

Recommendations

30. After lengthy deliberations, the Committee resolved as follows on the proposed amendments-

CHAPTER TWO: PROPOSALS BY MEMBERS, COMMITTEES AND OTHER
STAKEHOLDERS

I. PROPOSALS BY THE LEADER OF THE MAJORITY PARTY, HON. ADEN
DUALE, MP ON GRADUATED PENALTIES FOR DISORDERLY CONDUCT IN
THE HOUSE, AND THE PLACE OF THE MACE

27. In a letter dated 19th February 2015, the Leader of the Majority Party submitted a proposal to amend the Standing Orders to provide for stiffer penalties to Members found guilty of gross misconduct in the House. He cited the need to amend Standing Orders 108 and 109 accordingly, to avoid scenarios of grave disorder such as those witnessed on 18th December, 2014 during debate on the Security Laws (Amendment) Bill, 2014 in the National Assembly. The Procedure and House Rules reviewed this request and make some preliminary observations and recommendations as discussed.

Justification of the amendment

28. Some of the justifications for the proposed amendment include-

(1) The Standing Orders do not comprehensively define what acts constitute disorderly conduct, grossly disorderly conduct and grave disorderly conduct. This means that many acts which qualify as disorderly conduct may go uncensored if the Standing Orders are not amended.

(2) Presently, there is also a blanket penalty for grossly disorderly conduct yet the gravity of the offences may differ, hence requiring variation in definition of offences and penalties.

(3) The penalty provided for in the Standing Orders is also not adequate and may not deter a Member from offending the provisions of Standing Order 107.

(4) The Speaker does not also have the power to name and discipline Members for disorderly conduct, grossly disorderly conduct and grave disorderly conduct.

(5) Further, the Standing Orders do not have a provision for the Mace. There is need to identify its place in the House as it represents the authority of the House and the Speaker.

(6) There is also need to stipulate what the effect is of the Mace not being in its place during the proceedings of the House.

(7) During the special sitting of the Assembly on 18th December, 2014 it was noted by one Member that the grave disorderly conduct witnessed during the sitting was "the darkest and lowest moment of the House that should never be allowed or remembered". The

- iv. The **Hon. Zainabu Kalekye Chidzuga, MP** from the Departmental Committee on Environment and Natural Resources and the Committee on Delegated Legislation.

33. The proposal by the Member for Ainabkhoi Constituency, the Hon. Samuel Chepkonga, MP, therefore sought to ensure the approval of the House when discharging Members from Committees since approval is required when appointing them to Committees.

Justification of the amendment

34. Some of the justifications for the proposed amendment include-
- a) Article 95 of the Constitution stipulates the representative, legislative and oversight role that a Member of the National Assembly plays. In this regard therefore, Standing Order 176 which allows the discharge of a Member from a Committee arguably inhibits and bars a Member from performing his or her representative, legislative and oversight role as provided for under Article 95 of the Constitution.
 - b) Ceding the power of the House to third parties is inappropriate. Standing Order 175 provides for approval of nomination by the House. Similarly, Standing Order 176 should allow the House to approve any proposals for discharge of a Member from Committee.
 - c) Article 32(3) of the Constitution stipulates that a person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion. Pursuant to Standing Order 175 (1), every Member is entitled to serve in a Committee. Therefore, discharge of a Member from a Committee due to dissenting opinions is an infringement to their freedom of conscience, belief and opinion.
 - d) One rationale for the amendment focuses upon "conscience issues." Questions of morality, it is argued, ought to be decided according to the consciences of individual members, and not according to the dictates of the party whips. Such questions are alleged to be above partisan politics. Therefore, a provision for Members to have dissenting opinions based on conscience should be availed on a case by case basis.
 - e) Some Members would like to act more independently when the party position places them in direct conflict with the interests of their constituents. Amending the Standing

Order would mean that members in such a position could vote according to the wishes of their constituents.

- f) Action against errant Members should be intended to reform a Member and not be harsh. A party should be tolerant to divergent views and engage a Member with dissenting opinion at Party level to ensure they are in tandem with ideals of the Party.
- g) The amendment of Standing Order 172 to allow the Committee on Selection to examine any proposal to discharge a Member from a Committee under Standing Order 176 would provide fair determination of the matter. This is because its Membership includes among others the Leader of the Majority Party as the chairperson and the Leader of the Minority Party whose main interest is to espouse the ideals and interests of their respective parties.

The case against amendment

35. Some of the arguments against the proposed amendment include-

- a) Article 124(1) of the Constitution provides that “each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.” Arguably, the discharge of Members from a Committee in terms of Standing Order 176 is a disciplinary mechanism that is not meant for the orderly conduct of the committees.
- b) Party discipline means that voters are provided with clear alternatives. The majority party must formulate policies and the minority party, in criticizing these policies, is expected to present alternatives. In so doing, all parties have a strong concern regarding various issues. The demand for internal party discipline reinforces the consistency of each party's position with respect to these issues.
- c) In a multiparty democracy, political parties are important vehicles for political and social mobilization and electioneering. Political parties bring together like-minded persons into a cohesive group guided by a particular ideology, principles and values. In a parliamentary system, party groups and caucuses give full expression to freedoms of association and political expression. One of the most important functions of political parties is the development of public policy options. To that extent, they should be encouraged and nurtured.

Such is the practice in the **United States Congress** where Members of each major party meet regularly in closed sessions known as **party conferences** (Republicans) or **party caucuses** (Democrats). Apart from selection of committee members and chairs, and holding elections to choose various floor leaders, participants set legislative agendas. This process takes place for both the Senate and the House of Representatives.

- d) In some jurisdictions, regular Party caucusing sessions are held to develop clear Party positions. Therefore, there is provision for Members to be fully aware of the Party decisions and ideals and give dissenting opinions based on conscience and on a case by case basis.
- e) Relaxing party discipline would mean extra organizational efforts on the part of already overworked party leaders. The argument has been made that even if the formal structures of party discipline were removed, the leaders of the various parties would still want to elicit support by approaching members on an individual basis. To accomplish this goal, each party would have to identify the positions of individual members. Such a development would require that considerably more time and effort be spent on organizational party activities.
- f) The previous Standing Orders of the House which were adopted on December 10, 2008 were silent on the discharge of a Member from a Committee. This was one of the reasons why the current Standing Orders adopted on January 9, 2013 were amended to ensure that party discipline is taken seriously by Members.
- g) Section 14(5) of the Political Parties Act, 2011 provides that:-
 - (5) *A person who, while being a member of a political party—*
 - (d) *in any way or manner, publicly advocates for the formation of another political party;*
 - or*
 - (e) *promotes the ideology, interests or policies of another political party;**shall, notwithstanding the provisions of subsection (1) or the provisions of any other written law, be deemed to have resigned from the previous political party.*

(6) Subsection (5) (d) and (e) shall not apply to a member of a political party in relation to the common objective of a coalition.

(7) A member of a political party may only be expelled from that political party if the member has infringed the constitution of the political party and after the member has been afforded a fair opportunity to be heard in accordance with the internal party disputes resolution mechanisms as prescribed in the constitution of the party.

Part VI—The Political Parties Disputes Tribunal of the Political Parties Act, 2011 provides that:-

40. (1) The Tribunal shall determine—

- (a) disputes between the members of a political party;*
- (b) disputes between a member of a political party and a political party;*
- (c) disputes between political parties;*
- (d) disputes between an independent candidate and a political party;*
- (e) disputes between coalition partners; and*
- (f) appeals from decisions of the Registrar under this Act.*

(2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a) (b), (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.

The aggrieved Members should therefore use the provisions of the Political Parties Act to get a fair hearing within their Party to allow the oversight function provided for by the Act to take course.

- h) The House recognizes political party decisions as they have sponsored Members to the August House. By writing to the Speaker, it is assumed that the Party has given the Member a fair hearing and all internal party mechanisms and processes have been exhausted. The subsequent recommendation to be made by the Committee on Selection will be in the interest of the House.
- i) Standing Order 176 is clear that the parliamentary party that nominated a member to a Select Committee may give notice, in writing, to the Speaker that the member is to be

a) THAT, Standing Order 235(6) be quilled as it gives too much power to the Budget and Appropriations Committee which will eventually leave Departmental Committees with no role to play in the budget making process;

42. The Procedure and House Rules Committee deliberated on this proposal and resolved not to amend the Standing Orders as proposed by the Hon. Wamunyinyi. The Committee however made the following recommendations-

Recommendations

c) Our Parliament is rated very well across the region and the world in terms of facilitating private Members' bills/legislative proposals, so any delays occasioned in the past may have been due to administrative and internal technicalities, and not an outright aim to inhibit the legislative activities of Members.

d) It is important to note that the current budget process has been in practice for only slightly over three years in Kenya. As such, it is imperative to address the underlying issues while nurturing the ongoing practices instead of changing the entire process midstream. As has been the case in the USA, the budget process will continue to evolve over time in terms of practices and procedures.

c) The examination of revenue collection measures is currently in the purview of the Departmental Committee on Finance, Planning and Trade, while the Budget and Appropriations Committee handles the overall role of budgetary matters and review of legislative business with financial implications, similar to other jurisdictions.

b) There is need to have a centralized manner of dealing with the budget once it is under consideration by the House. This ensures that the process remains coordinated and that the competing financial needs of the country are allocated within the available resources. If all committees are allowed to handle money bills yet all are operating from one basket, there is a likelihood of approvals going past the set monetary ceilings, since each committee doesn't know what the others have approved in terms of expenditure. This is a similar scenario to how the Executive proceeds only with the approval of the National Treasury on monetary matters.

39. According to the Member, the “relevant Committee” referred to in Article 114(2) of the Constitution does not necessarily refer to the Budget and Appropriations Committee; this function could also be conducted by a Departmental Committee.

Justification of the amendment

40. Some of the justifications for the proposed amendment include-

a) During the budget making process, sector budget estimates are committed to the relevant departmental committees for scrutiny and approval. Departmental Committees are therefore better placed to determine how money bill proposals resonate with the current budget.

b) Money Bill matters cannot be looked at in total isolation of the sector policy. Departmental Committees are better placed to analyze money bill proposals in relation to the sector priorities in which they are in charge of as opposed to the Budget Committee.

c) The amendment will cure existing situations where it is possible to have two conflicting recommendations between Departmental Committees and the Budget and Appropriations Committee on how to proceed with the same money bill proposal.

d) Departmental Committees also have the powers to summon the Cabinet Secretary for Finance so the interests of the Executive will still be protected as envisaged by Article 114(2) of this proposal is carried.

e) There have been delays occasioned in the past by the Budget and Appropriations Committee (BAC) in the processing of legislative proposals and motions with a money Bill effect. This proposed amendment to the Standing Orders would likely cure this problem, hastening the legislative proposal review process.

The case against amendment

41. Arguments against the proposed amendment were-

a) As seen in other jurisdictions, it is important to have a committee which has the relevant expertise to handle macroeconomic matters and have a holistic view of the overall national budget, in relation to review and processing of ongoing legislative proposals that may have financial implications.

not sponsor the Member to the House. In this regard therefore, it makes it almost impossible for a Political Party to discipline its Members.

d) THAT, the proposed amendments to Standing Order 176 should therefore create a balance between the due process of the law, the right of Political Parties to discipline their Members, the guard against abuse by the Political Parties in punishing errant Members on one hand and tolerance with divergent views and dissenting opinions on the other.

Recommendations

37. The Committee, having examined the proposed amendments to Standing Order 176, approved the amendments save for the following recommendations-

a) THAT, there is need to define how many incidences constitute consistent and persistent voting by a Member in support or against a legislative agenda which a party has pronounced its decision in the House;

b) THAT, there is need to describe what a party position is, the manner in which the position should be communicated to Members and also determine whether the position should be communicated to the National Assembly;

c) THAT, forwarding the matter of discharge of a Member to the House for purposes of Fair Administrative Action would provide an opportunity to notify the Member and give him/her a chance to be heard;

d) THAT, there is need to stipulate the timeline from the date the offence is committed to the date that the matter is brought to the attention of the House by the Political Party.

III. PROPOSAL BY THE HON. WAFULA WAMUNYINYI, MP ON THE MANNER OF REVIEWING MONEY BILLS BY DEPARTMENTAL COMMITTEES

38. In a letter to the Speaker dated March 10, 2016, the Member for Kanduyi, the Hon. Wafula Wamunyinyi, MP, submitted a request to the Procedure and House Rules Committee to consider amending Standing Order 114(3)(a) to harmonize it with Article 114 (2) of the Constitution. The proposed amendment seeks to alter the manner of consideration of motions and legislative proposals which have a "money Bill" effect.

discharged from a select committee. "Parliamentary Party" means a party or a coalition of parties consisting of not less than five percent of the membership of the National Assembly. This provision was made to ensure that only sitting Members of Parliament make that decision. It also absolves the Speaker from demanding evidence of Party mechanisms undertaken upon conveyance of discharge of a Member by a Party whip.

j) Party discipline is an internal matter that should stay within the Party. Therefore, the internal affairs of one Party should not be brought to the House to be considered by Members of another Party. Not only would the amendment of Standing Order 176 expose a party's internal affairs, but also render Members of Parliament vulnerable to harsh political party penalties.

k) In assessing the motivation of members, one can conclude that members usually want to support their party. They recognize and accept the powers of the parliamentary leadership. Moreover, members of a party tend to share common beliefs, values, and goals, and are united in their concern for the viability of the party.

Observations

36. Following extensive deliberations, the Procedure and House Rules Committee observed as follows-

a) THAT, in amending Standing Order 176 to allow the House to approve any proposals for discharge of a Member from a Committee, in the absence of other mechanisms of punishing errant Members, Political Parties may resort to the disciplinary mechanisms under Article 103(1)(e)(i) of the Constitution as read together with section 14(5) of the Political Parties Act (Cap. 7B) where Members may be deemed to have resigned from Political Parties.

b) THAT, the proposed amendments offend the provisions of Articles 47, 50 and 236(b) of the Constitution and the Fair Administrative Action Act No. 4 of 2015 in that although the proposed amendments are intended to allow the House to approve any proposals for discharge of a Member from Committee, there are no provisions for the due process of law before a Member is subjected to the disciplinary action envisaged under Standing Order 176.

c) THAT, the proposed amendment to Standing Order 176 takes away the right of Political Parties that sponsored Members to the National Assembly to use disciplinary measures against errant Members and gives it to the House and in effect to other Parties which did

- b) **THAT**, the importance of the Budget Policy Statement should be underlined by sealing any amendments that may occur after its approval. Annual estimates should be analyzed against resolutions;
- c) **THAT**, Standing Order 236 be actualized in subsequent financial years so as to reinstate the Committee of Supply; and
- d) **THAT**, the provisions of Standing Order 240(2) should be applied in light of the fact that the Ministries are less in number.

43. The Committee noted that the proposed amendments would encourage better consultation with Ministry officials and reinstate the authority of Departmental Committees. This would give more credibility to the budget making process.

IV PROPOSALS BY THE HON. (DR.) PATRICK MUSIMBA, MP

Introduction of a Parallel Debating Chamber

44. The Member for Kibwezi West, Hon. (Dr.) Patrick Musimba, MP, in a letter dated March 15, 2016, requested that a parallel debating Chamber be introduced. He proposed that the Second Reading of Bills and tabling of reports be conducted in the Mini Chamber at County Hall to enable the House to execute its legislative role expediently and in a timely manner.
45. The Second Reading debate is the most important phase for a Bill, as this is when its entire foundation is considered. Each Member of the House is entitled to make one speech during this debate, after which the main vote on the Bill will occur. The overall length of debate at the Second Reading is determined by the nature of the policy issues in the proposed legislation, and the number of Members who wish to contribute on the subject at hand.
46. A comparative study of the practice in the United Kingdom revealed that the Westminster Hall, a parallel chamber was used for extra time for select committee reports to be debated and private members to raise constituency and specialist matters. Australia had a Federation Chamber for the same purpose and Malaysia had in 2016, introduced a Second Chamber.
47. Following extensive deliberations, the Committee noted that this proposal was progressive in nature and would perhaps be implementable in future. However, the Committee felt that there was need for further review to decide on what debates, apart from Second Reading of Bills,

could occur in this Chamber. It was therefore resolved that this proposal not be adopted at this time.

Recognition of independent Members in the definition of a parliamentary party

48. The Hon. (Dr.) Patrick Musimba, MP further proposed amendments to provide for the following:
- a) the definition of a 'Parliamentary Party' to include 'independent Members, a coalition of independent Members, individual member parties';
 - b) the definition of a 'Party Whip' to include 'any other whip designated by any other parliamentary party registered with the Speaker of the National Assembly;
 - c) creation and recognition of the position of a Leader of independents;
 - d) provision for the election of a leader and deputy leader of a registered parliamentary party or coalition of parties in the National Assembly; and
 - e) inclusion of the leader of any registered parliamentary party as a Member of the House Business Committee and as a Member of the Committee on Selection.

Observations

49. The import of the amendments was to provide a place for the independents in the decision-making process of the National Assembly. The Standing Orders define a "*Parliamentary Party*" as a party or a coalition of parties consisting of not less than five percent of the membership of the National Assembly. Article 108 of the Constitution defines the Leader of the Majority Party and the Leader of the Minority Party. The Constitution of Kenya recognizes democratic rights of its citizens and provides for it in Article 85 by outlining the eligibility for a person to stand as an independent candidate for election. This includes the fact that the candidate should not be a Member of a Party. "*Party Whip*" means a Member designated by a parliamentary party as its party whip for the purposes of the transaction of the business in the House and includes the Majority Whip and the Minority Whip.

Recommendations

50. The Committee was of the view that these amendments would offend constitutional provisions of Article 85 by threatening the position of Independents. Independent Members have individual and separate ideologies otherwise they would have joined a Party which espouses their ideologies. Further, for purposes of business in the House and committees, Independent

Members are protected, and may associate with coalitions if they wish, for further considerations.

51. The proposal that all parliamentary parties need to be registered for recognition may dim the spirit of Political Parties as envisaged in Part 3 of Chapter Seven of the Constitution. Registration of a Party in Parliament may interfere with the perception of the party outside Parliament; and overlap with the mandate of the Registrar of Political Parties as established under the Political Parties Act.
52. Further, Standing Order 174 (2) on the criteria for nomination of Members to select Committees by the Committee on Selection caters for the place of Independents. As such, these proposals were declined.

V. PROPOSALS BY THE HON. (ENG.) NICOLAS GUMBO, MP ON IMPROVING THE OVERSIGHT CAPACITY OF WATCHDOG COMMITTEES

53. The Chairperson of the Public Accounts Committee, Hon. (Eng.) Nicolas Gumbo, MP, proposed that membership of the Public Accounts Committee and Public Investments Committee ought to have the Minority Party or Coalition of Parties with a Majority of one, the Chairperson and Vice Chairperson elected by the Committees from among Members of the Committee nominated from the minority Party or coalition of parties, and to have the reports of these two Committees adopted within two weeks of being tabled in the House without any amendments.

Observations

54. The evolution of the Public Accounts Committee and Public Investments Committee was first introduced during the Seventh Parliament in a proposed amendment to the Standing Orders through Sessional Paper No. 2 of 1996. This was later adopted in Sessional Paper No. 8 of 1997 where the membership of the Public Accounts Committee and Public Investments Committee was reduced from 13 to 11 with 6 from the Government and 5 from the Opposition. The Chairpersons of the two Committees were from the opposition party.

Recommendations

55. To achieve effective oversight, the Public Accounts, Public Investments, Implementation (Standing Order 209) and the proposed new Special Funds Account Committee (New Standing

Order 205A) would require a similar structure of majority of the Members and the leadership from the Minority Party or party not forming the government.

56. On the proposal that a report of the Committee should not be debated or amended upon by the House, the Committee was of the opinion that a Committee was an extension of the House and therefore any report tabled must be adopted by way of a Motion. Such Motion is subject to amendment pursuant to the provisions of Standing Orders.

VI. PROPOSALS BY THE HON. JANET NANGABO, MP AND THE HON. (DR.) ROBERT PUKOSE, MP ON ESTABLISHMENT OF THE CATERING AND FACILITIES COMMITTEE;

57. The two Members furthered the proposal introduced to the House by way of Motion before the House on July 8, 2015 that Parliamentary Service Commission, during its 211th meeting on June 15, 2015 resolved to reconstitute the National Assembly's Catering and Health Club Committee into a Joint Committee of the House of Parliament incorporating Members of the Senate in view of the fact that catering and health services are joint services in a bicameral parliament. It was proposed that the Committee be administered by the Parliamentary Service Commission and that the Catering and Health Club Fund, currently under the National Assembly Catering and Health Club Committee, ought to be wound up and the sums therein paid into the Parliamentary Fund.

Recommendation

58. It was proposed that a Motion to rescind the Committee which had been established by a resolution of the House would be drafted for adoption by the House. This was in view of the fact that there was the proposed establishment of a Members' services and facilities committee.

VII. PROPOSALS BY THE HON. ADAN KEYNAN, CBS, MP

59. The Chairperson of the Public Investments Committee (PIC) also submitted some proposals for amendment of the Standing Orders as follows:

Make a provision for all Chairpersons of Committees be members or ex-officio Members of House Business Committee.

60. The Committee observed that it is important to keep committee work separate from the House business, especially as Chairs would be likely to frequently lobby for their business to be

prioritized. It was felt that the House Business Committee should focus on a more holistic view of the business of the House during its work.

Recommendation

61. The Committee therefore did not find the proposal favourable, especially in view of the fact that the membership of the House Business Committee has subsequently been reviewed as discussed further in this report to have only 12 Members only, from the previous 32 persons.

There should be a consideration for adding Housing to Transport in Departmental Committees.

62. It was also noted that the departmental committee dealing with matters of Transport still also had Housing matters under its mandate. Therefore no change was necessary.

That the Public Investments Committee, Public Accounts Committee and the proposed Special Fund Accounts Committee should be chaired by the Opposition or party not forming government.

63. The Committee was agreeable to the proposal.

Deleting the Committee on Appointments from the Standing Orders

64. The Member proposed that the said Committee be deleted from the Standing Orders and its mandate taken up by the Departmental Committees according to their mandates. The Committee did not find the proposal favourable as the Committee is amongst the first ones to be formed at the beginning of a new Parliament. It is possible that, at commencement of a new House, all or part of the Departmental Committees may not be constituted immediately. This would affect the functioning of a national government due to the occasioned delays to form the Cabinet. Further, the practice in many similar jurisdictions is that the task is carried out by one standing committee, established for that purpose. In addition, having one Committee deal with matters of appointment of Cabinet Secretaries is justified by the need to look at issues of gender and regional balances and application of similar standard of vetting.

VIII. PROPOSALS BY THE HON. MOSES KURIA, MP

65. The Member for Gatundu South, Hon. Moses Kuria, MP, submitted proposed amendments with justifications as follows-

Merging of Committees and rule for serving in only one Committee

- a) That, the Constitutional Implementation Oversight Committee (CIOOC), Committee on Delegated Legislation and the Justice & Legal Affairs Committee (JLAC) be merged.
- b) That, the Budget & Appropriations Committee and the Departmental Committee on Finance, Planning & Trade be merged.
- c) Create a provision in the Standing Orders that restricts Members from serving in more than two committees, except if they are members of the House Business Committee. Further, Committees shall have no more than 29 Members who should be selected on the basis of qualification and experience in matters relating to that Committee.

Justification

66. Since CIOOC was mandated to oversight the workings of the Commission on Implementation of the Constitution (CIC) whose term has since lapsed, the remaining work of this Committee can be done by expanding the mandate of JLAC. Additionally, he was of the opinion that the work of the Committee on Delegated Legislation can also be done by the Justice & Legal Affairs Committee. For the purposes of the Statutory Instruments Act, the resultant Committee shall be the one envisaged in the definition of “Committee” under Section 2 of the Act. This will ensure harmony between subsidiary legislation, the statutes and the Constitution.
67. Further, regarding the BAC and Finance Committee, the Member was of the view that these two committees usually consider similar matters, and experience overlap in their work. Merging them would resolve this issue, while also learning from the precedence set by the Senate Committee on Finance, Commerce and Budget and County Assemblies, whose committees do both functions. He added that the Budget Committee typically reviews the expenditure side of the budget, while the Finance Committee reviews only the revenue part of the budget. Since different sets of people are examining the two sides of one budget without any linkage between them, this creates an imbalance in the eventual budget presented and considered by the House. He proposed that the resultant Budget Appropriations and Finance Committee will be the Committee referred to in Article 221 (5) of the Constitution, and will be responsible for all aspects of budget.

Observations and recommendations

58. The Committee noted that since CIOC is a committee set up by the Constitution, it cannot be wound up. However, it can have more functions added to its mandate, which has already been proposed by the Committee. As such, this proposal was not adopted. Further, the issue of merging the Committee on Delegated Legislation and the Justice & Legal Affairs Committee had already been canvassed by the Committee in depth. It was noted that the Committee on Delegated Legislation was still in its infancy, having been in existence for five years. The Committee, which is established by title by the Statutory Instrument Act, should be given a chance to continue before considering any reviewing its existence, in the said statute.
69. Regarding the BAC and Finance Committee The Committee noted that this proposal had also been extensively discussed when reviewing changes to the Part XXIV on Financial Procedures. The Committee resolved to retain the current scenario where the Budget and Appropriations Committee and the Departmental Committee on Finance, Planning and Trade will continue to each handle the budget estimates and Finance Bill respectively.
70. Regarding restricting Members from serving in more than two committees, the Committee also considered this matter, and made various changes in relation to the membership of Committees-
- a) Leave it to parties to ensure qualifications,
 - b) Leader of the Majority Party and Deputy Leader of the Majority Party/Leader of the Minority Party and Deputy Leader of the Minority Party may not serve as Chairpersons; save for where the Standing Orders provide such as Public Accounts Committee / Public Investments Committee/Selection Committee,
 - c) Chairperson and Vice Chairpersons of Committees to relinquish other committees,
 - d) a Member of Department Committee not to serve in Public Accounts Committee / Public Investments Committee

IX. PROPOSALS BY THE STATE DEPARTMENT OF EAC INTEGRATION

71. A proposal was forwarded to the Procedure and House Rules Committee by the State Department of East African Community Integration in the Ministry of East African Community (EAC), Labour and Social Protection regarding the oversight role of the National Assembly on Regional Integration matters.
72. The Department stated that its mandated is to liaise with Parliament, the East African Legislative Assembly (EALA), and the EALA-Kenya Chapter Members. It also observes that

the National Assembly Committee on Regional Integration established under Standing Order 212, has the mandate of reviewing issues of EAC integration and other regional integration matters. However, there has been confusion in determining which ministry or department is responsible for those other regional integration blocs, which Kenya is a member of, such as IGAD, COMESA, ICRGLR. The assumption has been that the Department of EAC is responsible yet it is not. There is need to clarify this in the Standing Orders.

73. The Committee considered this matter and observed that the Regional Integration Committee was formed arising out of decisions from the EAC Summit and the Bureau of Speakers of the Member States, and through Article 65 of the EAC Treaty to form ministries and committees to deal with EAC integration matters. The Committee therefore resolved to ensure that the Regional Committee handles only EAC and EALA matters, while all other regional matters outside the EAC are handled by the Ministry of Foreign Affairs.

X. A DRAFT NATIONAL POLICY ON PUBLIC PARTICIPATION FROM THE OFFICE OF THE ATTORNEY GENERAL

74. The Office of the Attorney General and Department of Justice is in the process of preparing a Draft National Policy on Public Participation and held a Stakeholders' Review Workshop on the draft National Policy on Public Participation on February 24, 2017. The deliberations of the workshop and a copy of the Draft Policy were presented to the Taskforce.
75. The Committee discussed the proposals in the document which was still a work in progress. It was noted that the National Assembly was in line with the practice of conducting public participation. It was agreed that a guiding policy was ideal as the manner of activities undertaken by the various Government agencies was diverse.
76. The Taskforce had proposed a new Standing Order 127 (3) to provide for the principles and guidance on the manner of Public participation. It was also proposed that the calls for public participation be structured in a manner that is responsive, highlighting the specific areas of the piece of legislation so that the public can make precise proposals.

XI. PROPOSAL TO AMEND THE STANDING ORDERS TO DETERMINE THE ROLE OF THE PUBLIC INVESTMENT COMMITTEE VIS-À-VIS THAT OF DEPARTMENTAL COMMITTEES

77. During the Eleventh Parliament, there have arisen conflicts regarding the work of the Public Investments Committee (PIC) versus that of the Departmental Committees. It was observed that

there. has been an overlap and duplication of roles, especially in the review of current affairs. Standing Order 206(7) defines the functions of the Public Investments Committee. Standing Order 206(8) further explains that despite paragraph (6), the Public Investments Committee shall not examine any of the following-

- (a) Matters of major Government policy as distinct from business or commercial functions of public investments;
- (b) Matters of day-to-day administration.

78. Standing Order 216(5) spells out the functions of Departmental Committees. A close reading of Standing Order 206 *vis-à-vis* Standing Order 216 indicates that there indeed exists an overlap in terms of functions given the mandate of the Departmental Committees in overseeing the Ministries and Departments/Agencies (state corporations) and the overlapping of functions with PIC with regard to state corporations.

79. In March 2014, the Speaker gave guidance on the issue of the mandate of the Departmental Committees as compared to that of Public Investments Committee in respect of state corporations and opined that the interpretation of Standing Order 216 limits the jurisdiction to the confines of “ministries and their departments.” It therefore follows that the carrying out of the mandate of the Departmental Committees must be tied to the context of that particular Ministry and its departments. Further, the Speaker ruled that, a state corporation, established under the provisions of the State Corporations Act (Cap. 446), or indeed established by a specific Act of Parliament, is not and cannot be construed to be a department of a Ministry, within the meaning of Standing Order 216.

80. The Committee observed that -

- (i) given the mandate of the Departmental Committees in overseeing the Ministries and Departments/Agencies (state corporations) and the overlapping of functions with PIC with regard to state corporations, PIC mandate should be restricted to examination/consideration of the reports of the Auditor General on the public investments laid before the House as is currently the case with PAC on Government Accounts;
- (ii) any inquiry by PIC on any matter in a state corporation should be preceded by a request for a special audit to the Auditor General on the subject matter. As such,

- PIC will only commence its inquiry on the matter after the submission and tabling of the special audit report by the Auditor General;
- (iii) the question of the existence of overlap between Standing Order 206 and 216 indeed has been canvassed before perhaps as an indication that there is need to redefine the functions of PIC vis-à-vis those of departmental committees as espoused in the Standing Orders; and
- (iv) there is need to provide clarity in the Standing Orders for avoidance of doubt and to avoid subjecting the Standing Orders to variant interpretations by Members.

Recommendations

81. The Committee considered the matter and proposed text in Standing Order 206(7) as follows-
- (a) deleting paragraph (7) and substituting therefor the following new paragraph-
- “(7) The function of the Public Investments Committee shall be to examine the reports of the Auditor General on the public investments as laid before the House.”

XII. PROPOSAL TO AMEND THE STANDING ORDERS TO PROVIDE FOR ENHANCED PUBLIC PARTICIPATION IN THE LEGISLATIVE PROCESS AND PARLIAMENTARY BUSINESS

82. The Devolution Forum had presented a Petition requesting the National Assembly to amend the Standing Orders to provide for enhanced public participation as contemplated in Article 118 of the Constitution.
83. The Petitioners claimed that Parliament has not taken sufficient measures to educate the public on issues under consideration by the House, has failed to efficiently mobilize citizens to participate and further does not provide sufficient time for the public to deliberate, consult and offer feedback on parliamentary business. Specifically, the Petitioners prayed that the Standing Orders be amended to provide a period of at least two months for public involvement in legislative and other business of the House, provide for public awareness on matters before the House, and make any other order that it deems fit.
84. The Committee held a sitting with the Petitioners on June 8, 2016 and discussed the issues raised. The petitioners highlighted that Article 232(1) of the Constitution on the values and principles of public service includes the following aspects:
- (d) involvement of the people in the process of policymaking;*

. (e) *accountability for administrative acts; and*

. (f) *transparency and provision to the public of timely and accurate information.*

85. The Devolution Forum therefore stipulated that Parliament is constitutionally bound to provide adequate opportunities for meaningful public participation in its business. The petitioners also made suggestions on the need to increase the use of information technology, instead of solely print media, use the Parliament website and social media platforms to a greater extent to provide information to the public, formulate policy/legislative briefs as a useful tool to simplify the contents of complex legislation to aid wider understanding by the public, budget for public participation during consideration of budget estimates and enforce the sessional legislative calendar.

Recommendations

86. The Committee considered incorporated the principles proposal by-

- (i) providing for webcast of House proceedings;
- (ii) providing for the modalities of public participation in the section on public participation on Bills; and,
- (iii) increasing the prepublication scrutiny period of legislative proposals.

CHAPTER THREE: PROPOSALS CONSIDERED WITH THE SENATE STANDING ORDERS TASKFORCE

87. The proposals considered with the Senate were those touching on the manner of managing business between the Houses and on the Joint Rules. Some of the matters considered were also those requiring harmonization in both Houses.

There were various issues considered as listed below:

- a) Election of Deputy Speaker, and the procedure for removal/vacation of office of the Speaker/Deputy Speaker;
 - b) Provisions relating to the President's Address to Parliament;
 - c) Messages;
 - d) Statements/Questions;
 - e) Appointments/nominations to state/public offices;
 - f) Instances where the Constitution requires fixed majority;
 - g) Gross misconduct and disorderly conduct;
 - h) Bills, including Presidential memorandum on reservations to a Bill;
 - i) Statutory Instruments;
 - j) Committees;
 - k) Broadcasting Rules; and
 - l) The Houses of Parliament (Joint Sittings) Rules.
88. Experiences were shared regarding ongoing procedural practices in both Houses, and proposals for amendment were suggested where necessary as shown under the respective Standing Orders, as follows-
- (i) **Removal of the Speaker/Deputy Speaker:** The two groups agreed on providing for a procedure for resignation or removal of the Speaker or Deputy Speaker, taking into account the need for a process of fair hearing and natural justice. A text was prepared under the relevant Standing Order.
 - (ii) **On Appointment of state officers:** it was discussed and agreed that where there are appointive positions or other matters requiring the approval of both Houses, the vetting/approval processes will be conducted by the relevant Committees of the two Houses sitting jointly and the rules on Sittings of Joint Committees shall apply.
 - a. That approval occurs when both Houses have approved the appointment. Where one of the Houses has rejected a proposed appointment, the proposed appointment shall be deemed to have been rejected.

- b. That where a motion proposing a rejection of a nominee is rejected by the House, any Member may move the House to consider approving the appointment. The Motion would need to be introduced in both Houses in the event that one House rejected the Motion and a motion to approve the appointment may be re-introduced in the House where the appointment was rejected.
- c. That a motion for approval is not a motion for the adoption of the Committee report, but a motion for the approval or rejection of the nominee. The report is meant to provide guidance to the House during its consideration of the Motion as is the practice with the Second Reading of a Bill. The Final version of this type of motion will read as follows-

'that, taking into account the Report of the xxx Committee on vetting of nominee(s) for approval as xxxx, this House approves the appointment of xxxx to xxxxx'

- (iii) **Instances where the Constitution requires fixed majority:** the team discussed whether the provisions of fixed majority should be restricted only Constitutional amendment Bills. It was agreed that Article 123(4) (c) of the Constitution applies to the Senate in regard to decision-making through voting. However, it was noted that this provision does not apply to Motions for removal of persons from offices.
- (iv) **Bills, including Presidential memorandum on reservations:** it was agreed that a Joint Committee comprising of Members from both Houses will handle the Memorandum on a Bill. If amendments were made fully accommodated the President's reservations, only a simple majority vote would be required. If amendments were not fully accommodating the President's reservations, then a threshold of 2/3 of Members would be required to pass the memorandum.
- (v) **Statutory Instruments:** it was agreed that a procedure would be provided for approval of statutory instruments where the law requires approval by both Houses e.g. Elections Act regulations; mediation in cases of discord etc.
- (vi) **Committees:** it was noted that there was need to have an express consent for joint sittings of Committees of the two Houses outside the mediation, appointments, or presidential memoranda processes.

89. Each of these proposals was further codified under the relevant Standing Order, and appears with explanatory comments in the First Schedule of this report. This aims to assist in harmonizing similar provisions of the Standing Orders in both Houses.

CHAPTER FOUR: PROPOSALS RECEIVED FROM OTHER DIRECTORATES AND DEPARTMENTS OF THE NATIONAL ASSEMBLY

90. Upon formation of the Taskforce to review the Standing Orders, the officers of the different Directorates and Departments were asked to request their respective teams to forward proposals to amend the Standing Orders. The Legislative and Procedural Services Directorate was able to review the entire Standing Orders from start to finish and make a various recommendations. Other Directorates/Departments focused on specific areas of interest.

The main issues raised from the Directorates/Departments included the following:

Committee Services Directorate

91. The Eleventh Parliament was the first to be created under Article 97 of the Constitution of Kenya, 2010, creating the largest House in history, that is, 349 Members in the National Assembly, and 67 in the Senate. In the National Assembly, this increase number of Members has brought about a number of emerging challenges, one being the likelihood or ability of every Member to serve in a parliamentary committee. Committees are an extension of the House and it is therefore beneficial that every Member of Parliament serves in at least one active Committee as part of their oversight role as stipulated in the Constitution, and as has been the practice.

The following table shows the current membership of Committees:

COMMITTEE MEMBERSHIP IN THE ELEVENTH PARLIAMENT

NO.	COMMITTEE	NUMBER OF MEMBERS
	HOUSE KEEPING COMMITTEES (5)	
	House Business Committee (SO 171)	32
	Procedure & House Rules Committee (SO 208)	21
	Liaison Committee (SO 217)	31
	Committee of Privileges (Section 10 - NAPP Act)	11
	Catering and Health Services Committee	29 (NA)
	INVESTIGATORY COMMITTEES (2)	
	Public Accounts Committee (SO 205)	27
	Public Investments Committee (SO 206)	27
	DEPARTMENTAL COMMITTEES (12)- SO 216)	
	Administration and National Security	29
	Agriculture, Livestock & Cooperatives	29
	Environment and Natural Resources	29
	Defence and Foreign Relations	29
	Education, Research & Technology	29
	Energy, Communications & Information	29
	Finance, Planning & Trade	29
	Health	29
	Justice & Legal Affairs	29
	Labour & Social Welfare	29

Lands	29
Transport, Public Works & Housing	29
OTHER SELECT COMMITTEES (8)	
Committee on Selection (SO 172)	21
Committee on Appointments (SO 204)	28
Budget & Appropriations Committee (SO 207)	51
Committee on Implementation (SO 208)	27
Committee on Delegated Legislation (SO 210)	28
Committee on Regional Integration (SO 212)	29
Constituencies Development Committee (NG-CDF Act)	19
Constitutional Implementation Oversight Committee	28
JOINT COMMITTEES (2)	
Joint Committee on National Cohesion and Equal Opportunity (SO 214)	29 (15 NA; 14 SEN)
Joint Committee on Parliamentary Broadcasting & Library (SO 215)	30

92. It is evident that the Committees now have a larger membership and therefore the working modalities become challenging. From time to time, the Speaker has advised that the Committees should form subcommittees to look into pieces of legislation such as Legislative Proposals, Bills and Petitions referred to the Committee in order to expedite House business. This has however not yielded much result as most legislators are also members of more than one Committee. This is especially evident when Committees have meetings taking place at the same time, and Members are unable to fully contribute to either committee.

93. This has greatly affected the oversight role of most Committees. There is therefore need to have a formula where each Member serves in at least one active Committee to improve efficiency

and effectiveness. The following steps outline the main factors to consider in creating this formula-

STEP ONE: IDENTIFICATION OF MEMBERS WHO ARE HOLDERS OF DESIGNATED OFFICES

NO.	DESCRIPTION OF OFFICE HELD	NUMBER OF MEMBERS
1.	Speaker	1
2.	Deputy Speaker	1
3.	Leader of the Majority Party	1
4.	Leader of the Minority Party	1
5.	Members of the Chairperson's Panel	4
6.	Deputy Leader of Majority Party	1
7.	Deputy Leader of Minority Party	1
	Total number of designated office holders	10

94. The above-listed thirteen (10) Members need not be members of most demanding committees since they hold other senior offices. As such, if their slots are subtracted from the overall number of committee slots available for allocation, the slots that require to be created for membership in committees are as follows:

349 MPs - 10 leaders = **339 committee slots to be created**

STEP TWO: DIVIDE THE COMMITTEES INTO VARIOUS CATEGORIES SO AS TO DETERMINE THE MOST DEMANDING ONES

NO. CATEGORISATION OF COMMITTEES

A. MOST DEMANDING COMMITTEES

1. Administration and National Security
2. Agriculture, Livestock & Cooperatives
3. Environment and Natural Resources
4. Defence and Foreign Relations
5. Education, Research & Technology
6. Energy, Communications & Information

7. Finance, Planning & Trade
8. Health
9. Justice & Legal Affairs
10. Labour & Social Welfare
11. Lands
12. Transport, Public Works & Housing

B. INVESTIGATORY COMMITTEES

13. Public Accounts Committee
14. Public Investments Committee

C. OTHERS

15. Budget & Appropriations Committee
16. Committee on Implementation
17. Committee on Delegated Legislation
18. Committee on Regional Integration
19. Constituencies Development Committee (NG-CDF Act)

D. COMMITTEES CONSIDERED TO BE LESS DEMANDING

20. House Business Committee (SO 171)
21. Procedure & House Rules Committee (SO 208)
22. Liaison Committee (SO 217)
23. Privileges Committee (Section 10 - NAPP Act)
24. Catering and Health Services Committee
25. Committee on Selection (SO 172)
26. Committee on Appointments (SO 204)

27. Constitutional Implementation Oversight Committee
28. Joint Committee on National Cohesion and Equal Opportunity (SO 214)
29. Joint Committee on Parliamentary Broadcasting & Library (SO 215)

STEP THREE: REALIGNMENT OF COMMITTEES

Summary of formula

We therefore require 336 positions to be created in active committees as follows:

OPTION	NO. OF MOST DEMANDING COMMITTEES	PROPOSED NO. OF MEMBERS PER COMMITTEE	TOTAL MEMBERS PROVIDED FOR
1.	22	15	330
2.	22	17	374
3.	18	15	270
	4	17	+68=338

95. In view of the options above, there is need to review the existing Committees to possibly realign or split them, create new ones or ensure less demanding ones become more demanding so as to create more available slots to allocate to Members.

