



Paper
by the Hon. Mr.
Cheloi on
Wed 27/8/2014
Hon. Cheloi

REPUBLIC OF KENYA
ELEVENTH PARLIAMENT

(SECOND SESSION)

THE NATIONAL ASSEMBLY

THE PROCEDURE & HOUSE RULES COMMITTEE

FOURTH REPORT

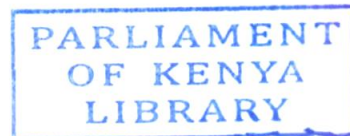
OF THE PROCEDURE & HOUSE RULES

COMMITTEE ON AMENDMENTS

TO THE STANDING ORDERS

(Submitted pursuant to Standing Order 262)

August 27, 2014



Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

August 2014

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PREFACE

Hon. Members,

The Procedure and House Rules Committee was constituted by the House on April 24, 2013 pursuant to provisions of Standing Order 208. The Committee is mandated to, among other matters, “*consider and report on all matters relating to the Standing Orders*”. The Committee is additionally mandated to propose 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. Such rules, once approved by the House have the same effect as the Standing Orders.

Hon. Members,

The Members of the Committee are-

1. The Hon. Justin B. Muturi, EGH, MP - Speaker of the National Assembly
2. The Hon. (Dr.) Joyce Laboso, MGH, MP - Deputy Speaker
3. The Hon. Moses Cheboi, MP - First Chairperson of Committees
4. The Hon. Rachael Shebesh, MP - Second Chairperson of Committees
5. The Hon. Tom J. Kajwang', MP - Third Chairperson of Committees
6. The Hon. Jessica Mbalu, 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. Issack Mwaura, 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 Manya Naicca, MP
19. The Hon. Joe Musyimi Mutambu, MP
20. The Hon. Alice Wahome, MP
21. The Hon. Ken Obura Mirenga, MP

Hon. Members,

As a follow-up to recommendations from a cross-section of Members, inter-jurisdictional case studies, and in a bid to operationalize Article 153 (3) of the Constitution, which concerns the appearance of Cabinet Secretaries before a Committee of the National Assembly, the attention of the Committee was drawn to the need for the Committee to propose amendment to the House on the part of the Standing Orders dealing with Select Committees.

In this regard, the Committee requests the House to approve this report proposing the insertion of a new Part XXIA to provide for the creation of the Committee on General Oversight that shall provide an avenue for Cabinet Secretaries to report to the House and give answers to Members' questions as envisioned in Article 153 (3) of the Constitution.

It is therefore my pleasure to present and commend this report to the House for adoption.



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY &
CHAIRPERSON, PROCEDURE AND HOUSE RULES COMMITTEE

Wednesday, August 27, 2014

ACKNOWLEDGMENT

Hon. Members, on behalf of the Committee, I wish to sincerely thank the Members of the Committee for their commitment to the work of this Committee. Their commitment to accommodate the views of Members across the board and to undertake comparative case studies of various scenarios relating to interaction between the legislative and executive arms of governments has been remarkable. The need to operationalize the provisions and expectations of Article 153 (3) and Article 95 of the Constitution is essential to the legislative agenda of this nation, and Members of this Committee have demonstrated unwavering commitments towards attaining this noble goal.

We also thank the Office of the Clerk for facilitating the Committee to undertake this assignment and to fulfill its mandate.

ADOPTION OF THE REPORT

The Report was adopted **unanimously** by all Members present. The Committee also resolved to submit the Report to the House on August 26, 2014 and move a motion seeking the approval of the House.