Splitting of existing Committees

96. It was proposed that the following two Committees be split as their mandate was too wide-

- (a) **Labour and Social Welfare:** Labour, trade union relations, manpower or human resource planning, gender, culture and social welfare, youth, National Youth Service, children's welfare, national heritage, betting, lotteries and sports.

It was proposed that the Committee be split into-

- i. **Labour and Social Welfare:** labour, labour relations, manpower or human resource planning, gender, youth, children's welfare, National Youth Service, social welfare and security, the elderly, persons with disabilities.

- ii. **Sports, Tourism and Culture:** sports, culture, language, arts, national heritage, betting and lotteries, tourism promotion and management.

(b) **Energy, Communication and Information:** Energy Fossil fuels exploration, Development, production, maintenance and regulation of energy, communication, information, broadcasting and Information Communications Technology (ICT) development and management.

It was proposed that the Committee be split into-

- (i) **Energy:** fossil fuels exploration, development, production, maintenance and regulation of energy.

- (ii) **Communication, Information and Innovation:** communication, information, media and broadcasting (except for broadcast of Parliamentary proceedings), Information Communications Technology (ICT) development and advancement of technology.

(c) **Finance, Planning And Trade:** Public finance, monetary policies, public debt, financial institutions, investment and divestiture policies, pricing policies, banking, insurance, population, revenue policies, planning, national development, trade, consumer protection, commerce and industry.

It was proposed that the Committee be split into-

- (i) **Finance and National Planning:** Public finance, monetary policies, public debt, financial institutions, investment and divestiture policies, pricing policies, banking, insurance, population, revenue policies including taxation, national planning **and** development.

- (ii) **Trade, Industry and Cooperatives:** trade, consumer protection, commerce, industrialization including special economic zones, enterprise promotion and development including small & medium-size enterprises, co-operatives development, intellectual property, industrial standards, anti-counterfeit policies and private sector engagement.

Creation of additional Committee

97. It was also proposed that a new investigatory committee be created to undertake functions that ought to have been conducted by the Public Accounts Committee but which have not been done due to the existing heavy workload. The Committee would be called the **Special Fund Accounts Committee (SFAC)** and would deal with Examination of-
- (a) audited accounts on utilization of the National Government Constituencies Development Fund;
 - (b) audited accounts of the Equalization Fund;
 - (c) audited accounts of the Judiciary Fund;
 - (d) the audited accounts of political parties funded from public funds; and
 - (e) any other funds as directed by the Speaker.

Change of mandate for the Constitutional Implementation Oversight Committee (CIOC)

98. The Constitutional Implementation Oversight Committee has been the oversight Committee for the now defunct Commission for Implementation of the Constitution pursuant to the part 4 of the Sixth Schedule of the Constitution. There is therefore need to create additional functions to sustain the mandate and relevance of this Committee to the functions of the House. The CIOC would now be mandated to-
- i. Review and report on outstanding legislation on implementation of the Constitution;
 - ii. Review pending matters under the devolved system of Government;
 - iii. Consider proposals to actualize or amend the Constitution;
 - iv. Undertake law reform, including audit of legislation – for avoidance of doubt, the oversight of constitutional commissions falls under the respective departmental committees;
 - v. Audit and report on any impediments to implementation of the Constitution;
 - vi. Examine the extent to which constitutional commissions enhance the implementation and respect of the letter and spirit of the Constitution; and
 - vii. Examine the extent to which administrative processes and procedures implement the Constitution.

STEP FOUR: CONSIDERATION OF PROPOSED OPTIONS

NO.	CATEGORISATION COMMITTEE	OF	CURRENT MEMBERSH IP	PROPOSED MEMBERSHIP		
				OPTION 1	OPTION 2	OPTION 3
A.	MOST DEMANDING COMMITTEES					
1.	Administration and National Security		29	15	17	15
2.	Agriculture & Livestock		29	15	17	15
3.	Communication, Information and Innovation [NEW]		-	15	17	15
4.	Environment and Natural Resources		29	15	17	15
5.	Defence and Foreign Relations		29	15	17	15
6.	Education, Research & Technology		29	15	17	15
7.	Energy		29	15	17	15
8.	Finance & National Planning		29	15	17	15
9.	Health		29	15	17	15
10.	Justice & Legal Affairs		29	15	17	15
11.	Labour and Social Welfare		29	15	17	15
12.	Lands		29	15	17	15
13.	Sports, Tourism and Culture [NEW]		-	15	17	15
14.	Transport, Public Works & Housing		29	15	17	15
15.	Trade, Industry & Cooperatives [NEW]		-	15	17	15
B.	INVESTIGATORY					
16.	Public Accounts Committee		27	15	17	17
17.	Public Investments Committee		27	15	17	17
18.	Special Fund Accounts Committee [NEW]		-	15	17	17

C.	OTHERS				
19	Budget & Appropriations Committee	51	15	23	17
20	Committee on Implementation	27	15	17	15
21	Committee on Delegated Legislation	28	15	17	15
22	Committee on Regional Integration	29	15	17	15
23	Constituencies Development Committee (NG-CDF Act)	19	15	17	15
	TOTAL NO. OF SLOTS		345	397	345

99. The Directorate recommended the second option of not more than 17 Members save for the Budget & Appropriations Committee which would have 23 Members. This will create the appropriate number of slots, while ensuring that the sizes of the committees are optimal.

PARLIAMENTARY BUDGET OFFICE

100. The office made proposals on the part dealing with Financial Procedures. Text was prepared for presentation of the Budget Policy Statement and Debt Management Strategy, Consideration of the Division of Revenue and County Allocation of Revenue Bill, presentation of Budget Estimates and consideration of the Appropriation, Supplementary Appropriation and Equalization Fund Appropriation Bill.
101. The process where the Cabinet Secretary for the Treasury presents the budget highlights was also codified, along with other text relating to the issues mentioned above. Most important to note is the re-introduction of the Committee of Supply, which was a procedure formerly used in previous Parliaments. Departmental Committees will each have a day scheduled for the Chairperson to present the budget estimates for the respective votes considered by each committee, and the question will be put on each vote separately. This will be a departure from the current practice where the Chairperson of the Budget and Appropriations Committee presents the entire budget estimates, having received input from the Chairpersons, and only a question put on the entire amount of the estimates. This is intended to give a bigger role to the Committee Chairpersons in the budget process.

SERJEANT-AT-ARMS

102. This Department raised the issue of how to handle security for the Speaker's procession especially when the President is present. This matter was provided for under the Standing Order on security and disorderly conduct.

CHAPTER FIVE: SUMMARY OF THE PROPOSED AMENDMENTS TO THE STANDING ORDERS

PART I – INTRODUCTORY

Standing Order 1: Matters not provided for;

103. **Expanding the scope of the guide to the Speaker’s decisions:** It is proposed that Standing Order 1(2) be amended by inserting the words “practices” after the word “traditions” to acknowledge the fact that decisions of the Speaker are made based on diverse grounds other than the ones stated therein. There had been a proposal to introduce resolutions as part of the basis the Speaker uses to make decisions. Upon discussion, it was agreed that this would be misleading as resolutions of one term of Parliament are not binding to resolutions of subsequent terms.

Standing Order 2: Interpretation;

104. Standing Order 2 has been amended to provide that “broadcast” includes live transmission of the proceedings of the House by radio, television or webcast.

New Standing Order 2A: Place of the Mace;

105. It is proposed that the Standing Orders be amended by inserting New Standing Order 2A to codify its significance in identifying the authority of the Speaker and the House and shall be kept in safe custody by the Serjeant-at-Arms.
106. A proposal had been floated to recognize the Mace in the Standing Orders so as to cure the mischief of legislators attempting to grab the Mace. Traditionally, the place of the Mace is regarded as a practice and is barely enshrined in the Standing Orders. The Standing Orders of the House of Representatives in New Zealand mention the Mace in regard to positioning it on top of the table when the Speaker takes the seat and under the Table when the Speaker has left the Chair.

PART II - SWEARING-IN OF MEMBERS AND ELECTION OF SPEAKER

Standing Order 3: Proceedings on assembly of a new House;

107. **Providing for swearing-in of Members of the East African Legislative Assembly:** It is proposed that Standing Order 3 (2) (b) be amended by inserting the phrase “East African Legislative Assembly” after the phrase “National Assembly.”

108. The Committee proposes recognition of the Members of the East African Legislative Assembly as Members who are only second in seniority to the Assembly, given that the Assembly has existed since 1948 and the East African Legislative Assembly has been in existence since 2001. The Committee also proposes to provide that the Clerk may in administering oath or affirmation give priority to persons with disabilities.

109. The Committee had also considered providing an opportunity for candidates for the positions of Speaker and Deputy Speaker to present credentials before commencement of the voting process to fill these offices. In Canada, prior to the election, the Members who are candidates may make introductory speeches of no more than five minutes. This would assist the House in determining the suitability of the candidate for the position. However upon discussion, the proposal was dropped because:

- a) it would give way to less serious persons who are only seeking publicity;
- b) traditionally, the candidates for the positions have been fielded by political parties and as such, the House membership votes based on party loyalty;
- c) Since the position of Speaker was open to Members of the Public and not a sitting Member of Parliament, admission of strangers to address the House would be challenging.

New Part IIA: Process of Removal of the Speaker and Deputy Speaker;

10. It is proposed that the Standing Orders be amended by inserting the following new Part immediately after Standing Order 12-

VACATION OF OFFICE OF SPEAKER AND DEPUTY SPEAKER

Resignation of the Speaker

12A (1) A Speaker or Deputy Speaker who intends to resign from office shall submit a letter of resignation addressed to the House.

(2) Upon receipt of a letter of resignation, the Clerk shall, without delay,—

- (a) in the case of resignation by the Deputy Speaker, inform the Speaker; or
- (b) in the case of resignation by the Speaker, inform the Deputy Speaker.

(3) The Speaker, Deputy Speaker or a Member of the Chairperson's Panel shall notify the House within seven days of receipt of a letter of resignation.

Removal from Office

12B (1) A member of the National Assembly, supported by at least one hundred and seventeen members, may move a motion for the removal of the Speaker or Deputy Speaker for—

- (a) gross violation of a provision of the Constitution or of any other law;
- (b) incompetence; or
- (c) gross misconduct.

(2) Before giving Notice of the Motion under paragraph (1) the Member shall deliver to the Clerk a copy of the proposed Motion in writing—

- (a) stating the grounds and particulars in upon which the proposed Motion is made;
- (b) signed by the Member; and
- (c) signed in support by at least one hundred and seventeen Members of the Assembly.

(3) Upon receipt of the motion by the Clerk, a Member shall not withdraw a signature appended to it.

(4) A Member shall give three days notice of the motion under paragraph (1) within three days of the approval of the motion by—

- (a) the Deputy Speaker, in the case of the removal of the Speaker; or
- (b) the Speaker, in the case of the removal of the Deputy Speaker.

(5) The Clerk shall set out on the Order Paper on which the Motion is listed—

- (a) the grounds and particulars upon which the proposed Motion is made;
- (b) the name of the Member sponsoring the Motion; and
- (c) the names of the Members in support of the Motion.

(6) If the Motion is supported by at least one hundred and seventeen Members of the National Assembly—

- (a) the Assembly shall appoint a select committee comprising eleven of its Members to investigate the matter; and

(b) the committee shall, within seven days, investigate and report to the Assembly whether it finds the allegations against the Speaker or Deputy Speaker to be substantiated.

(7) The Speaker or Deputy Speaker has the right may appear and be represented before the select committee during its investigations.

(8) If the select committee reports that it finds the allegations—

(a) unsubstantiated, no further proceedings shall be taken; or

(b) substantiated, the National Assembly shall—

(i) furnish the Speaker or Deputy Speaker with the report of the select Committee, together with any other evidence adduced and such notes or papers presented to the committee at least three days before the day scheduled for his or her appearance before the Assembly;

(ii) afford the Speaker or Deputy Speaker an opportunity to be heard;

(iii) consider the Report of the select committee; and

(iv) vote whether to approve the resolution requiring the removal from office of the Speaker or Deputy Speaker.

(9) If a resolution requiring the removal from office of a Speaker or Deputy Speaker is supported by at least two-thirds of the Members of the Assembly, the Speaker or Deputy Speaker shall cease to hold office.

11. The Committee observed that a procedure for removal of State Officers such as the President and the Deputy President is provided for. There should therefore be a formal procedure to cater for due process and for fair hearing for the Speaker in the event of intention for his removal. Article 106 (2) of the Constitution provides for situations in which the office of Speaker or Deputy Speaker shall become vacant. The process of removal of Speaker or Deputy Speaker should therefore provide for the manner of conducting business in the event that the office falls vacant up to election of a new Speaker or Deputy Speaker.

12. The Standing Orders provide for manner of dealing with the vacancy when a new House of Parliament first meets after an election. The process has provided for vacation of office under Article 103 of the Constitution, through removal and resignation. There may also be need to provide for other situations such as bankruptcy, incapacitation etc.

113. The Committee observed that there is need to increase the threshold in terms of the number of Members required to support a Motion for removal of a Speaker or Deputy Speaker from fifty members to a third of the Members of the National Assembly. This is to avoid the abuse of the process for removal of Speaker or Deputy Speaker.

PART III – DEPUTY SPEAKER AND CHAIRPERSON OF COMMITTEES

Standing Order 14: Notification of opening of Parliament;

114. **Provide for timely opening of a new of Parliament:** It is proposed that Standing Order 14 (1) be amended by inserting the phrase “as soon as is practicable” after the phrase “opening of Parliament.” This is to:
- i. provide for sufficient time for the President to issue the Notice in the event that there is a dispute in the Presidential election; or
 - ii. cater for cases when it is not known when the President will open the next sitting.
115. The Committee observed that there is need to provide clear timelines when the House shall be opened following the First Sitting of the House after a general election. The Committee proposed that Parliament should be opened not later than thirty days following the First Sitting of the House after a general election.

Standing Order 16: Chairperson’s Panel;

116. **Proposed reduction of the number of Members of the Chairperson’s Panel:** The Committee considered reducing the number of Members in the Chairperson’s Panel to three instead of four for ease of manageability and commitment by the Panel. However, it was resolved that the current membership of the Panel is sufficient. Further, the Committee proposed consideration of the Members of the Panel being reappointed at the beginning of every Session as opposed to at the beginning of every term as is currently provided for. This was left for consideration and determination in future.

PART IV - THE LEADER OF THE MAJORITY PARTY AND THE LEADER OF THE MINORITY PARTY

Standing Orders 19 and 20: Leader of the Majority Party and Deputy Leader of the Majority Party/Leader of the Minority Party and Deputy Leader of the Minority Party;

117. **Simplifying the replacement process of a Leader of the Majority Party and a Leader of the Minority Party:** It is **proposed** that the Standing Orders be amended by deleting Standing Orders 19 (4) and 20 (4).

118. The **Committee** proposed deletion of the Standing Orders providing for removal of the Leader of the Majority Party, the Leader of the Minority Party and their Deputies only upon election of a Member to fill the position. The intention of the provision was to ensure there was no vacuum in the specific offices for streamlined flow of business in the House. The deletion was proposed as it was felt that these provisions were frivolous and created an avenue for a prolonged replacement process. It was also noted that this is a political process that should be left to the parties to resolve and subsequently inform the House.

PART V – ADDRESS BY PRESIDENT, VISITING DIGNITARY AND OTHER PERSONS

New Standing Order 25A

119. **Designation of a place in the Chamber for Cabinet Secretaries and other persons:** It is proposed that the Standing Orders be amended by inserting the following new Standing Order 25A immediately after Standing Order 25 (2)-

25A. The Speaker may designate a suitable place in the Chamber or at the bar of the House for—

- (a) the Cabinet Secretary responsible for finance to make a public pronouncement of the budget policy highlights and revenue raising measures for the national government as contemplated under the Public Finance Management Act;
- (b) other persons to make submissions and presentations before the House.

20. This would provide an avenue for presentations before the House by other persons such as the Chief Justice, and the Auditor General, among other state officers, in exceptional circumstances. Such a provision would also allow for the officials in the Children's Parliament to make presentations to the Assembly, and further demystify Parliament while providing indirect mentorship to students.

PART VI - CALENDAR, SITTINGS AND ADJOURNMENTS OF THE HOUSE

Standing Order 28: Calendar of the Assembly;

121. **Simplifying the adjournment process of the House:** It is proposed that Standing Order 28(3) be amended by inserting the phrase “the Speaker shall notify Members of the same, and at the appointed time, the Assembly shall adjourn without question put” after the phrase “parliamentary Calendar”. The Committee proposed this on the basis that there was no need for debate on a Motion of adjournment.

Standing Order 30: Hours of meeting;

122. **Change of sitting times:** a change was effected to Standing 30(1) to reflect the current Wednesday morning sitting hours beginning at 9.30 a.m. and ending at 1.00 p.m. to reflect current situation as amended in the Addendum to the Standing Orders in 2014.
123. The Committee has also proposed an extension of the afternoon sitting hours of the House by a further thirty(30)minutes. Time for interruption of business moves to **7.00 p.m.** from 6.30 p.m., and to **7.30 p.m.** from 7.00 p.m., in the event of an Allotted Day. This change in sitting time was informed by the fact that there is a lot of business, especially by Members, and there was need to create more time for debate, especially with the increased House membership. This practice of extended sitting hours is also seen in other jurisdictions. For example, in the National Assembly of Zambia, their sitting times are as follows:

Tuesday	1430hrs-2000hrs
Wednesday	1430hrs-2000hrs
Thursday	1430hrs-2000hrs
Friday	0900hrs-1300hrs

Additionally, the House of Commons in the United Kingdom has the following sitting hours:

	Main Chamber	Westminster Hall
Monday	2.30pm-10.30pm	4.30pm-7.30pm
Tuesday	11.30am-7.30pm	9.30am-11.30am & 2.30pm-5.30pm
Wednesday	11.30am-7.30pm	9.30am-11.30am & 2.30pm-5.30pm
Thursday	9.30am-5.30pm	1.30pm-4.30pm
Friday	9.30am-3.00pm (for only 13 Fridays)	

Similarly, the House of Commons in Canada also has extended sitting hours as follows:

Monday	11.00am-6.30pm
Tuesday	10.00am-6.30pm
Wednesday	2.00pm-6.30pm
Thursday	10.00am-6.30pm
Friday	10.00am-2.30pm

Standing Order 32: Resumption of interrupted business;

124. **Rearrangement of Standing Order to relevant part:** It is proposed that the Standing Orders be amended by moving Standing Order 32 to immediately after Standing Order 95. The Committee proposed this on the basis that this Standing Order provides for procedure on debate and should be clustered with similar Standing Orders.

PART VII - QUORUM OF THE HOUSE

New Standing Order 35(4): Quorum during the proceeding of the House;

125. **Simplifying the process of attaining Quorum:** It had been proposed that the process of attaining quorum be simplified by rendering leaving of the House by Members other than party whips disorderly. The proposal was however deleted as it was not considered necessary.

PART VIII - ORDER OF BUSINESS

Standing Order 38: Order Paper to be prepared and circulated;

126. **Making provision for a Supplementary Order Paper:** It is proposed that Standing Order 38(1) be amended by inserting the phrase “proposed to be transacted” after the word “business”. This would make allowance for the possibility of a Supplementary Order Paper in the event of change of the business to be considered after publication of the Order Paper.
127. **Providing for manner of election of temporary Speaker:** The Committee considered a proposed amendment to the Standing Orders to provide for the manner of commencement of the House when the presidium is absent and the manner of election of a temporary Presiding Officer. The amendment would actualize Article 107 (1) (c) of the Constitution, which the Committee proposed as provision for the manner of election of a Member to preside over the House in the absence of a Member of the Chairperson’s Panel. After extensive deliberations, the Taskforce

resolved that the matter remains as a practice and be inserted into the Procedural Manual for use by officers when need arises.

Standing Order 40: Sequence of proceedings;

128. **Proposed changes to the preliminary orders:** It had been proposed that Standing Order 40 be amended by having item (vii) on Statements subdivided into subjects to clarify the nature of Statements that Members are allowed to submit. It was also proposed that Statements from Chairpersons of Committees, Urgent Matters of National Importance, Tributes and accolades be listed as a separate item under preliminary orders for consideration as a priority business.
129. The Rules of the Senate of Canada provide that at the request of the Leader of the Government, the Leader of the Opposition, or the leader or facilitator of any other recognized party or recognized parliamentary group, the period for Senators' Statements shall be extended by no more than 15 minutes for the purpose of paying tribute to a current or former Senator. Each Senator offering a tribute shall speak only once and for no more than three minutes.
130. The two proposals were discussed and dropped in view of the fact that:
- i. Statements already provide a forum for Chairpersons of Committees to apprise the House on business pending before the Committee;
 - ii. Statements on Urgent Matters of National Importance required notice hence could not be discussed under preliminary orders; and
 - iii. Members are allowed to make Personal Statements on any topic including the accolades and tributes which are allowed by the Speaker when need arises.
131. Standing Order 40 (3) was proposed to be amended by deletion of the phrase "or a member belonging to the Majority or Minority Party" appearing after the phrase "sponsored by the Majority or Minority Party" as this was a repetition.

PART IX – MESSAGES

New Standing Order 42 (3A);

132. **Providing for Messages from the Executive other than the President:** It is proposed that the Standing Orders be amended by inserting the following new Standing Order immediately after Standing Order 42 (3) (c)-

42 (3A) Paragraphs 1, 2 and 3 shall apply, with necessary modifications, to a message delivered to the Speaker by a Cabinet Secretary for communication to the House pursuant to any written law.

133. The amendment would cater for receipt of Messages from the Cabinet and any other office in the Executive other than the President and from the Senate.

PART X – STATEMENTS

Standing Order 43: Member's general statements

134. Change of timing for Members to make general statements from Tuesday at 6.00 p.m. at 6.30 p.m. to accommodate the time for interruption of business of the House.

Standing Order 44: Statement Hour

135. **Re-introduction of Chairpersons' statements:** Standing Order 44(2) (c) had been deleted through the Addendum to the Standing Order. It is being re-introduced so as make provision for cases where Chairpersons of Committees have to make statements in the House on matters before their Committees.

PART XII – MOTIONS

New Standing Order 47 (4A);

136. **Providing for procedure of consideration of Motions for removal from State Office:** It is proposed that the Standing Orders be amended by inserting a new Standing Order 47(4A) on a notice of motion under Part XIV (*Procedure for removal from State Office*). This is to allow for such a sensitive matter to be considered expeditiously by the House and avoid a hanging noose on the State Officer who is the subject of the removal.

PART XIII – SPECIAL MOTIONS

Standing Order 52: Motions which may be moved without Notice;

37. A proposal had been made to add a Motion to alter the Calendar of the House to this list. However, it was felt that such a motion should be substantively scheduled and debated, as it could affect the Business of the House, especially if shortening the sitting time of the Assembly.

Standing Order 61:Definition of Special Motion;

138. **Providing for removal of a Speaker or Deputy Speaker as a Special Motion:** It is proposed that Standing Order 61(1) be amended by inserting a new Standing Order under 61 (b) to provide for a resolution for removal of a Speaker or Deputy Speaker from office as a special Motion.

Standing Order 62:Instances where the Constitution requires a fixed majority;

139. **Providing clear timelines for consideration of a Motion for the removal of a Speaker or Deputy Speaker:** It is proposed that Standing Order 62 be amended -
- a) by deletion of the phrase “a Special Motion shall be” appearing immediately after the words “lesser or further period”;
 - b) in paragraph (a) by deletion of the phrase “disposed of by” appearing at the beginning of the paragraph and inserting in place thereof the words “shall dispose of a Special Motion” after the words “the Speaker”;
 - c) by inserting a new paragraph (b) “a Member shall give notice of the motion in the House within three sitting days of the Speaker’s approval”;
 - d) by renaming the existing paragraph (b) as paragraph (c);
 - e) in paragraph (c) by deletion of the phrase “disposed of by” appearing at the beginning of the paragraph and inserting in place thereof the words “shall dispose of a Special Motion” after the words “the House”; and
 - f) in paragraph (c) by deleting the words “Standing Order 47 (Notice of Motions)” and inserting in place thereof the words “under sub-paragraph (b)” immediately after the words “upon the notice under”.
140. The amendments were informed by the sensitive nature of Special Motions and thus the need to dispose of them expeditiously within a total of twenty four days from the receipt of notice by a Member to the time the House disposes of the Motion.

PART XIV- PROCEDURE FOR REMOVAL FROM STATE OFFICE

Standing Order 63: Procedure for removal of President on grounds of incapacity;

141. Making Members aware of the objective of a Motion they intend to support and ensure credibility of the Motion:

a) **New Standing Order 63(1A)**

142. It is proposed that the Standing Orders be amended by inserting the following new Standing Order after Standing Order 63(1) -

63 (1A) A motion under this Standing Order shall have its subject matter indicated on every sheet.

143. The Committee proposed this amendment on a motion for removal of President on grounds of incapacity to make it clear to Members supporting the Motion what they were signing for. It is proposed that Standing Order 63(5) be amended by inserting the phrase "Upon receipt of the Motion by the Clerk" at the beginning of the paragraph. This would prevent too much back and forth on withdrawal and addition of signatures which affects the credibility of the allegations.

Standing Order 64: Procedure for removal of President by impeachment;

144. Making Members aware of the objective of a Motion they intend to support and ensure credibility of the Motion:

a) **New Standing Order 64(1A)**

It is proposed that the Standing Orders be amended by inserting the following new Standing Order after Standing Order 64(1) -

64 (1A) The grounds specified in a motion under this Standing Order shall be admissible if -

- (a) framed clearly to particularize and disclose a gross violation of the Constitution or other written law, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal;
- (b) stating with precision, the provisions of the Constitution or other written law that have been alleged to be grossly violated, where gross violation of the Constitution or other written law is indicated as a ground for the intended removal; and
- (c) accompanied by necessary evidence, including annexures or sworn testimonies in respect of the allegations.

The proposed grounds would guide the admissibility of a Motion for removal of the President by impeachment.

- b) It is proposed that Standing Order 64(5) be amended by inserting the phrase “Upon receipt of the Motion by the Clerk” at the beginning of the paragraph.

This would prevent too much back and forth on withdrawal and addition of signatures which affects the credibility of the allegations.

Standing Order 66:Procedure for removal of Cabinet Secretary;

- 145. Making Members aware of the objective of a Motion they intend to support and ensure credibility of the Motion:

- a) It is proposed that Standing Order 66 be amended in paragraph 2 by deleting the existing paragraph 66 (2) and substituting thereof with the following paragraph-

66(2) the provisions of Standing Order 64 (Procedure for removal of President by impeachment) shall apply to a Motion under paragraph (1).

The Committee proposed this amendment on a motion for removal of a Cabinet Secretary to make it clear to Members supporting the Motion what they were signing for. It is proposed that Standing Order 66(4) be amended by inserting the phrase “Upon receipt of the Motion by the Clerk” at the beginning of the paragraph.

This would prevent too much back and forth on withdrawal and addition of signatures which affects the credibility of the allegations.

PART XV – VOTING AND DIVISIONS

Standing Order 70:Electronic voting;

- 146. **Updating the Standing Orders to current practice:** It is proposed that Standing Order 70(7) be deleted.
- 147. This provision was applicable when voting lobbies were still in use. In addition, it contradicts Standing Order 76 (2) which states that it shall be disorderly conduct for a Member to fail to record his or her abstention in a division.

PART XVI - RULES OF DEBATE

Rearrangement of the Standing Orders in their proper sequence:

148. The Committee proposed the following rearrangements:
- a) Standing Orders 92, 93 and 94 which provide for a Member who has spoken to a question may speak to an amendment, Debate on amendment confined to amendment and Reserving rights of speech respectively are rearranged to appear after Standing Order 82 on Speaking twice to a Question. The proposal will ensure better flow of the related Standing Orders.
 - b) Former Standing Order 32 on resumption of interrupted business be placed after Standing Order 95 on Closure of debate to have Standing Orders on the subject of Debate in the House clustered under the same Part, and for synergy of the Standing Orders.

PART XVII - LIMITATION OF DEBATE

Enhancing quality of debate:

149. **New Standing Order 97 (5):** It is proposed that the Standing Orders be amended by inserting the following new Standing Order immediately after Standing Order 97 (4):
- 97 (5) The Speaker may give priority to Members specified in a party list submitted by a Party Whip to speak during debate.

It was proposed that a party list to be submitted by Party Whips be introduced. This would enable meaningful contribution to Motions of an exclusive nature.

150. **Enriching debate on a Bill:** By inserting the words “and the Chairperson of the relevant Committee” immediately after the words “Leader of Minority party”.
- Granting the Chairperson of the relevant Committee a maximum of 60 minutes in addition to the Leader of Majority Party and the Leader of Minority Party allows for comprehensive detail to be shared on the content of a Bill as the Chair has considered the Bill severally with stakeholders and is thus better versed with it than the rest of the House membership.

These amendments are a codification of the existing procedure where limitations on debate are adopted by the House at the beginning of every Session as Procedural Motions.

151. **New Standing Order 99 (2):** It is proposed that the Standing Orders be amended by inserting the following new Standing Order immediately after Standing Order 99 (1):

(2) The security check or screening under paragraph (1) shall extend to a handbag or other accessory that a Member intends to enter with into the Chamber.

PART XVIII - ORDER IN THE HOUSE AND INCOMMITTEE OF THE WHOLE HOUSE

Standing Order 107: Disorderly conduct;

152. Expansion of definition of disorderly conduct to provide for graduated scale of punishment commensurate to the disorder and manner of punishment for Members of Parliament: The Committee observed that there is need to redefine and categorize disorderly conduct into two, and also allow a Member who has a Bill to appear before the House or a Committee when the Bill is being considered notwithstanding the punishment being served.

The proposed amendment is as follows-

Disorderly conduct

107. (1) A Member commits an act of disorderly conduct if the Member—

- (a) creates actual disorder;
- (b) knowingly raises a false point of order;
- (c) unnecessarily interrupts proceedings or consults in a disruptive manner;
- (d) fails to record abstention in a division;
- (e) fails to declare personal interest in a matter before the House or a Committee in accordance with Standing Order 90;
- (f) deliberately gives false information to the House;
- (g) makes allegations without, in the Speaker's opinion, adequate substantiation;
- (h) threatens to use violence against a Member or other person in the House or Committee;
- (i) votes more than once in breach of these Standing Orders;
- (j) fails to record abstention in a division; or
- (k) commits any other breach of these Standing Orders, that in the opinion of the Speaker, constitutes disorderly conduct.

(2) The Speaker may call a Member whose conduct is disorderly to order, and-

- (a) caution the Member; or
- (b) order the Member to withdraw from the precincts of the Assembly for a maximum of four days.

Gross disorderly conduct

107A. (1) A Member commits an act of gross disorderly conduct if the Member-

- (a) defies a ruling or direction of the Speaker or Chairperson of Committees;
- (b) declines to explain or retract use of unparliamentary words or declines to offer apologies, despite having been ordered to do so by the Speaker;
- (c) demonstrates or makes disruptive utterances against the suspension of a Member;
- (d) attempts to or causes disorder of whatever nature during an address by a visiting dignitary;
- (e) uses violence against a Member or other person in the House or Committee;
- (f) attempts to or disrupts the Speaker's Procession when the Procession is entering or leaving the Chamber;
- (g) attempts to or removes the mace from its place in the Chamber;
- (h) acts in any other way to the serious detriment of the dignity or orderly procedure of the House; or commits any other breach of these Standing Orders, that in the opinion of the Speaker, constitutes gross disorderly conduct.

(2) In this Standing Order, "unparliamentary language" means the use of words which, in the opinion of the person presiding, are deemed to be impolite, rude, abusive or inconsistent with parliamentary procedure or practice.

(3) The Speaker may call a Member whose conduct is grossly disorderly to order, and shall order the Member to withdraw immediately from the precincts of the Assembly for a minimum of five days and a maximum of twenty eight days, including the day of suspension.

Effect of suspension

110A.(1) A Member who is ordered to withdraw from the precincts of Assembly under Standing Order 108 (*Member may be suspended after being named*) and Standing Order 111 (*Action to be taken on refusal to withdraw*) shall during the period of such withdrawal or suspension forfeit the right of access to the precincts of the Assembly.

- (a) the right of access to the precincts of the Assembly; and
- (b) his or her salary and all allowances payable during the period.

(2) Suspension from the service of the House shall not exempt the Member so suspended from appearing before a Committee of the House for the consideration of a Bill sponsored by the Member.

Appeal against suspension

110B. (1) Except as provided in this Standing Order, the suspension of a Member or the application of this Standing Order shall not be subject to debate.

(3) A Member suspended from the House under this Part may appeal in writing to the Committee of Privileges within three days of the suspension.

(4) Despite paragraph (2), the Committee may, with leave of the House, admit an appeal received after three days.

(5) Upon receipt of the Member's appeal, the Committee shall within seven days-

- (a) notify the Member, in writing, of the day appointed for the hearing of the appeal;
- (b) notify the Speaker, who shall thereafter admit the Member to the precincts of Parliament on the day(s) appointed for the hearing of the appeal; and
- (c) consider the appeal and after according the Member the right to be heard, submit a report to the House either-
 - (i) upholding the suspension; or
 - (ii) reducing the period of suspension; or
 - (iii) readmitting the Member to the House.

(6) The decision of the Committee regarding the suspension shall be final.

(7) The Member who presided in the House or Committee of the whole House during suspension of an appealing Member shall not participate in the proceedings of the Committee during the appeal.

(8) A member designated by the Committee shall inform the House of the decision of the Committee regarding the suspension and the Speaker shall thereupon effect the decision.

- (9) The House may, in exceptional circumstances permitted by the Speaker, debate the report of the Committee without amendment or resolution.

Action to be taken on refusal to withdraw

153. It is proposed that Standing Order 111 be amended by inserting the following new Standing Order immediately after Standing Order 97 (4) by deleting the words “during the remainder of a session” and replacing thereof with the words “for a minimum of twenty-one days and a maximum of ninety days”.
154. The proposals were informed by the fact that the suspension for the remainder of the Session was very punitive for the Members. The time period was thus amended to take into account a timeframe for which the Constitution envisions that a constituency should not have a Member of Parliament.

Definition of a day

112B. For the purposes of this part, a “day” means a calendar day.

PART XIX - PUBLICBILLS

Standing Order 114: Introduction of Bills;

155. **Manner of handling legislative proposals:** It is proposed that Standing Order 114 be amended by-
- a) deleting the existing paragraphs 3 and 4 and replacing them with the following paragraphs 3 to 8-
- (3) Upon receipt of the legislative proposal from the Clerk under paragraph (2), the Speaker shall-
- (a) where the Speaker is of the opinion that a legislative proposal is not a draft money Bill in terms of Article 114 of the Constitution-
 - (i) direct that the proposal be referred to the relevant Departmental Committee for prepublication scrutiny in case of a legislative proposal not sponsored by a Committee;
 - (ii) direct that the proposal be published into a bill, in the case of a legislative proposal sponsored by a committee.

(b) where the Speaker is of the opinion that a legislative proposal is a draft money Bill in terms of Article 114 of the Constitution, direct that the legislative proposal be referred to the Budget and Appropriations Committee and the proposal shall be proceeded with only in accordance with the recommendations of the Budget and Appropriations Committee after taking into account the views of the Cabinet Secretary responsible for finance.

(4) The Budget and Appropriations Committee shall consider only the money-bill or financial aspects of the proposal and submit a report to the Speaker within twenty one (21) days of receipt of the proposal.

(5) A report under paragraph (4) shall contain-

- (a) the views of the Cabinet Secretary responsible for finance, if any;
- (b) a detailed examination of the manner in which the legislative proposal affects the current and future budgets and may include implications on tax measures;
- (c) a recommendation on whether or not the proposal should be proceeded with;
- (d) any other appropriate recommendation relating to money-bill aspects of the proposal.

(6) Upon receipt of the recommendations of the Budget and Appropriations Committee, the Speaker shall direct that -

- (a) the proposal be subjected to prepublication scrutiny before the relevant Departmental Committee in case of a legislative proposal not sponsored by a Committee, or
- (b) the proposal be published into a bill, in the case of a legislative proposal sponsored by a committee, or
- (c) the legislative proposal be not proceeded with.

(7) The Departmental Committee to which a legislative proposal is referred to for prepublication scrutiny under paragraphs (3)(a)(i) and (6)(a) shall consider the proposal

and submit a report to the Speaker within twenty one (21) days and advising whether or not the proposal should be proceeded with, or any other appropriate recommendation.

(8) Following the recommendations of the relevant Departmental Committee, the Speaker shall direct either that the legislative proposal be not proceeded with or that it be published into a bill.

b) New Standing Orders 114A and B

156. It is proposed that the Standing Orders be amended by inserting the following new Standing Orders after Standing Order 114 (8) –

Speaker to exempt certain legislative proposals

114A. (1) The Speaker may exempt a legislative proposal which originates from the Party forming the National Government from the provisions of Standing Order 114 (pre-publication scrutiny).

(2) An exemption under paragraph (1) may not be granted unless it is accompanied by-

(a) a copy of a Cabinet approval;

(b) a certificate by the Attorney-General confirming that the legislative proposal complies with the Constitution and the law.

(3) Upon grant of the exemption, the Speaker shall direct that the legislative proposal be published into a bill.

Standing Order 120: Publication;

57. **Additional Bills whose publication period can be reduced:** It is proposed that Standing Order 120 be amended by-

a) deleting the word “or” appearing after the words “an Appropriation Bill” and

b) inserting the words “a Division of Revenue Bill or a County Allocation of Revenue Bill, and Equalization Fund Appropriation Bill” after the words “Supplementary Appropriation Bill”.

The amendment provides for addition of the Division of Revenue Bill, the County Allocation of Revenue Bill and the Equalization Fund Appropriation Bill as financial Bills

which require a shorter publication period and can be dealt with at all stages on the same day. These Bills deal with provision of Funds to the Exchequer for provision of services by the Government to citizens.

Standing Order 121: Bills concerning county government;

158. A new paragraph has been added to the Standing Order to clarify this matter. The amendment seeks to realign Standing Order 121 with the provisions of Article 110 (3) of the Constitution. The amendment will ensure that the whenever any question arises as to whether a Bill is a Bill concerning county governments, the Speaker makes a determination on the nature of the Bill.

Standing Order 122: Procedure upon publication;

159. Some paragraphs were deleted so as to realign Standing Order 122 with the provisions of Article 110(3) of the Constitution. There is no need to regurgitate the procedure of making the determination in terms of Article 110(3) of the Constitution in the Standing Orders. The provisions of Article 110(3) are clear as to when the determination is made and the nature of the questions to be answered in making the determination.

Standing Order 127: Committal of Bills to Committees and public participation;

160. **Providing for forms of public participation:** It is proposed that Standing Order 127 be amended by-

- a) deleting the existing paragraph 3 and replacing it with the following paragraph thereof-

127 (3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

- a) inviting submission of memoranda;
- b) holding public hearings;
- c) consulting relevant stakeholders in a sector; and
- d) consulting experts on technical subjects.

161. The amendment provides for the principle of public participation and outlines the activities to be undertaken in the process of conducting public participation. The Committee observed that in relation to Bills emanating from the Senate there is need for the Public Participation process to be targeted on specific stakeholders to avoid duplication of efforts and wastage of public resources.

162. Committee Report on a Bill: It is proposed that the Standing Orders be amended by inserting the following new Standing Order immediately after Standing Order 127 (3) -

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.

b) In paragraph (4) by deleting the words “to inform debate” appearing after the words “Committee’s report to the House” and insertion of the word “one” after the word “twenty”.

The amendment clearly explains that the purpose of a Report on a Bill is to inform debate based on views collected from public participation conducted by the Committee; and not for adoption by the House.

The addition of one day to make the period twenty one days is for consistency with other parts of the Standing Orders.

Standing Order 131: Referral of proposed amendments to Committees;

163. Providing for harmonization of proposed amendments despite their number: It is proposed that Standing Order 131 be amended by deleting the words “more than ten” appearing after the words “before commencement of Committee of the Whole”

This is to ensure harmonization of proposed amendments to a Bill despite their number, as there may be fewer than ten conflicting amendments.

Standing Order 133: Procedure in Committee of the whole House on a Bill;

a) **New Standing Order 133 (1A)**

64. Elaboration of the process of debate in Committee of the whole House: The Standing Orders be amended by inserting the following new Standing Order immediately after Standing Order 133 (1) –

133(1A) Debate to a proposed amendment shall be confined to the content of the amendment.

The amendment is an emphasis on rules of relevance in Committee of the Whole House.

b) In paragraph (7) by deleting the word “or” appearing after the words “Equalization Bill” and inserting the words “a Division of Revenue Bill or a County Allocation of Revenue Bill” after the words “an Appropriation Bill”.

The amendment exempts Members from moving amendments whose effect would be to impose a charge or increase expenditure above that already resolved by the House on the two Bills.

Standing Order 136: Procedure on Bills reported from Committee of the whole House;

165. Detailing the process of Recommital of a Bill: Standing Order 136 be amended-

a) In paragraph 2 by deleting the word “a” appearing after the words “contained in” and replacing with the word “the” thereof.

b) New Standing Order 136 (1A)

The Standing Orders be amended by deleting the existing paragraph 136 (3) and substituting thereof with the following new Standing Order immediately after Standing Order 136 (2) –

136A (1) A Member who desires to amend or delete a provision contained in a Bill reported from Committee of the whole House or introduce a new provision in the Bill, may propose an amendment to add, at the end of the Motion for agreement with the Committee of the whole House, the words “subject to the re-committal of the Bill (in respect of some specified clause, part or of some proposed new clause or new schedule) to a Committee of the whole House.”

(2) If the amendment to the motion for agreement with the Committee of the whole House is agreed to, the Bill shall stand so re-committed and the House shall either forthwith or upon a day named by the House Business Committee in consultation with the Member in charge of the Bill dissolve itself into a Committee to consider the matter so re-committed.

The amendment provides a detailed explanation on the Recommital Procedure for clarity.

166. **Standing Order 137: Procedure on Bills reported from Select Committees;** is amended in paragraph 1 by deleting the words “on a Bill” appearing after the words “Select Committee” and replacing with the word “established pursuant to Standing Order 127(2)” thereof.

167. **Standing Order 141:Re-introduction of Bills;** is amended by-

a) deleting the existing heading and substituting with the following new heading thereof-

Lapse and Re-introduction of Bills

This is to have the title reflect the content therein.

b) Inserting the following new paragraph (3A) immediately after Standing Order 141(3)-

3A. The provisions of paragraph (1),(2), and (3) of this Standing Order shall not apply to a Bill to amend the Constitution, a Division of Revenue Bill, County Allocation of Revenue Bill or a Bill originating from the Senate.

168. The amendment provides for exempting Constitutional Amendment Bills, Division of Revenue and County Allocation of Revenue Bills and Senate Bills from lapsing upon rejection at the Second Reading or Third Reading, and from lapsing at the end of two consecutive Sessions of the same Parliament if Second Reading of the Bill has not been concluded. This exemption will also allow for republication of the Bills in the same form within a six-month period where necessary.

Standing Order 143: Consideration of Bills originating from the Senate;

169. **Outlining manner of consideration of Bills from the Senate:** Standing Order 143 be amended by deleting the existing Standing Order 143 and substituting with the following new Standing Order thereof-

(1) Whenever the Speaker receives a Bill originating in the Senate, the Speaker shall-

(a) cause the fact to be known to the House by way of a Message;

(b) cause the Bill to be read a First Time.

(2) Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.

(3) Where the opinion of the Speaker under paragraph (2) is to the effect that the Bill is not a money Bill, the Bill shall be proceeded with in the same manner as a Bill originating in the National Assembly after First Reading.

(4) Where the opinion of the Speaker under paragraph (2) is to the effect that the Bill is a money Bill in terms of Article 114 of the Constitution, the Bill shall stand referred to the Budget and Appropriations Committee.

(5) The Budget and Appropriations Committee shall consider the Bill and report its recommendations to the House.

(6) Where the Budget and Appropriations Committee recommends that the House proceeds with the Bill, the Bill shall be proceeded with in the same manner as a Bill originating in the National Assembly after First Reading in the manner recommended by the Budget and Appropriations Committee.

Referral of Bills by President

170. Standing Order 154 be amended by deleting the existing Standing Order and substituting with the a new Standing Order to clearly elaborate the manner of consideration of Presidential Memoranda including constitution of a Joint Committee on a Bill concerning both Houses. This procedure will be harmonized in both Houses.

Standing Order 155: Referral of President's reservations to joint committee;

171. Standing Order 155 was deleted as it has been catered for under Standing Order 154.

PART XXII - SELECT COMMITTEES

Various proposals were effected to the Standing Orders on Committees to effect the following:-

Standing Order 171: House Business Committee

172. Standing Order 171 be amended by-
- a. inserting the following new Standing Orders under Standing Order 171 (c):
 - (ca) the Majority Party Whip or the representative designated in writing; and
 - (cb) the Minority Party Whip or the representative designated in writing;
 - b. deleting Standing Order 171 (3) be deleted.

73. The amendment would clarify the whips must be Members of the House business Committee, and reduce the number of the rest of the Members to seven members. This reduced membership is expected to enhance the efficiency of the Committee by mainly involving the leadership of the House in setting the weekly business.

Standing Order 172: Committee on Selection

174. That the Standing Orders be amended by deleting the existing Standing Order and replacing it with the following words thereof-

(1) There shall be a select committee, to be designated Committee on Selection, consisting of—

(a) the Leader of the Majority party who shall be the chairperson;

(b) the Leader of the Minority party; and

(c) not less than eleven and not more than nineteen members, who shall be nominated by parliamentary parties and approved by the House taking into consideration the interests of Independents.

The amendment in paragraph (c) was informed by the need to enshrine the position of independent Members in Committees.

Standing Order 174: Criteria for nomination;

175. **Improving the efficiency of Committees:** It is proposed that Standing Order 174 be amended to reduce multiple memberships of Members to Committees which leads to lack of quorum as Members have a competing need to attend more than one meeting taking place within the same period. It is expected that the amendment will also improve the efficiency of Committees by attempting to balance Membership in accordance with the intensity of engagement of Committees.

Having a majority of Members in the watchdog Committees from the Minority Party would enable effective oversight by the Minority Party.

Standing Order 176: Discharge of a member from a committee;

76. **Applying due process and giving the Member a fair hearing in the discharge from a Committee:** The Committee provided for the process of discharge of Members from Committees by confining the matter to a political party after according the Member an opportunity to be heard. The amendment also provides for notice to the Member of the discharge.

Standing Order 178: Chairing of select committees and quorum;

177. The Standing Order was amended to provide that the Chairperson and Vice-Chairperson be from a member from a party other than a parliamentary party forming the national government.

The proposed Special Fund Accounts Committee would elect a Chairperson and Vice-Chairperson from amongst independent members nominated to the Committee or a member from a party other than a parliamentary party forming the national government, in the absence of independent members.

Standing Order 179: Conduct of election;

178. **Providing the procedure of conducting the election of Chairperson or Vice-Chairperson of a committee:** It is proposed that Standing Order 179 be amended to provide for the manner of conducting of elections of Chairs and Vice Chairs of Committees. A proposal had been floated that a third of signatures from Members of the Select Committee be collected to garner confidence of the people. The Taskforce deliberated on the proposal and agreed that this would lock out the Members from vying for the post if the numbers of Party Members in a Committee were too few to offer the requisite support. Also, since the Members of Parliament at that stage are new and not familiar with each other, compiling signatures may be challenging. It was agreed that having a proposer and seconder would be a suitable option.

Standing Order 181 on Notice of meetings;

179. **Use of mobile phone numbers as a primary mode of notification:** a proposal had been submitted to provide for use of mobile phones as a means of communication of Parliamentary Business under Standing Order 181(2). The Taskforce discussed and agreed that some agendas to be considered by Committees may be sensitive and need publication of hard copies of notices for efficient notification. The matter would be dealt with administratively in the Committee Operations Manual, and no changes would be made to the Standing Order at this time.

Standing Order 183: Sub-committees of select committees;

192. Formation of a Committee on Members' Services & Welfare: The Committee noted that there was need to establish a Committee on Members' Services and Facilities to consider, advise and report on Members' welfare and provide a forum for Members to raise concerns on these issues.

193. Standing Order 216: Appointment of Departmental Committees
Reorganization of Committee mandates: That the Standing Orders be amended by inserting a new paragraph (g) to provide examination of treaties, agreements and conventions as part of the functions of Departmental Committees. The Committee also observed that there is need to remove Cooperatives from the mandate of Agriculture and confer it on the relevant Committee which is the Committee on Trade and Industry. provide for the need for Committees of the House and the Senate wishing to hold a joint sitting to seek the written approval of the Speaker.

It was further noted that the Members of Departmental Committee on Defence and Foreign Relations may need to take oath due to the nature of sensitive and confidential information presented to them relating to the mandate of their Committee.
Additionally, the Committee was of the view that there is need prescribe the oath to be sworn or affirmation to be made by a witness appearing before a Committee. The text of this has now been provided for in the Sixth Schedule of the Standing Orders.

194. Reporting to Parliament as provided for in the Constitution;

Various Articles of the Constitution provide for Statutory Reporting to Parliament. During the 1st Parliament, Reports of the Auditor General on various State Corporations have been laid and referred to the relevant Committees for consideration. Question has arisen on the manner in which to consider the Reports and what action to take after consideration of the reports. It was resolved that an addition be made to the mandate of Departmental Committees to handle reports provided pursuant to Article 254 of the Constitution.

The Committee also observed that there is need to include an additional function to the mandate of Departmental Committees to examine any questions raised by Members on matters relating to their mandate.

other such funds established from time to time by the national executive. It will also ease pressure on the Public Accounts Committee which has a large number of reports to consider.

Standing Order 210: Committee on Delegated Legislation;

189. Working of the Committee on Delegated Legislation: This select Committee is mandated to consider any statutory instrument submitted to the Assembly pursuant to the Constitution. The Committee noted that the Act outlined more elaborate provisions than the Standing Orders. The Committee discussed on whether the delegated powers should be completely delegated such that the Committee entirely approved or entirely rejected the Legislation; or whether there was a chance for amendment of the statutory instruments in the course of approval.

The Standing Orders need to elaborate and provide for Statutes which require approval by Parliament, Statutory Instruments requiring approval of the National Assembly and those requiring concurrence of the other House on a resolution by one House.

190. There was also need to provide a framework for consideration of other Statutory Instruments provided for under Section 2 of the Statutory Instruments Act such any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, or guideline issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

In the meantime, the House would apply guidance given by the Speaker through a Communication from the Chair issued on August 2, 2016.

191. Standing Order 212: Committee on Regional Integration; New Standing Order 212A: Procedure for presentation of reports from the East African Legislative Assembly and the Pan-African Parliament

It is proposed that the Standing Orders be amended by inserting New Standing Order 212A to encode the existing practice where the Committee on Regional Integration presents a report on any matter relating to the work of the East African Legislative Assembly or the Pan-African Parliament. The Clerk of the National Assembly also forwards the records of debates, Bills or Acts received from the East African Legislative Assembly, Bills or Acts of the Community to the relevant committee for consideration within twenty-one days.

New Standing Order 212B

188.

Establishment of a select committee to be designated the Special Funds Accounts Committee: It is proposed that the Standing Orders be amended by creating a Special Funds Account Committee which would examine audited accounts of political parties, special funds and

New Standing Order 205A

The Members of the three Committees will be nominated and approved by the House at the commencement of every Session so as to maintain the credibility and enhance integrity in the dealings of the Committees.
the Members originating from the Minority Party or the party not forming national government.

Standing Order 205A) would require a similar structure of having the leadership and majority of Investments Committees, and the proposed new Special Funds Account Committee (New This was later adopted in Sessional Paper No. 8 of 1997. The Public Accounts and Public Parliament in proposed amendment to Standing Orders through Sessional Paper No. 2 of 1996. Accounts Committee and Public Investments Committee was first introduced during the Seventh Orders 205, 206 and 209 be amended to achieve effective oversight. The evolution of the Public Strengthening of the Oversight role of the oversight Committees: It is proposed that Standing Committee and Standing Order 209: Committee on Implementation.

187.

Standing Order 205: Public Accounts Committee; Standing Order 206: Public Investments

issues in their work plan.

The report would enable the Committee in the subsequent Parliament to consider the pending

which is unable to complete its work before the expiry of its term.

immediately after Standing Order 200 (2) to provide for tabling of an exit report by a Committee It was proposed that the Standing Orders be amended by inserting New Standing Order 200A

186.

New Standing Order 200A: Providing for Exit reports at the end of a Parliamentary term.

Standing Order 200: Progress reports

would instill professionalism into the process.

to make a resolution on a vote of no confidence in the Chairperson or Vice-Chairperson serve the Chairperson or Vice-Chairperson with a written notice citing grounds through the Clerk. This

180. **Quorum for subcommittees:** this was a proposal made to provide for quorum for subcommittees. However, it was resolved that instead of requiring a fixed number, this matter be left to the Committees to handle internally, since the number of members per subcommittee may vary. The Committee observed that there is need for the Budget and Appropriations Committee to establish a Legislative Review sub-committee.

181. **Standing Order 184: Members adversely mentioned not to sit;** The Standing Order was amended to provide for legal representation for a Member adversely mentioned during appearance before a Committee.

Standing Order 187: Failure to attend meetings;

177. **New Standing Order 187 (1A):** Providing for an official manner of transmitting record of attendance of meetings: It is proposed that Standing Order 187 be amended to have written notification to the Chairperson or Speaker done through the Office of the Clerk who would keep such record of notification and/or Speaker's approval. This is because the Clerk is the custodian of all committee records and is charged with conveying all committee decisions.

Standing Order 188: Absence of chairperson and vice-chairperson;

183. **Provision for democracy:** It is proposed that Standing Order 188 be amended to allow Members to determine their leadership and enhance democracy at committee level by deciding on the temporary Chairperson.

Standing Order 189: List of attendees;

8 **Providing for recording of Members with written permission for absence in minutes:** It is proposed that Standing Order 189 be amended by providing for recording of Members present, absent with apologies and absent. This ensures ease of implementing Standing Order 187 on failure to attend four consecutive sittings by ascertaining whether the Member was absent with apology or not.

Standing Order 193: Vote of no confidence in the Chairperson or Vice-Chairperson;

15. **Providing process for serving of Vote of no confidence in a Committee Chairperson or vice chairperson:** The Standing Order was amended in paragraph 2 to provide that Members desiring

PART XXIII - PUBLIC PETITIONS

195. The Committee observed that there is need for the Standing Orders to be amended to separate ordinary Petitions from Petitions for removal of Members of Commissions and holders of Independent Offices. This Standing Order also provides that petitions for removal of persons from Commissions and Independent Offices shall not lapse at the expiry of a term of Parliament.

The proposed text is as follows-

“PART XXIIIA—PETITION ON REMOVAL OF A MEMBER OF A COMMISSION OR HOLDER OF INDEPENDENT OFFICE”

- a) Amend Standing Order 230 by deleting paragraph 1 and substituting therefor the following new paragraph—

“(1)In addition to complying with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of Standing Order 223 (*Form of Petition*), a petition to the House for removal of a member of a Commission or holder of an independent office under Article 251 of the Constitution—

(a) shall—

- (i) indicate the grounds under Article 251(1) of the Constitution which the member of the commission is alleged to be in breach;
- (ii) where the grounds in subparagraph (i) above relate to violation of the Constitution or any other law, state with degree of precision the provisions of the Constitution or any other written law that have been alleged to be violated;
- (iii) indicate the nexus between the member concerned and the alleged grounds on which removal is sought;

(b) may contain affidavits or other documents annexed to it.”

PART XXIV - FINANCIAL PROCEDURES

Standing Order 232: Presentation of Budget Policy Statement and the Debt Management Strategy;

196. **Inclusion of the Debt Management Strategy as a document for submission:** Standing Order 232 was amended to include this strategy as part of the documents submitted with the Budget Policy Statement, pursuant to the provisions of Section 33(1) of the Public Finance Management Act, though it should be noted that it has been part of the submissions in the past. Also included is a list of the expected contents of this document and the Budget Policy Statement, including how they will be dealt with by the Budget & Appropriations Committee and the House.

Standing Order 233: Consideration of Division of Revenue Bill and Standing Order 234: Consideration of County Allocation of Revenue Bill;

197. **The role of the Commission on Revenue Allocation:** The only change made to these two paragraphs was the inclusion of paragraphs in each Standing Order requiring the House to take into account the views of the Commission on Revenue Allocation in considering these two Bills.

Standing Order 235: Presentation of Budget Estimates and committal to Committees

198. **Simplification of the process of handling estimates:** There was a deletion of two sub-paragraphs in the existing Standing Order which stipulated how the estimates are dealt with by the House. This is for clarity, since the next Standing Order goes into greater detail on the procedure for consideration of the estimates.

Standing Orders 236 - 240: Committee of Supply

199. **Actualization of the Committee of Supply:** Standing Orders 237 – 240 were combined to form new Standing Orders 237 – 239, which deal with the procedure for the Committee on Supply. The process is simplified and the motion to be considered by the House stipulated.

New Standing Order 240: Appropriation Bill and Equalization Fund Appropriation Bill

200. **Manner of dealing with the Appropriation Bills:** this new Standing Order stipulates the process of how these Bills come to the House and are processed, including the deadline for passage of the Appropriation Bill.

Standing Order 241: Pronouncement of the Budget highlights and Revenue raising measures

201. **Harmonization of the Standing Order with the Addendum:** the approved version of this Standing Order as found in the Addendum to the Standing Orders was inserted here for easier reference in future. The practice of it has been ongoing.

Standing Order 242: Vote on Account

202. **Clarification of the provisions:** a sub-paragraph referring to the deadline for dealing with the Vote on Account was deleted because it has been the practice that the Appropriation Bill is always passed by 26th June. If necessary, the remaining paragraphs still allow for action on the Vote on account by 26th June.

Standings Order 243 - 244: Procedure on Supplementary Estimates

203. **Simplification of consideration of supplementary estimates:** the process for dealing with supplementary estimates is stipulated, along with introduction of the Supplementary Estimates Bill, and insertion of a procedure for actualizing provisions of Article 223(5) of the Constitution on spending of sums of 10% over the approved amounts in that year's Appropriation Bill. There was also an insertion of what should be contained in a Supplementary Appropriation Bill.

204. **Standing Order 245: Consideration of Finance Bill**

A proposal had been made for the Budget and Appropriations Committee to handle the Finance Bill, given that they handle the expenditures, which are informed by the revenues, so as to have a well-rounded process. However, it was felt that the current scenario should remain to avoid having the entire budget cycle process domiciled in one Committee, excluding the rest. This proposal was therefore declined.

PART XXVI – PROCEDURE ON REPORTS OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY AND THE PAN-AFRICAN PARLIAMENT

Standing Order 251: Procedure for presentation of reports

205. **Part moved for better flow of the Standing Orders:** This part deleted and moved to after Standing Order 212 on definition of the Committee on Regional Integration for better flow. It will therefore be a new Standing Order 212A.

PART XXVII – PUBLIC ACCESS TO THE HOUSE AND ITS COMMITTEES

Standing Order 254: Exclusion from the House or committees;

206. **Strengthening the authority of a Chairperson of Committee:** It is proposed that Standing Order 254 (1), (2) and (3) be amended by inserting the words “or Chairperson” immediately after the word “Speaker”.

A Committee is an extension of the House as it derives its mandate from matters referred to it by the House. The amendment was informed by the need to empower the Chairpersons to enforce the Standing Order in Committee meetings.

PART XXVIII – GENERAL

Standing Order 256A: Extension of period prescribed

207. **Extension of timelines given in the Standing Orders:** on a number of occasions, a Committee of the House has sought to extend the timelines for consideration of a petition for removal of a constitutional office holder, public petitions, and amendments to the Standing Orders, among other matters. This new provision will simplify and clarify this practice and how it is done.

Standing Order 256B: Summons by the House

208. **Actualization of Article 125 (1):** Article 125 (1) of the Constitution provides that Either House of Parliament, and any of its committees, has power to summon any person to appear before it for the purpose of giving evidence or providing information.

The Taskforce considered the matter and was of the view that across Presidential systems, there was no opportunity for other persons to address the plenary except address by a dignitary and the Head of State.

However, it was agreed that drafting of such a provision in the Standing Orders should only be exercised with caution and implemented only in exceptional circumstances. This would prevent abuse and avert a lapse into the practice in the Parliamentary System of Governance where the Executive appears before the House to respond to matters raised.

The proposed text is as follows-

256B. Summons by the House

- (1) A Member may give a three days' notice of a Motion requiring the House to summon a person to appear before the House pursuant to the provisions of Article 125(1) of the Constitution.
- (2) Speaker shall refuse or decline the notice, if the Speaker is of the opinion that the proposed motion is frivolous, vexatious, an abuse of the proceedings of the House, or an attempt to unreasonably usurp matters under consideration by a particular committee.
- (3) The notice under paragraph (1) shall specify:
 - (a) the person or persons to be summoned;
 - (b) the purpose of the summons;
 - (c) the evidence to be adduced, or document to be produced, if any, before the House;

(d) the time and place of appearance before the House.

(3) Upon resolution of the House on a motion under paragraph (1) by the House, the Clerk shall, not later than three days from the date of the approval, issue summons to the persons named in the Motion, requiring the person to attend before the House on the date, time and place indicated in the Motion.

(6) A person shall be summoned to appear before the House under this Standing Order only if—

(a) the purpose of the summons is not to consider a matter which is already a subject of consideration by a committee of the House; or

(b) the person has been previously summoned to appear before a committee of the House but has failed or declined to appear before such committee without lawful cause.

Permission for absence

209. **Provision for how Members should seek permission to be away:** this new Standing Order clarifies what Members should do when desiring to be away from chamber or committee sittings, and that the Clerk shall keep custody of such requests to the Speaker.

Standing Order 259: Seating in the Chamber

210. **Designating seating space for leaderships of the House:** the Standing Order was amended to include designated seating space in the Chamber for the Chairperson's Panel members, Deputy Leaders of Majority and Minority Parties, Party Whips and Committee Chairpersons. This will ensure easier access to the leaders in the Chamber, since they frequently conduct business there, e.g. notices of motion, tabling documents, moving Bills or Motions, among others.

PART XXX –TRANSITIONAL PROVISIONS

SECOND SCHEDULE

Departmental Committees

- i. Administration and National Security
- ii. Agriculture and Livestock
- iii. **Communication, Information and Innovation [NEW]**
- iv. Defence and Foreign Relations
- v. Education, Research & Technology
- vi. Energy
- vii. Environment and Natural Resources

- viii. Finance & National Planning *[amended]*
 - ix. Health
 - x. Justice & Legal Affairs
 - xi. Labour and Social Welfare *[amended]*
 - xii. Lands
 - xiii. **Sports, Tourism and Culture *[NEW]***
 - xiv. Transport, Public Works & Housing
 - xv. **Trade, Industry & Cooperatives *[NEW]***
-

CONCLUSION



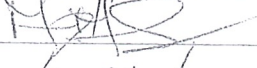
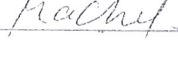
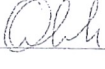
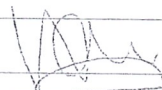
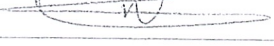
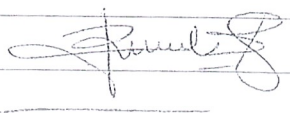

211. In closing, it is noted that this fifth comprehensive review of the Standing Orders will assist the next House to operate more effectively, and should therefore be prioritized for consideration by the Procedure and House Rules Committee and subsequently the House. It should also be noted that once the House adopts the Report and the proposed amendments to the Standing Orders, the Addendum adopted in 2014 stands revoked.

KENYA NATIONAL ASSEMBLY


ATTENDANCE LIST

PROCEDURE AND HOUSE RULES COMMITTEE

Meeting of the Members of the Procedure and House Rules Committee held at the Windsor Golf & Country Club, Kiambu County onJune 2017 at

	NAME	SIGNATURE
1.	The Hon. Justin B. N. Muturi, EGH, MP	
2.	The Hon. (Dr.) Joyce Laboso, MGH, MP	
3.	The Hon. Moses Cheboi, CBS, MP	
4.	The Hon. Racheal Shebesh, MP	
5.	The Hon. Jessica Mbalu, MP	
6.	The Hon. Christopher Omulele, MP	
7.	The Hon. David Kiaraho, MP	
8.	The Hon. Oscar Sudi, MP	
9.	The Hon. Peter Njuguna, MP	
10.	The Hon. (Dr.) James Murgor, MP	
11.	The Hon. Bare Shill, MP	
12.	The Hon. Alice Ng'ang'a, MP	
13.	The Hon. Abdul Rahim Dawood, MP	
14.	The Hon. Alice Wahome, MP	
15.	The Hon. David Wafula, MP	
16.	The Hon. Robert Mbui, MP	
17.	The Hon. Abdikadir Omar Aden, MP	
18.	The Hon. Johnson Many Naicca, MP	
19.	The Hon. Isaac Mwaura, CBS, MP	
20.	The Hon. (Dr.) James Nyikal, MP	
21.	The Hon. Abdulswamad Sherrif Nassir, MP	

OTHER INVITED MEMBERS

22.	Hon. (Dr) Naomi Shaban, EGH, MP	
23.	Hon. Jakoyo Midiwo, MGH, MP	
24.	Hon. Katoo Ole Metito, EGH, MP	
25.	Hon. Thomas Mwadeghu, CBS, MP	
26.	Hon. Amina Abdalla, CBS, MP	

Signed by

Samuel Njoroge – Deputy Director, Legislative and Procedural Services
For: Clerk of the National Assembly

Appendix 1

MINUTES OF THE 1ST SITTING OF THE MEETING OF PROCEDURE AND HOUSE
RULES COMMITTEE ON FRIDAY, JUNE 09, 2017 AT THE WINDSOR GOLF &
COUNTRY CLUB, KIAMBU COUNTY AT 9.30 AM.

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP - Speaker of the National Assembly
2. The Hon. Racheal Shebesh, MP - Second Chairperson of Committees
3. The Hon. Christopher Omulele, MP - Fourth Chairperson of Committees
4. The Hon. Peter Njuguna, MP - Member
5. The Hon. (Dr.) James Murgor, MP - Member
6. The Hon. (Dr.) Isaac Mwaura, CBS, MP - Member
7. The Hon. Johnson Many Naicca, MP - Member
8. The Hon. Robert Mbui, MP - Member

NON-MEMBER IN ATTENDANCE

9. The Hon, Jakoyo Midiwo, MP

MEMBERS ABSENT WITH APOLOGY

1. The Hon. (Dr.) Joyce Laboso, MGH, MP - Deputy Speaker
2. The Hon. Moses Cheboi, CBS, MP - First Chairperson of Committees
3. The Hon. Jessica Mbalu, MP - Third Chairperson of Committees
4. The Hon. David Kiaraho, MP - Member
5. The Hon. Bare Shill, MP - Member
6. The Hon. Alice Ng'ang'a, MP - Member
7. The Hon. Abdul Rahim Dawood, MP - Member
8. The Hon. Alice Wahome, MP - Member
9. The Hon. David Wafula, MP - Member
10. The Hon. Oscar Sudi, MP - Member
11. The Hon. Abdikadir Omar Aden, MP - Member
12. The Hon. (Dr.) James Nyikal, MP - Member
13. The Hon. Abdulswamad Sherrif Nassir, MP - Member

IN-ATTENDANCE

1. Mr. Michael Sialai, EBS
2. Mr. Jeremiah Ndombi
3. Mr. Samuel Njoroge
4. Mr. Martin Masinde
5. Mr. Michael Karuru
6. Mr. Nicholas Emejen
7. Mr. Kipkemoi Arap Kirui
8. Mr. Rana Tiampati
9. Ms. Jemimah Waigwa
10. Mr. Ronald Walala
11. Ms. Wanjiru Ndindiri
12. Mr. Noah Too

NATIONAL ASSEMBLY

- Clerk, National Assembly
- Senior Deputy Clerk, National Assembly
- Acting Director, L&P
- Senior Deputy Director, PBO
- Deputy Director, Legal Services
- Deputy Director, NA Committees
- Principal Clerk Assistant I
- Principal Clerk Assistant I
- Legal Counsel
- Legal Counsel
- Senior Clerk Assistant
- Senior Clerk Assistant

MIN.NO. 01/01/2017: PRELIMINARIES

The meeting was called to order at 9.35 am and commenced with a word of prayer from the Chair followed by introductions.

MIN.NO. 02/01/2017: ADOPTION OF THE AGENDA

The agenda was considered and adopted without any amendments.

MIN.NO. 03/01/2017: CONSIDERATION OF THE REPORT ON THE REVIEW
OF THE STANDING ORDERS

During its Consideration of the report on the review of the Standing Orders the Committee invited the Acting Director, Legislative and Procedural Services to present the Report of the Taskforce on amendments to the National Assembly Standing Orders.

In his presentation, the Acting Director, Legislative and Procedural Services stated as follows:-

1. The Procedure and House Rules Committee established under Standing Order 208 is charged with considering proposed amendments to the National Assembly Standing Orders. Further, Standing Order 263 (1) stipulates that *'A Member may, with the support of at least fifty other Members, request the Procedure and House Rules Committee to consider an amendment to the Standing Orders,'* while Standing Order 264 provides that *'at least once in every term of Parliament, not later than six months to the end of the term, the Procedure and House Rules Committee shall review the Standing Orders and make a report to the House recommending the Standing Orders, if any, to be amended.'*
2. In order to facilitate the work of the Committee in discharging this mandate, given the limited timelines available, and the need to comprehensively review the entire Standing Orders, the Office of the Clerk established a Taskforce to undertake this review and report back to the Committee.
3. The Taskforce undertook the following functions under its terms of reference:
 - (i) Review proposals presented by various Members;
 - (ii) Collect and harmonize proposals from other stakeholders;
 - (iii) Liaise with Senate colleagues on proposals regarding handling of business between the Houses, and changes to the Joint Rules; and
 - (iv) Prepare the actual text for the amendments.
4. Proposals reviewed

The Taskforce considered proposals to amend the Standing Orders from various Members and Directorates and Departments as follows:

- (a) The Hon. Aden Duale, MP, Leader of the Majority Party, on graduated penalties for disorderly conduct in the House, and the place of the Mace;
- (b) The Hon. Samuel Chepkonga, MP on the discharge of Members from Committees;
- (c) The Hon. Wafula Wamunyinyi, MP on the manner of reviewing money Bills by Departmental Committees; and
- (d) The Hon. Patrick Musimba, MP on the introduction of a parallel debating chamber and recognition of independent Members in the definition of a parliamentary party.
- (e) The Hon. Nicolas Gumbo, MP on improving the oversight capacity of watchdog Committees;
- (f) The Hon. Janet Nangabo, MP and the Hon. Robert Pukose, MP on establishment of the Catering and Facilities Committee;
- (g) The Hon. Adan Keynan, CBS, MP on the membership of House Business Committee, the mandates of two Departmental Committees, and the chairing of the watchdog committees;
- (h) The Hon. Moses Kuria, MP on the merging of some committees, and service of Members in more than two committees;
- (i) The State Department of East African Community Integration on the mandate of the Committee on Regional Integration;
- (j) A draft National Policy on Public Participation from the Office of the Attorney General;
- (k) A Petition from a non-governmental organization, the Devolution Forum regarding enhanced public participation in the legislative process and Parliamentary business.
- (l) Proposals adopted from a meeting with the Senate Standing Orders Taskforce regarding business conducted between the two Houses and the Joint Rules; and
- (m) Proposals from various Directorates and Departments: Legislative & Procedural Services, Committee Services, Legal Services, Parliamentary Budget Office and Serjeant-at-Arms.

5. The Taskforce also considered amendments initiated internally on procedural developments and other issues noted during the life of the current Parliament, and made recommendations on comprehensive changes in its report.

6. Appended to the Taskforce report is the summary of the proposed changes to the Standing Orders (**First Schedule**) and actual text for the proposed amendments to the Standing Orders (**Second Schedule**).

In addition, the Acting Director, L&P in his presentation gave experiences and lessons from past reviews of the Standing Orders in the Kenyan Parliament.

MIN.NO. 04/01/2017: CONSIDERATION OF THE FIRST SCHEDULE:
SUMMARY TO THE STANDING ORDERS

The Acting Director, Legislative and Procedural Services was call upon by the Committee to take the Committee through the **First Schedule on Summary to the Standing Orders** in the Report of the Taskforce on amendments to the National Assembly Standing Orders.

In his presentation, the Acting Director, Legislative and Procedural Services assisted by the Members of the Taskforce took through the Committee on the following list of provisions

of Standing Orders with proposed amendments with explanations of the reasons for those proposals.

These areas included;

1. Expansion of the scope of Speaker's decisions;
2. The place of the Mace;
3. Providing for swearing in of Members of the EALA;
4. Process of removal of the Speaker and the Deputy Speaker;
5. Provide for timely opening of a Parliament;
6. Reducing the number of Members of the Chairperson's Panel;
7. Simplifying the replacement process of a Leader of Majority Party and the Leader of Minority Party;
8. Designation of a place in the Chamber for Cabinet Secretaries and other persons;
9. Simplifying the adjournment process of the House;
10. Change of sitting times;
11. Simplifying the process of attaining Quorum;
12. Making provision for a supplementary Order Paper;
13. Providing for manner of election of a temporary Speaker;
14. Statements to be divided into subjects to clarify their nature;
15. Providing for Messages from the Executive other than the President;
16. Change of timing for Members to make general statements;
17. Providing for procedure of consideration of Motions for removal from State Office;
18. Inclusion of a Motion to alter the calendar of the House;
19. Providing for removal of a Speaker or Deputy Speaker as a Special Motion;
20. Timelines for consideration of a Motion for the removal of a Speaker or Deputy Speaker;
21. Making members aware of the objective of a Motion they intend to support and ensure credibility of the Motion;
22. Updating the Standing Orders to current practice as regard electronic voting;
23. Clerk to maintain a register of interests of Members;
24. Enhancing quality of debate through use of party lists;
25. Expansion and categorization of what constitute disorderly conduct;
26. Manner of handling legislative proposals;
27. Composition of Committees (HBC and Committee on Selection)
28. Improving efficiency of committees by reducing multiple membership to Committees;
29. Limitation of chairing of committees by constitutional office holders;
30. Discharge of Members from Committees;
31. Providing the procedure of conducting election of chair and vice-chair of committees;
32. Use of mobile phone numbers as a primary mode of notification;
33. Quorum of sub-committees;
34. Legal Representation of Members adversely mentioned;
35. Providing for an official manner of transmitting record of attendance of meetings;

36. Members to determine who to chair a Committee in the absence of a Chair and the Vice-Chair;
37. Providing for recording of Members with written permission for absence in Minutes;
38. Providing the process for serving of vote of no confidence in a Committee Chair or Vice-Chair;
39. Providing for Exit Reports;
40. Strengthening the oversight role of the oversight committees;
41. Establishment of a Special Funds Committee;
42. Working of the Committee on Delegated Legislation;
43. Procedure of presentations of reports of EALA and PAP;
44. Include examination of treaties, agreements and conventions as additional function of departmental committees;
45. Inclusion of the Debt Management Strategy as a document for submission;
46. Role of CRA during the consideration of Division of Revenue Bill and the County Allocation of Revenue Bill;
47. Simplification of the process of handling estimates;
48. Actualization of the Committee of Supply;
49. Manner of dealing with the Appropriation Bills;
50. Clarification of the provisions relating to the Vote on Account;
51. Simplification of consideration of supplementary estimates;
52. BAC to handle Finance Bill; and,
53. Procedure for presentation of reports to be after Standing Order 212 which deals with the Committee on Regional Integration;
54. Strengthening the authority of a Chairperson of Committee;
55. Extension of timelines given in the Standing Orders relating to Petitions;
56. Petitions- Separate Ordinary from Petitions for Removal from Office.
57. Designating seating space for leaderships of the House;
58. Reporting to Parliament by various State Organs;
59. Reorganizing the mandates of the Committees; and,
60. Actualizing Article 125 of the constitution in the Standing Orders.

The Committee was also taken through the actual text for the proposed amendments to the Standing Orders as per the Schedules attached to the taskforce report.

MIN.NO. 03/02/2017: THE COMMITTEE RECOMMENDATIONS.

After various deliberations, the Committee made observations and recommended the following further amendments:-

- "broadcast" includes the live transmission of the proceedings of the House by radio, television or webcast;

- (2) The Clerk shall administer the Oath or Affirmation of Office to Members in alphabetical order using the following order of precedence-(c)Members with the longest cumulative period of service in the Senate;

- **PART IIA VACATION OF OFFICE OF SPEAKER AND DEPUTY SPEAKER**

- Notification of opening of Parliament

14 (1) After taking and subscribing to the Oath or Affirmation of Office under Standing Order 12 (*Swearing-in of the Speaker*), the Speaker shall notify the Members of the place, date and time of the opening of Parliament, which shall be not more than thirty days after the first sitting of the House.

- **Discharge of a Member from Chairperson's Panel**

17 (1) The Speaker may, in writing, to the House Business Committee give notice that a member has been discharged from the Panel.

(2) Within seven days of receipt by the House Business Committee of a notice under paragraph (1), the House Business Committee shall consider the notice and give Notice of Motion to replace the Member.

- 19 (4) (Deleted)

- **PART V – ADDRESS BY PRESIDENT, VISITING DIGNITARY OR OTHER PERSONS**

- **Designation of a place for Cabinet Secretaries and other persons**

25A. The Speaker may designate a suitable place in the Chamber or at the bar of the House for—

- (a) the Cabinet Secretary responsible for finance to make a public pronouncement of the budget policy highlights and revenue raising measures for the national government as contemplated under the Public Finance Management Act;
- (b) other persons to make submissions or presentations before the House.

- 28 (3) On a day when the Assembly is scheduled to adjourn to a day other than the next normal sitting day in accordance with the parliamentary Calendar, the Speaker shall notify Members of the same, and at the appointed time, the Assembly shall adjourn without question put.

- **Hours of meeting**

30 (1) Unless the Speaker, for the convenience of the House otherwise directs, the House shall meet at 9.00 9.30 a.m. on Wednesday and at 2.30 p.m. on Tuesday, Wednesday, and Thursday, but more than one sitting may be directed during the same day.

- 32 (Deleted)

- **Quorum at commencement of the House**

34 (1) The quorum of the House shall be fifty Members.

(2) Except as otherwise provided under these Standing Orders, the quorum under paragraph (1) shall only apply for purposes of voting on a question proposed for decision in the House.

- **Members' general statements**

43 (1) Notwithstanding Standing Order 30 (*Hours of Meeting*), the Speaker shall interrupt the business of the House every Tuesday at 6.30 pm to facilitate Members to make general statements of topical concern.

- 44 2 (c) A member may request for a statement from the Committee chairperson relating to matters under the mandate of the Committee and the Speaker may either appoint a day for the statement or direct that the statement be issued on the same day.

- **Procedure for removal of President on grounds of incapacity**

63 (1A) A motion under this Standing Order shall have its subject matter indicated on every sheet.

(5) Upon receipt of the Motion by the Clerk, any signature appended to the list as provided under paragraph (4) shall not be withdrawn.

- **Member who has spoken to question may speak to amendment**

82A. Where an amendment has been moved, and if necessary seconded, any Member who has already spoken to the main question may speak to the amendment, and any Member who has not spoken to the main question but speaks to the amendment does not thereby forfeit the right to speak to the main question. [FORMER SO 92]

- 97 (5) The Speaker may give priority to Members specified in a party list submitted by a Party Whip to speak during debate on a particular matter.

MIN.NO. 05/01/2017:

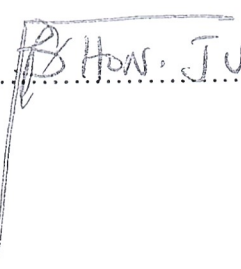
ADJOURNMENT

Being 12.30 pm, the meeting was adjourned to 2.00 pm.

SIGN..... 

DATE 9/6/2017

CHAIRPERSON.....

 HON. JUSTIN B. N. MUTURI, EQ.H, M.P.

MINUTES OF THE 2ND SITTING OF THE MEETING OF PROCEDURE AND HOUSE RULES COMMITTEE ON FRIDAY, JUNE 09, 2017 AT THE WINDSOR GOLF & COUNTRY CLUB, KIAMBU COUNTY AT 2.00 PM.