FOURTH REPORT OF THE PROCEDURE AND HOUSE RULES COMMITTEE

I. MEMBERSHIP OF THE COMMITTEE

The Committee 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, MP - First Chairperson of Committees
4. The Hon. Rachael Shebesh, MP - Second Chairperson of Committees
5. The Hon. Tom J. Kajwang', MP - Third Chairperson of Committees
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16. The Hon. Bare Shill, MP
17. The Hon. Alice Ng'ang'a, MP
18. The Hon. Johnson Manya Naicca, MP
19. The Hon. Joe Musyimi Mutambu, MP
20. The Hon. Alice Wahome, MP
21. The Hon. Ken Obura Mirenga, MP

II. MANDATE OF THE COMMITTEE

The Committee is mandated by Standing Order 208 to, among other matters, “consider and report on all matters relating to the Standing Orders”. The Committee is also mandated to propose 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. Such rules, once approved by the House have the same effect as the Standing Orders.

III. MANNER OF AMENDING THE STANDING ORDERS

Procedure of Amending the Standing Orders

Standing Orders provide three avenues through which they can be amended, namely:-

- (i) The Procedure and House Rules Committee can propose amendments anytime;
- (ii) Amendment on the Initiative of a Member; and,
- (iii) Periodic Review by the Procedure and House Rules Committee.

Commencement of proposed amendments

Proposed Amendments to the Standing Orders take effect at the time appointed by the House, after approval.

IV. BACKGROUND TO THE PROPOSED AMENDMENTS

Creation of the Committee on General Oversight

The recommendation to create the Committee on General Oversight was informed by various considerations, namely:

- a. The need to operationalize Article 153 (3) of the Constitution of Kenya 2010, which states that *‘A Cabinet Secretary shall attend before a committee of the National Assembly, or the Senate, when required by the committee, and answer any question concerning a*

matter for which the Cabinet Secretary is responsible.” At the moment, the National Assembly does not have such a Committee in place, hence the need to create it through this amendment to the Standing Orders;

- b. The need to modify the practice of using Statements in a bid to obtain ministerial feedback. This system no longer works on account of the fact that Chairpersons of Committees are expected to answer questions on behalf of Cabinet Secretaries, which is a tall order considering the quality and quantity of information sought by the National Assembly;
- c. The report obtained after a Study Tour of France where the Committee found that even though Ministers cease to be Members of Parliament upon appointment to the Cabinet, they nevertheless continue to appear in Parliament to answer Members’ Questions; and
- d. The need to further the operationalization of Article 95 (2) that mandates the National Assembly to deliberate and resolve issues of concern to the people.

Key Features of the Committee on General Oversight

The key features of the proposed Committee on General Oversight are as follows:

- a) The Committee is chaired by the Speaker of the National Assembly.
- b) The Quorum is sixteen Members.
- c) The Leader of the Majority Party is to consult the Speaker in creating the Agenda of the Committee and in Scheduling of Questions.
- d) The Sittings of the Committee are to be held every Tuesday from 10.00am to 12.30pm.
- e) Members will have opportunity to ask Questions to the Cabinet Secretaries.
- f) A maximum of three (3) Cabinet Secretaries will be invited at any one time.

- g) Between ten (10) to twenty (20) Questions will be posed to the Cabinet Secretaries but on average not more than five (5) Questions are to be directed to each Cabinet Secretary.
- h) Supplementary Questions will be allowed so long as they relate to the original question.
- i) The option for obtaining Written Reply from the Cabinet Secretaries remains.
- j) There shall be verbatim recording of the proceedings.
- k) The Cabinet Secretaries shall be accorded privileges similar to those of witnesses invited to the National Assembly.

V. RECOMMENDATIONS

The Committee therefore recommends-

1. **THAT**, the House resolves to amend the Standing Orders(*Second Edition*) by inserting the following new PART XXIA immediately before part XXII, as follows-

NEW PART XXIA : THE COMMITTEE ON GENERAL OVERSIGHT

Establishment

- 170A.** (1) There is established a Committee to be known as the Committee on General Oversight comprising of all Members of the National Assembly to which Cabinet Secretaries shall attend and answer any question concerning matters for which they are responsible pursuant to Article 153(3) of the Constitution.
- (2) The Speaker shall be the Chairperson of the Committee on General Oversight, and the Deputy speaker may, in absence of the Speaker, preside over the Committee.