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP - Speaker of the National Assembly
2. The Hon. Racheal Shebesh, MP - Second Chairperson of Committees
3. The Hon. Christopher Omulele, MP - Fourth Chairperson of Committees
4. The Hon. Peter Njuguna, MP - Member
5. The Hon. (Dr.) James Murgor, MP - Member
6. The Hon. (Dr.) Isaac Mwaura, CBS, MP - Member
7. The Hon. Johnson Many Naicca, MP - Member
8. The Hon. Robert Mbui, MP - Member

NON-MEMBER IN ATTENDANCE

9. The Hon. Jakoyo Midiwo, MP

MEMBERS ABSENT WITH APOLOGY

1. The Hon. (Dr.) Joyce Laboso, MGH, MP - Deputy Speaker
2. The Hon. Moses Cheboi, CBS, MP - First Chairperson of Committees
3. The Hon. Jessica Mbalu, MP - Third Chairperson of Committees
4. The Hon. David Kiaraho, MP - Member
5. The Hon. Bare Shill, MP - Member
6. The Hon. Alice Ng'ang'a, MP - Member
7. The Hon. Abdul Rahim Dawood, MP - Member
8. The Hon. Alice Wahome, MP - Member
9. The Hon. David Wafula, MP - Member
10. The Hon. Oscar Sudi, MP - Member
11. The Hon. Abdikadir Omar Aden, MP - Member
12. The Hon. (Dr.) James Nyikal, MP - Member
13. The Hon. Abdulswamad Sherrif Nassir, MP - Member

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Michael Sialai, EBS - Clerk, National Assembly
2. Mr. Jeremiah Ndombi - Senior Deputy Clerk, National Assembly
3. Mr. Samuel Njoroge - Acting Director, L&P
4. Mr. Martin Masinde - Senior Deputy Director, PBO
5. Mr. Michael Karuru - Deputy Director, Legal Services
6. Mr. Nicholas Emejen - Deputy Director, NA Committees
7. Mr. Kipkemoi Arap Kirui - Principal Clerk Assistant I
8. Mr. Rana Tiampati - Principal Clerk Assistant I
9. Ms. Jemimah Waigwa - Legal Counsel
10. Mr. Ronald Walala - Legal Counsel
11. Ms. Wanjiru Ndindiri - Senior Clerk Assistant

MIN.NO. 01/02/2017: PRELIMINARIES

The meeting was called to order at 2.15 pm and commenced with a word of prayer by the Chair.

MIN.NO. 02/02/2017: CONSIDERATION OF THE FIRST SCHEDULE:
SUMMARY TO THE STANDING ORDERS

The Acting Director, Legislative and Procedural Services was call upon again by the Committee to take the Committee through the **First Schedule on Summary to the Standing Orders** in the Report of the Taskforce on amendments to the National Assembly Standing Orders.

In his presentation, the Acting Director, Legislative and Procedural Services assisted by the Members of the Taskforce took through the Committee on the following list of provisions of Standing Orders with proposed amendments with explanations of the reasons for those proposals.

MIN.NO. 03/02/2017: THE COMMITTEE RECOMMENDATIONS.

After various deliberations, the Committee made observations and recommended the following further amendments:-

- **Disorderly conduct**

107. (1) A Member commits an act of disorderly conduct if the Member—

- (a) creates actual disorder;
- (b) knowingly raises a false point of order;
- (c) unnecessarily interrupts proceedings or consults in a disruptive manner;
- (d) fails to declare personal interest in a matter before the House or a Committee in accordance with Standing Order 90;
- (e) deliberately gives false information to the House;
- (f) makes allegations without, in the Speaker's opinion, adequate substantiation;
- (g) threatens to use violence against a Member or other person in the House or Committee;
- (h) votes more than once in breach of these Standing Orders;
- (i) fails to record abstention in a division; or
- (j) commits any other breach of these Standing Orders, that in the opinion of the Speaker, constitutes disorderly conduct.

(2) The Speaker may call a Member whose conduct is disorderly to order, and-

- (a) caution the Member; or
- (b) order the Member to withdraw from the precincts of the Assembly for a maximum of four days.

Gross disorderly conduct

107A. (1) A Member commits an act of gross disorderly conduct if the Member-

- (a) defies a ruling or direction of the Speaker or Chairperson of Committees;
- (b) declines to explain or retract use of unparliamentary words or declines to offer apologies, despite having been ordered to do so by the Speaker;
- (c) demonstrates or makes disruptive utterances against the suspension of a Member;
- (d) attempts to or causes disorder of whatever nature during an address by a visiting dignitary;
- (e) uses violence against a Member or other person in the House or Committee;
- (f) attempts to or disrupts the Speaker's Procession when the Procession is entering or leaving the Chamber;
- (g) attempts to or removes the mace from its place in the Chamber;
- (h) acts in any other way to the serious detriment of the dignity or orderly procedure of the House; or commits any other breach of these Standing Orders, that in the opinion of the Speaker, constitutes gross disorderly conduct.

(2) In this Standing Order, "unparliamentary language" means the use of words which, in the opinion of the person presiding, are deemed to be impolite, rude, abusive or inconsistent with parliamentary procedure or practice.

(3) The Speaker may call a Member whose conduct is grossly disorderly to order, and shall order the Member to withdraw immediately from the precincts of the Assembly for a minimum of five days and a maximum of twenty eight days, including the day of suspension.

- Effect of suspension

110A. (1) A Member who is ordered to withdraw from the precincts of Assembly under Standing Order 108 (*Member may be suspended after being named*) and Standing Order 111 (*Action to be taken on refusal to withdraw*) shall during the period of such withdrawal or suspension the right of access to the precincts of the Assembly; and

- (a) his or her salary and all allowances payable during the period.

(2) Suspension from the service of the House shall not exempt the Member so suspended from appearing before a Committee of the House for the consideration of a Bill sponsored by the Member.

- Speaker to exempt certain legislative proposals

114A. (1) The Speaker may exempt a legislative proposal which originates from the Party forming the National Government from the provisions of Standing Order 114 (pre-publication scrutiny).

(2) An exemption under paragraph (1) may not be granted unless it is accompanied by-

- (a) a copy of a cabinet approval; and

(b) a certificate by the Attorney-General confirming that the legislative proposal complies with the Constitution and the law

(3) The Attorney-General may indicate the Member under whose name the legislative proposal is proposed to be published.

(4) Upon grant of the exemption, the Speaker shall direct that the legislative proposal be published into a bill.

- Bills concerning county government

121 (1) A Bill concerning county governments is-

(a) a special Bill, which shall be considered under Article 111 of the Constitution if it-

(i) relates to the election of members of a county assembly or a county executive; or

(ii) is the annual County Allocation of Revenue Bill referred to in Article 218 of the Constitution; or

(b) an ordinary Bill, which shall be considered as provided under Article 112 of the Constitution, in any other case.

(2) Whenever any question arises as to whether a Bill is a Bill concerning county governments, the Speaker shall determine whether the Bill is a Bill concerning county governments and, if it is, whether it is a special or an ordinary Bill.

- Procedure on Bills reported from Committee of the whole House

Recommittal Procedure

136A. (1) A Member who desires to amend or delete a provision contained in a Bill reported from Committee of the whole House or introduce a new provision in the Bill, may propose an amendment to add, at the end of the Motion for agreement with the Committee of the whole House, the words "subject to the re-committal of the Bill (in respect of some specified clause, part or of some proposed new clause or new schedule) to a Committee of the whole House."

(2) If the amendment to the motion for agreement with the Committee of the whole House is agreed to, the Bill shall stand so re-committed and the House shall either forthwith or upon a day named by the House Business Committee in consultation with the Member in charge of the Bill dissolve itself into a Committee to consider the matter so re-committed.

(3) (Deleted)

- 143 (6) Where the Budget and Appropriations Committee recommends that the House—

- (a) proceeds with the Bill, the Bill shall be proceeded with in the same manner as a Bill originating in the National Assembly after First Reading in the manner recommended by the Budget and Appropriations Committee;
- (b) should not proceed with the Bill, that fact shall be recorded in the journals of the House.

-154 (7) The Assembly shall vote on the proposed amendments and may pass the Bill—

- (a) where the amendments do not fully accommodate the President's reservations, by a vote supported by two-thirds of all the Members;
- (b) where the amendments fully accommodate the reservations of the President, by a vote supported by a simple majority of all the Members.

- 155 (Deleted).

- **House Business Committee**

171(1) There shall be a select committee, to be designated the House Business Committee, consisting of-

- (a) the Speaker who shall be the chairperson;
- (b) the Leader of the Majority Party or a representative designated in writing;
- (c) the Leader of the Minority Party or a representative designated in writing;
- (ca) the Majority Party Whip or a representative designated in writing;
- (cb) the Minority Party Whip or a representative designated in writing; and
- (d) seven other Members, who shall be nominated by parliamentary parties and approved by the House at the commencement of every Session, reflecting the relative majorities of the seats held by each of the parliamentary parties in the National Assembly and taking into consideration the interests of Independents.

(2) The House Business Committee shall be appointed within seven days on assembly of a new House.

(3)(Deleted).

- 184 A Member who is adversely mentioned in a matter under deliberation by a Committee shall not be present at any meeting at which the Committee is deliberating on the matter, but the Member may appear in person or through a legal representative to adduce evidence before the Committee.

- 187 (1A) A notification under paragraph (1) shall be made through the Clerk and recorded in the minutes of the Committee.

- **Powers and privileges of committees**

191 (1) Committees shall enjoy and exercise all the powers and privileges bestowed on

Parliament by the Constitution and statute, including the power to—

(a) summon any person to appear before it for the purposes of giving evidence or providing information;

(b) enforce the attendance of witnesses and examine them under oath, affirmation or otherwise;

(c) compel the production of documents;

(d) request for and receive papers and documents from the Government and the public; and

(e) to issue a commission or request to examine witnesses abroad.

(2) The oath to be sworn or affirmation to be made by a witness appearing before a Committee shall be in the form set out in the Sixth Schedule.

- **Reports of Select Committees**

Reports on Commissions and Independent Offices.

199A. Each Departmental Committee shall, at least once every year, submit a report to the House on its consideration of any report submitted to the House by a Commission or Independent Office to the House and referred to it under Standing Order 216 (*Appointment of and Mandate of Departmental Committees*)

- **Approval of sittings with a Senate Committee**

202A. (1) A Committee may, with the written permission of the Speaker, hold joint sittings with a Committee of the Senate to consider a matter related to their respective mandates.

(2) The Speaker shall notify the House of the approval under paragraph (1).

- 207 (6) The Committee shall invite Chairpersons of all Departmental Committees to make presentations during the consideration of the budget.

The Committee may establish such subcommittees as it may consider necessary for the discharge of its functions including a subcommittee on legislative review.

- **Procedure for presentation of reports from the East African Legislative Assembly and the Pan-African Parliament**

212A. (1) the Committee on Regional Integration may, receive a report or consult with a committee or a Member of the East African Legislative Assembly or the Pan-African, Parliament may present a report to or consult with the Committee for the time being responsible for matters relating to regional integration or any other committee of the House on any matter relating to the work of the East African Legislative Assembly or the Pan-African Parliament, respectively.

(2) Whenever the Clerk of the National Assembly receives copies of the records of relevant debates of the meetings of the East African Legislative Assembly, or copies of Bills introduced into the East African Legislative Assembly and Acts of the East African

Community, the Clerk shall forward the records of debates, Bills or Acts of the Community to the relevant committee.

(3) The Committee shall consider a report under paragraph (1) or the records of debates, Bills or Acts of the Community, and submit its report to the House with its recommendations, if any, within twenty-one days.

(4) The National Assembly shall, within twenty-one days, consider the report of the Committee under paragraph (3) and the Clerk shall, within seven days, forward to the Clerk of the East Africa Legislative Assembly the resolution of the National Assembly on the report together with copies of the records of the debate.

- Committee on Members' Services and Facilities.

212B.(1) There shall be a select committee to be designated the Committee on Members' Services and Facilities.

(2) The Committee shall be responsible for—

- (a) receiving and considering views of Members on the services and facilities provided for their benefit and well-being; and
- (b) making recommendations to the House on the services and facilities provided for Members.

(3) The Committee shall consist of a Chairperson and not more than six other members who shall be approved by the House at the commencement of every Session.

- Appointment and mandate of Departmental Committees

- 216 (5) (i) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- (j) examine any questions raised by Members on a matter within its mandate.

(6) The Leader of the Majority Party shall, in consultation with the Speaker, determine order in which Cabinet Secretaries shall appear to answer questions raised under paragraph (1)(j) before a Committee.

(7) The Speaker may, on request of the Leader of the Majority Party vary the order in which questions raised under paragraph (1)(j) shall be disposed of in a Committee, or defer a question scheduled to be responded to.

- PART XXIIIA—PETITION FOR REMOVAL OF A MEMBER OF A COMMISSION OR INDEPENDENT OFFICE

Petitions for Removal of a member of a Commission or holder of an Independent Office

123. (1) In addition to complying with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of Standing Order 223 (*Form of Petition*), a petition to the House for removal of a member of a Commission or holder of an Independent Office under Article 251 of the Constitution—

(a) shall—

(i) indicate the grounds under Article 251(1) of the Constitution which the member of the commission or holder of an Independent Office is in breach;

(ii) where the grounds in subparagraph (i) above relate to violation of the Constitution or any other law, state with a degree of precision the provisions of the Constitution or any other written law that have been alleged to be violated;

(iii) indicate the nexus between the member concerned and the alleged grounds on which removal is sought; and

(b) may contain affidavits or other documents annexed to it.

- Consideration of County Allocation of Revenue Bill

124. Whenever the County Allocation of Revenue Bill is referred to the House by the Senate, the House shall consider the Bill within ten days and the provisions of Article 111 of the Constitution shall apply.

(1A) In considering a County Allocation of Revenue Bill, the House shall take into account any recommendation submitted by the Commission on Revenue Allocation, pursuant to provisions of Article 205 of the Constitution.

235 (2) The budget estimates referred to in paragraph (1) shall include the estimates of expenditure from the equalization fund pursuant to Article 221(2) of the Constitution.

(3) The Estimates and related documents submitted under Paragraph (1) and (2) shall be tabled in the National Assembly within three days of submission.

(4) Upon being laid before the House -

(a) the Estimates under paragraph (1) shall stand committed to each Departmental Committee to consider and make recommendations to the Budget and Appropriations Committee within twenty one days of committal.

(b) the Estimates under paragraph (2) shall stand committed to Budget and Appropriations Committee to consider and make recommendations to the House together with the report of the Committee on the Budget Estimates.

(5) The Budget and Appropriations Committee shall discuss and review the Budget Estimates and the Estimates of Expenditure from the Equalization fund and make recommendations to the National Assembly, taking into account the recommendations of the Departmental Committees, the views of the Cabinet Secretary and the public.

- 237A. (1) In considering the Budget and Appropriations Committee report, the House shall turn itself into a Committee of Supply.

(2) The Chairperson of the Committee of Supply shall move the motion "*Committee of Supply: Approval of the Report of the Budget and Appropriations Committee on the Budget Estimates and the Estimates of Expenditure from the Equalization Fund for the financial year.....and the allocations to the respective votes and programmes as contained in the Schedule*"

(3) The Chairperson of the Committee of Supply shall put a question on each of the Votes and the programmes therein. During the Committee of supply, a question shall be put on each of the Votes and the programmes therein.

(4) The House may amend the Estimates in accordance with the resolutions adopted with regard to the Budget and Appropriations Committee ensuring that -

(a) an increase in expenditure in a proposed appropriations is balanced by a reduction in expenditure in another proposed appropriation; or

(b) a proposed reduction in expenditure is used to reduce the deficit.

(5) An amendment to any Vote to increase or reduce the sum allotted thereto whether in respect to any programme or a Vote itself may only be moved in accordance with the recommendation of the Budget and Appropriations Committee.

(6) An amendment in the Committee of Supply may be in the form of a motion "*That the Vote..... be increased/reduced by Ksh (in respect of programme)*" or in such a form as the Speaker may approve.

(8) When all amendments in respect of all Votes have been disposed of, the Chairman shall again propose the question "*Committee of Supply: Approval of the Report of the Budget and Appropriations Committee on the Budget Estimates and Estimates of Expenditure from the Equalization Fund for the financial year.....and the allocations to the respective votes and programmes as contained in the Schedule*"

- Consideration of Supply Resolutions

238A. (1) The report or any resolution of the Committee of Supply shall be considered by the House forthwith, unless the House otherwise orders, upon a Motion, "*That, the House do agree with the Committee in the said resolution.*"

(2) The question on any Motion moved under paragraph (1) of this Standing Order shall be put forthwith, no amendment, adjournment or debate being allowed, unless a Member desires to amend or to add to the resolution in which case the Member may propose an amendment to add, at the end of the Motion, the words "*subject to the re-committal of the*

· *resolution (in respect of some specific amendment, or addition) to the Committee of Supply.*”

(3) If the Motion is agreed to with the Member's amendment, the resolution shall stand re-committed to the Committee of Supply and the House shall either forthwith or upon a day determined by the Member dissolve itself into Committee of Supply to consider the resolution so re-committed.

(4) When any resolution of the Committee of Supply has been re-committed to the Committee, the Committee shall consider only the matters in respect of which it was so re-committed and any matter directly consequential thereon.

(5) Except as provided by paragraph (4) of this Standing Order, paragraphs (2) and (3) of the provisions of this Standing Order shall apply in respect of a resolution so re-committed.

239A. The resolution of the House on the Budget Estimates and Estimates of Expenditure from the Equalization Fund shall serve as a basis of the Appropriation Bill and the Equalization Fund Appropriation Bill.

- **Appropriation Bill and Equalization Fund Appropriation Bill**

240A. (1) Upon approval of the budget estimates, the Chairperson of the Budget and Appropriations Committee shall introduce an Appropriation Bill and an Equalization Fund Appropriation Bill in the House.

(2) House may proceed only in accordance with the recommendation of the Budget and Appropriations Committee in respect of any proposed amendment to a Bill under paragraph (1) having consulted with the relevant Departmental Committees.

(3) The House shall consider and pass the Appropriation Bill not later than 26th June of any given year.

- **Pronouncement of the Budget highlights and Revenue raising measures**

241 (1) The Cabinet Secretary responsible for Finance shall make a public pronouncement of the budget policy highlights and revenue raising measures for the national government as contemplated under the Public Finance Management Act.

(2) The Speaker may designate a suitable place in the Chamber for the purposes of admitting the Cabinet Secretary to make the public pronouncement of the budget policy highlights and revenue raising measures.

(3) Whenever the Cabinet Secretary responsible for finance makes a public pronouncement under paragraph (1), the Speaker shall not allow any questions or clarifications to the statement by the Cabinet Secretary.

(4) On the same date that the budget policy highlights and revenue raising measures are pronounced, the Cabinet Secretary shall submit to the National Assembly a legislative proposal, setting out the revenue raising measures for the national government, together with a policy statement expounding on those measures.

(5) The provisions of the National Assembly (Powers and Privileges) Act (Cap 6.) shall apply to a Cabinet Secretary admitted to the Chamber under this Part.

- **Vote on Account**

242 (1) Following approval of the Budget Estimates, and before the Appropriation Bill is assented to, the National Assembly may authorise withdrawals in accordance with Article 222 of the Constitution, and such authority shall be communicated to the Cabinet Secretary responsible for finance by the Speaker of the National Assembly within seven days of that authority being granted by the National Assembly.

(2) A motion seeking the authorization of withdrawals under paragraph (1) shall be known as a Vote on Account and shall be put down on or any day before 30th June.

- **Procedure on Supplementary Estimates**

243 (1) The national government shall submit to Parliament for approval, a supplementary budget in support of money spent under Article 223 of the Constitution.

(2) The supplementary budget shall include –

(a) a statement showing how the additional expenditure relates to the fiscal responsibility principles and financial objectives, and

(b) a schedule showing the list of programmes or projects that is affected by the proposed supplementary budget

(3) The procedure applicable to the approval of the Budget Estimates under Standing Order (.....) (Procedure in Committee of Supply) and (.....) (Consideration of Supply Resolutions) shall with the necessary modifications, apply to the approval of the Supplementary Estimates.

(4) (Deleted)

(5) (Deleted)

(4) (Deleted)

(7) (Deleted)

- **Approval of expenditure of more than ten percent**

244A. (1) Pursuant to the provisions of Article 223(5), the House may, following a request by the National Treasury and upon recommendation of the Budget and

Appropriations Committee, by resolution, approve spending of more than ten per cent above the sum appropriated in the Appropriations Act for that financial year.

(2) The Budget and Appropriations Committee shall satisfy itself that the proposed expenditure under paragraph (1) relates to special circumstances.

244B. The resolution of the House on the Supplementary Estimates shall serve as a basis of the Supplementary Appropriation Bill.

- **Supplementary Appropriation Bill**

244C. (1) Upon approval of the Supplementary Estimates, the Chairperson of the Budget and Appropriations Committee shall introduce a Supplementary Appropriation Bill for consideration by the House.

(2) The procedure applicable to the approval of a Appropriation Bill under Standing Order (.....) shall with the necessary modifications, apply to the approval of the Supplementary Appropriation Bill.

(3) A Supplementary Appropriation Bill shall contain a schedule showing -
(a) the amounts appropriated in the Appropriation Act; and
(b) the net proposed change arising from the approved supplementary estimates under Standing Order (.....);

- **Extension of period prescribed**

256A. (1) Despite the provisions of these Standing Orders prescribing a period for doing an act by the National Assembly or its Committee, the House may, upon a motion, resolve to extend that period.

(2) The authority of the House contemplated under paragraph (1), may be exercised only in exceptional circumstances to be permitted by the Speaker.

(3) Where an extension of time is granted under this Standing Order, the doing of all other acts consequential thereto shall be deemed to have been extended accordingly.

- **Summons by the House**

256B. (1) A Member may give a three days' notice of a Motion requiring the House to summon a person to appear before the House pursuant to the provisions of Article 125(1) of the Constitution.

(2) The Speaker shall refuse or decline the notice, if the Speaker is of the opinion that the proposed motion is frivolous, vexatious, an abuse of the proceedings of the House, or an attempt to unreasonably usurp matters under consideration by a particular Committee.

(3) The notice under paragraph (1) shall specify—

- (a) the person or persons to be summoned;
- (b) the purpose of the summons;
- (c) the evidence to be adduced, or document to be produced, if any, before the House; and
- (d) the time and place of appearance before the House.

(4) Upon resolution of the House on a motion under paragraph (1), the Clerk shall, not later than three days from the date of the approval, issue summons to the persons named in the Motion, requiring the person to attend before the House on the date, time and place indicated in the Motion.

(5) A person shall be summoned to appear before the House under this Standing Order only if—

(a) the purpose of the summons is not to consider a matter which is already a subject of consideration by a Committee of the House; or

(b) the person has been previously summoned to appear before a Committee of the House but has failed or declined to appear before such committee without lawful cause.

- SECOND SCHEDULE

DEPARTMENTAL COMMITTEES [Standing Order 216]

B

Agriculture and Livestock

Agriculture, livestock, irrigation, fisheries development, , production and marketing.

M

Trade, Industry and Cooperatives

trade, consumer protection, commerce, industrialization including special economic zones, enterprise promotion and development including small and medium-size enterprises, intellectual property, industrial standards, anti-counterfeit policies and co-operatives development.

- JOINT SITTINGS OF THE HOUSES OF PARLIAMENT

5 (2A) The Speaker of a House of Parliament shall enforce, in the respective House, a decision made by the Presiding Speaker during a Joint Sitting.

- SIXTH SCHEDULE

FORM OF OATH/SOLEMN AFFIRMATION BY WITNESS APPEARING BEFORE A COMMITTEE OF THE HOUSE

(Standing Order 191)

I.....do swear/affirm that the evidence I shall give before this Committee on the matter(s) under its consideration shall be the truth, the whole truth nothing but the truth. (In the case of an oath—So help me God.)

- FIRST SCHEDULE

BROADCASTING OF RULES

(As outlined in Standing Order 250)

1. Parliament Broadcasting Unit
2. Parliamentary privilege
3. Television Broadcasting
4. Radio broadcasting Protection of dignity of the House
5. External media houses
6. Breach of broadcasting Rules
7. Application

- SECOND SCHEDULE

DEPARTMENTAL COMMITTEES

(As outlined in Standing Order 216)

- A. Administration and National Security
- B. Agriculture, Livestock and Cooperatives
- C. Communication, Information and Innovation
- D. Defence and Foreign Relations
- E. Education, Research and Technology
- F. Energy
- G. Environmental and Natural Resources
- H. Finance and National Planning
- I. Health
- J. Justice and Legal Affairs
- K. Labour and Social Welfare
- L. Lands
- M. Sports, Tourism and Culture
- N. Trade and Industry
- O. Transport, Public Works and Housing

MIN.NO. 04/02/2017:

ADJOURNMENT

Being 5.00 pm, the meeting was adjourned to 6.00 pm.

SIGN. BM

DATE 9/6/2017

CHAIRPERSON. HON. JUSTIN B. N. MUTURI, EGH; M.P.

MINUTES OF THE 3RD SITTING OF THE MEETING OF PROCEDURE AND HOUSE RULES COMMITTEE ON FRIDAY, JUNE 09, 2017 AT THE WINDSOR GOLF & COUNTRY CLUB, KIAMBU COUNTY AT 6.00 PM.

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP - Speaker of the National Assembly
2. The Hon. Racheal Shebesh, MP - Second Chairperson of Committees
3. The Hon. Christopher Omulele, MP - Fourth Chairperson of Committees
4. The Hon. Peter Njuguna, MP - Member
5. The Hon. (Dr.) James Murgor, MP - Member
6. The Hon. (Dr.) Isaac Mwaura, CBS, MP - Member
7. The Hon. Johnson Many Naicca, MP - Member
8. The Hon. Robert Mbui, MP - Member

NON-MEMBER IN ATTENDANCE

9. The Hon, Jakoyo Midiwo, MP

MEMBERS ABSENT WITH APOLOGY

1. The Hon. (Dr.) Joyce Laboso, MGH, MP - Deputy Speaker
2. The Hon. Moses Cheboi, CBS, MP - First Chairperson of Committees
3. The Hon. Jessica Mbalu, MP - Third Chairperson of Committees
4. The Hon. David Kiaraho, MP - Member
5. The Hon. Bare Shill, MP - Member
6. The Hon. Alice Ng'ang'a, MP - Member
7. The Hon. Abdul Rahim Dawood, MP - Member
8. The Hon. Alice Wahome, MP - Member
9. The Hon. David Wafula, MP - Member
10. The Hon. Oscar Sudi, MP - Member
11. The Hon. Abdikadir Omar Aden, MP - Member
12. The Hon. (Dr.) James Nyikal, MP - Member
13. The Hon. Abdulswamad Sherrif Nassir, MP - Member

IN-ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Michael Sialai, EBS - Clerk, National Assembly
2. Mr. Jeremiah Ndombi - Senior Deputy Clerk, National Assembly
3. Mr. Samuel Njoroge - Acting Director, L&P
4. Mr. Martin Masinde - Senior Deputy Director, PBO
5. Mr. Michael Karuru - Deputy Director, Legal Services
6. Mr. Nicholas Emejen - Deputy Director, NA Committees
7. Mr. Kipkemoi Arap Kirui - Principal Clerk Assistant I
8. Mr. Rana Tiampati - Principal Clerk Assistant I
9. Ms. Jemimah Waigwa - Legal Counsel
10. Mr. Ronald Walala - Legal Counsel
11. Ms. Wanjiru Ndindiri - Senior Clerk Assistant

12. Mr. Noah Too

Senior Clerk Assistant

MIN.NO. 01/03/2017: PRELIMINARIES

The meeting was called to order at 6.05 pm and commenced with a word of prayer by the Chair.

MIN.NO. 02/03/2017: CONSIDERATION OF THE DRAFT REPORT
ON THE REVIEW OF THE STANDING ORDERS

The Committee scrutinized the draft report to ensure that all the observations noted by the Taskforce and subsequent recommendations during the first and the second meeting were effected and that the report was true reflection of the Committee deliberations.

MIN.NO. 03/03/2017: ADOPTION OF THE REPORT ON THE REVIEW OF THE
STANDING ORDERS

The Committee therefore adopted the report on the review of the Standing Orders of the National Assembly of Kenya. The Committee further resolved that the report be tabled and scheduled for debate in the House..

MIN.NO. 04/03/2017: ADJOURNMENT

There being no Any Other Business, the meeting was adjourned at 7.30 pm.

SIGN.....

DATE 9/6/2017

CHAIRPERSON..... HON. JUSTIN B-N. MUTURI, EGH, MP

Appendix 2

REPUBLIC OF KENYA

Tel: +254 20 2848248
Fax: +254 20 315950
E-mail: leaderofmajority@parliament.go.ke



Parliament Buildings
P. O. Box 41842 - 00100
Nairobi, Kenya

When replying, please quote

THE NATIONAL ASSEMBLY

OFFICE OF THE LEADER OF MAJORITY PARTY

Ref: ML/ NA/VOL 1/ 2015/7

Date: February 19, 2015

The Hon. Justin B.N. Muturi, EGH, MP
Chairperson Committee on Privileges
Parliament Buildings
NAIROBI

Dear *Justin*,

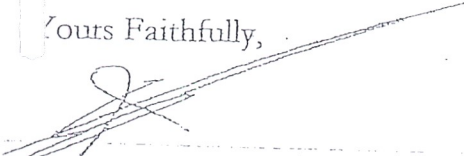
RE: PROPOSAL TO AMEND THE STANDING ORDERS

The above-mentioned matter refers.

Last year during the consideration of the Security Laws (Amendment) Bill, Members even after being cautioned of the repercussions of their continued breach of the rules of procedure and their general conduct in the Chamber, persisted in their unruly and disrespectful demeanor towards the authority of the Chair, and indeed the House.

In view of the above, I write to propose for the amendment of Standing Orders to provide for stiffer penalties to Members found with gross misconduct. The penalties for misconduct as provided for in Standing Order (108 and 109) need to be reviewed accordingly.

Yours Faithfully,


THE HON. ADEN DUALE, EGH, M.P.
LEADER OF MAJORITY PARTY

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20 NOV 2014
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI

Copy
24/11/14

(2)



The Hon. Samuel Chepkonga, MP
National Assembly
Parliament Buildings
Nairobi

November 20, 2014

The Hon. Justin B. Mutari, MP
Chairperson
Procedure and House Rules Committee
National Assembly
Parliament Buildings
Nairobi

(P) CWA
Noted. These are very serious proposals and you & I would have to have the committee to meet within the shortest time possible any day from Tuesday (25/11/14).
Sam & WA
21/11/14

Dear

RE: REQUEST TO AMEND STANDING ORDERS

In accordance with Standing Order 263, I wish to request the Procedure and House Rules Committee to consider amending Standing Order 176 to allow the House to approve any proposals for discharge Member from Committees.

The justification of this is informed by provisions of Standing Order 175 which provides that nomination of Members to serve in Committees shall be approved by the House. It would therefore be prudent that discharge of Members be effected only with approval of the House. This would ensure that Standing Order 176 is in tandem with the spirit of Standing Order 175.

Please find enclosed the proposed amendment.

THE HON. SAMUEL CHEPKONGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

MS Ann Amides
Can a meeting of Thursday 27th Nov 1
to committee on
at 10:00am
Agnes

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21 NOV 2014
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P. O. Box 41842, NAIROBI

(iii) Inserting the following new paragraphs immediately after the new paragraph (2)

“(3) The House shall within seven days thereafter, debate and decide on whether to approve the motion?”

“(4) The discharge of a Member shall take effect upon a resolution of the House to discharge such Member?”



THE HON. SAMUEL CHEPKONGA, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS

November 20, 2014

17.	JACOB MACHARIA	MOLLO	Signature
18	GIDEON HUNGARO	REF NABITA	Signature
19	ARDINOOK M. al.	Namunot	Signature
20	Hon VICTOR MUNYAKA	MACHAKOS	Signature
21	Hon BLISSA X. B. B. B.	TURBO	Signature
22	Hon Susan Mungaka	Machakos	Signature
23	HON N. MUSTAFA IDD	ICILFI BOUTA	Signature
24	HON JAMES SPITO	ANWENDO	Signature
25	Hon James K. Chidzwa	Kwale	Signature
26	Hon Lungu Kang'ata	KITAMU	Signature
27	Hon. K.S. Bitok	Mosop	Signature
28	HON PHILIP ROTUNDI	SABOTI	Signature
29	Hon David Wafula	WEKAL	Signature
30	Hon Anna Abdi	NAMUNOT	Signature
31	Hon. Fatima Ibrahim	Waji cont	Signature
32	HON ELIJAH MOIN	NYARIBARI MAMASARA	Signature
33	HON BEATSON MUIULA	MAXADARA	Signature
34	HON. AGOI KUFEN	SABATIYA	Signature
35	HON ALEX MWIRU	TETARAKA	Signature

53	Hon John B. Sewi	MT ELGON	W
54	Hon. Geoffrey Odungo	Madaya	Gmoff
55	Hon. Moses Te Satul	Kajiado West	R
56	Hon. Kinoti Gatobu	Burri	W
57	Hon James Mungu	Keiyo North	W
58	HON. EUSILAH NGENI	VADIGISHU COURT	W
59	Hon. KIKI EPATEN	KINANG'ON	W
60	Hon (Eng) S.M. Ngũgĩ	NDIA	W
61	Hon Peter Muguna	GDA MWA	W
62	Hon. MURINKI	NJA GARA	W
63	Hon WSOGU BARUA	GICHERU	W
64	Hon DAVID KIARITO	OL-KALOO	W
65	Hon HIRLOSU	CHEROKWANG KERICHO	W
66	Hon Olooi Moses	Kuresoi North	W
67	Hon James GAKIYA	CHERUKURU NORTH	W
68	Hon. ALICE NGANGA	THIKA TOWN	W
69	Hon James Lomenen	TURKANABOAT	W
70	Hon. KANDI KOLA	KIEWI	W

90	Hon Jackson Kufam	Kejo South	Steph
91	Hon Harrison Combe	MASHRIK	Steph
92	Hon. ZONZI RAI	KIHANFO	Samm
93	Neto Ahsin	Noyun	Jon
94	Bishop R. Mutebi	Nbon.	Bob
95	Paul K. Bui	Chepatinga	Steph
96	Hon. Mary Mbugua	Nku	Steph
97	Hon Benson Mbat	MASINGA	Steph
98	HON STEPHEN MULE	MATUNGUW	Steph
99	Hon Rachael Nyamai	Kiru South	Steph
100	Hon. Dalmos Otiemo	Rougo	Steph
101	Hon. Alfred Samba	Wabony East	Steph
102	Hon. Eng. S. R. Manga	Kuria East	Steph
103	Hon Zepporah Kenia	Nand County	Steph
104	HON REGINA NYEBE	WIPOKOT	God
105	Hon BEN MUMANG	MIAMIRA	Steph
106	Hon JOEL OUYANCHA	BOMACHOGE BORABI	A
107	HON. RONALD TONDI	BOMET CENTRAL	Steph
108	Hon Dr Susan Chelot	e/ueoaeo	Steph

128	HON. B. KITUNDU	MWINGI WEST	Burton
129	HON DAN BANTANA	LEBOYA WEST	Handwritten signature
130	HON I.W. NG'ATHU	Kangema	Uyobu
131	Savage Johnson	Nominated	Handwritten signature
132	Hon Charles M. Nyamai	Kisumu Rural	Handwritten signature
133	Hon Adas Keyna	Eldas	Handwritten signature
134	Hon. Mansim Nyamwaya	GUTHRIE KILIMANTARO	Handwritten signature
135	Hon. Leonard Sang	Ruweti	BSP
136	Dr. Naomi Saban	Tareta	Drabon
137	HON O.K. KUSASIRI	BAHATI	Handwritten signature
138	HON OMULELE CHEPTUNG	LEADA	Handwritten signature
139	HON. MARI SENEZA	KAJIADO	Handwritten signature
140	HON. WILLIAM CHEPTUNG	BARINGO NORTH	Handwritten signature
141	Hon Ngũgũ J.	EMURUA DIKIRI	Handwritten signature
142	Hon Alois Mbatia	Samburu North	Handwritten signature
143	Hon. Bernard K. Bett	Bomet East	Handwritten signature
144	HON C. GIMOSE	HAMUSI	Handwritten signature
145	HON A KETER	NANDI HILLS	Handwritten signature

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NATIONAL ASSEMBLY
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10 MAR 2016
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P. O. Box 31542, NAIROBI

② SDC

Initiate action and check for any other proposals deal with CNA
11/3/16

The Hon. Wafula Wamunyinyi, MP,
National Assembly,
Parliament Buildings,
NAIROBI.

10th March, 2016

The Hon. Justin B. Muturi, EGH, MP,
Chairperson,
Procedure and House Rules Committee,
National Assembly,
Parliament Buildings,
NAIROBI.

① Noted. CNA to process this request as appropriate.

Wafula Wamunyinyi
CNA
10/03/16

Dear

RE: REQUEST TO AMEND STANDING ORDERS

In accordance with Standing Order 263, I wish to request the Procedure and House Rules Committee to consider amending Standing Order 114(3)(a) so as to harmonize the Standing Order with Article 114(2) of the Constitution.

The justification of this is informed by the following considerations-

1. Article 114(2) of the Constitution which provides that "if, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of "a money Bill", the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance". This would ensure that Standing Order 114(3)(a) is in tandem with Article 114(2) of the Constitution
2. During the budget making process, sector budget estimates are committed to the relevant departmental committees for scrutiny and approval. Departmental Committees are therefore better placed to determine how money bill proposal resonates with the current budget.
3. Money Bill matters in a Bill cannot be looked at in total isolation of the sector policy. Departmental Committees are better placed to analyse the money bill proposal in relation to the sector priorities in which they are in charge of as opposed to the Budget Committee.

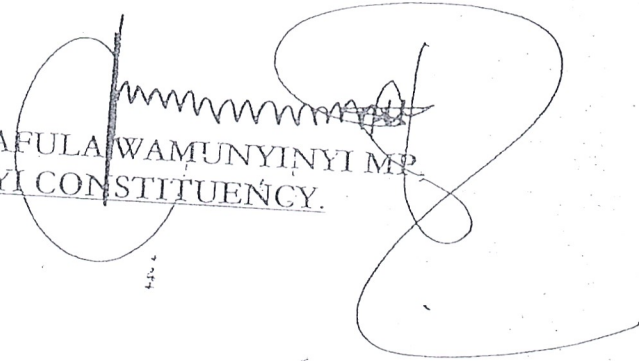
① ~~Ms. Shibuko - Chair~~
MS. SHIBUKO - Chair
Let's call a meeting of PAC
on 11.03.16

③ Sunny Njoroge

ASK the Committee Chair in Charge to initiate research in this matter particularly on visit of...

4. The amendment will cure the existing situations where it is possible to have two conflicting recommendations between Departmental Committees and the Budget and Appropriations Committee on how to proceed with the same money bill proposal.
5. Departmental Committees also have the powers to summon the Cabinet Secretary for Finance so the interests of the Executive will still be protected as envisaged by Article 114(2) if this proposal is carried.

Please find enclosed the text of the proposed amendment.


THE HON. WAFULA WAMUNYINYI MP.
KANDUYI CONSTITUENCY.

PROPOSED AMENDMENT TO STANDING ORDER 114(3)(a)

THAT, Standing Order 114(3) be amended in paragraph (a) by deleting the words "Budget and Appropriations Committee" wherever they appear and substituting therefor the words "relevant Departmental Committee".

[Signature]

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP

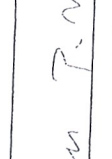
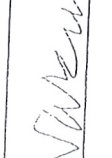
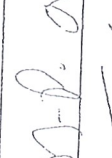



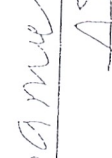

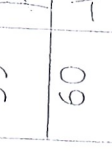


Pursuant to the provision of Standing Order 263 that requires a proposal for amendment of the Standing Orders to be supported by 'at least fifty other Members of the National Assembly' we the undersigned Members of the National Assembly hereby append our Signatures as support for this proposal for amendment of Standing Order 114(3)(a)

47	Hon Mohamed D. Duale	Dadaas	<i>[Signature]</i>
48	HON. MARIANNA JOSEPH	KASIPUT	<i>[Signature]</i>
49	Hon. Lathi Leleli	Gembury West	<i>[Signature]</i>
50	HON SHAFIQ A. BU	Lamu East	<i>[Signature]</i>
51	Hon. Mohamed M. Matsum	Mandhe West	<i>[Signature]</i>
52	HON PRISCILLA NYOKARI	NYERI COUNTY	<i>[Signature]</i>
53	HON Sarah Koroere	LAIKIPIA	<i>[Signature]</i>
54	HON THE JOHN B. SERUT	MT ERGON	<i>[Signature]</i>
55	HON BEN WAMANYI	RISRABU	<i>[Signature]</i>
56	HON CHARLES GENI	NORTH MUGIRANGO	<i>[Signature]</i>
57	Hon Richard M. Bayenka	Kitutu Chache South	<i>[Signature]</i>
58	Hon Ken Shwari	Kisumu Central	<i>[Signature]</i>

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP

Pursuant to the provision of Standing Order 263 that requires a proposal for amendment of the Standing Orders to be supported by 'at least fifty other Members of the National Assembly' we the undersigned Members of the National Assembly hereby append our Signatures as support for this proposal for amendment of Standing Order 114(3)(a)













59	HON. Samuel Aramp	MP. NAKURU	
60	HON. ABUBAKI MURUKU	NAKURU EAST	
61	HON. David Lemeleng	NAKURU WEST	
62	HON. MORTALAI OUKENZA	NAKURU NORTH	
63	HON. SOEL ONYANG'ATA	BOMBURA BORABU	
64	HON. Benson Mburu	MARSABIT	
65	HON. Samuel M. Nchiitu	GUJIBU	
66	HON. FRED JOHN KIRIGWA	NAKURU	
67	HON. JOSEPH NJIRI	NAKURU WEST	
68	HON. KANINI KESAU	MP. KISUMU	
69	HON. JOSEPH NJIRI	MP. SUNA RES.	
70	HON. Samuel Shabani	MP. KISUMU EAST	

THE NATIONAL ASSEMBLY, ELEVENTH PARLIAMENT, FOURTH SESSION

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP


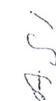

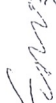








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71	HON. JIMMY ANKWENNIL	KITUCHHEHE NORTH	
72	HON. MURUKI NSIAGARA	MBEREJE NORTH	
73	HON. JANET TE-1/1AA	Nominating	
74	HON. Mathani Nyuki	Chuka - Gungu	
75	HON. SPONVEL ANTHONI	KAPPIRA	
76	HON. JAMES M. MOKOSI	N/A	
77	HON. Spondor MOTO	Nominating	
78	HON. Wesley Kori	CHEONGAY	
79	HON. Adia Keyna	Eldas	
80	HON. Vincent Muryole	Mwala	
81	HON. J. Dora Atwal	Kism West	
82	HON. MARY SMITH	KISII COUNTY	

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP













Pursuant to the provision of Standing Order 263 that requires a proposal for amendment of the Standing Orders to be supported by 'at least fifty other Members of the National Assembly' we the undersigned Members of the National Assembly hereby append our Signatures as support for this proposal for amendment of Standing Order 114(3)(a)

83	John Ogoti Omoro	EMBU	
84	Christie W. W. W. W.	Kenia	
85	MEMUSI KANCHOBAY	Kajiado Central	
86	Lawrence Ameso Ameso	Kakamega	
87	Nasra Ibrahim Joreh	Marsabit	
88	Hon. EK. WANYONYO	Uasin Gishu	
89	Hon. Joyce W. Lay	Taita Taveta	
90	Hon. Elwin Busire	Turbo	
91	Hon. David Posing	Pokot South	
92	Hon. Mounson O. Nyamweya	South Mugirango	
93	Hon. T.M. E. E. E.	Kilimanjaro	
94	M. E. P. Agostini	Mt. Kenya	

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP


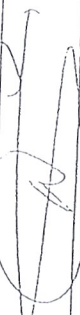






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95	HON KENNETH OCKA, MP	KIRIRA	
96	Hon. Suetama Murenga Kasuti	KIMILIL	
97	Hon. Florence Muthe	BUSIA	
98	Hon. Andrew Nwadike	UWATAJI	
99	HON NANSU GETHERO	TRU	
100	HON. KAMATI NATHANIEL	TRU	
101	Hon Kaboo of Meht	Karado South	
102	Hon. Lessonet Moses &	ET Fawine.	
103	Hon Julius -K. Muly	Tindret	
104	Hon Lomenen	T/South	
105	Hon J.M. Wanjungu	or-goro - orok	
106	Hon Francis Wadwa Nderu	N'barag'ag	

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP

Pursuant to the provision of Standing Order 263 that requires a proposal for amendment of the Standing Orders to be supported by 'at least fifty other Members of the National Assembly' we the undersigned Members of the National Assembly hereby append our Signatures as support for this proposal for amendment of Standing Order 114(3)(a)

107	Hon Eng SR Mwangi	UKURUS AG. KURIA WEST	
108	Hon DR J K MURORO	KEIYO NORTH	
109	Hon Cornelius Sam	Isidan	
110	Hon Ameh Nyolabi Gathecha	KIAMBU COUNTY	
111	Hon Grace Khamari Kachoi	MP Baringo South	
112	Prof. J. M. O. Wanjau	NAIROBI EAST	
113	Hon F. K. Njeng'o	SIADUDI NORTH	
114	Hon Cecilia Ngetich	BOMET COUNTY	
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PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP

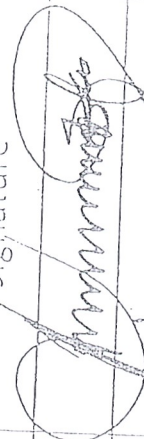









Pursuant to the provision of Standing Order 263 that requires a proposal for amendment of the Standing Orders to be supported by 'at least fifty other Members of the National Assembly' we the undersigned Members of the National Assembly hereby append our Signatures as support for this proposal for amendment of Standing Order 114(3)(a)

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PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP





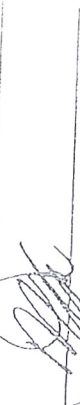




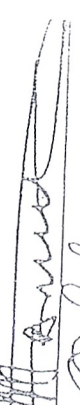


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No.	Name of Member	Constituency	Signature
1	Wafula Wamunyinyi	Kanduyi	
2	FRED DWIT	Mwango	
3	Omar omunyini	Changamwe	
4	SIMBA ARAFI	BAROTSI NORTH	
5	FRANCIS MWANGANGI	YAITA	
6	SAKWA J. BUNYABI	NAMBALLE	
7	EMMAUEL WANGWIE	NARAKHOLA	
8	Bar Wanyama	Wenge West	
9	Steven Kariuki	MATHARE	
10	BONIFACE OTSUNIA	Bumula	

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP













Pursuant to the provision of Standing Order 263 that requires a proposal for amendment of the Standing Orders to be supported by 'at least fifty other Members of the National Assembly' we the undersigned Members of the National Assembly hereby append our Signatures as support for this proposal for amendment of Standing Order 114(3)(a)

23	Sauaji Johnson	Nominated	
24	Hon. Tim Wangayi	WESTHAMS	
25	Hon. Karatta Aman	Tidry	
26	Hon. Makali Mulu	Kitui Central	
27	Hon. Raphael Otalo	LuRamba	
28	Hon. Dr. W. Kibung'u	LUKUYANI	
29	Hon. George Omer MP	Rangwe Cashewery	
30	Hon. Joseph Kabado	Uviri Constituency	
31	Hon. Zuleika Hassan	Nominated	
32	Hon. Nicholas N. Ng'akar	Tumkana Raj	
33	Hon. Onwale Awulola	LUANDA	
34	Hon. Dr. David Eseli Simiyu	Tongaren	

PROPOSAL FOR AMENDMENT TO STANDING ORDER 114(3)(a)

BY HON. WAFULA WAMUNYINYI, MP

Pursuant to the provision of Standing Order 263 that requires a proposal for amendment of the Standing Orders to be supported by 'at least fifty other Members of the National Assembly' we the undersigned Members of the National Assembly hereby append our Signatures as support for this proposal for amendment of Standing Order 114(3)(a)

35	Hon. Eng. James Rege	Karachuwoyo	
36	Hon James D. Rege	Muhorini	
37	HON. JESSICA MBALU	ILBWEZI EAST	
38	Hon Isaac Mwaure	Momwotoko	
39	Hon. William Chetemo	B/NORTH	
40	YUSUF HASSAN	RAMUKUJI	
41	Ahmed Samba Bangura	Hon Lugavi	
42	Hon Jackson Lutoma	Keryo Surt	
43	Hon Raphael Letumba	Samburu East	
44	Hon. Muchenul Tongi	Nyanisori chaela	
45	Hon SIDDEON KONEHSA	KILGORS	
46	Hon. J. LEKATS	Laisamu	

MEMO

TO : THE CLERK OF THE NATIONAL ASSEMBLY

MS. W. Ndlovu
PLS b/UP at the
request.
passed
2/27

(4)
Njenge
to study and
present to
the PSHD
Committee.
Independent Mps
cannot constitute
any party

THRO' : THE DEPUTY DIRECTOR, LEGAL SERVICES- NA

Forwarded. This matter should be filed before the task force on the
amendment of the Standing Orders for consideration. However, in the interim,
I do not agree with certain aspects of the proposal. Firstly, it will be
unprecedented to deem "coalition of independent members" as a parliament
party. Secondly issues of party leaders should be left to the
political parties under the Political Parties Act and the Standing
Orders should not provide for election of
party leaders whatsoever. The latter is not
a procedural issue to be addressed in
the Standing Orders.

FROM : LEGAL COUNSEL II

DATE : 28th February, 2017

RE: PROPOSED AMENDMENTS—THE NATIONAL ASSEMBLY STANDING ORDERS

28/03/17

The letter received from Hon. Dr. Patrick Musimba proposes the following amendments to the National Assembly Standing Orders—

1. Standing Order 2, amendment of the phrase—
 - a) "Parliamentary Party" to mean "a party, coalition of parties, independent candidates, coalition of independent candidates, individual member and parties consisting of not less than five percent membership of the National Assembly; and
 - b) "Party whip" to mean "a member designated by a parliamentary party as its whip for the purposes of the transaction of the business in the House and includes the Majority Whip, the minority whip and any other Whip designated by any other parliamentary party registered with speaker of National Assembly".
2. PART IV
 - a) Amendment of the heading to "THE LEADER OF THE MAJORITY PARTY, THE LEADER OF THE MINORITY PARTY AND THE LEADER OF ANY OTHER PARLIAMENTARY PARTY"; and
 - b) Insertion of a new standing order immediately after Standing Order 20 to provide for the election of a leader and deputy leader of a registered parliamentary party or coalition of parties in the National Assembly.



STANDING ORDER 2

THAT, Standing Order 2 be amended by deleting the definition of "Parliamentary Party" and substituting therefore the following new definition—

““Parliamentary Party” means a party, coalition of parties, coalition of a party and an independent Member or a coalition of independent Members consisting of not less than five percent of the membership of the National Assembly;”

PART IV

THAT, the Standing Orders be amended by deleting the Title to Part IV and substituting therefore the following new Title—

“THE LEADER OF THE MAJORITY PARTY, THE LEADER OF THE MINORITY PARTY AND THE LEADER OF A PARLIAMENTARY PARTY”

NEW STANDING ORDER

THAT, the Standing Orders be amended by inserting the following new Standing Order immediately after Standing Order 20—

20A. (1) A parliamentary party shall elect—

- (a) a member of the National Assembly belonging to the party to be the leader of the parliamentary party;
- (b) a member of the National assembly belonging to the party to be the deputy leader of the parliamentary party.

(2) In electing members under paragraph (1), a parliamentary party shall take into account—

- (a) any existing coalition agreement entered into pursuant to the Political Parties Act and the Elections Act; and
- (b) the need for gender balance.

(3) A member elected under paragraph (2) may be removed by a majority votes of all members of the parliamentary party.

(4) The removal of a member from office under paragraph (3) shall not take effect until a member is elected in the manner provided for under paragraph (1).

(5) The whip of the parliamentary party shall forthwith, upon a decision being made under this Standing Order, communicate to the Speaker, in writing, the decision together with the minutes of the meeting at which the decision was made.



Mr. Mweu M
Study this and
advise on
23/04

Hon. Dr. Patrick Mweu Musimba, MP
Kibwezi West Constituency

Parliament Buildings
Tel: +254 20 2221291
P. O. Box 41842 - 00100
Nairobi, Kenya

Continental Hse. 5th Flr. 519
Mobile: +254 722 519 776
Email: patrick@musimba.co.ke
www.patrickmusimba.co.ke

21th March, 2017

The Clerk of the National Assembly
Parliament Buildings
NAIROBI

RE: PROPOSED AMENDMENTS - THE NATIONAL ASSEMBLY STANDING ORDERS

NOTICE is given that the Member for Kibwezi West Constituency, Hon. Dr. Patrick Mweu Musimba M.P., intends to move the following amendments to The National Assembly Standing Orders.

OBJECTIVES

1. To align the Standing orders with the provisions The Constitution (Article 85) in respect to Independent members of National Assembly, as well as non- affiliate members to both the Majority and Minority Party.
2. In formation of all committees a minimum of 5% of its membership be drawn from a parliamentary party reflecting its relative composition in the house.
3. All Parliamentary Parties be registered with the Clerk of National Assembly.
4. The leadership of all committees to comprise a Majority and Minority chair drawn from the Majority, Minority or parliamentary party in tandem with there being an majority and minority leader and the composition of the chairman's panel which comprises of both the Majority and Minority party.

THE PROPOSED AMMMENDMENT

INTERPRETATION

THAT, Order 2 (1) (a) "Parliamentary Party" be amended to mean a party, coalition of parties, independent candidates, coalition of independent candidates, individual member and parties consisting of not less than five percent of the membership of the National Assembly;

“Party Whip” be amended to mean a member designated by a parliamentary party as its party whip for the purposes of the transaction of the business in the House and includes the Majority Whip, the Minority Whip and any other Whip designated by any other parliamentary party registered with speaker of National Assembly

PART IV

Heading of PART IV of the Standing Orders be amended by inserting the wording “*leader of any other parliamentary party*”

“THE LEADER OF THE MAJORITY PARTY, THE LEADER OF THE MINORITY PARTY AND THE LEADER OF ANY OTHER PARLIAMENTARY PARTY”

Insert “*leader of any other parliamentary party and Deputy leader of any other parliamentary party*”

21. (1) the registered parliamentary party or coalition of parties in the National Assembly shall elect-

(a) A member of the National Assembly belonging to the party or coalition of parties to be the Leader of the registered parliamentary party;

(b) a member of the National Assembly belonging to the party or coalition of parties to be the Deputy Leader of the registered parliamentary party.

(2) In electing members under paragraph (1), the Registered Parliamentary Party or coalition of parties in the National Assembly shall take into account-

(a) Any existing coalition agreement entered into pursuant to the Political Parties Act and The Elections Act;

(b) The need for gender balance.

(3) A member elected under paragraph (2) may be removed by a majority of votes of all members of the registered parliamentary party or coalition of parties in the National Assembly.

(4) The removal of a member from office under paragraph (3) shall not take effect until a member is elected in the manner provided for under paragraph (1).

(5) The whip of the registered parliamentary party or coalition of parties in the National Assembly shall forthwith, upon a decision being made under this standing Order, communicate to the Speaker, in writing the decision together with the minutes of the meeting at which the decision was made.

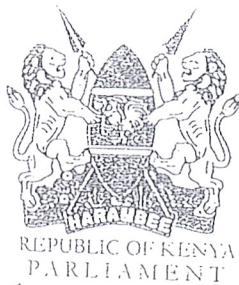
PART XXII - SELECT COMMITTEES

Standing Order 171 - (House Business Committees) – insert after Order 171(1) (c) the words “Leader of any registered parliamentary Party”

Standing Order 172 – (Committee on Selection) – insert after the words “Leader of the Minority Party” – the words “Leader of any registered parliamentary Party”

“172. (1) There shall be a select committee, to be designated Committee on Selection, consisting the Leader of the Majority party who shall be the chairperson, the Leader of the Minority party, Leader of any registered parliamentary Party and not less than eleven and not more than nineteen members, who shall be nominated by parliamentary parties and approved by the House.”

HON. DR. PATRICK MUSIMBA, M.P.,
Kibwezi West Constituency



*Mrs Wanjau Okinda
pts bring to the attention
of the House
Committee
JV
16/3*

Hon. Eng. Nicolas Gumbo, REng, FIEK, MP.
Rarieda Constituency

Chairman: Public Accounts Committee

Parliament Buildings
Tel: +254 20 2221291 Ext. 3552
P. O. Box 41842 - 00100
Nairobi, Kenya

Harambee Plaza 10th Flr Rm. 1004
Mobile: +254 722 20 97 30/734 333 411
E-mail: rarieda@parliament.go.ke

16th March 2017

Mr. Michael R Sialai, EBS
Clerk of The National Assembly,
P O Box 41842-00100,
NAIROBI.

RECEIVED
16/3/2017
PUBLIC ACCOUNTS COMMITTEE

5

Dear Mr. Sialai.

RE: PROPOSED AMIMENDMENTS TO STANDING ORDERS

This is in reference to your letter of 23rd February 2017 with regard to the above.

I wish to propose the following amendments to the National Assembly Standing Orders.

- (1) That standing order NO.205(5) and 206(4), on the membership of the Public Accounts and Public Investments Committee, be amended in part to read ".....the Minority Party or Coalition of Parties shall have a majority of one";
- (2) That Standing Orders NO. 205 (3) and 206(3) be amended in part to read ".....shall consist of a Chairperson and Vice-chairperson who shall BOTH be members elected by the committee from among the members of the committee nominated from the minority party or coalition of parties".
- (3) That a new Standing Order be introduced to read "Once adopted by the Committee, reports of BOTH the Public Accounts Committee and the Public Investments Committee shall be adopted within two weeks of being tabled in the House without any amendments.

Thank You.


Yours Faithfully

Hon. Eng. Nicolas Gumbo, REng, RConsEng, MAAK(E), Prlw, FIEK, MP.
Rarieda Constituency, and Chairman, Public Accounts Committee.

Ccc. The Speaker Kenya National Assembly

The purpose of this letter is request your authority for the joint retreat between the Catering and Health Services Committee and the Procedure and House Rules Committee to be undertaken in Eldoret from 2nd to 5th March 2017

Yours faithfully

A handwritten signature in black ink, appearing to read 'Janet Nangabo', with a horizontal line extending to the right.

Hon. Janet Nangabo, MP
Committee Chairperson

The purpose of this request is to propose following amendments to the Standing Orders to provide for:

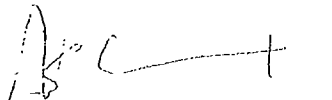
- (i) the establishment of a Joint Committee to be known as the Joint Committee on Facilities and Services;
- (ii) the mandate of the Joint Committee as follows---
 - a) to oversee the operations of the Catering and Health Club Department in Parliament;

The justification for the proposed amendments are as follows--

- i Although the Committee has been established under House Resolution, the Standing Orders do not have provisions establishing the Committee as presently constituted or as a Joint Committee as proposed;
- ii The Committee existed by the House Resolution of 2011 that changed the mandate of the Committee from managing to overseeing the operations of the Catering and Health Club Department in Parliament, there is need to realign the mandate of the Committee to reflect this change,
- iii. In light of the change from the unicameral to bicameral system, there is need to have a Joint Committee that addresses issues on services provided to Members of Parliament in both the National Assembly and the Senate,
- iv. The renaming of the committee from Catering and Health Services Committees to a Joint Committee on Facilities and Services is informed by the following reasons.
 - a) The term facilities and services are broader and apt, unlike catering and health services which is limited to two services offered by Parliament yet the services are broader;
 - b) Article 127(6) of the Constitution uses the terminologies "services" and "facilities", hence the need to realign the name to reflect these changes,
 - c) The name "Facilities and Services" is used by other Parliaments delivering similar mandates to the proposed Joint Committee on Facilities and Services

The purpose of this letter is request your authority for the joint retreat between the Catering and Health Services Committee and the Procedure and House Rules Committee to be undertaken in Eldoret from 2nd to 5th March 2017

Yours faithfully

A handwritten signature in black ink, appearing to read 'Janet Nangabo', with a long horizontal stroke extending to the right.

Hon. Janet Nangabo, MP
Committee Chairperson

7

11th August, 2016

The Hon. Justin B. Muturi, EGH, MP,
Chairperson,
Procedure and House Rules Committee,
National Assembly,
Parliament Buildings,
NAIROBI.

Approved. Place before the
Procedure and House Rules Committee
to consider.

BMT
SNA
15/8/16

Dear

RE: REQUEST TO AMEND THE STANDING ORDERS

In accordance with Standing Order 263, I wish to request the Procedure and House Rules Committee to consider amending the Standing Orders to provide for the Catering and Health Services Committee as a Joint Committee.

The Catering and Health Services Committee is one of the Committees of the National Assembly which has been in existence since 1967 by dint of House Resolution. However, to date, the Committee has not been established under the Standing Orders hence this request.

The purpose of this request is to propose following amendments to the Standing Orders to provide for:

- (i) the establishment of a Joint Committee to be known as the Joint Committee on Facilities and Services;
- (ii) the mandate of the Joint Committee as follows—
 - a) to oversee the operations of the Catering and Health Club Department in Parliament;
 - b) to exercise oversight over services provided by the Parliamentary Service Commission to the Members of Parliament.

The justification for the proposed amendments are as follows—

- i. Although the Committee has been established under House Resolution, the Standing Orders do not have provisions establishing the Committee as presently constituted or as a Joint Committee as proposed;
- ii. The Committee existed by the House Resolution of 2011 that changed the mandate of the Committee from managing to overseeing the operations of the

Catering and Health Club Department in Parliament, there is need to realign the mandate of the Committee to reflect this change;

- iii. In light of the change from the unicameral to bicameral system, there is need to have a Joint Committee that addresses issues on services provided to Members of Parliament in both the National Assembly and the Senate;
- iv. The renaming of the committee from Catering and Health Services Committees to a Joint Committee on Facilities and Services is informed by the following reasons:
 - a) The term facilities and services are broader and apt, unlike catering and health services which is limited to two services offered by Parliament yet the services are broader;
 - b) Article 127(6) of the Constitution uses the terminologies "services" and "facilities", hence the need to realign the name to reflect these changes;
 - c) The name "Facilities and Services" is used by other Parliaments delivering similar mandates to the proposed Joint Committee on Facilities and Services;

Please find enclosed the proposed amendments.



HON. DR. ROBERT PUKOSE, MP

ENDEBESS CONSTITUENCY

PROPOSED AMENDMENTS TO THE STANDING ORDERS

STANDING ORDER 213

THAT standing order 213 of the National Assembly Standing Orders be amended in paragraph (4) by inserting a new paragraph immediately after sub-paragraph (b) as follows---

“(ba) The Joint Committee on Facilities and Services;”

NEW STANDING ORDER

THAT the Standing Orders be amended by inserting a new standing order immediately after standing order 215 as follows---

Joint Committee on Facilities and Services 215A. The Joint Committee on Facilities and Services shall --

- a) oversee the operations of the Catering and Health Club Department in Parliament; and
- b) to exercise oversight over services provided by the Parliamentary Service Commission to the Members of Parliament.

FOURTH SCHEDULE

THAT rule 9 of the Fourth Schedule of the Standing Orders be amended in paragraph (1) by inserting the following new subparagraph immediately subparagraph (b)-

“(ba) the Joint Committee on Facilities and Services, and”



REPUBLIC OF KENYA
PARLIAMENT

Hon. Adan Keynan, CBS., MP.

Eldas Constituency

Commissioner, Parliamentary Service Commission

Parliament Buildings
Tel: +254 20 2848 233
P. O. Box 41842 00100
Nairobi, Kenya

County Hall, Room 20
Mobile: +254 722 301 9
Fax: +254 20 2215

Email: eldas2013@yahoo.co.ke

8 June, 2017

Mr. Michael Sialai, EBS
Clerk of the National Assembly,
P. O. Box 41842 - 00100,

NAIROBI.

Dear Mr. Sialai

RE: SUBMISSION OF PROPOSALS FOR AMENDMENTS TO THE STANDING
ORDERS

The subject matter above refers.

I wish to give the following proposals for consideration by the Procedure and House
Rules Committee in the ongoing review of the Standing Orders: -

Proposal	Justification
1. Amend SO 171(1) to include Committee Chairpersons as ex-officio members of the House Business Committee	<p>The House Business Committee is a unique Committee, in that, it determines the business to be transacted in the Plenary. This business is largely a product of the work generated by Committees, which in a Presidential system of government like Kenya, is the right channel for executing oversight functions by the Legislature. The success of the Legislature is, therefore, largely dependent on the viability and the efficacy of its Committees which culminate in Reports to the plenary.</p> <p>Unfortunately, several of these reports have to a large extent not received the priority they deserve by the HBC, possibly because of the current structural membership of the</p>

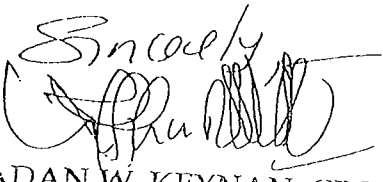
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09 JUN 2017
SECRETARY'S OFFICE

8

Proposal	Justification
	<p>Committee. The inclusion of Committee Chairpersons, therefore, in the HBC as ex-officio members will address this challenge and in turn improve KNA's efficacy in scheduling of house business.</p>
<p>2. Amend SO 193 - Vote of No Confidence in the Chairperson or Vice Chairperson by increasing the threshold for the removal of Chairpersons/Vice Chairpersons to two-thirds of the Committee membership.</p> <p>The removal process should also require person(s) spearheading the vote of no confidence to submit grounds for the removal of the said Chairperson/Vice-Chairperson. A hearing process should also be provided to determine its merit, based on the issues raised while according the said chairperson or vice chairperson an opportunity to be heard.</p>	<p>Increasing the threshold for removal of chairperson/vice chairperson will cure the current situation where only a simple majority is required to institute removal of the Chair/Vice Chairperson.</p> <p>A hearing process is informed by principles of natural justice require that an accused person be given a hearing to defend oneself against the accusations. The current provisions of SO 193 lacks this hearing process.</p>
<p>3. Delete the Committee on Appointments (SO 204). Its mandate of considering appointments made under Art.152(2) of the Constitution (Cabinet Secretaries) be transferred to the respective Departmental Committee SO 216 (f).</p> <p>Delete the words "except those under SO 204 (Committee on</p>	<p>a) Departmental Committees are better placed to consider appointment of Cabinet Secretaries alongside those provided by the Constitution or any statute requiring National Assembly approval. This is because DCs are mandated by SO 216 to handle all matters relating to the respective Ministries and departments, including vetting of various office holders;</p> <p>b) Further, the current provision where the Speaker is the Chair of the Committee on</p>

Proposal	Justification
Appointments)" appearing after the word "approve" in SO 206(f)	Appointments compromises the Speaker's position as a neutral arbiter in the event of a request for fair administrative action arising out of a matter before the Committee for which he is a member and Chairperson!

Yours



HON. ADAN W. KEYNAN, CBS, MP
 CHAIRMAN,
PUBLIC INVESTMENTS COMMITTEE

WN - 21/5/17

(9)

Standing Orders Amendments

Proposals by Hon. Keynan,

X • All Chairs of committees to be Ex-Official to BHC; ;

2. ✓
red ✓
- ✓ • Don't split Communication from Information-
 - ✓ • Consider adding Housing to transport;
 - ✓ • PAC, PIC and SFAC and Implementation to be chaired by the Opposition;

Chairs will sabotage HBC

they're not

Keep comm work separate from Hse biz - & HBC to focus on holistic view

REPUBLIC OF KENYA

10

Telegram 'Bunge'
Telephone: +254 20 2221 291
Fax: +254 20 2243 694
E-mail: clerk@parliament.go.ke
When replying please quote



Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842-00100
Nairobi, Kenya.

May 17, 2017

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
Nairobi

Ms. Ndindiri
Please bring it with procedure and House Rules Committee
D Nyirse
AK 18/5/17
not
not 17/5/17

Dear Sir,

RE: REQUEST TO AMEND THE STANDING ORDERS

Following a Communication from the Chair on February 23, 2017 regarding a review of the Standing Orders, I wish to submit some amendments to the Procedure and House Rules Committee for consideration.

I am proposing that the Standing Orders be amended in the following manner:

1. Merging of Committees:

- a) the Constitutional Implementation Oversight Committee (CIOC), Committee on Delegated Legislation and the Justice & Legal Affairs Committee (JLAC).

Justification:

- (i) Since CIOC was mandated to oversight the workings of the Commission on Implementation of the Constitution (CIC) whose term has since lapsed, the remaining work of this Committee can be done by expanding the mandate of JLAC.
- (ii) Additionally, the work of the Committee on Delegated Legislation can also be done by the Justice & Legal Affairs Committee. For the purposes of the Statutory Instruments Act, the resultant Committee shall be the one envisaged in the definition of "Committee" under Section 2 of the

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17 MAY 2017

Act. This will ensure harmony between subsidiary legislation, the statutes and the Constitution.

- b) the Budget & Appropriations Committee and the Departmental Committee on Finance, Planning & Trade.

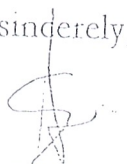
Justification:

- (i) These two committees usually consider similar matters, and experience overlap in their work. Merging them would resolve this issue, while also learning from the precedence set by the Senate Committee on Finance, Commerce and Budget and County Assemblies, whose committees do both functions.
- (ii) The Budget Committee typically reviews the expenditure side of the budget, while the Finance Committee reviews only the revenue part of the budget. Since different sets of people are examining the two sides of one budget without any linkage between them, this creates an imbalance in the eventual budget presented and considered by the House.
- (iii) The resultant Budget Appropriations and Finance Committee will be the Committee referred to in Article 221 (5) of the Constitution, and will be responsible for all aspects of budget.
2. Create a provision in the Standing Orders that prevents Members from serving in more than two committees, except if they are members of the House Business Committee. Further, Committees shall have no more than 29 Members who should be selected on the basis of qualification and experience in matters relating to that Committee.

Justification: To ensure that Members are able to focus better and make Committees more effective in their work.

Thank you for your consideration.

Yours sincerely,



THE HON. MOSES KURIA, MP
MEMBER FOR GATUNDU SOUTH CONSTITUENCY

① Mr. Kiara
be his deal. Let this
Bill be considered by the House
Committee
JWS



② Ms Ndlovizi
Please bring this
up for the Committee
and the Taskforce
ATC
JWS

REPUBLIC OF KENYA

MINISTRY OF THE EAST AFRICAN COMMUNITY (EAC), LABOUR
AND SOCIAL PROTECTION

STATE DEPARTMENT OF EAC INTEGRATION
OFFICE OF THE PRINCIPAL SECRETARY

Telephones: +254-20-2245741/2211614 /2245752
Mobile No. 0729111108/0733208888
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e-mail: ps@meac.go.ke
website: www.meac.go.ke

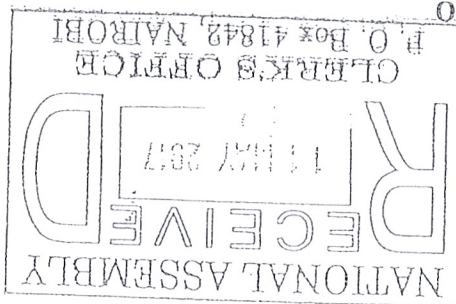
Co-op Bank House Building
Haile Selassie Avenue
P.O. Box 8846 - 00200 City Square
NAIROBI,

When replying please quote:

EAC/5/18/1 VOL. I (176)

09th May, 2017

Mr. Michael Sialai, CBS
Clerk
The Kenya National Assembly
Parliament Building
NAIROBI



Dear Mr. Sialai,

AMENDMENT OF NATIONAL ASSEMBLY STANDING ORDER

The Regional Integration Committee, Defence and Foreign Relations Committee and the East African Legislative Assembly (Kenya Chapter) have on various occasions discussed the oversight responsibility of the legislatures. The retreat held on 24th April, 2017 in Mombasa, resolved to enhance the role of the legislatures in regional integration through various ways including review of the National Assembly Standing Order, 212 Articles (a) to (e).

The current observation, understanding and interpretation is that the obligation of responding to integration matters is a preserve of the State Department EAC Integration (SDEACI). The Cabinet Secretary and the Principal Secretary responsible for East African Community Integration on a number of occasions have been required to respond to issues beyond their mandate.



Vision:
Deepen and widen East African Integration for Sustainable Development and improved livelihoods of all
Kenyans



Further, the mandate of the SDEACI as provided for in the Executive Order No. 1/2016 of May, 2016 is limited to matters relating to the EAC Integration bloc. In practice, however, the issues of Regional Integration cut across other Ministries and are not restricted to the current Ministry of East African Community Integration, Labour and Social Protection.

On the basis of the aforementioned, there is need to widen the National Assembly's Oversight role on Regional Integration to cover all the Ministries that deal with whole spectrum of Regional Integration issues such as IGAD, COMESA, ICGRL among others.

The State Department appreciates the close working relationship, support and continued cooperation.

Yours sincerely,



BETTY C. MAINA, CBS
PRINCIPAL SECRETARY
EAC INTEGRATION

Attach



Vision:
Deepen and widen East African Integration for Sustainable Development and improved livelihoods of all
Kenyans





REPUBLIC OF KENYA

BRIEF ON AMENDMENT OF NATIONAL ASSEMBLY STANDING ORDER

STATE DEPARTMENT OF EAC INTEGRATION

1.0. Introduction

The East African Community Treaty article provides for Partner States to create a Ministry to coordinate EAC Affairs. The treaty identifies areas of cooperation for the agenda and discussion by the Partner States, creates organs and structure for decision making such as the Summit, Council of Ministers among others. In addition, the EAC Treaty has created a legislature which among its functions includes an oversight responsibility, a financial role and an established link with respective Partner States' National Assemblies.

In pursuing its mandate the State Department of EAC Integration is expected to liaise with the Parliament (National Assembly and the Senate), EALA and EALA (K) Chapter members to enable it to fulfil the integration agenda for the benefit of the people of Kenya.

2.0. Relationship with the Parliament

The Ministry's association with Parliament is primarily through the Departmental Committee on Defence and Foreign Relations, Regional Integration Committee, Finance and Trade Committee among others.

2.1. Departmental Committee on Defence and Foreign Relations

Since coming into being in 2006, the Ministry responsible for EAC integration has primarily been dealing with the Departmental Committee on Defence and

Foreign Relations until 2013. During that period, it dealt with the Ministry on issues of its budgetary considerations, the EALA Reports/Bills and motions and undertook oversight roles and functions of the Ministry. However, from 2013, other than those functions relating to budget were assigned to the Select Committee on Regional Integration as per the revised National Assembly Standing Orders of 212(2). The Defence Committee however got an additional role of vetting Cabinet Secretaries and Principal Secretaries to be assigned jobs in the Ministry responsible for EAC integration.

2.2. Regional Integration Committee

The Select Committee on Regional Integration was created to play an oversight role on Regional Integration issues and to interrogate EALA Bills, Motions and Report. The need for such a committee had been deemed appropriate due to the importance being attached to Regional Integration issues. The Committee alongside the Defence and Foreign Relation, Finance and Trade Committee have continued to interrogate the Regional Integration issues.

3.0. Mandate of the Ministry of EAC, Labour & Social Protection

The Ministry has three State Departments, namely East African Community Integration, Labour and Social Protection. The former has the primary role of integration.

3.1. Functions of State Department for East African Integration

- i) Policy on East African Community;
- ii) Implementation of the East African Treaty;
- iii) Coordination of Implementation of EAC Regional Programmes and Projects;
- iv) Promotion and Fast Tracking of EAC Integration;
- v) Coordination of Government's Participation in East African Community Affairs; and
- vi) East African Community Meetings and Institutions.

An examination of the stated functions indicate that it is explicit on the relevant regional integration bloc that the State Department is responsible for EAC Integration is responsible for EAC. An observation of the current National Standing Orders specifically 212(2) however, indicates that the role of Regional Integration Committee is not limited to the EAC and that it has a wider mandate. Specifically Standing Orders No. 212(2) a,d,e, are far beyond the scope of the State Department. Articles 212 (2) b and c are on the spot on the mandate of the State Department which are specific to EAC.

4.0. National Assembly's Current Standing Orders

The Standing Order established the Regional Integration Committee to pursue the following:

- a. Enhance the role and involvement of the House in intensification and development of the integration process in the EAC and the greater African region;
- b. Examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;
- c. Examine the Bills introduced in the East African Legislative Assembly and Acts of the East African Community;
- d. Examine records of all the relevant debates and resolutions of the meetings of the Pan African Parliament, the African, Caribbean and Pacific-European Union Joint Parliamentary Assembly and other regional integration bodies;
- e. Inquire into and examine any other matter relating to regional integration generally requiring action by the House.

5.0. Emerging Issues from the Standing Orders

Currently Standing Order No. 212(2) has five sub articles (a - e) two of which are explicit on the issues of EAC integration while the other three are not. Kenya is a member of several regional blocs namely IGAD, ICRGLR, COMESA to name but

a few. The Standing Orders however, only mention EAC specifically. This perspective has sometimes brought confusion as to who is responsible and the EAC department has tended to be assumed to be the one. The specific articles that need to be reviewed and recommend are as follows:

Standing Order 212 (2) a

The Order states that:

Enhance the role and involvement of the House in intensification and development of the integration process in the EAC and the greater African region;

- In the 212(2)a Article, the standing order envisages the intensification and development of the integration process beyond the EAC region. The implications therefore may lead to the EAC State Department being required to explain on issues beyond its mandate

Proposal:

- It is proposed that the Article is still relevant but could read as follows: -
Enhance the role and involvement of the House in intensification and development of the integration process in the EAC.

OR

- *Enhance the role and involvement of the House in intensification and development of the integration process in the EAC, COMESA, IGAD ICGLR.*

Standing Order 212 (2) a

It states that:

Examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;

- In the article above it would be appropriate to include EALA alongside the other Regional Legislative bodies.

Proposal:

- *It is proposed that Article(a) can be eliminated but EALA as a legislative body be added in Article (d) and Article (b)*

Standing Order 212 (2) c

The Order States that:

Proposal:

Article 212(2) c should remain the same.

Standing Order 212 (2) d

The Order States that:

Examine records of all the relevant debates and resolutions of the meetings of the Pan African Parliament, the African, Caribbean and Pacific-European Union Joint Parliamentary Assembly and other regional integration bodies;

- It would be imperative to determine which are the other regional bodies and the responsibilities placed appropriately to the relevant portfolio ministries. Alternatively, the issue should identify the key integration bodies that Kenya is a party to.

Proposal:

- It is proposed that the sub article to read as follows:

Examine records of all the relevant debates and resolutions of the meetings of the EALA, Pan African Parliament, the African, Caribbean and Pacific-European Union Joint Parliamentary Assembly.

Standing Order 212 (2) e

The Order States that:

Inquire into and examine any other matter relating to regional integration generally requiring action by the House.

Proposal:

- In the article the Regional bodies need to be identified e.g. IGAD, COMESA, ICGLR among others and the responsible portfolio ministries, other than the EAC should take responsibility.

6.0. The Emerging Issues/Other Considerations

The constitutional dispensation recognizes Parliament on legislative issues, there is therefore, there is a need to involve the Senate on integration matters. The recent proposal to include it in the selection/appointment of EALA members is a good step and perhaps a joint Departmental Parliamentary Committee on Regional Integration would be appropriate.

Currently the Regional Integration Committee is a Select Committee, a Department Committee would enable all issues on integration to be handled holistically and provide continuity.

7.0. Conclusion

The coming into being of the Standing Orders in 2013 has helped to move the integration agenda a notch higher and has led to a closer working relationship between the Ministry and the National Assembly.



12

Wanjiru Ndindiri <wndindiri@gmail.com>

Fwd: amendments to standing orders

1 message

Sam Njoroge <njorogesir@gmail.com>
To: Wanjiru Ndindiri <wndindiri@gmail.com>

Tue, May 30, 2017 at 5:45 PM

----- Forwarded message -----

From: evans oanda <evansoanda@gmail.com>
Date: Tue, May 30, 2017 at 2:58 PM
Subject: amendments to standing orders
To: Sam Njoroge <njorogesir@gmail.com>, Samuel njoroge <njorogesamm@yahoo.com>

Good afternoon Director,

We spoke

Please find here-attached a draft copy of the resolutions of the retreat the Committee on Regional Integration held with the State Department of EAC and EALA (Kenya chapter) recently.

There were issues raised on how to hold Kenyan representatives to EALA accountable for the work they do on behalf of Kenya. It was felt that they can only report to the Kenyan Parliament through the Committee on Responsible for EAC issues. Therefore it was resolved that the Standing Orders be amended to create a direct link between Kenyan's EALA chapter and the Committee on Regional Integration as indicated in 3.1 (3) on Linkages between EALA (K) and Parliament, bullet 2 of the attached document.

Since the drafting of the Standing Orders is on -going, we would appreciate if they establish this link.

We may propose this amendment:

Standing Order 212 be amended in sub clause 2 by inserting the following (e) immediately after (d)-
(e) interact constantly with the Kenya's representatives to the East African Legislative Assembly (EALA) for updates on how they advance the resolutions of the Kenyan Parliament within the EAC/EALA especially on amendments to Bills and resolutions tabled before EALA

Regards - Evans Oanda

EALA RIC and SDEACI Meeting.doc
36K

REPORT OF THE MEETING BETWEEN MEMBERS OF REGIONAL
INTEGRATION COMMITTEE, (EALA K), DEFENCE AND FOREIGN
RELATIONS AFFAIRS AND THE STATE DEPARTMENT OF EAC
INTEGRATION HELD ON 24TH MARCH, 2017 AT THE PRIDE IN PARADISE

3.0 PLENARY, RESOLUTIONS AND CONCLUSION

3.1 PLENARY

The following issues were raised during the plenary:

1. Provisions of the Treaty

- There may be need to review the areas of cooperation and hindrances to the implementation of agreements made;
- Develop mechanism to enforce implementation of decisions and directives;
- Avoid hurried admission of new members as has been the case with South Sudan;

2. Draft Strategy on Re-engineering Kenya's engagement in the EAC

a) Intelligence gathering:

- Make use of EALA (K) and Embassies in the Partner States;
- Make use of information obtained help Kenya to diversify from the traditional EAC markets and products

b) Changing Tact:

- Engage experts in the negotiation process;
- Shelve the 'Big Brother' mentality in the region that has been a source of resentment from some of the Partner States;
- Lobby for strategic positions at the EAC;
- Prioritize the country's national interests

c) Bilateral engagements

- Engage specific Partner States in areas of Kenya's strategic interests;
- Use this to influence specific interests in Kenya's foreign policy;
- Make budgetary provisions for these engagements;

3. Linkage between EALA (K) and Parliament

- Parliament does not recognize EALA members as Members of Parliament;
- The Standing Orders should be revised to facilitate a direct relationship between the two houses;
- There is need to review the point at which the Parliament contributes to EALA Bills and Motions;
- There is also need to clarify how reservations made by Parliament on EALA Bills are addressed;
- Organize for joint RIC and EALA(K) sensitization activities;
- Consider making RIC a departmental committee of Parliament;
- There is need to actualize the mandate of RIC beyond EAC as provided for in Standing Order 212

3.2 RESOLUTIONS

The following resolutions were made:

1. The framework for interaction between the Parliament, EALA (K) and SDEACI be formalized for effectiveness and efficiency in the integration process;
2. Parliament and EALA (K) to be involved more often in the activities of the EAC integration process by SDEACI to update them on the progress of the integration process;
3. An integration conference shall be held annually to assess the benefits, opportunities and challenges of the EAC integration process;
4. Parliament, EALA (K) and SDEACI shall meet biannually to monitor and review results of the EAC integration process and deliberate on Kenya's Regional Options;
5. The Regional Integration Committee should be made a departmental Committee of the National Assembly;

6. The PSC Act and any other subsequent rules thereto, be amended to recognize EALA (K) members as members of Parliament,
7. Proposed that EAC affairs be handled by a stand-alone ministry,
8. Agreed on the need for greater coordination of Kenya's national interests across all arms of government and EALA(K);
9. Ensure continuity of EALA(K) membership from one session to another.

13

MEMO

Agree

TO : THE CLERK, NATIONAL ASSEMBLY

This may be relevant

THRO' : THE DIRECTOR, LEGAL SERVICES- NA

to our review

*Forwarded for noting.
Date. 14/3/17.*

75-0.

Scalia

THRO' : PRINCIPAL LEGAL COUNSEL

Forwarded. The brief may be forwarded for purposes of investigation.

27/3/17

FROM : LEGAL COUNSEL II

14/3/2017

DATE : 14th MARCH 2017

*Ms. Mwangi
Let's discuss in the B.L.C. panel.
Please see 27/3/17*

RE: STAKEHOLDERS' REVIEW WORKSHOP ON THE DRAFT NATIONAL POLICY ON PUBLIC PARTICIPATION, 24TH FEBRUARY 2017

The above subject refers.

Following my nomination to attend the stakeholders' review workshop on the draft National Policy on Public Participation on behalf of the Clerk of the National Assembly held on 24th February 2017 at Kenyatta International Convention Centre (KICC), Nairobi, I wish to report as follows—


1. The Government, through the Office of the Attorney General and Department of Justice is developing a national policy on public participation and had invited the Clerk of the National Assembly (Annex 1, the invitation letter) and has a draft national policy on public participation (Annex 2, Working Draft National Public Participation Policy).

RECEIVED
14 MAR 2017

2. The opening remarks and introduction to Public Participation and Background on the Policy Development Process were done by Mrs. Emily Chweya, Chief State Counsel, Department of Justice (Annex 3, Development of a National Policy on Public Participation, Concept Note for the Stakeholder Consultation Workshop 24th February 2017, KICC, Nairobi).
3. Mrs. Chweya indicated that a national policy on public participation will act as the execution framework under which governmental ministries, departments and agencies work to involve the public's opinion and thus resolve one or more social, economic or political issues of the society. The proposed policy will act as an overarching framework on all public participation in both national and county governments but it will also enable the citizenry to own decisions made that will affect them.
4. Dr. Joshua Kivuva, the Consultant for the policy from the University of Nairobi, gave the participants an overview of the working draft policy on Public Participation. Of particular importance is the implementation framework under Part IV of the Working Draft. It indicates that the Intergovernmental Relations Technical Committee (IGRTC), the Council of Governors, County Governments, the County Civic Education Units (CCEUs), and other National Government ministries, the Kenya School of Government (KSG) and the Kenya Institute of Curriculum Development (KICD) will play key roles in the implementation of public participation in Kenya. Also, a wide range of non-state actors will play an important role as well.
5. It is proposed in the draft national policy that the Coordinating Government Agency shall be the Office of the Attorney General & the Department of Justice which will provide leadership and be in charge of the coordination of the implementation of the national policy on public participation.
6. Also, it is proposed that there be established a People's Participation Charter in the two levels of government, their MDAs and Independent Commissions, and each arm of government, which will set out the principles for participation and a brief account of when and how the people of Kenya should be able to participate.

7. It came out during the presentations that the Ministry of Devolution had developed Public Participation County Guidelines whereas a number of counties have enacted Acts on Public Participation. However, it was pointed out that the National Policy on Public Participation will be an overarching policy on both levels of government.
8. Later, the participants were divided into three groups to develop policy problems, policy statements and priority actions for three broad policy orientations as follows—
 - a) GROUP A: Citizen awareness, Access to information, Capacity Building and Civic Education
 - b) GROUP B: Planning & Budgeting Implementation, Funding and State facilitation
 - c) GROUP C: Feedback Mechanisms, Monitoring and Evaluation and Complaints & Redress Mechanisms
9. In my Group C, we presented our document before the plenary (Annex 4, Group C).
10. During the plenary, I indicated that the National Assembly has been alive to its duty of public participation in all its engagements and in particular instance, by the newspaper advertisements that it places inviting memoranda from the public on Bills, public hearings conducted by the Committees, the letters sent to the Attorney General and the Kenya Law Reform Commission inviting them to submit their comments on legislative proposals during pre-publication scrutiny, the live broadcast of Parliamentary proceedings, the dissemination of information through Parliamentary website, Parliamentary Outreach Programs including during Agricultural Society Shows and Parliamentary Service Week and so many developments.
11. Also, I informed the plenary of the Public Participation Bill by Hon. Christopher Omulele pending before the Justice and Legal Affairs Committee. This was in an effort to provide a better legislative framework by which public participation is to be effected. I also noted the challenges faced, for instance, court cases where courts have challenged parliamentary processes for not offering the public “reasonable opportunity”, a concept which without a clear policy is still a grey area.

12 After the presentations and discussions it was agreed that the stakeholder engagements will continue



Salem Dick Lorot

SDC
Concrete Solutions
to represent the
National Assembly
15/2/17



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

KNEX 1
G. J. L. S.
to attend on

DOJ/LJM/2/147(52)

13th February, 2017 *Winnifred*

Principal Secretary (Devolution)
Ministry of Devolution and Planning
Teleposta Towers
NAIROBI

RECEIVED
DIRECTORATE OF LEGAL SERVICES
NATIONAL ASSEMBLY
DATE RECEIVED: 21/2/2017
NAME: _____
TIME RECEIVED: _____
SIGNATURE: _____

an
Opport
attend
&
brief
conf.

Principal Secretary
Ministry of Finance and National Treasury
Treasury Building
Harambee Avenue
NAIROBI

Subat
21/2/17

Principal Secretary
Ministry of Health
Afya House
NAIROBI

Principal Secretary (Lands)
Ministry of Lands and Physical Planning
Ardhi House, First Ngong Avenue
NAIROBI

Principal Secretary (Basic Education)
Ministry of Education
Jogoo House, Harambee Avenue
NAIROBI

Mr. Lorot, LC

Principal Secretary, (Housing & Urban Planning)
Ministry of Lands, Housing and Urban Development
Ardhi House
NAIROBI

Kindly attend and
Brief.
Ken: 21/2/17

Principal Secretary (Transport)
Ministry of Transport, Infrastructure
Housing and Urban Development
Transcom House
NAIROBI

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15 FEB 2017
CLERK'S OFFICE



Principal Secretary
Ministry of Mining
Works Building
NAIROBI

Principal Secretary (Energy)
Ministry of Energy and Petroleum
Nyayo House
NAIROBI

Principal Secretary
Ministry of Industry,
Trade and Cooperatives
Social Security House
Block A, 23RD Floor
NAIROBI

Principal Secretary (Labour)
Ministry of EAC, Labour and Social Protection
NSSF Building, Bishops Road
NAIROBI

Director (Department of Children's Services)
Ministry of EAC Affairs
Labour and Social Protection
NSSF Building
NAIROBI

Chief Registrar of the Judiciary
Supreme Court Building
City Hall Way
NAIROBI

Clerk of National Assembly
Parliament Buildings
Parliament Way
NAIROBI

Clerk of the Senate
Parliament Buildings
Parliament Way
NAIROBI

Secretary/Chief Executive Officer
Kenya Law Reform Commission
3rd Floor, Kenya Re-insurance Plaza Building
NAIROBI

Commissioner of Prisons
Kenya Prisons Service
Magereza House
Bishops Road
NAIROBI

Inspector General
Kenya Police Service
Jogoo House
Harambee Avenue
NAIROBI

Chief Executive Officer
Independent Electoral and Boundaries Commission
Anniversary Towers
NAIROBI

The Secretary
Public Service Commission
Harambee Avenue
NAIROBI

Director
Kenya School of Government
Lower Kabete
NAIROBI

**INVITATION TO ATTEND A STAKEHOLDERS' REVIEW WORKSHOP ON THE DRAFT
NATIONAL POLICY ON PUBLIC PARTICIPATION, 24th FEBRUARY 2017**

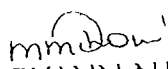
We make reference to the above matter.

The Government, through the Office of the Attorney General and Department of Justice is developing a national policy on public participation. Public participation has been codified as a major theme of the Constitution of Kenya, appearing as a national value in Article 10, as well as in a number of specific provisions, in relation to either certain public institutions or processes, or to certain sections of society. A draft policy on public participation in Kenya has been developed.

The policy will act as an overarching framework for all public participation in the country to be referred to by both national and county governments. The policy takes into consideration the county government's guidelines on public participation, and all other efforts, including legislation, and sub sector policies

To this end, our office wishes to present this draft policy for stakeholders' feedback and input. The purpose of this letter therefore is to invite you to nominate a technical officer well versed with matters on public participation to a one day stakeholder review workshop on Friday, 24th February 2017 from 8.30am-4.30pm at the Kenyatta International Convention Center (KICC), Nairobi.

Please send the name and contact details of your nominee to Ms. Claris Kariuki at ceekariuki@gmail.com on or before Monday 20th February 2017.


MARYANN NJAU-KIMANI, OGW
SECRETARY, JUSTICE & CONSTITUTIONAL AFFAIRS
FOR: SOLICITOR GENERAL



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL & THE DEPARTMENT OF JUSTICE

Working Draft National Public Participation Policy

CONSULTANT

Joshua M. Kivuva, Ph.D.
University of Nairobi

February 2017

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ACRONYMS

AG	Attorney General
CAJ	Commission on Administrative Justice
CBEF	County Budget and Economic Forums
CCEC	County Civic Education Coordinator
CCEU	County Civic Education Unit
CDF	Constituency Development Fund
CE	Civic Education
CEDMAC	Constitutional Education for Marginalized
CGA	County Governments Act
CIC	Commission for the Implementation of the Constitution
CIDA	Canadian International Development Agency
CIDP	County Integrated Development Plan
CJPC	Catholic Justice and Peace Commission
CKRC	Constitution of Kenya Review Commission
CLARION	Center for Law and Research International
COE	Committee of Experts
CoK	Constitution of Kenya
COVAW	Coalition on Violence Against Women
CPST	Center for Parliamentary Studies and Training
CRECO	Constitution and Reform Education Consortium
CSO	Civic Society Organizations
DANIDA	Danish International Development Agency
DELTA	Development Education for Leadership and Team Action
DEP	Development Education Program
EACC	Ethics and Anti-Corruption Commission
EAWL	East African Women's League
FCEP	Ecumenical Civic Education Program
FMB	Election Management Body
IEBC	Independent Electoral and Boundaries Commission
IED	Institute of Education in Democracy
KANU	Kenya African National Union
KCCEC	Kamiriithu Community Cultural and Educational Centre
KCSSP	Kenya Civil Society Strengthening Program
K-DOP	Kenya Domestic Observer Program
KHRC	Kenya Human Rights Commission
KICD	Kenya Institute of Curriculum Development
KIRC	Kenya Law Reform Commission
K-NICE	Kenya National Integrated Civic Education
KSG	Kenya School of Government
KTI	Kenya Transitional Initiative
KWPC	Kenya Women's Political Caucus
LASDAI	Local Authority Service Delivery Action Plans
LSK	Law Society of Kenya
MCA	Member of County Assembly
MoDP	Ministry of Devolution and Planning
MYWO	Maeendeleo Ya Watanzake Organization
NAMACEC	National Muslim Civic Education Consortium
NARC	National Alliance-Kambaya Coalition

NCBF	National Capacity Building Framework
NCCK	National Christian Churches of Kenya
NCEC	National Convention Executive Council
NCEF	National Civic Education Framework
NCEP	National Citizenship Education Program
NCWK	National Council of Women of Kenya
NEMA	National Environment Management Authority
NEMU	National Election Monitoring Unit
NGEC	National Gender and Equality Commission
NIMES	National Integrated Monitoring and Evaluation System
NOA	National Orientation Agency
PEP	People Empowerment Program
PLI	Public Law Institute
SIDA	Swedish International Development Cooperation Agency
TA	Transitional Authority
UHRC	Uganda's Human Rights Commission
UMWA	Uganda Media Women Association
UNDP	United National Development Programme
USAID	United States Agency for International Development
SUPKEM	Supreme Council of Kenya Muslims

EXECUTIVE SUMMARY

Public participation is increasingly becoming a global buzz-word and an indispensable element of democracy and is being used almost synonymously with good governance. Participation is no longer seen only in terms of Constitutional requirements, but has become both the foundation for democratic governance and one of the most important elements for strengthening and legitimizing governmental actions. Advocates of people centred development argue that when the beneficiaries of services and those at the grassroots are the architects of their own future, services are greatly improved. This is because they understand their needs and local conditions better. This explains the increasing demands for, the expanding forms of, and interactive participatory spaces emerging as sites within which state and society interact.

It is assumed that through participation, even the poor influence activities and projects that are important to them by interacting with their leaders and other decision-making agencies. Effective public participation is the anchoring for a strong local democracy and a people centred development since it enhances social, political and economic transformation. Participation is not just a technical fix for problems, but a mechanism for social justice, social change, and the elimination of inequalities. Indeed, despite its multidimensionality and complex nature, public participation is still seen world over as the "magic bullet" for development and governance problems.

Participation however, remains contested, highly ambiguous and value-laden. As a concept participation lacks clarity and is often manipulated to reinforce the interests of the state and the powerful and to validate pre-conceived policy initiatives. The spaces for public participation are contested and closed while the atmosphere for participation is unfriendly. Participation is more often undertaken in a random, uncoordinated and piecemeal manner. Indeed, the number of informed citizens is limited allowing leaders to plan *for* citizens rather than planning *with* them.

The Constitution of Kenya (CoK), 2010 was meant to transform state-society relations and to empower citizens to effectively engage in their governance. However, despite the CoK transforming the governance architecture and requiring citizen participation, state-society relations have not been restructured or transformed. Further, the rethinking in the nature of state-society relations and the refurbishing of participatory institutions and spaces that was meant to accompany the promulgation of the new Constitution, has also not taken place. As a result, despite considerable efforts by both the national and County Governments to engage the public in their governance, the nature and extent of participation contemplated by the Constitution and devolution laws has not been achieved by either level of government. In fact, although most counties have developed and enacted legislation on public participation, many of them have not implemented them and hence only limited progress has been made. Counties are also reluctant to collaborate with each other or to use the Intergovernmental Relations Technical structures.

Thus, although new spaces for participation have been created and existing ones expanded, empowerment of the people has not taken place. Public participation has remained largely mechanical, obligatory, peripheral, manipulative and tokenistic and a large portion of citizens has remained in apathy to the process. There is a lack of clarity on important aspects of participation: a) what constitutes adequate (public) participation; b) what is the nature of participation that meets the Constitutional threshold; and, c) what are the most effective mechanisms for public participation? Further, important policies and mechanisms necessary for public participation are not in place or have not been operationalized. A citizen-driven and

citizen centred participation has therefore not been realized in any level of government.

This National Public Participation Policy (NPPP) is intended to address existing challenges and to facilitate the empowerment of ordinary citizens through the construction of new relations between them and the institutions of governance that affect their lives. This is expected to transform participation from a technical-tokenistic device to a routine occurrence. It will also change the behaviour of leaders from planning for citizens to planning with them.

The National Public Participation Policy will act as the execution framework to guide the two levels of government and their ministries, departments and agencies in their efforts to engage the public on governance issues. It will define the roles and responsibilities of the key actors and the allocation and distribution of resources for public participation. The policy will act as an overarching framework on all forms of public participation in Kenya. The policy will not only help coordinate public participation in both national and county governments, it will provide mechanisms in which County governments will be assisted to implement public participation and empower the people to enable them influence policies.

The goal of the National Public Participation Policy is to provide a comprehensive, systematized and coordinated framework for public engagement in Kenya to ensure public participation becomes a way of life and a civic culture in which the people creatively and willingly participate in all matters of their governance. The policy has six objectives:

1. Establish and promote principles, standards and best practices of public participation in Kenya
2. Address statutory and other measures to ensure the institutionalization of effective public participation;
3. Encourage early and continuous public notification and participation in major actions and decisions;
4. Provide an objective criteria to measure the effectiveness and overall worth of public participation in the country; and,
5. Provide for mechanisms by which the public may participate in the affairs of the Government; and,
6. To clarify roles and responsibilities of the two levels of government, non-state actors and the public.

Experience with public participation in Kenya provides important issues that the policy is to address, including: Low levels of attendance to participation meetings by locals; How to improve the capacity to engage of citizens and the capacity at grassroots; How to ensure continuous public participation; How citizens' input get incorporated into government decision; How to strengthen local CBOs; and, how to improve links between CSOs at the national level and local CBOs.

Threshold concerns also arise: What is adequate public participation and how do we ensure it? What is adequate notice, and optimal level of decentralization of meetings? How do we ensure notices, attendance and contribution meet constitutional/legal thresholds? How best do we ensure participation of Article 14 groups: should representation be by umbrella organizations or by individuals? How many of the umbrella organizations is adequate representation, and, what about representation of children?

Finally, recent judgements by Kenyan courts have raised the bar for public participation higher, requiring governments at the two levels and other state agencies to facilitate and to demonstrate that they have done so including designing appropriate mechanisms of inviting people to participate. Thus, since policy does not happen in a vacuum, the following policy orientations form the anchoring for (the success of) the National Public Participation Policy:

Access to information; Civic education; Capacity Building, Planning, Budgeting and Implementation, Funding, State Facilitation, Monitoring and Evaluation, and, Feedback Mechanisms

Defining Key Terms

Public Participation: The process through which citizens and other stakeholders engage the government; it is the process by which citizens, as individuals, groups and communities (also known as stakeholders), interact with the state and other non-state actors to influence decisions, policies, programs, legislation and oversight in service delivery, development and other matters concerning their governance. Public participation is therefore a two-way communication in which the people bring their preferences, complaints and aspirations on to the government agenda in an effort to influence policy formulation, development initiatives, and resources and/or to provide alternatives. The public participates when the people challenge, question or support any government decisions or activity that is of interest to them. It is through public participation that the people hold the government to account.

Effective public participation will result in Kenya being a democratic political system whose governance is issue based, people centred, and result-oriented. Public participation will be both issue based and "people centred" meaning that it will not just meet the widest interests, but will be responsive to the needs and rights of citizens. Public participation will also be result oriented and will be conducted in a stable, predictable manner to produce measurable outcome.

Qualitative participation: the extent of both the information and the array of citizens who would engage in meaningful debate of the proposals for legislations.

Quantitative Participation: refers to the amount or extent of information disseminated and the widest possible extent to the citizens concerned. Both qualitative and quantitative participation is achieved when a reasonable amount of time, level and opportunity for participation is provided, and the relevant documents supplied in accessible, simplified and abridged version, to all interested parties to know about the issues, and to have adequate say in the deliberations to influence the final decision or policy. Extensive public participation may not be possible over the first five years of the Constitution and needs to be achieved incrementally over a decade. The initial years- hence needs to be progressive.¹

Facilitation of Public Participation: To facilitate means to "make easy or easier" or to "promote"; "taking steps to ensure the public is involved or is brought into the matter".²

Public Areas: public areas are defined to include the market place, bus stops, health centres, churches, mosques, temples, the district/chiefs' offices and educational institutions.

Accountability: It means answerability to the people: an open transparent system which permits the free flow of information and in which leaders are answerable to the people.

Standardization and Coordination: Standardization means the act or process of public participation is developed and accepted by the stakeholders as of the desired, content and quality. The standards are based on the consensus of different interested parties, users, and by the two levels of government. Coordination on the other hand will refer to the ability or process of organizing different stakeholders to ensure that they work together in harmony, effectively and efficiently.

¹ Judge XXX, in Diani Business Welfare Association and Others V the County Government of Kwale, [2015], eKLR: 8

² Judge Odunga: Judge Nyamweya P

PART ONE

BACKGROUND INFORMATION

Introduction

Public participation is increasingly becoming a global buzz-word and an indispensable element of democracy and people centred development, and is being used almost synonymously with good governance. Participation is no longer seen only in terms of Constitutional requirements or a technical fix for problems, but has become both the foundation for democratic governance and a mechanism for social, political and economic transformation and the elimination of inequalities. It has become one of the most important elements for strengthening and legitimizing governmental actions. Indeed, despite its multidimensionality and complex nature, public participation is still seen world over as the "magic bullet" for development and governance problems.

Advocates of people centred development argue that when the beneficiaries of services and those at the grassroots are the architects of their own future, services are greatly improved.³ It is assumed that through participation, even the poor influence activities and projects that are important to them.⁴ This is because they understand their needs and local conditions better and interact more with their local leaders and other decision-making agencies. Furthermore, the people understand their local conditions better. This explains the increasing demands for the expanding forms of, and interactive participatory spaces emerging as sites within which state and society interact.

In XXX participation is credited with XXX [I'll put best practices here].

Participation however, remains contested, highly ambiguous and value-laden.⁵ As a concept participation lacks clarity and is often manipulated to reinforce the interests of the state and the powerful and to validate or legitimize pre-conceived policy initiatives.⁶ The spaces for public participation are contested and closed while the atmosphere for participation is unfriendly. Participation is more often undertaken in an uncoordinated and piece-meal manner. Indeed, the number of informed citizens is limited allowing leaders to plan *for* citizens rather than planning *with* them.⁷

In Kenya, participation is taking place in the absence of information and documents; when they are available, documents are bulky or in a technical or language locals cannot understand; attendance to meetings is low and majority of those in attendance do not understand the issues and lack the capacity to contribute effectively. Even when they attend and contribute, policy-makers are either unwilling or unable to incorporate their views making the little participation done manipulative, episodic or tokenistic and stage-managed and there are no mechanisms for making participation continuous.

Civic education provides important opportunities for public participation, yet it is also problematic. Kenya's civic education has for the most part been driven by civil society organizations (CSOs) resulting in the existence of strong CSOs that can form important partners for public participation. However, CSOs and other groups with the ability to engage in budgeting

and planning are either missing, weak or have not been mapped; local Community Based Organizations (CBOs) are largely incapable of engaging well on governance issues, yet they remain delinked from national CSOs. Since most policy decisions and governmental actions take place either behind closed doors where ordinary citizens are denied access, or in invited spaces where only a few "privileged people" have access, ensuring citizens have unlimited access to information enhances their participation. Civic education and capacity building for citizens has also become important to ensure citizens have the power over policy-making and to avoid being manipulated to legitimize decisions and actions of the state, already made.

Other threshold concerns have arisen as evidenced in the citizens of Kiambu, Kilifi and Machakos, counties who have gone to court demanding better citizen engagement, raising several important threshold concerns: What is adequate public participation and how do we ensure it? What is adequate notice, and level of decentralization of meetings? How do we ensure notices, attendance and contribution meet constitutional/legal thresholds? How many people is adequate attendance? What about the representation of youth, women, the marginalized? Should representation be by their umbrella organizations or by individuals? How many of the umbrella organizations is adequate representation? What about representation of children?

The Constitution of Kenya (CoK), 2010 was meant to transform state-society relations and to empower citizens to effectively engage in their governance. However, despite the CoK transforming the governance architecture and requiring citizen participation, state-society relations have not been restructured or transformed. Further, the rethinking in state-society power relations and the refurbishing of participatory institutions and spaces, that were meant to accompany the promulgation of the new Constitution, have not taken place. Thus, although new spaces for participation have been created and existing ones expanded, a fully supportive state ~~has not developed and hence people's transformation and empowerment has not taken place.~~ Public participation has remained largely mechanical, manipulative and tokenistic while a large portion of citizens has remained in apathy to the process.

The National Public Participation Policy (NPPP) is intended to address these existing challenges and to facilitate the empowerment of ordinary citizens through the construction of new relations between them and the institutions of governance that affect their lives. This is expected to transform participation from a technical-tokenistic device to a routine occurrence and to change the behaviour of leaders from planning for citizens to planning with them.

What is Public Participation?

Arnstein (1969), Pretty (1995), White (1996) and the International Association for Public Participation (IAP2) (2007) are the most renowned authorities on public participation. What the four have in common is the contention that there are different levels of citizen involvement, however, not every citizen involvement fits the category of or merits to be called citizen/public participation. For example, in Arnstein's "Ladder of Participation", there are 8 levels of citizen involvement—manipulation, therapy, informing, consultation, placation, partnership, delegated power and citizen control. However, of the 8 levels, only 3—partnership, delegated power and citizen control—fit the category of (citizen) participation. In these three, citizens have the power to negotiate, are treated as partners, and understand the issues. To Arnstein, manipulation and therapy (the first two levels) do not constitute participation at all since citizens are simply manipulated and have no powers to engage. Similarly, informing, consultation and placation (the second, third and fourth levels in the ladder) represent tokenistic involvement in which the people are used to lend credibility or legitimacy to decisions already made (elsewhere). To him, effective participation can only occur when citizens are empowerment.

Pretty (1995) has 7 corresponding levels of citizen involvement, but only 2 meet the criteria of

public participation. Pretty's two first levels—manipulation and passive participation—are merely used as pretence involvement. The next three—consultation, participation for material gain and functional participation—fall the category of tokenism, where citizens just approve decisions made by others. It is only in the last two levels—interactive participation and self-mobilization that the people have the power to impact on, and to make independent decisions.

In White's (1996)⁸ 4 levels, only representative involvement (which allows citizens a voice to influence decisions) and transformative involvement (where citizens are assumed to be equal partners and are well empowered to make decisions) constitute real (public) participation. Similarly, in IAP2's 5 levels of involvement, the first three—informing, consulting and involving the people, constitute mere cosmetic façade of participation in which citizens have little effect or influence on decisions and they stand to gain very little as well. Real participation occurs only in the collaborative and empowering levels, where citizens are made partners in the process (IAP2, 2007).

Operationalization of Public Participation

Summarizing the above, and recognizing the multidimensionality and complex nature of the concept of participation, Sharon Penderis (n.d) makes a clear distinction between citizen involvement that doesn't amount to, or does not meet the threshold of (effective) participation and involvement that does. This distinction separates peoples' involvement that is a MEANS used by governments, other institutions and those in authority to achieve their own objectives and involvement that is a PROCESS which awakens consciousness, power and self-transformation in the people developing in them the capacity to act and interact with the state as partners. While in the first (MEANS), peoples' involvement is used as a coercive and manipulative tool to increase institutional ends (often cloaked in the rhetoric of peoples' empowerment),⁹ it is only in the latter that real participation takes place.

Drawing from the above, we make a similar distinction between peoples' involvement that does not lead to effective participation and one that does. Accordingly, involvement of the people will not lead to effective participation if:

- It is passive, functional, manipulative, pretence or therapeutic;
- It is meant merely for information, consultation, placation or it is driven solely by the government; It reduces citizens to mere users and choosers of predetermined government services;
- It is merely meant to meet certain legal or institutional requirements;
- It is meant for, or it is involvement for material gain; and,
- The people aren't aware or do not understand the issues being deliberated on.

For citizen involvement to amount to effective participation, it must have or must meet the following qualities:

- Change the power dynamics between the people and their rulers in favour of the former;
- Lead to or encourage (citizen) partnerships (between the people and those in authority), delegated power or citizen control.
- Be interactive and self-mobilizing;
- Be representative and collaborative; and,
- Be transformative and empowering.

⁸ White, S. (1996). Depoliticizing development: the use and abuse of participation. *Development in practice*.

⁹ Cleaver, F. (2001). Institutions, agency and the limitations of participatory approaches to development. In B. Cooke, & U. Kothari (Eds.), *Participation: The New Tyranny?* (pp. 36-55). London: Zed Books.

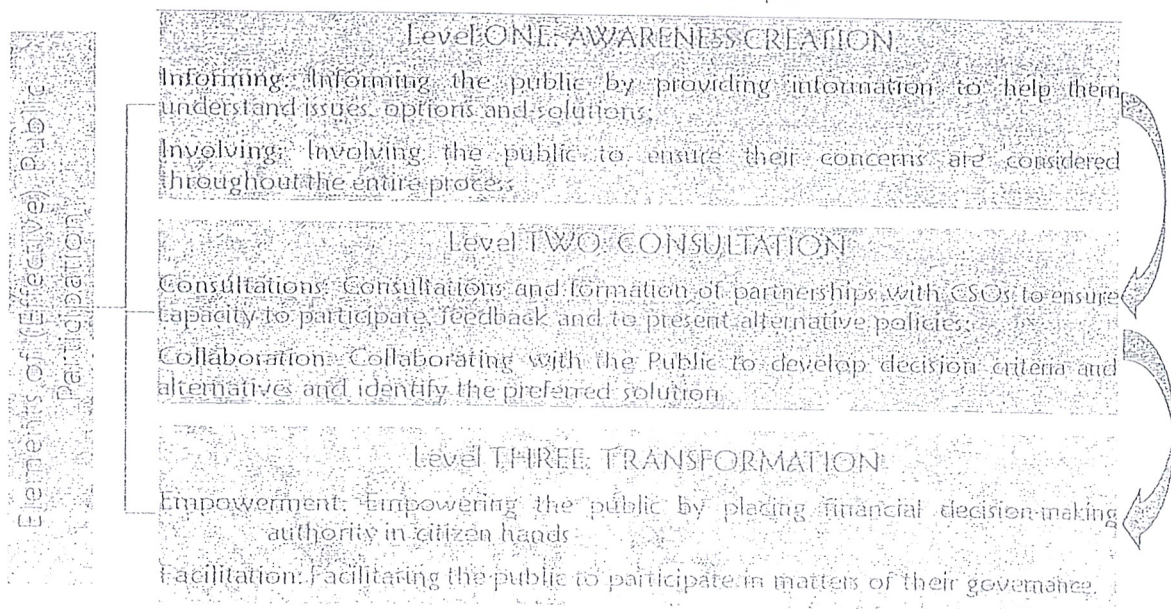
As it is clear from the four authorities discussed above, (effective) participation is therefore a transformative process that has people at the very centre of governance and development. Thus, although informing, consultation, placation and involvement of the people are important, the level and intensity of peoples' input is too low to constitute adequate or effective participation. These actions or activities must be complemented by, say, partnerships, empowerment, or transformation that give people power and control. The National Public Participation Policy views effective participation as a process constituting of 3 levels of citizen involvement:

Level I: Awareness Creation, which includes: citizen acquisition of (and government and other duty bearers providing and communicating) information and knowledge to act from an informed position; and, public involvement to ensure public concerns are considered throughout the entire process. This is the state or level in which citizens are informed or made aware of what is happening; documents are circulated, agenda is set; and people called to citizen participation meetings.

Level II: Consultation Level: This level constitutes a two-way consultation mechanism between the government, CSOs and the people to ensure adequate consultations, capacity building and feedback; collaboration with CSOs, government agents and the public to develop decision criteria and alternatives and identify the preferred solutions. It is a consulting and negotiations state where collaborations, facilitation and interactive and even decisions about representation are made. In this level, a partnership between the public, CSOs and state actors takes place by placing financial decision-making authority in citizen hands, and, by providing opportunities and avenues to the public to facilitate their participation. In addition, negotiations, consultations, facilitation, representation and interactions take place that enable the citizen gain the capacity to engage.

Level III: Transformative Level. This is the final level where knowledgeable, capacitated and empowered citizens effectively engage the state and other actors, as a partner, and their contributions are incorporated into government policy and hold leaders to account ensuring they get better, cheaper and more services. This is demonstrated in the figure below.

Figure 1: Levels of Public Participation



We therefore define (effective) public participation as a multidimensional and complex, yet transformative process, that has people at every centre of governance and development process. It is a two-way communication in which the people bring their preferences, complaints and aspirations to the government agenda. Citizen participation, (which can either be done directly, where citizens as sovereign and owners of their government decide what should be done), or through their democratically elected representatives, is premised on: a) a belief in the importance of entrusting citizens with the responsibility of shaping their own future; and b) that citizens are able and willing participants in their governance.

In its very basic level, participation refers to consultation and other engagements between the people (and groups representing them) and structures/institutions of the state, mainly at the local level, in all matters of their governance meant to enhance governance, improve service delivery and deepen democracy by promoting accountability, equality and transparency in government. It is the process by which citizens, as individuals, groups and communities (also known as stakeholders), undertake the following: a). interact with the state and other non-state actors to influence decisions, policies, programs and legislation; b) oversight and hold their leaders to account in service delivery, development and other matters concerning their governance; c) input and share control over development initiatives, decisions and resources which affect them¹⁰; and, d). influence the formulation, and provision of policy alternatives.¹¹

In Kenya, participation must also take place at the two levels (and in every arm) of government, the national and county levels and must be adhered to and bind every state organ, state officers, public servants and all persons whenever they: apply or interpret the Constitution; enact, apply or interpret any law; and, make or implement public policy decisions. Public participation as anticipated in the CoK, 2010, is meant to be interactive, collaborative, consultative, responsive, transparent, and, accountable. Through it, duty bearers in the two levels of government communicate information and distribute documents for discussion in a transparent and timely manner.

The Importance of Public Participation

Public participation is important because it establishes in the people a sense of ownership of government decisions and strengthens local capacity including giving voice to the poor and marginalized. Public participation is a mechanism of control against excessive discretion vested in civil servants, providing important checks and balances against unnecessary political interference and abuse of office.

Meaningful public participation promotes sustainable decisions by providing participants with the information they need. By communicating to participants how their input affects the decision, leaders provide the people with incentives to think, decide, plan and play an active part in the provision of their services. Public participation in planning and budgeting processes provides better plans and more people centred budgets. While people are more willing to accept or take ownership of decisions that they were part of, the negotiations that take place in the process of public participation also enable the people resolve their differences and understand each other better.

Table 1 below highlights some of the major benefits of public participation:

¹⁰Odu'mambo, M. & Taita, A. (2009). *Devolved Funds Development: A Handbook on Participation*. Nairobi: Clasp Press.

¹¹M. Oenga, T. & P. Chese. (2008). *Participatory Urban Planning Toolkit Based on the Kuala Lumpur Experience: A guide to Community Based Action Planning for Effective Urban and Services Delivery*.

Table 1: Benefits of Public Participation

Benefit	Importance of Public Participation
Strengthening Democracy and Governance	<p>How it comes about</p> <p>Through voicing their opinions, voting, supporting or opposing government policies and decisions</p>
Potential for Increasing public Accountability and Transparency in Government	<p>By holding leaders to account and demanding certain things (not) be done</p>
Enhancement of Legitimacy	<p>Citizen participation enhances people's trust in government and increases their support of policies and government decisions, leadership and institutions</p>
Improves Quality of Decisions	<p>Citizen participation ensures that development plans, laws and policies undergo comprehensive review and revisions</p>
Improved Services & Delivery	<p>As consumers, citizens are able to provide the government with important feedback on the quality of services and service provision</p>
Community Empowerment	<p>Through participation, state-citizen relations are changed from control to empowerment and the latter acquires more decision-making powers.</p>

PART TWO

SITUATIONAL ANALYSIS OF PUBLIC PARTICIPATION IN KENYA

Introduction

Kenya has had several public participation mechanisms including the Local Authority Service Delivery Action Plan (LASDAP), the District Focus for Rural Development (DFRD) and the Constituency Development Fund. However, public participation remained largely nominal, tokenistic and subject to the influence of the central government and its leaders. By vesting all sovereign power in the people of Kenya (Article 1) and providing for their involvement in all matters pertaining to their governance, the Constitution of Kenya (2010) and other devolution laws sought to change this. These laws include: The County Governments Act (2012), the Public Finance Management Act, (2012), Urban Areas and Cities Act (2011).

However, despite considerable efforts by both National and County Governments to engage the public in their governance, the nature and extent of participation contemplated by the Constitution and devolution laws has not been achieved by either level. The national government, for example, hasn't significantly changed the way it operated before the CoK was promulgated. Public participation is still more obligatory, peripheral and tokenistic.¹² There is a lack of clarity on important aspects of participation: a) what constitutes adequate (public) participation; b) the nature of participation that meets the Constitutional threshold; and, c) the most effective mechanisms for public participation. Other policies and mechanisms necessary for public participation are also not in place or have not been operationalized. Civic education, for example, hasn't been done in any significant level while access to information in a timely, inexpensive manner has not taken place. Thus, a citizen driven and citizen centred participation has not been realized in any level of government.

Recent studies and surveys show that some form or other of public participation is taking place in governance processes in the two levels of government. However, the form, nature and levels are unsatisfactory. While the National Government lacks an effective framework to facilitate public participation, County Governments are not utilizing the already developed public participation guidelines. In fact, although most counties have developed and enacted legislation on public participation, many of them have not implemented them and hence only limited progress has been made. Counties are also reluctant to use existing Intergovernmental Relations structures or collaborate among themselves. More important, little has been done to operationalize participation related laws by:

- a) Developing regulations and guidelines;
- b) Setting up relevant institutions/offices;
- c) Putting in place the relevant mechanisms and systems;
- d) Developing procedures; and,
- e) Providing adequate budget for public participation.

Kenya's Experience with Public Participation

Before the promulgation of the Constitution of Kenya in 2010, planning, budgeting and implementation of development programs was the responsibility of the central government, with little or no involvement of the people. This top-down approach to planning was centralized with

¹² Arnstein S.R. (2007). A Ladder of Citizen Participation. Journal of the American Institute of Planners, 716-224.

decisions made from Nairobi. When provincial and district headquarters were involved, it was only to transmit information and decisions already agreed upon in Nairobi. This approach to planning continued until 1983, when the District Focus for Rural development (DFRD) strategy was introduced, making the district an administrative unit and the locus for project identification and implementation. The DFRD strategy was meant to encourage community participation in the identification, planning and implementation of development projects at the district level, although Central government field officers played the central role in planning and the implementation of programs. The strategy, however, faced implementation challenges since it lacked a legislative framework that could entrench the work of coordination committees.

The enactment of Physical Planning Act in 1996 was a milestone, which provided for community participation in the preparation and implementation of physical and development plans. This however also lacked the critical element of community sensitization on its roles, while physical planning remained centralized in major towns. Communities residing in remote or rural areas remained marginalized in participatory planning.

In 2001, the Ministry of Local Government through its reform programme, the Kenya Local Government Reform Programme (KLGPR) introduced the Local Authorities Service Delivery Action Plan (LASDAP), a tool developed to improve participatory planning, governance and service delivery in local authorities. It created an entry point for local authorities to constructively engage their citizens in decision making at the local level. LASDAP engaged citizens in annual ward level consultative processes to consider and identify priority capital projects.¹³ LASDAP was a product of participatory planning that involved various stakeholders and citizens within a local authority. This included self-help groups, business organizations, resident organizations, religious groups, educational and health institutions, professional organizations, NGOs and individual residents.

In 2003 the Constituencies Development Fund Act (CDF) created the Constituencies Development Fund with the objective of addressing poverty at grassroots level. In January 2013, the Act was repealed and replaced with the CDF Act (2013). The revised law aligned the Fund with devolution and required citizen participation through their membership in the County Projects Committee, the Constituency Development Fund Committee and the Project Management Committee.

The Local Authority Service Delivery Action Plan (LASDAP) and Constituencies Development Fund (CDF) have been the main vehicles of community participation at the local level. These however never performed to expectation and operated in an opaque fashion; were subject to multiple abuses; and, citizen participation in both was next to zero.¹⁴ When LASDAP involved citizens well services improved while the Councils collected more revenue.¹⁵ LASDAP provided (at least a paper) important opportunities for citizen participation: such as information gathering, consultation and consensus meetings, formation of monitoring groups, participating in feedback meetings, participating in Local Authorities Budget Day, community budget and formation of project committees.¹⁶

Both LASDAP and the CDF provide important lessons for Kenya's public participation:

- Collaborative initiatives between government and CSOs enhances PP; joint mobilization

¹³ Kenya School of Government, *Devolution Working Paper Series: Working Paper No. 3: Participation in Kenya's Local Development Funds: Reviewing the Past to Inform the Future*. February, 2015

¹⁴ National Taxpayers Association (NTA) *Budget Transparency and Citizen Participation in Counties in Kenya* (2013) :10

¹⁵ NTA, 2013: 16

¹⁶ NTA, 2013: 16

- improves quality of participation. CSOs are good at mobilizing and developing participation guidelines and training
- Incorporation of local leaders, enhanced mobilization of the people and provision of upfront training were important – explaining what citizens are required to participate in, why, and how it related to wider development programs, was crucial;
- Timely communication of critical information and in formats and using channels that are accessible and user friendly, providing easy to digest information on content, encourages more participation;
- Building incentives for officials to act, such as requiring a feedback mechanism and reporting,
- Duty bearers need training
- Linking citizen oversight with technical expert---building capacity of locals to participate.¹⁷

The two devolved funds however, lacked a coherent or coordinating framework and suffered from overlaps, duplication, and despite their multiplicity, low citizen involvement. This was mainly the result of the absence of statutory guidelines on participation¹⁸ Other challenges included: lack of standardization and coordination mechanisms; public apathy; heavy political and bureaucratic control, inadequate civic education, tokenistic approach to public participation, absence of clearly defined participation thresholds, inadequate funding; unclear timelines; and, non-inclusion of special groups- women, youth, PWDs and minorities and the marginalized¹⁹ Even though the CDF Act review of 2013 provides citizens the power to select representatives; the potential influence of the local MP in these selected is high

Kenya's judicial and Constitutional Review processes of the 1990s and 2000s incorporated public participation. The Constitution of Kenya Review Commission (CKRC), the Committee of Experts (CoE), and the Court Users' Committees with the assistance of civil society groups conducted civic education and organized local meetings, and ran resource centres. There were public meetings in each constituency, sometimes more than one, chaired by two or more commissioners. The Commission received written submissions, and held meetings with organised bodies, professional, political and others to hear their views. The Commission kept records reported back to each constituency. The CoE even had a thirty day period for intensive public engagement before the people voted to approve or reject the Draft Constitution. The common model of public participation is the public meeting, usually coupled with the possibility of submitting written suggestions.

Public management in environmental sector [will also be discussed here]

Towards the end of 2015 participation had become common. These included the future of the tea industry, the medium term budgeting process, the future of the 8-4-4 education system, the routing of the standard gauge railway, the approval of genetically modified cotton seed and the National Urban Development Policy. Many more public participation processes have taken place in the counties

¹⁷ KSG Devolution Working Paper Series Working Paper 3 February 2013-3

¹⁸ KSG Devolution Working Paper 3-6

¹⁹ Kenya Human Rights Commission (KHRC) and Social and 201st Accountability Network (SEAN) *Humanization of Decentralized Development in Kenya: Towards A National Citizen Engagement and Enhanced Accountability (2011)* National Experts Association (NEA) *Local Communities and Citizen Participation in Governance Kenya (2013)*

Constitutional and Legal Foundations for Public Participation in Kenya

Public participation is a basic human rights principle encapsulated in the Constitution and in several international human rights conventions that Kenya has signed. Among the Conventions Kenya has signed with important public participation provisions include the following:

- The Convention on the Rights of Persons with Disabilities (ICRPD), 2008
 - The International Covenant on Civil and Political Rights (ICCPR) 1976
 - The International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1972
 - The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) 1997
 - The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 2001
 - The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1984
 - The Convention on the Rights of the Child (CRC) 1990
- Persons with disabilities in Kenya constitute approximately 3.6% of the population

Constitution of Kenya, 2010

Public participation is also a recurring theme throughout the Constitution of Kenya, 2010, which specifies several areas where participation must take place. The Constitution places sovereign power to the people of Kenya,²⁰ which when exercised under a devolved system of government seeks to promote democratic and accountable exercise of power; to give powers of self-governance to the people and enhance their participation in the exercise of the powers of the state and in making decisions affecting them; and to enhance checks and balances and the separation of powers.²¹

Public participation is a Constitutional requirement that must take place at the two levels of government (respecting the principle of devolution) and at the different arms of government (respecting the constitutional principle of separation of powers). Thus, governments at the two levels and different arms of government must involve the public in all matters affecting their governance. Some important Constitutional provisions for public participation include:

- Every citizen has a right to access information held by the state and requires the state to publish and publicize any important information affecting the nation. The freedom to information Act has been enacted providing the mechanisms for accessing information.
- The Fourth Schedule assigns the responsibility of ensuring and coordinating public participation at the local level to the counties.²²
- All sovereign power belongs to the people of Kenya. The people may exercise their sovereignty directly or through their elected representatives;
- Public participation should ensure equality and non-discrimination and respect the freedom of expression of all participants;
- The Constitution guarantees equality and non-discrimination and the participation of minorities and marginalized groups;
- The State shall encourage public participation in the management, protection, and conservation of the environment;
- National legislation shall provide for the governance and management of urban areas and

²⁰Republic of Kenya . (2010). *The Constitution of Kenya* (CoK), Art.1(i-4).

²⁰ Republic of Kenya . (2010). *The CoK*, Art.1(i-4).

²¹ Republic of Kenya . (2010). *The CoK*, Article 174 (a,b,c,&j).

²² Republic of Kenya . (2010). *The CoK*, Art. 35(1) and (3)

cities and shall, in particular – (c) provide for participation by residents in the governance of urban areas and cities,

- Parliament shall – (a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and (b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
- A county assembly shall— (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public, and (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees (2) A county assembly may not exclude the public, or any media, from any sitting, unless in exceptional circumstances (where) the speaker has determined that there are justifiable reasons for doing so;
- There shall be openness and accountability, including public participation in financial matters, and,
- Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending, or repealing any legislation. (2) Parliament may not exclude the public, or any media, from any sitting, unless in exceptional circumstances (where) the relevant Speaker has determined that there are justifiable reasons for the exclusion.²³

Public participation in specific matters is also required by the various devolution related legislation, including: The County Governments Act, 2012; Urban Areas and Cities Act; Public Finance Management Act; and, the Public Procurement and Disposal Act.²⁴

Environment Management and Coordination Act [Discussion to be included]

The County Government Acts, 2012

The CGA, provides the principles for public participation including; a) timely access to information, data, documents and other information relevant or related for policy formulation and implementation; b) reasonable access to the process of formulating and implementing policies, laws and regulations, development projects and budgets, while protecting the interests and rights of minorities and marginalized groups.²⁵ Section 30 & 92 give County Governors the responsibility for promoting and facilitating citizen participation in the development of policies and plans, delivering services and for submitting an Annual Report to the county Assembly on citizen participation in the affairs of the County government.

The Urban Areas and Cities Act, 2011

This Act provides for residents in urban areas,²⁶ cities and particular local areas,²⁷ to participate in their governance through citizen forums.²⁸ Schedules 2 of the UACA, 2011 provides that “A city or urban area shall develop a system of governance that encourages participation by residents in its affairs.” The section further mandates county governments to facilitate public participation by ensuring the necessary conditions

²³A detailed table of the Constitutional and legal foundation for civic education is contained in Annex 1

²⁴A more detailed table is attached as Annex 1

²⁵Republic of Kenya (2012) The County Governments Act, Section 8

²⁶Republic of Kenya (2011) Urban Areas and Cities Act (UACA) Section 4(a)

²⁷Republic of Kenya (2011) The UACA Section 4(c)

²⁸Republic of Kenya (2011) The UACA Section 4

The Public Finance Management Act

Section 137(1) provides for the establishment of County Budget and Economic Forums and the appointment of non-county officials to it. These forums are the avenues for consultation on the preparation of County Plans, the County Fiscal Strategy Paper and the County Budget Review and Outlook Paper, and on matters relating to budgeting, and economic and financial management of the county. The County Treasurer is to make the CFSP available for public scrutiny for seven days. Further, public participation on the same can take place during the 14 days of its debate in the County Assemblies. Section 131(5) requires the County Treasury to avail the consolidated Budget estimates for citizen scrutiny for 21 days. The Act further provides guidelines for public participation in the budgeting process including provision for key dates, methodology for review, the procedures to be followed by those who wish to participate, the format of information and documents and the opportunities available for participation.²⁹

Public Service Commission (PSC), Guidelines for Public Participation.

PSC guidelines require State Organs and State (Public) Officers to engage citizens and share in agenda-setting and ensure their policy and legal proposals are generated jointly. Further, they require participation at all stages of policy development processes, ensuring that public views, values and priorities are infused throughout the policy cycle. Specifically, the guidelines mandate State Organs to:

- Identify stakeholders, their interests in operations and programs and their roles in the participation process;
- Determine which stakeholders should be involved and the contribution expected from the different stakeholders;
- Identify appropriate methods to inform stakeholders about public participation process; and,
- Determine the method that would be most effective in making stakeholders aware of the public participation process.

Important Court Rulings on Public Participation

Recent Court rulings have set a high bar and established important standards for public participation in the country. Based on PP standards in South Africa, Courts have required (agents of) the state and every arm of government at the two levels to do more to facilitate the public to engage with the government. The table below presents important standards that courts have set:

Table 2: Important Court Decisions on Public Participation

Case	Standard
	<ul style="list-style-type: none">• PP must be real and not illusory; it cannot be treated as a mere formality for the purposes of fulfilling Constitutional dictates.• Governments and state agents have a duty to facilitate the public and communities to participate and to demonstrate that they have facilitated public participation both "qualitatively" and "quantitatively" and must do

²⁹ Republic of Kenya. (2012). Public Finance Management Act (PFMA), Sect. 128(2).

³⁰ Robert Gakuru & Others v Governor Kiambu County & 30 Others [2014] eKLR. [Judge Odunga]

whatever is reasonable to involve the people:

- Huddling a few people in a 5 Star hotel on one day, advertisements in a newspaper, or “tweet” messages inviting people to participation fora are inadequate. State agents must use as many fora as possible to advertise for PP meetings;
- Adequate notices and access to, and information about the matter as well as the opportunities that are available for participation, must be provided.
- Conditions that are conducive to the effective exercise of the right to participate must also be provided—including through road shows, regional workshops, radio programs and publications aimed at educating and informing the public about ways to influence governance.
- This requires the (state’s) provision of public education, access to information and (the state) should create conditions that are conducive to exercise that right to participate.
- The agency must show what it “has done”, which must be reasonable in all the circumstances and the methods must be appropriate.

◦ A one day newspaper advertisement in a country (where) newspapers are a luxury leave alone the level of illiteracy may not suffice for the purpose of seeking public views and public participation.

◦ Merely to allow public participation is “not enough”. More is required. Measures need to be taken to facilitate public participation and must provide notice of and information about what is under consideration and the opportunities available for public participation.

Judge Emukule cautions on the difficulties of aggregating public opinion into specific actionable ideas since citizens may not agree on all ideas. He called for incremental public participation [over a decade]

- It is not possible for government to respond to all citizen demands.
- Executives have a duty to present clear choices and (in) a simplified version to the public.
- Public participation should be genuinely representative of diverse interests;
- If PP does not include large sections of society, it may fail the test of legitimacy”.
- While logistical issues—town hall meetings, preparation and validation forum, notice boards, project sites and newspaper advertisements—are important, strategic issues—who was present, gender, youth and equal ear, minorities and the marginalized—are more important.
- Ensuring participation of individuals/groups from all ranges of economic, trade and commercial activities, hoteliers and industrial interests, ethnic, and religious are more important.

Judge Chitembwe S. in the Kilifi³³ County case did not agree on the high bar set by the other

³¹ Simeon Kioko Kitheka & 2 Others V County Government of Machakos & 3 Others [2016] eKLR [Judge Nyamweya P]

³² Diani Business Welfare Association and others V County Government of Kwale [2015] eKLR

³³ Malindi North Resident Association (Mama) & 6 Others V Kilifi County Government & 2 Others [2016] eKLR

judges on public participation and ruled that public participation is not to be a very long tedious process whereby each and every residents' views have to be sought and included in the output. He added that it should not be expected by any resident(s) that whenever they make their conditions through public participation, then those conditions would be the basis of legislation. All that the citizens can do is expect that MCAs will take their conditions into account (and) if that doesn't happen, then they have the residual powers of voting them out. The judge's argument was that, each member of a County Assembly represents a defined work and is taken to be representing the views of the residents of these wards. To him, public participation comes in as an extra input in the legislative making process.

Emerging Best Practices from County Legislation

According to Osoi Johnson, the County Assemblies Forum Chair, at least 41 Counties have drafted Public Participation legislation, of which 17 have already finalized their Public Participation Acts.³⁴ A review of some of these Acts reveals the emergence good provision, which, if implemented well can give rise to the emergence of good public participation practices in the counties. The table below captures some of these emerging best practices:

Table 3: Important PP Provision from County Legislation

	<p>County Executive and Clerk of CA to formulate public participation guidelines (with CA approval) to:</p> <ul style="list-style-type: none"> • Development of an evaluation framework public participation ensuring stakeholders: <ul style="list-style-type: none"> ± Are informed of the results PP processes, and ± How their input was used in the decision taken; • Adaption of new public participation techniques and technologies; • Facilitation of public education and training programs for the purpose of creating the culture of, and respect for, the principles of public participation, : <ul style="list-style-type: none"> ± Undertake and encourage actions that build trust and credibility; • Preparation and submission of an annual report on the status of public participation in the County. • Holding of Annual County Citizens participation forum. <ul style="list-style-type: none"> ± Minutes taken and publicized ± Relevant Government organ to provide feedback on all issues raised; • Right of citizens to petition County Government. <ul style="list-style-type: none"> ± Keep a public register of al petitions ad decisions.
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³⁴ Interview with Chair CAF, Friday February 3, 2017 at the Intergovernmental Relations Technical Committee Boardroom

³⁵ Machakos County Public Participation Act, 2014

- ⌄ Provision for further appeal to the CAJ;
- Produce Annual Public Participation Report within 3 months after year end. Report to:
 - ⌄ description of the activities and outcomes of public participation
- Have a consultation document which is as simple, and concise as possible, providing the summary of the issues or matter for consultation clearly setting out the guidelines to address.
- Establishment of a PP department in both CA and County Public Service to:
 - ⌄ Coordinate public participation by MDAs,
 - ⌄ Facilitate capacity building and
 - ⌄ Support public participation in all departments,
 - ⌄ Undertake M&E of PP in all MDAs,
 - ⌄ Receive complaints and liaise with MDAs to resolve them,
 - ⌄ Ensure adequate staffing;
- ⌄ // Installation of notice boards in most appropriate and conspicuous places in each village.
- Prepare of an Annual PP Report, advice on policies including:
 - ⌄ Number of PP Forums facilitated by each department;
 - ⌄ Level of public engagement; and
 - ⌄ Level of incorporation of proposals made or issues raised by stakeholders or the public.
 - ⌄ Annual PP Report done less than 2 months after the end of the year.
 - ⌄ Right of petition including publication of the decision outcome of the petition, register of petitioners and supporting documents and the decisions of the County Executive.
- MCAs to convene of Ward Forums every 3 months; Records kept and reports made to County Assembly.
- County Service Board in consultation with the Executive member designated staff as necessary to the department.
 - ⌄ Establishment of a PP Advisory Committee with membership from cross-section of society including professional bodies, women, youth FBOs.
 - ⌄ Convening of citizen forums at County, Sub-County, Town, Ward and village levels.
 - ⌄ Stakeholders mapping and engagement with all stakeholders;

³⁶ Laikipia County Public Participation Bill, 2014

continuously report and communicate to all stakeholders in progress.

The Challenges to Public Participation in Kenya

The following are some major challenges that have limited the effectiveness of public participation in Kenya:

Definitional Problems and Poor Conceptualization Slowing-down Participation: Public participation is still not clearly defined and no safeguards are in place to prioritize community needs.³⁷ Poor conceptualization and the absence of a common vision meaning that there lacks consensus on specific definitions, content, or impact indicators of public participation. There are also definition problems: what is public participation? What does it entail? When can it be said that public participation has taken place?

Unresolved Threshold Issues causing Confusion: What is adequate attendance to meetings? Should threshold be determined by numbers or the ability to contribute? Should it be the largest number of citizens or individuals or groups with the ability to contribute? What of special groups—the marginalized, women, PWDs, the youth, the elderly? What of the people most affected by the decision? Can these groups be represented and by whom? What of children?

Poor Coordination and Standardization Mechanisms has Increased Duplication: There is a proliferation of CSOs organizing citizens for public participation. However, their activities have remained uncoordinated, leading to duplication of efforts. There is also inadequate policy, legal and regulatory regime. Counties have neither fully embraced public participation nor have they established County Civic Education Units (CCEUs) in compliance with the CGA, 2012 and therefore public participation is not uniformly provided, leaving citizens confused. Public participation has remained uncoordinated and un-standardized.

Increasing Numbers of County Public Participation Legislation without proper Anchoring: Counties have drafted and enacted legislation on PP in the absence of an overarching national policy to provide clear norms and standards for effective PP and the necessary mechanisms for their implementation.

Stage-managed participation nurturing cynicism and disinterest: Stage managed participation has also taken place where individuals and groups are brought together to rubber stamp pre-determined outcomes. In addition, duty bearers are playing Cat and Mouse Games with Public Participation where duty bearers would mischievously shift dates or venues for consultative meetings and fail to notify citizens; flout laid-down procedures or deliberately avoid providing relevant information and documents.

Mistrust among Providers Hindering Collaboration and Objectivity: Mistrust between government on one hand, and the civil society and development partners, on the other, continues to limit its impact. Further, public participation forums have been partisan, lacking objectivity and neutrality and have been manipulated.

Exclusion of important segments: Public participation had been conducted in a manner that has excluded important segments, including the least influential in society—women, youth and PWDs. At times, it has been conducted to legitimize decisions already made and therefore has

³⁷ National Taxpayers Association, 2013:12

also excluded CSOs and others capable of influencing the outcome.

Poor Communication and Communication Gaps: There are serious communication problems between county executives and county assembly and between them and lower level administrators in the sub-counties and wards. This has resulted in slow, late, inaccurate or incomplete communication. There is also an information problem. Newspaper adverts were used to announce for public participation even in areas with low literacy levels and low newspaper distribution and access. The sharing of materials and documents on planning and budgeting is limited, while documents remain too bulky and technical for citizens to understand.

Absence of a Participatory Culture Reducing Citizen Enthusiasm and Incentives: This has resulted from a general apathy to public participation that most citizens show leading to demands for money or expectations of payment to attend meetings. This has also led to, or been caused by, the selective involvement of the people by the leaders in which in the few participation forums that have taken place, organizers and agencies of the state handpick the people to attend or speak during participation forums. The leaders' lack of innovative ways and approaches to participate has also contributed to this. In many cases, duty bearers are not motivated to involve the widest possible number of people or those who can positively participate.

Unclear Responsibilities and Inadequate Access to Critical Information Reducing Quality of Participation: The national government does not seem to have clearly defined duty bearers in charge of participation, and even where they exist many of them have not embraced the idea of making information available and accessible to the public, and when it is, the information is either in a language that most people do not understand or in big volumes. Since most governmental decisions and policies take place behind closed doors and in places where the common man has no access, without a willingness to avail information, it is hard for citizens to participate effectively.

Inadequate capacity and limited Civic Education Affecting People's Ability to Participate: In addition, majority of citizens lacks awareness and many do not know of the requirement for their participation in these processes. Those who know, do not have the requisite understanding of the issues and require civic education that is either absent or inadequate.

Inadequate Funding Limiting Level of Participation: Inadequate funding and other financial and budgetary constraints coupled with poor and inadequate capacity, have reduced the frequency and quality of participation. Funding levels also determine the amount of civic education, availability of materials and documents and the quality of training.

Failure to Complete the National Public Participation Policy Exacerbating Problem: The failure to complete a National Public Participation Policy has led to coordination and standardization problems with a lot of duplication and with counties, Ministries and Departments using different systems. A National Public Participation Policy is required to spell out the norms, principles and standards for effective public participation.

Questionable M&E Systems and Poor Feedback Mechanism Affecting Standards: Despite public participation being undertaken in the country, there has not been a strong monitoring and evaluation component. Government monitoring, research and evaluation systems, personnel and other mechanisms have been ineffective, inadequate and unreliable. In addition, supervision and documentation of the programs, their content and achievements have been weak. Even when public involvement is high, peoples' inputs do not get incorporated into the document since most public engagements take place at the tail end of the process:

Minimalism and Compliance Only Attitude Negatively Affecting Participation: Since the promulgation of the Constitution of Kenya, 2010, that requires State (Public) Officers to ensure participation of the public in all aspects of their governance, both the national and county governments have been forced to involve the people in the most aspects of their governance. However, there has developed a "compliance only" attitude and a "minimalist approach" among Public (State) Officers, where efforts are only put to ensure compliance with the law even if such do not necessarily advance public participation.

National Public Participation Policy as the Answer to the Challenges

The NPPP seeks to address some of these challenges. A recent study on the Status of Public Participation in Kenya by the Inter-Governmental relations Technical Committee (IGRTC) recommended the drafting of a National Public Participation Policy as the answer to the above challenges aimed at providing clear norms and standards for effective public participation. According to the IGRTC this national overarching policy should provide for:

- Norms and standards for effective PP; clear minimum standards; specify role of stakeholders; provide a holistic definition; values and principles of public participation; funding; mechanisms for reaching individuals and groups that can add value to the decision-making enforcement mechanism; a comprehensive stakeholders mapping for all issues requiring PP; well-defined consequences for non-compliance
- PP guidelines for national government similar to these for county governments with provision for adequate citizen awareness.
- Establishment of inclusive sector specific PP working groups including: planning sector group, budgeting sector group, capacity sector group, monitoring and evaluation sector group and funding.
- Documents necessary for public participation must be made available, accessible and in a form that is easy to understand. Every effort should be made to ensure an abridged and simplified version are available.
- Build capacity for public participation at the two levels of government and at the IGR, through partnership between government, NSA and development partners.
- Enhance civic education to institutionalize a culture of civic education.

SWOT Analysis of Public Participation in Kenya

The table below reflects the Public Participation experiences in Kenya as summarized in a SWOT analysis.

Table 4: SWOT Analysis for Public Participation in Kenya

STRENGTHS	OPPORTUNITIES
<ul style="list-style-type: none"> • Multiple channels through which citizens can be engaged; • Collaborative environment—government, NSAs, CSOs, CBOs, and FBOs; • Access to information act in place; • Multiple approaches and initiatives to facilitate public communication and access to information; • Strengthening and coordination of CSOs (work) at county level; 	<ul style="list-style-type: none"> • The National Capacity Building Framework to strengthen County capacity in planning, finances and management; • Development of access to information law; • Several public participation policies and laws in the counties; • Role of CSOs; • Existing legislation demanding for public participation—CGA, UACA, PFMA. • County Public Participation Guidelines; • Online and web-based mechanisms of

- CSOs and youth groups successfully advocating for county government action;
- Good collaboration between government officers and citizens;
- Improving accountability in leadership;

WEAKNESSES

- Many counties yet to put in place civic education framework or programs;
- Local communities might not organize, remain weak, unable to hold leaders to account;
- Both relationship and working relationship between the adversarial NGO Board those of President conflicts over PBO Act;
- Requisite budget and capacity to institutionalize minimum standards for participation missing;
- No systematic mechanisms exist to access requisite documents from either level of government;
- Few citizen forums being organized;
- Lack of guidelines establishing public participation structures;
- Low capacity for citizens to engage the county government;
- No meaningful education on documents or issues for discussion;
- Selective invitations to PP forums and opportunities to speak given only to pro-government views;
- Meetings organized at inconvenient times – market days;
- Poor/inadequate feedback mechanism;
- Absence of non-monetary incentives for PP.

- communication and access to information;
- Draft National Civic Education Framework
- Emerging local sectoral working groups
- Counties opening/increasing spaces for citizen engagements.

THREATS

- In many counties, no officers have been designated for purposes of accessing information;
- Not many counties have enacted legislation to ensure access to information;
- CSOs encountering challenges accessing key documents from counties to monitor progress in public participation
- Fear that devolution might mean devolvement of corruption and other vices.
- Failure and unwillingness by County Governments to give adequate notices for meetings;
- Limited access to information and documents;
- Low citizen understanding of issues discussed in public meetings;
- Unwillingness of County officers to undertake meaningful civic education;
- Misallocation or poor prioritization of funds;
- Violation of legal budget timelines;
- Lack of provision for PWDs, minorities or the marginalized;
- Weak feedback mechanisms;
- Inadequate/poor monitoring and evaluation
- Monetary rewards for PP a big threat;
- Gatekeeper attitude still persists among some county officers.

PART THREE

POLICY GOAL, OBJECTIVES AND ORIENTATIONS

Introduction

The CoK created a devolved system with two distinct levels of government that are interdependent and demands they conduct their mutual relations on the basis of consultation and cooperation.³⁸ Public participation needs to take place not just in the two levels, but also in a consultative, collaborative and coordinated manner and in accordance with the principles of devolved government.³⁹ The Constitution further demands that each level of government respects the functional and institutional integrity of the government at the other level.⁴⁰

The National Public Participation Policy will therefore provide a framework for achieving this collaborative participation at the two levels of government and nationally. Accordingly, each level of government will prepare separate public participation guidelines, clearly showing how it will engage the public on all areas of their governance and how they will collaborate and consult with the other levels and institutions of the government.⁴¹

The sections that follow discuss the various elements of the policy including its rationale or justification, its guiding principles, goal, objectives, and major orientations of policy areas. The section begins with the vision and mission of the policy

Vision

A Public Participation Policy that guides Kenya towards sustainable and meaningful realization of the right to participate for all Kenyans.

Mission

To provide a comprehensive, functional and coherent framework for structured and sustainable public participation in Kenya

Rationale and Justification for Kenya's NPP Policy

The National Public Participation Policy will act as the execution framework to guide the two levels of government and their ministries, departments and agencies in their efforts to engage the public on governance issues. It will define the roles and responsibilities of the key actors and the allocation and distribution of resources for public participation. The policy will act as an overarching framework on all forms of public participation in Kenya. The policy will not only help coordinate public participation in both national and county governments, it will provide mechanisms in which County governments will be assisted to implement public participation and empower the people to enable them influence policies.

³⁸The CoK, 2010. Article 6(2)

³⁹The CoK, 2010. Article 175

⁴⁰The CoK, 2010. Article 189

⁴¹ This policy recognizes that the County Governments Public Participation Guidelines already exist. The policy will therefore ensure that the National Government prepares similar guidelines to guide public

Public Participation Policy Goal

The goal of the National Public Participation Policy is to provide a comprehensive, systematized, coordinated and sustainable framework for public engagement in Kenya to ensure public participation becomes a way of life and a civic culture in which the people creatively and willingly participate in all matters of their governance. Since public participation is a political process, which is about influence and power relations and how they affect the people, the goal of the National Public Participation Policy is to transform government citizen power relations from one of control to that of empowerment --one that builds power within citizens and local communities to facilitate them to hold leaders to account.

National Public Participation Policy Objectives

The broad objective of this policy is to provide a systematized, collaborative and coordinated public engagement in Kenya that is issue based, people centred and people driven. The six specific policy objectives are defined below

1. Establish and promote principles, standards and best practices of public participation in Kenya
2. Address statutory and other measures to ensure the institutionalization of effective public participation;
3. Encourage early and continuous public notification and participation in major actions and decisions;
4. Provide objective criteria to measure the effectiveness and overall worth of public participation in the country; and,
5. Provide for mechanisms by which the public may participate in the affairs of the Government; and,
6. To clarify roles and responsibilities of the two levels of government, non-state actors and the public

Guiding Principles of Public Participation

Public participation in governance processes shall be guided by the adherence to the following principles and values:

- a) Sovereignty of the people and Equality of opportunities for all,
- b) That individuals, groups, communities and organizations have a right to be consulted and involved in the decision and policy making process;
- c) Provision of adequate and effective mechanisms and opportunities for participation for those interested in, or affected by, decisions,
- d) That public views shall be taken into consideration in decision making,
- e) Access to the necessary information and documents and in a language and form that is easy to comprehend,
- f) Provision of civic education and the development of necessary capacity for the public to effectively engage;
- g) National Values under Article 10 and the Bill of Rights and Fundamental Freedoms in Chapter Four;
- h) Principles of leadership and integrity in Chapter 6 and any other principles of public participation as may be prescribed by any written law,
- i) Provision of adequate funding for public participation,
- j) Adequate monitoring and evaluation and feedback mechanisms, and,
- k) Adherence to the principles of devolution and separation of power

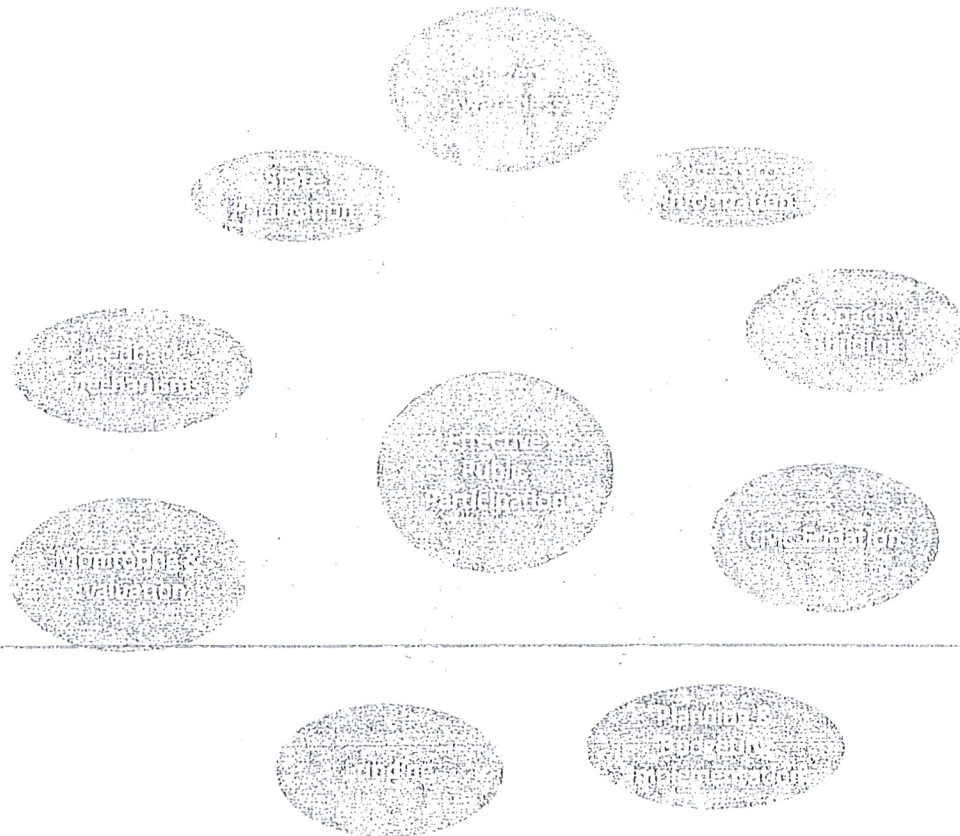
National Public Participation Policy Orientation/ Policy Areas

Past experiences with public participation provide important policy orientations and issues to address. The major ones are concerned with issues of addressing the low levels of attendance to participation meetings by locals; how to increase or improve the capacity to engage of those who attend meetings especially on the technical issues. This is mainly because those who attend lack capacity to engage, especially on technical issues; when large numbers attend, only a few can contribute; even when they attend and contribute, the state is unwilling or unable to incorporate their views. Others include, how to incorporate citizens' contributions into government decision making since both national and county governments lack mechanisms for incorporating citizen contribution. The little participation undertaken tends to be manipulated or stage-managed: How to ensure continuous public participation since engagement with the public takes place at the final phase of the policy process. Citizens are not normally involved in the early stages of conceptualization or implementation. More important citizen engagement is considered a one-time event, rather than a continuous process. Further, the question of how to increase the capacity of citizens at the grassroots in the absence of strong civil society organizations is important. This is made worse by the fact that: a) CBOs existing at the grassroots are unable to effectively engage on governance issues; and, b) the absence of or weak links between CSOs at the national and local levels and between them and CBOs.

Figure 1 below captures the important policy areas that Kenya's National Public Participation Policy should address.



Figure 2: Kenya's NPPP: Key Policy Areas



The National Public Participation Policy is not intended to be an isolated policy, but one that fits well within and is embedded in the broad post-2010 Government of Kenya policy orientation which is firmly anchored in the Constitution of Kenya, 2010 and Kenya's development blue-print, Vision 2030, both of which define how the governance sector is to be structured and run to facilitate the attainment of effective public participation. First, the Constitution of Kenya (CoK), 2010 grants sovereign power to the people and affirms that any power that a State Organ or Officer has is delegated to it by the people. Second, the Constitution not only creates a two-level system of government—National and County levels—but affirms that peoples' sovereignty be exercised at the two levels. Third, the Constitution provides National Values and Principles of Governance that must bind State (and public) Organs/Officers whenever they exercise these delegated powers. The objectives of the NPPP will therefore be pursued and achieved within this wider network of government policy orientation. There are eight policy orientations that are especially important to the success of the NPPP. They include: access to information; capacity building; civic education; planning, budgeting and implementation; funding; state facilitation; monitoring, research and evaluation; and, feedback mechanism.

Access to Information

The right to access information is crucial to public participation and to the well-functioning of a democracy. It is a right under the Constitution (Article 35) and is a vital ingredient for the achievement of meaningful and informed public participation.

Policy Concern

Without freedom of information, State authorities and agents can easily manipulate information while uninformed citizenry are unlikely to hold their leaders to account. In areas with high illiteracy levels or where access to newspapers is limited, the need to access information becomes even more important. Despite state officers and other responsibility bearers having a duty to make available information held by the state (Art. 33), they have not fully embraced the idea and hence the mechanisms for this have not been finalized. Even when information and documents are available, the language used is too technical for ordinary folks to understand.

Policy Objective: Ensure citizens continuously have easy and timely access to all the information they need, in a language and format that is easy to understand. Ensure technical documents are simplified

In Kenya access to information is hindered by an ingrained culture amongst public officials not to share information, meaning citizens do not have adequate information; when available it is not in places where they can easily access and on a regular basis. For example, citizens do not have access to information on budgets, government programs and results, policy formulation, planning and social services. This has resulted in information held by the state not being published or publicized, and government agencies without appointed officers in charge of public participation. Even where legislation has been completed, the information given to the public is still grossly inadequate and hard to understand. When the issues are technical (for example on budgets, or environmental impacts), the documents, if available, are also hard to understand.

Policy Action

- Publish, publicize and disseminate widely all information needed by the public to engage;
- Ensure early notification of meetings and continuous communication of information;
- Use of as many media as possible to disseminate information: including government websites, dailies, national radio, TV and posts in churches, markets, schools and any other public spaces;
- Develop regulations and operationalize Access to Information laws;
- Strengthen communication mechanisms, and, the adaption of new, more, better or alternative methods of information dissemination;
- Ensure increased number of meetings, meeting venues; popularize the meetings to facilitate ease of attendance and increase the number of these who attend;
- Strengthening, streamlining, and building capacity to access to information and data systems to ensure promptness and ease of access by the citizen;
- Strengthening and building capacity for local governance systems to enhance accountability, responsiveness and service to the people;
- Promotion of public-private cooperation and partnership with local telecommunication providers (safaricom, airtel etc.) to ensure a reliable sms based notification system;
- Assign the responsibility for information dissemination to a specific officer;
- Provide adequate notices, and (simplified) document and, production of popular versions of bulky or technical documents;
- Ensure a collaborative approach to information sharing; and,
- Sensitize duty-bearers and people on importance of participation.

Civic Education for Public Participation

The importance of civic education to democracy cannot be overstated. It is a critical element for

a well-functioning democracy,⁴² and an effective tool for both duty bearers and the citizen to fully comprehend and fulfil their roles and obligations. It facilitates the understanding and fulfilment of national values and undertaking legal and institutional reforms necessary for a country's transformation. Civic education is also essential in creating the necessary civic awareness, reorienting the national psyche for the new constitutional dispensation and engendering robust public engagement in the implementation process.⁴³

Policy Objective: Ensure public participation meetings take place at the lowest levels of the devolved units and that those at the lowest level engage fully and effectively

Policy Concern

The Constitution, the County Governments Act and the National Civic Education Framework provide an unprecedented opportunity for collaborative and integrated national civic education. Civic education informs the public, creates awareness and facilitates them to make informed decisions. It ensures that a critical mass of citizens possess the knowledge and skills and embody the values, norms and behaviour that accord with the principles of democracy.⁴⁴ Effective public participation is only possible with an empowered citizen, which requires civic education.

Low levels of awareness of development programs and projects contributed to limited public engagement with the government. Many Kenyans lack the necessary knowledge to engage effectively with the government. Lack of proper planning and organization has also led to negative outcomes.

Priority Action

- The government will develop and collaboration with CSOs and other NSA to ensure civic education is provided to the widest reach;
- Revision of the National Civic Education Framework to address concerns of County governments;
- Ensure a well-funded and collaborative civic education to reach those at the grassroots level;
- Encourage the involvement of state and non-state actors, including CSOs and FBOs to facilitate civic education.
- Conduct civic education programs to inculcate a participatory culture and to widen knowledge and participation among citizens, leading to an informed and active citizenry;
- Target participation campaigns to specific and special groups—women, youth, minorities, marginalized and PWDs—to ensure their participation;
- Build and undertake non-partisan civic education programs on attitudinal and value change to inculcate participatory culture;
- Ensure an inclusive public participation, especially for youth, women, minorities and PWDs;
- Provide incentives to citizens to take active role in participation;
- Revive the K-NICE⁴⁵ and develop civic education curriculum;
- Develop and popularize People Participation Charters, with brief accounts of how and when to participate and the available opportunities for participation.

⁴²Benjamin Barber (1992).

⁴³Republic of Kenya, 2013. The National Capacity Building Framework, MoDP.

⁴⁴United Republic of Tanzania, National Strategy for Civic Education, January 2011

⁴⁵The Kenya National Integrated Civic Education (K-NICE) program.

Capacity Building

Capacity building consists of developing knowledge, skills and operational capacity so that individuals and groups may achieve their purposes.⁴⁶ Most citizens are ill-equipped to participate in planning, budgeting and fear being victimized when they hold leaders to account. Poor capacity to engage leads to wastefulness and misappropriation of resources. Leaders and duty bearers have a tendency not to accept criticism positively; they fear that criticism will make them less popular or lose votes.

Policy Challenge

There is general lack of capacity both by state officers and the people on public participation to effectively engage with the state on governance issues. There is inadequate capacity of state actors to foster public participation. Together with duty bearers, the people lack both the capacity, experience and will to foster public participation.

Policy Objective: Enhance citizen capacity in policy formulation, implementation and all engagements in the project cycle to ensure that they participate fully in all aspects of their governance

There is also a lack of data on county capacity. As the National Capacity Building Framework notes, capacity building approaches in Kenya are fragmented and lack clear policies and guidelines. There are inadequate linkages and a general lack of mechanisms for monitoring and evaluation of training outcomes and impact. Capacity building for public participation has also taken a "quick fix" short term approach and is not well funded.

Priority Action

- Develop the necessary knowledge and skills and capacity of individuals, groups and communities to not only understand their responsibilities but also the responsibility of Government towards the people;
- Orient capacity building to focus on how to provide positive criticism and how to accept criticism and sensitize leaders and duty bearers to appreciate that citizens' constructive criticism and input;
- Increase recruitment and training of staff in public participation and equip them with knowledge of when and how to carry out participation, what to expect from participation, effective public participation, planning for participation and evaluation;
- Put in place a citizen participation framework to facilitate the cooperation of the Kenya School of Government and CSOs and NGOs with relevant expertise;
- Increase the level of collaboration both between levels of government and between them and the NSA. Capacity building entails investing in people, organizations and networks. Collaboration will not only improve the quality of participation but will increase the norms of trust, both between the two levels of government and between the government and citizens and will facilitate reciprocity in pursuit of common shared goals.
- Ensure and encourage production of popular version, abridged and signified version of important documents to ensure citizens understand the issues, however technical they are;

⁴⁶ Okello et al, (2008), Breaking Kenyan barriers to public involvement in environmental impact assessment. IAIA08 Conference Proceeding: The Art and Science of Impact Assessment 28th Annual Conference of the International Association for Impact Assessment. Perth, Australia: Perth Convention Exhibition Centre. Retrieved from www.iaia.org

- Partner with CSOs, CBOs and FBOs to ensure broader reach and widen participation, and to transform government-citizen relations to that of empowerment through the creation of “participation based” community groups.
- Encourage and ensure the development of voluntary organizations, social networks and social movements and strengthen existing ones to ensure that they work alongside government to facilitate citizen participation;
- Provide adequate budgetary allocation for short and long-term training for public officers;
- Establish support centres in various ministries and departments;
- Direct training to affecting attitudes towards participation, and equip public servants with the necessary knowledge and skills.

Planning, Budgeting and Implementation

Planning, budgeting and implementation are some of the areas of governance that have had the least public participation, mainly because they do not normally decentralize their services to the local levels. Planning, budgeting and implementation are also technical. However, while majority of citizens is ill and unprepared to participate, the middle class and local elites are normally unwilling to participate. The middle class, for example, rarely attend public forums. Further, linkages between government officers and the people are weak. Even with devolution, the linkage between the county planning and budgeting officers and sub-county and ward administration is weak. This poor planning and budgeting has contributed to poor participation by the people leading to high project incompleteness rates, poor quality projects that almost always overshoot the budget or go beyond the completion date.

Policy Objective: Ensure that public participation at every level of governance is well planned sufficiently budgeted for and fully implemented to ensure its effectiveness and legitimacy of government

Further, even where participation was high in the identification or planning phase, citizen engagement was much lower at the implementation and monitoring phases. The facilities of holding consultative meetings are rarely available. In fact, even with devolution, few sub-counties have functional social halls where consultative meetings can take place. Citizen apathy, particularly by the middle class has also had a negative impact. The failure to structure citizen participation around service delivery partly explains the apathy. This is worse at the grassroots level where the middle class does not attend public meetings while the masses are not organized, lack the requisite technical knowhow and therefore cannot present a collective position on important issues. Without proper planning, projects and programs are identified based on the whims of leaders and the interests of a few local elites. Even when consultations take place, it is with a few people known to the leaders, which ensures a favourable review of public participation.

Priority/Action Areas

- Ensure that the government continues to develop its planning mechanisms for public participation;
- Ensure and enable every MDA develop its own participation plan so that it can carry out participation in ways that suit the issues with which it deals;
- Facilitate MDAs anticipate well in advance what issues are going to require participation;
- Facilitate and enable MDAs build databases encourage/build linkages between government and people and SCOs providing civic education and capacity building.
- Increase capacity building and civic education for the public and grassroots levels to ensure their ability to engage in technical aspects of planning, budgeting and implementation;

- Ensure the strengthening of local CSOs to facilitate their engagement with planners and implementers
- Put systems in place to ensure citizens have access to information and documents on planning, budgeting and other projects

Funding

Public participation is not a key area of service provision hence it is not allocated much money. Government funding of public participation has been limited leaving it to CSOs and development partners. The problem with this is that, CSOs are project driven and their budget is limited to the life of the project hence, financing is limited and short term. There is also a perception that government institutions are not serious with public participation, that the citizens get listened to only when there is an NGO around, and that there are not many alternative funding mechanisms for people to participate. This perception has perpetuated manipulation of public participation, reducing it to tokenism.

Policy Objective: Collaborating with development partners and other philanthropic agencies, ensure adequate funding for public participation to facilitate citizen attendance, awareness creation and capacity to ensure continuous and effective participation

Priority Action

- Make provision of funding for public participation a core mandate of both national and county governments.
- Collaborate with development partners and CSOs to facilitate the sourcing adequate funding for public participation;
- Ensure regularization and coordination of funds for public participation from external sources;
- Ensure adequate and continuous funding for public participation ensuring both national and county governments set aside sufficient funds for public participation and ensure that funds from development partners and CSOs are well coordinated to complement state funding

Monitoring, Evaluation

Monitoring and evaluation serves several purposes, holding leaders accountable, and ensuring better, more and cheaper services; generate objective data and evidence based facts and serve as important deliberation and dissemination forums. Kenya's monitoring and evaluation of development management is however weak and lacks an effective legislative framework that compels duty bearers to account to the citizens. This has led to lack of accountability, corruption and the politics of patronage. The average Kenyan has in the past not been able to question procedures and processes at the local level.

Policy Objective: Ensure monitoring and valuation systems and mechanism are put in place to facilitate a comprehensive, integrated and collaborative public participation to ensure value for money.

More important there has lacked a feedback mechanism by the government. The lack of accountability mechanisms and the absence of effective monitoring fundamentally undermine performance and accountability in local governance in Kenya. People are likely to participate if they see how their input has been incorporated in the documents or if they see how their input

has brought about change to their lives. The more awareness and spaces for participation the more they participate.

Policy Priority Action

- Put in place systems and mechanisms for monitoring and evaluating extent of public participation;
- Build monitoring and evaluation units within every MDA and level of government;
- Ensure every program supporting public participation has an inbuilt M&E unit;
- Put in place mechanisms and systems for ensuring that notices for public participation are done in a timely manner, information is made available and accessible and that public participation meetings are documented;
- Ensure meetings are well attended and the presence of individuals or groups with the capacity to engage on the subject matters of the meeting;
- Ensure proper documentation of meetings and proper minutes are kept and that citizen contributions are incorporated in the final document/policy;
- Inform the County government on the status of public participation.

Feedback and Reporting Mechanisms

For long, duty bearers in Kenya have operated in an environment surrounded by a lot of secrecy. This has prevented them from having to account to the people. Even when the citizen had participated in development projects or in planning, there has not been in place a mechanism of evaluating the importance of their contribution or the extent to which citizen contributions influenced government decisions.

Policy Objective. Ensure citizen contribution informs government policy leading to increased citizen participation

Priority Action

- Ensure the creation of a culture of accountability both among duty bearers and between them and those demanding accountability;
- Put in place a feedback system to ensure that citizen contributions inform policy;
- Strengthen local groups and communities to actively participate in auditing of projects and demand explanations where public resources have not been utilized effectively;
- Enable groups and local communities to investigate poor areas of performance based on the County's strategic plans;
- Providing an opportunity for and develop a people centered reporting system, which would address the gaps, challenge the responsible parties and assign responsibilities for future action;
- Carry out rigorous evaluations of agency programs and individual responsibilities;
- Facilitate reporting from implementers on whether advertisements went out in good time, whether the venue worked well;
- Make reports on success such as how many people came, how many women came, and who spoke?
- Document how/extent to which public input was used/incorporated or how resources were used, in relation to benefit gained;
- Put in place review mechanisms for status of public participation in Kenya.

IMPLEMENTATION FRAMEWORK

Introduction

National Public Participation Policy will be implemented through an integrated, coordinated and consultative process by various actors both at the national and county levels of government. The implementation of the policy, and the roles and responsibility assigned to each implementing agency will respect the principles of the separation of powers and devolution. Accordingly, public participation will be provided separately, but jointly, collaboratively and in a consultative manner both at the national and county levels. Within each arm of government in both levels, public participation will be conducted separately but in a collaborative manner to be in accord with the principle of separation of power. At each level, there shall be a responsible office which will spearhead the development of public participation guidelines and oversight of public participation in keeping with the principle of devolution.

Appropriate strategies will be used to implement the NPPP. Such strategies to ensure effective public participation will take a national orientation and outlook but remain county specific; Public participation will take place at the lowest possible level of governance (preferably at the village level) and will be conducted in the language or languages commonly used in each specific locality. County civic education units will ensure that public participation takes place in the most effective way possible. These strategies and action plans will be reviewed regularly to address any emerging problem.

The Intergovernmental Relations Technical Committees (IGRTCs), the Council of Governors, the County Civic Education Units (CCEUs), and other National Government ministries, the Kenya School of Government (KSG) and the Kenya Institute for Curriculum Development (KICD) will play key roles in the implementation of public participation. In addition, a wide range of non-state actors including CSOs, NGOs, Faith Based Organisations (FBOs) and CBOs, together with development partners will play an important role as well. More important, the people, in exercise of their sovereignty, will have the overall role of holding every agent accountable.

Institutional Framework for Policy Implementation

The existence of a cohesive and well-functioning institutional framework is essential for the attainment of all the objectives of this policy. The aim is to ensure that the various institutions effectively play their respective but interdependent roles with a view to promoting effective public participation in Kenya

The Intergovernmental Relations Technical Committee (IGRTC), the Council of Governors, County Governments, the County Civic Education Units (CCEUs), and other National Government ministries, the Kenya School of Government (KSG) and the Kenya Institute for Curriculum Development (KICD) will play key roles in the implementation of public participation in Kenya. In addition, a wide range of non-state actors including CSOs, NGOs, Faith Based Organizations (FBOs) and CBOs, together with development partners will play an important role as well. More important, the people, in exercise of their sovereignty, will have the overall role of holding every agent accountable.

The Coordinating Government Agency

The Office of the Attorney General & the Department of Justice will provide leadership and be in charge of the coordination of the implementation of the national policy on public participation

Government Ministries, Departments and Agencies

The role of the Government Ministries, Departments and Agencies will be to create an enabling environment for public participation to take place

County Governments

The role of County Governments will be to promote principles of public participation as provided in the Constitution, the County Governments Act and in this policy

Development Partners

Development partners will play a complementary role towards realization of development of the goals and objectives of this policy. Within the public participation policy framework, the Government will foster linkages with various development partners to provide financial, material, technical assistance as well as build capacity for sustainability

Non- State Actors

The role of non-state actors will be to collaborate with Government to mobilize citizens, disseminate the policy, capacity build citizens and offer contributions towards the effective implementation of this policy

Conflict Resolution

Any conflicts arising out of interpretation of the provisions of the public participation policy will be resolved in a court of law

Creation of Public Participation Offices

Each Government Ministry will establish a department and appoint an officer to be in charge of public participation.

Development of People's Participation Charters

The two levels of government, their MDAs and Independent Commissions, and each arm of government will develop a People's Participation Charter which will set out the principles of participation, and a brief account of when and how the people of Kenya should be able to participate. The government will ensure the full revival and renewal of the Kenya National Integrated Civic Education (K-NICE)

Development of Public Participation Guidelines

Each arm of government shall prepare guidelines on public participation indicating how they will engage with the public. Further both county governments and national governments will make an annual report detailing the level of public participation in the level of government and the challenges experienced, and outline how they will be addressed in the next year. Both the national and county governments will pass legislation to establish the level of mechanisms and institutions to address the following issues

- a) Provide a working definition of public participation
- b) How public participation will be conducted and the responsibilities of key stakeholders.
- c) Who should participate and how?
- d) The content of public participation;

Monitoring and Evaluation

The realization of the objectives of this policy will require consistent monitoring and evaluation that will help policy makers to;

- a. Quantify achievements gained in civic education and citizen awareness leading to a more informed citizenry during public participation
- b. Identify critical success factors and both international and national best practices for public participation
- c. Enhance and support access to information of the citizenry to government procedures and operations

A monitoring and results-based evaluation framework will be developed. This framework will specify, among other critical elements, performance targets, budgets and timelines against which the implementation of the National Policy on Public Participation will be assessed. The Monitoring and Evaluation framework is directly linked with the budget framework to facilitate regular reviews and feedback on resource utilization.

~~The monitoring and evaluation framework will address questions such as whether the participation exercise comprised a broadly representative sample of the population of the affected public; Whether the issues of concern to the public, and relevant to the decision at hand, were taken into account in reaching a decision; Whether timeliness, realistic milestones and deadlines were properly managed throughout the process; whether the involvement of the public was canvassed early enough; whether the public were able to participate in an effective forum; Whether the Public participation process provided the participants with the information that they need to participate in a meaningful way, Whether the process for public participation sought out and facilitated the involvement of those potentially affected by or interested in a decision and Whether public participation process communicated to participants how their input affected the decision.~~

Review

This National Policy on Public Participation will be reviewed every five years to take into account the current and future needs of Kenya.

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REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

STAKEHOLDER CONSULTATION WORKSHOP ON THE WORKING DRAFT POLICY
ON PUBLIC PARTICIPATION

24TH FEBRUARY 2017, KICC, NAIROBI
PROGRAM

TIME	ACTIVITY	RESPONSIBLE ACTOR(S)
8.30am-9.00am	Arrival and Registration	Secretariat, Department of Justice
9.00am -9.15am	Introductions and Climate Setting	Ms. Claris Kariuki State Counsel, Department of Justice
9.15am-9.20am	Opening Remarks	Mrs. Emily Chweya Chief State Counsel, Department of Justice
9.20am-9.30am	Introduction to Public Participation and Background on the Policy Development Process	Mrs. Emily Chweya State Counsel, Department of Justice
9.30am -10.15am	Overview of the working draft policy on Public Participation	Dr. Joshua Kivuva, Consultant, University of Nairobi
10.15am-10.30am	Plenary Session	Moderator: Mrs. Emily Chweya
10.30am-11.00am	HEALTH BREAK	
11.00am-1.00pm	Group Discussions on arising policy issues.	Group Leaders
12.00pm-2.00pm	LUNCH	
2.00pm-3.30pm	Group Presentations	Moderator: Dr. Joshua Kivuva
3.30pm-4.00pm	Conclusion and Way Forward	Mrs. Emily Chweya
4.00pm-4.30pm	HEALTH BREAK AND DEPARTURE	

GROUP C

NATIONAL POLICY ON PUBLIC PARTICIPATION

FEEDBACK MECHANISMS, MONITORING AND EVALUATION AND COMPLAINTS & REDRESS MECHANISMS

POLICY PROBLEM

There is a lack of or inadequate monitoring, evaluation and reporting frameworks in ensuring effective public participation. This means that the duty bearers and right holders do not engage in a structured way to inform interventions before, during and after implementation of public participation policy.

POLICY STATEMENT

Government at both levels shall ensure the development of a comprehensive monitoring, evaluation and reporting framework for a structured engagement between duty bearers and right holders in ensuring effective public participation.

PRIORITY ACTIONS

1. The setting of performance standards- public participation process cycle,(stakeholder mapping ,adequate mapping, advance notice etc)
2. Setting indicators (input and output indicators)
3. Reporting and feedback mechanisms (templates for reporting against set performance standards)
4. Remedial actions

COMPLAINTS AND REDRESS MECHANISMS

POLICY PROBLEM

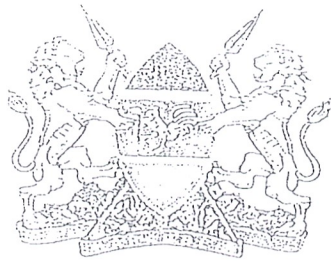
Inadequate or ineffective tools and mechanisms for handling and redressing complaints on public participation.

POLICY STATEMENT

Government at both levels shall ensure that institutions are strengthened for effective complaints handling and resolution of disputes arising from public participation process.

PRIORITY ACTIONS

- 1 Establishment of internal complaints handling committees
- 2 Strengthening of oversight institutions on complaints for example KNCHR, IPOA, CAI, Gender and Equality Commission, etc
- 3 Establishment of customer help desks, help lines
- 4 Establishment of independent tribunals for dispute resolution with avenues for appeal
- 5 Development of grievance- handling procedures at insutitutional level



REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

DEVELOPMENT OF A NATIONAL POLICY ON PUBLIC PARTICIPATION
CONCEPT NOTE FOR THE STAKEHOLDER CONSULTATION WORKSHOP
24TH FEBRUARY 2017, KICC, NAIROBI

1.1. BACKGROUND INFORMATION

Public participation is an open, accountable process through which individuals and groups within the community can exchange ideas and influence decision making. Public participation enhances accountability since it provides the participating communities with an opportunity to hold public authorities accountable for implementation. Public participation is a vital part of democratic governance. It allows the people to think, decide, plan and play an active part in the development and operation of services that affect their lives. Meaningful public participation promotes sustainable decisions by providing participants with the information they need to be involved in a meaningful way, and it communicates to participants how their input affects the decision.

The third report on development in Kenya by UNDP argued that the lack of good governance was one of the main causes of lack of human development in Kenya. Corruption, inefficient management of public resources and reluctance or total failure to involve the poor in the development process were some of the manifestations of this problem contributing to social, economic and political underdevelopment in the country. Political freedom, participation and human development constitute important pillars of good governance in any given nation¹.

Public participation has been codified as a major theme of the Constitution of Kenya, appearing as a national value in Article 10, as well as in a number of specific provisions, in relation to either certain public institutions or processes, or to certain sections of society. Therefore, for the successful implementation of the Constitution, public participation must be made operational through the establishment of functional mechanisms to ensure effective and meaningful public participation.

¹ Kenya Human Development Report (2003)

Generally public participation involves three elements; public access to information, public participation in decision making and public access to judicial and administrative redress or access to justice. Public participation involves the citizens in a dignified manner into the fold of the state decision making processes, and thus--- strengthens public trust in government; builds confidence in key public institutions; promotes the values of good governance: accountability, transparency, and respect for human rights, achieves sustainable development and service delivery; and Improves the quality of monitoring and evaluation of public policies. Public participation aims at bridging the gap between the government, civil society, private sector and general public, building a common understanding about the local situation, priorities and programs.

To this end, the then Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA) in collaboration with the Commission for the Implementation of the Constitution (CIC) organized a three day stakeholder conference at the Great Rift Valley Lodge, Naivasha on the 24th – 26th September 2012, discussed and agreed to develop a national policy as the most suitable framework to guide public participation processes.

1.2. RATIONALE AND JUSTIFICATION FOR THE POLICY ON PUBLIC PARTICIPATION

A national policy on public participation will act as the execution framework under which governmental ministries, departments and agencies work to involve the public's opinion and thus resolve one or more social, economic or political issues of the society. It will define the roles and responsibilities of various agents in the system and the allocation & distribution of resources to resolve these societal issues. The proposed policy will act as an overarching framework on all public participation in Kenya. Not only will it coordinate public participation in both national and county governments but it will also enable the citizenry to own decisions made that will affect them

1.3 GOALS OF THE POLICY

The goals of the National Public Participation Policy are

- a) To provide a comprehensive, systematized, coordinated and adaptable framework for public engagement in Kenya to ensure public participation becomes a way of life and a civic culture in which the people creatively and willingly participate in all matters of their governance
- b) To have the policy stipulate an obligation for various agencies to make regulatory frameworks to guide public participation in Kenya

1.4 OBJECTIVES OF THE PROPOSED POLICY ON PUBLIC PARTICIPATION

The broad objective of this policy is to set standards for public participation for the three arms and two levels of government, government Agencies, independent commissions, private sector and non state actors. The six specific policy objectives are defined below:

1. Establish and promote principles, standards and best practices of public participation in Kenya
2. Address statutory and other measures to ensure the institutionalization of effective public participation;
3. Encourage early and continuous public notification and participation in major actions and decisions;
4. Provide objective criteria to measure the effectiveness and overall worth of public participation in the country;
5. Provide for mechanisms by which the public may participate in the affairs of the Government; and,
6. To clarify roles and responsibilities of the two levels and the three arms of government, government Agencies, independent commissions, private sector, non state actors and the public with regard to public participation

1.5. PRINCIPLES OF PUBLIC PARTICIPATION

Public participation in governance processes shall be guided by the adherence to the following principles and values:

- a) Sovereignty of the people and Equality of opportunities for all;
- b) That individuals, groups, communities and organizations have a right to be consulted and involved in the decision and policy making process;
- c) Provision of adequate and effective mechanisms and opportunities for participation for those interested in, or affected by, decisions;
- d) That public views shall be taken into consideration in decision making;
- e) Access to the necessary information and documents and in a language and form that is easy to comprehend;
- f) Provision of civic education and the development of necessary capacity for the public to effectively engage;
- g) National Values under Article 10 and the Bill of Rights and Fundamental Freedoms in Chapter Four
- h) Principles of leadership and integrity in Chapter 6 and any other principles of public participation as may be prescribed by any written law;
- i) Provision of adequate funding for public participation;
- j) Adequate monitoring and evaluation and feedback mechanisms; and,
- k) Adherence to the principles of devolution and separation of power.

1.6 METHODOLOGY

It is envisaged that the process of formulating the Policy will take at least one year. The process will involve review of the mechanisms for public participation, stakeholders' consultation and borrowing from international best practices. The process will be highly consultative.

The policy formulation process will involve the following processes;

- a) Key Informant Interviews
- b) Focus group Discussions
- c) Stakeholder consultation forums
- d) Regional Hearings in the counties
- e) Stakeholder Validation of the policy
- f) Cabinet Approval
- g) Parliamentary Approval
- h) Dissemination and sensitization of the policy

1.6 STAKEHOLDER MAPPING

The following stakeholders are paramount in this process,

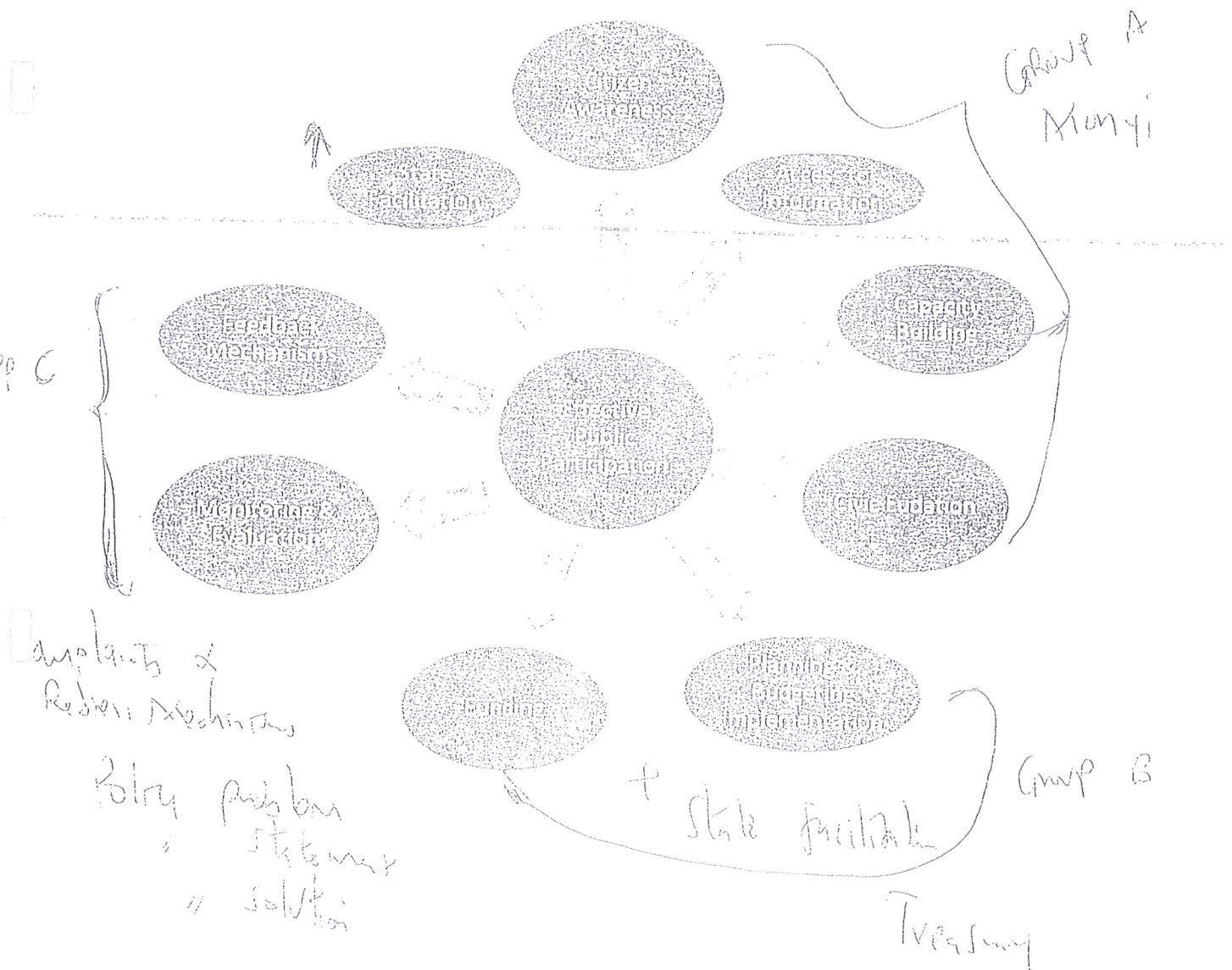
- a) Government Ministries, Departments and Agencies
- b) Judiciary and Legislature
- c) County Executive and Assemblies
- d) Constitutional Commissions
- e) Civil Society Organizations
- f) Faith Based Organizations
- g) Professional Bodies and Private Sector
- h) Donors and Partners

1.7. KEY POLICY PRIORITY AREAS

The National Public Participation Policy is not intended to be an isolated policy, but one that fits well within and is embedded in the broad post-2010 Government of Kenya policy orientation which is firmly anchored in the Constitution of Kenya, 2010 and Kenya's development blue-print, Vision 2030, both of which define how the governance sector is to be structured and run to facilitate the attainment of effective public participation. First, the Constitution of Kenya (CoK), 2010 grants sovereign power to the people and affirms that any power that a State Organ or Officer has is delegated to it by the people. Second, the Constitution not only creates a two level system of government - National and County levels - but affirms that peoples' sovereignty be exercised at the two levels. Third, the Constitution provides National Values and Principles of Governance that must bind State (and public) Organs/Officers whenever

they exercise these delegated powers. The objectives of the NPPP will therefore be pursued and achieved within this wider network of government policy orientation. There are eight policy orientations that are especially important to the success of the National Public Participation Policy. They include:

- a) Access to information;
- b) Capacity building;
- c) Civic education;
- d) Planning, budgeting and implementation;
- e) Funding;
- f) State facilitation;
- g) Monitoring, Research and evaluation; and,
- h) Feedback mechanism





REPUBLIC OF KENYA
ELEVENTH PARLIAMENT- (FOURTH SESSION)
THE NATIONAL ASSEMBLY

PETITIONS

(No. 07 of 2016)

CONVEYANCE OF A PETITION TO THE NATIONAL ASSEMBLY
ON PROPOSED AMENDMENTS TO STANDING ORDERS TO
PROVIDE FOR ENHANCED PUBLIC PARTICIPATION IN THE
LEGISLATIVE PROCESS AND PARLIAMENTARY BUSINESS

Honourable Members,

In accordance with the provisions of Standing Order 225 (2) (b), I wish to convey to the House that my office is in receipt of a Petition signed by a group of fifteen (15) individuals referring themselves as the "*Devolution Forum*". The said group is praying that the National Assembly, effects appropriate amendments to the Standing Orders to enhance public participation as contemplated in Article 118 of the Constitution with regard to public access to parliament and participation.

Honourable Members,

Standing Orders 127 (3) provides for consideration of public views and recommendations on Bills while Standing Orders 198 provides for public access to meetings of Select Committee. Nevertheless, the Petitioners aver that Parliament has failed to:

- (i) provide adequate opportunities for meaningful public participation in the House business;
- (ii) adequately educate the public on issues before the House; and
- (iii) provide sufficient time for the public to deliberate, consult and offer feedback to matters before the House.

The Petitioners pray that the National Assembly through the Procedure and House Rule Committee amends the Standing Orders to:


- (i) provide for a period of at least two months for public involvement in legislative and other business of the House;
- (ii) provide for public awareness on matters before the House; and
- (iii) Make any other order or direction that it deems fit in the circumstances of the case.

Honourable Members,

You may wish to note that this is a very unique Petition as the prayers sought by the Petitioners propose amendments to our Standing Orders. This will require meticulous consideration as they propose to basically alter the manner in which we conduct business. I am aware that the Procedure and House Rules Committee, which I chair, is currently considering various proposals for amendment of our Rules of Procedure.

This Petition therefore stands committed to the Procedure and House Rules Committee, for consideration together with the rest of the proposals. The Committee is required to report its findings to the Petitioners and the House. The Committee should also undertake to hear the Petitioners with a view to incorporating their proposals in our Rules of Procedure relating to public participation in the legislative business.

Thank you!


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

Tuesday, 12th April, 2016



13-1

TO: National Assembly of Kenya,
C/O The Clerk,
Kenya National Assembly
Parliament Buildings
P.O.BOX 41842-00100,
Nairobi, Kenya.

③ Mr. Abdo ...
...

Cc: Hon. Samuel Chepkong'a
Chairperson
Justice & Legal Affairs Committee
Kenya National Assembly
Parliament Buildings
P.O.BOX 41842-00100,
Nairobi, Kenya

o J / Legal

pse procs
Ans

15/3/16

Hon. Benjamin Langat
Chairperson
Finance, Planning & Trade Committee
Kenya National Assembly
Parliament Buildings
P.O.BOX 41842-00100,
Nairobi, Kenya

15/3/2016
...

The Hon. David Kiarahoke
Chairperson
Procedure and House rules Committee
Kenya National Assembly
Parliament Buildings
P.O.BOX 41842-00100,
Nairobi, Kenya

③ Ms. Wanjiku L.C
please study HR and advise the
C/S on compliance with the
and the SC 20/1/2016

The Hon. (Dr.) Naomi Shaban
Chairperson
House Business Committee
Kenya National Assembly
Parliament Buildings
P.O.BOX 41842-00100,
Nairobi, Kenya

14 MAR 2016

PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION, PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDERS 219, 223 OF THE NATIONAL ASSEMBLY ON INVOLVEMENT IN THE LEGISLATIVE AND OTHER BUSINESS OF PARLIAMENT IN ACCORDANCE WITH ARTICLE 118 (b)

We, the undersigned,

Citizens of Kenya, representing, individuals and non-governmental organizations wish in the interest of the public, to lodge this petition concerning public participation in the legislative and other business of Parliament as provided in the Constitution.

We humbly draw the attention of the house to the following:

THAT

1. The Constitution of Kenya 2010 Article 1 reposes all sovereign authority in the People of Kenya; The People of Kenya have delegated legislative authority to Parliament as the representatives of the People.
2. Article 95 of the Constitution provides that the role of Parliament, among other roles, is to deliberate on issues of concern to the people and enact legislation accordance with the constitution.
3. The Constitution in Article 10 (2) provides that Public Participation is among the national values and principles of governance in Kenya
4. Article 118 (b) of the Constitution provides that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees
5. The Constitution in Article 232 (1) on the values and principles of public service include: (d) involvement of the people in the process of policy making; (e) accountability for administrative acts and (f) transparency and provision to the public of timely and accurate information
6. Parliament is constitutionally bound to provide adequate opportunities for meaningful public participation in their business.

THAT

7. The opportunity to participate is not sufficient if Parliament fails to create a conducive environment for public participation. The court upholds this view as follows:
“Merely to allow public participation in the law-making process is, in the prevailing circumstances, not enough. More is required. Measures need to be taken to facilitate public participation in the law-making process [...] Public involvement in the legislative process requires access to information and the facilitation of learning and understanding in order to achieve meaningful involvement by ordinary citizens.”¹

¹ Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & another [2015] eKLR Para 152

PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION, PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDERS 219, 223 OF THE NATIONAL ASSEMBLY ON INVOLVEMENT IN THE LEGISLATIVE AND OTHER BUSINESS OF PARLIAMENT IN ACCORDANCE WITH ARTICLE 118 (b)

8. Parliament should provide the opportunity to participate in light of the “importance of the legislation and the intensity of its impact on the public. The more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say.”²
9. The court has asserted itself on public participation timelines citing:
“For the opportunity afforded to the public to participate in a legislative process to comply with section 118(1), the invitation must give those wishing to participate sufficient time to prepare. Members of the public cannot participate meaningfully if they are given inadequate time to study the Bill, consider their stance and formulate representations to be made.”³
10. A responsive legislative timetable must enable the right of public participation and not suffer the right to the convenience of Parliament.
“Reasonable time has to be provided for public input since time may be a relevant consideration in determining the reasonableness of a legislature’s failure to provide meaningful opportunities for public involvement in a given case. There may well be circumstances of emergency that require urgent legislative responses and short timetables [...] When it comes to establishing legislative timetables, the temptation to cut down on public involvement must be resisted. Problems encountered in speeding up a sluggish timetable do not ordinarily constitute a basis for inferring that inroads into the appropriate degree of public involvement are reasonable. The timetable must be subordinated to the rights guaranteed in the Constitution, and not the rights to the timetable.”⁴

THAT

11. Parliament has shown a trend of undermining public participation by not undertaking initiatives to educate the public on issues of consideration before the house, failing to effectively mobilize citizens to participate and further through not providing sufficient time for the public to deliberate, consult and offer feedback.
12. The table below highlights a few bills and durations given to the public to submit recommendations to illustrate the conduct of Parliament while affording public participation:

² Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR Para 77

³ Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & another [2015] eKLR Para 151

⁴ Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR Para 59

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Legislation	Date shared	Deadline for submitting reviews
Constitution of Kenya (Amendment) No. 5 Bill and Election Laws (Amendment) No. 2 Bill 2015	20 October 2015	23 October 2015
Protection for Traditional Knowledge & Traditional Cultural Expressions Bill, 2015	12 November 2015	18 November 2015
National Government Constituencies Development Fund Bill, 2015	12 November 2015	18 November 2015
(Vetting) Approval for National Assembly for persons nominated to be Members and Chairperson of the Ethics and Anti-corruption Commission of Kenya	25 November 2015	1 December 2015
The Controller of Budget Bill, 2015	26 January 2016	1 February 2015
The Banking (Amendment) Bill, 2015	26 January 2016	1 February 2015
The Proceeds of Crime and Anti-Laundering (Amendment) Bill, 2015	26 January 2016	1 February 2015
Election Laws (Amendment) No. 3 Bill, 2015	17 February 2016	24 February 2016
Public Finance Management Act- Affirmative Action Social Development Fund Regulations	17 February 2016	25 February 2016
Kenya Uwezo Fund Bill, 2015	19 February 2016	26 February 2016
Political Parties (Amendment) Bill	26 February 2016	4 March 2016

THAT

13. To the best of our knowledge, the issues in respect of which this petition is made are not pending before any court of law, or constitutional or legal body.

HEREFORE your humble petitioners Pray that Parliament-

- a. Deals with this Petition immediately in view of the urgency of the matter and the seriousness of the issues presented herein
- b. Provide a minimum of two months for public involvement in the legislative and other business of parliament towards providing opportunities for meaningful public participation. This should be so, unless there is due urgency to legislate around an issue of concern to the people.
- c. Undertake to educate the public on matters before the house towards securing effective public participation in the legislative and other agendas of the house.

PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION, PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDERS 219, 223 OF THE NATIONAL ASSEMBLY ON INVOLVEMENT IN THE LEGISLATIVE AND OTHER BUSINESS OF PARLIAMENT IN ACCORDANCE WITH ARTICLE 118 (b)

d. Undertake to mobilize citizens for public participation, through other media, in addition to national newspapers.

And your Petitioners will ever Pray

1. The Devolution Forum Members

Name of Petitioner	Full Address	National ID OR Passport No.	Signature/ Thumb Impression
1. WANGARI GICHUWO	48353 - 00100	9089030	
2. MURITHI WILSON	P.O. 7247 - 4306	12929768	
3. WILSON KIPKURU	4571 - 00100	1024577	
4. SAMUEL OYEMO	41079 - 00100	13042483	
5. DANIEL MURUGU	41079 - 00100	20412273	
6. CHELIA MASAU	198 - 00200	21951950	
7. DANIEL NAKURU	1507 Nakuru	13072577	
8. WY GATHO	4803 - 00506	28763062	
9. LUIS MAJONI	1966 - 00200	2440732	
10. ANNET MAJONI	21081 - 00505	24706354	
11. ESTHER MIANO	22893 - 00100	25531864	
12. PAUL KIMANI	1 Kariakari	13591271	
13. DEBORAH MURUGU	17 - Masungu	2109544	
14. BILLY MURUGU	557 - KARIKARI	21599017	
15. RACHAEL GICHUWO	16196 - 00100	25735762	

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WORKSHOP ON TASKFORCE ON AMENDMENT OF THE
STANDING ORDERS

23RD TO 26TH FEBRUARY, 2017

ISSUES FOR DISCUSSION WITH SENATE STANDING
ORDERS TASKFORCE

1. Joint Rules
2. President's reservations to a bill concerning county governments
3. Origination of money bills
4. Joint vetting processes
5. Joint sittings
6. Committees: Catering committee, issues in Mediation processes

PART XXIV - FINANCIAL PROCEDURES

PB O
Proposed
(16)

GENERAL

RESTRICTIONS WITH REGARD TO CERTAIN FINANCIAL MEASURES

231. (1) If, in the opinion of the Speaker, a motion makes provision for a matter listed in the definition of "a money Bill" in terms of Article 114 of the Constitution, the Assembly may proceed only with the recommendation of the Budget and Appropriations Committee after taking into account, the views of the Cabinet Secretary responsible for finance.

(2) "A money Bill", as provided for in Article 114 of the Constitution means a Bill, other than a Division of Revenue Bill or a County Allocation of Revenue Bill both provided for in Article 218 of the Constitution, that contains provisions dealing with-

- (a) taxes;
- (b) the imposition of charges on a public fund or the variation or repeal of any of those charges;
- (c) the appropriation, receipt, custody, investment or issue of public money;
- (d) the raising or guaranteeing of any loan or its repayment; or
- (e) matters incidental to any of those matters.

(3) In paragraph (2), "tax", "public money", and "loan" do not include any tax, public money or loan raised by a county.

PRESENTATION OF BUDGET POLICY STATEMENT AND THE DEBT MANAGEMENT STRATEGY

232. (1) Every year not later than 15th February the Cabinet Secretary responsible for Finance shall submit to the House a Budget Policy Statement and a Debt Management Strategy and shall be deemed to have been laid.

(2) The Budget Policy Statement shall include-

- (a) an assessment of the current state of the economy and the financial outlook over the medium term, including macro-economic forecasts;
- (b) the financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term;
- (c) the proposed expenditure limits for the national government, including those of Parliament and the Judiciary and indicative transfers to county governments; and
- (d) the fiscal responsibility principles and financial objectives over the medium term including limits on total annual debt.

(9) The approval by the House of the motion on the report of the Budget and Appropriations Committee on the Budget Policy Statement shall constitute the House Resolution setting forth the total overall projected revenue and borrowing, vertical allocation of resources among the two levels of government, the ceilings recommended for the National Government, the Judiciary and Parliament and where necessary, the total sums for each Vote and the allocations to individual programmes for the fiscal year in question.

(10) The resolution of the House on the Budget Policy Statement shall serve as a basis of the proposed estimates of expenditure for the next financial year and the medium term.

CONSIDERATION OF DIVISION OF REVENUE BILL

233. (1) Every year, not later than 10th March, there shall be introduced in National Assembly a Division of Revenue Bill, which shall divide revenue raised by the national government among the national and county levels of government in accordance with the Constitution.

(2) A Bill required by paragraph (1) shall be accompanied by a memorandum setting out—

- (a) an explanation of revenue allocation as proposed by the Bill;
- (b) an evaluation of the Bill in relation to the criteria mentioned in Article 203 (1) of the Constitution; and
- (c) a summary of any significant deviation from the Commission on Revenue Allocation's recommendations, with an explanation for each such deviation.

(3) The National Assembly shall proceed upon and conclude its consideration of a Division of Revenue Bill not later than ten sitting days after the Bill has been introduced with a view to passing it, with -or without amendments.

(4) In considering a Division of Revenue Bill, the House shall take into account any recommendation submitted by the Commission on Revenue Allocation, pursuant to provisions of Article 205 of the Constitution.

(5) The Division of Revenue Bill, having been passed by the National Assembly shall stand referred to the Senate in accordance with Standing Order (142) (*Concurrence of the other House*)

Committee of Supply

236. The Committee of Supply shall be a Committee of the Whole House.

237. (1) In considering the Budget and Appropriations Committee report, the House shall turn itself into a Committee of Supply.

(2) The Chairperson of the Committee of Supply shall move the motion "*Committee of Supply: Approval of the Report of the Budget and Appropriations Committee on the Budget Estimates and the Estimates of Expenditure from the Equalization Fund for the financial year.....and the allocations to the respective votes and programmes as contained in the Schedule*"

(3) The Chairperson of the Committee of Supply shall put a question on each of the Votes and the programmes therein. During the Committee of supply, a question shall be put on each of the Votes and the programmes therein.

(4) The National Assembly may amend the Budget Estimates only in accordance with the resolutions adopted with regard to the Budget and Appropriations Committee ensuring that

- (a) an increase in expenditure in a proposed appropriations is balanced by a reduction in expenditure in another proposed appropriation; or
- (b) a proposed reduction in expenditure is used to reduce the deficit.

(5) An amendment to any Vote to increase or reduce the sum allotted thereto whether in respect to any programme or a Vote itself may only be moved in accordance with the recommendation of the Budget and Appropriations Committee.

(6) An amendment in the Committee of Supply may be in the form of a motion "*That the Vote..... be increased/reduced by Ksh (in respect of programme)*" or in such a form as the Speaker may approve.

(8) When all amendments in respect of all Votes have been disposed of, the Chairman shall again propose the question "*Committee of Supply: Approval of the Report of the Budget and Appropriations Committee on the Budget Estimates and Estimates of Expenditure from the Equalization Fund for the financial year.....and the allocations to the respective votes and programmes as contained in the Schedule*"

Consideration of Supply Resolutions

238. (1) The report or any resolution of the Committee of Supply shall be considered by the House forthwith, unless the House otherwise orders, upon a Motion, "*That, the House do agree with the Committee in the said resolution.*"

Pronouncement of the Budget highlights and Revenue raising measures

241. (1) The Cabinet Secretary responsible for Finance shall make a public pronouncement of the budget policy highlights and revenue raising measures for the national government as contemplated under the Public Finance Management Act.

(2) The Speaker may designate a suitable place in the Chamber for the purposes of admitting the Cabinet Secretary to make the public pronouncement of the budget policy highlights and revenue raising measures.

(3) Whenever the Cabinet Secretary responsible for finance makes a public pronouncement under paragraph (1), the Speaker shall not allow any questions or clarifications to the statement by the Cabinet Secretary.

(4) On the same date that the budget policy highlights and revenue raising measures are pronounced, the Cabinet Secretary shall submit to the National Assembly a legislative proposal, setting out the revenue raising measures for the national government, together with a policy statement expounding on those measures.

(5) The provisions of the National Assembly (Powers and Privileges) Act (Cap 6.) shall apply to a Cabinet Secretary admitted to the Chamber under this Part.

Vote on Account

241. A (1) Following approval of the Budget Estimates, and before the Appropriation Bill is assented to, the National Assembly may authorize withdrawals in accordance with Article 222 of the Constitution, and such authority shall be communicated to the Cabinet Secretary responsible for finance by the Speaker of the National Assembly within seven days of that authority being granted by the National Assembly.

(2) A motion seeking the authorization of withdrawals under paragraph (1) shall be known as a Vote on Account and shall be put down on or any day before 30th June.

PROCEDURE ON SUPPLEMENTARY ESTIMATES

Supplementary Estimates

242. (1) The national government shall submit to National Assembly for approval, a supplementary budget in support of money spent under Article 223 of the Constitution.

(2) The supplementary budget shall include --

- (a) a statement showing how the additional expenditure relates to the fiscal responsibility principles and financial objectives, and
- (b) a schedule showing the list of programmes or projects that is affected by the proposed supplementary budget

submitted as a legislative proposal by the Cabinet Secretary, together with the report of the Committee on the bill.

(2) Any of the recommendations made by the Committee or adopted by the National Assembly on revenue matters shall –

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to the direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth;
- (f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and
- (g) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

(3) The recommendations of the Cabinet Secretary in paragraph (1)(f) shall be included in the report and tabled in the National Assembly.

(4) Not later than ninety days after passing the Appropriation Bill, the National Assembly shall consider and approve the Finance Bill with or without amendments.