Quorum

- 170B.** (1) A Meeting of the Committee on General Oversight shall not commence unless there are present not less than **sixteen** Members, excluding the person presiding, but a meeting of the Committee may thereafter continue despite there being less than sixteen Members present, unless in exceptional circumstances, the Speaker is of the view that the agenda of such meeting requires not less than fifty Members to be present.
- (2) The provision of Standing Order 34 (*Quorum at the commencement of the House*) and Standing Order 185 (*Adjournment for lack of quorum*) shall apply to the commencement of meetings of the Committee.

Mandate

170C.

(1) Pursuant to the provisions of Article 153(3) of the Constitution, a Cabinet Secretary shall attend before the Committee on General Oversight to answer any question concerning a matter for which the Cabinet Secretary is responsible.

(2) Paragraph (1) does not preclude any other Committee of the House from requiring the attendance of a Cabinet Secretary before it, but not for the purposes of answering questions as provided for under this Part.

(3) The Clerk shall notify the Cabinet Secretaries on the Questions intended to be addressed, at least seven days before the day of the meeting, but the Speaker may certify a Question to be urgent, in which case it may be replied to as soon as the Speaker may recommend in accordance with Standing Order 170G (*Questions by private notice*)

(4) The Committee may invite more than one Cabinet Secretary so as to allow the Cabinet Secretaries to answer matters relating to more than one State Department in one sitting of the Committee, but not more than three Cabinet Secretaries may be required to appear before the Committee at such meeting.

(5) The Committee on General Oversight shall invite the Member who had given a notice of the Questions to be replied to in the Committee

Meetings of the Committee

170(D).

(1) Unless for the convenience of the House and the Committee, the Speaker otherwise directs, the Committee on General Oversight shall meet on every Tuesday, commencing at 10.00 am, but a meeting of the Committee shall not continue after 12.30 pm.

(2) The Committee shall not meet when the House is on recess.

The Agenda of the Committee

170(E).

(1) The Leader of the Majority Party shall, in consultation with the Speaker, determine the agenda of the Committee, including the list and order in which Cabinet Secretaries shall appear to answer Questions before the Committee.

(2) The Agenda of the Committee, showing the schedule of Questions listed for response and the Order in which questions shall be taken shall be appended on the Order Paper of every Tuesday of the week when the House is sitting.

(3) The Speaker may, on request of the Leader of the Majority Party vary the order in which Questions shall be disposed of in the Committee, or defer a question scheduled to be responded to.

(4) The Leader of the Majority Party shall, every Thursday before 5.00 pm, submit to the Clerk a list showing the Questions scheduled for reply the following Tuesday for publication in the Order Paper.

Notices of Questions

170F.

(1) Notices of Questions relating to issues of concern to the people shall be given by Members in writing to the Clerk and the Clerk shall, having satisfied himself/herself that the notice satisfies the requirement of the Standing Order 170H (*General Rules of Questions for the Committee*) submit the notice to the Speaker for approval.

(2) A Member desiring to ask a Question before the Committee on General Oversight shall hand to the Clerk the written request, at least ten days before the day the Member intends to have the Question addressed in the Committee.

(3) Following the approval of the Speaker under paragraph (1), the Clerk shall, within forty-eight hours, submit the request to the relevant Cabinet Secretary.

Questions by Private notice

170G.

(1) Despite Standing Order 170G (*Notices of Questions*), the Speaker may allow a Member to also ask a question which in the opinion of the Speaker is of urgent character or relate to exceptionally important issues of concern to the people.

(2) A Member wishing to ask a question by private notice shall hand to the Clerk a notice of the Question at least twenty four hours before time scheduled for replies, but the question shall not be allowed unless it falls within the

matters for which a cabinet secretary scheduled to attend before the Committee the following day, is responsible.

- (3) The Speaker may, in exceptional circumstances, on the request of the Leader of the Majority Party allow a Cabinet Secretary to attend and answer to urgent matters before the Committee, notwithstanding that notice has not been given.
- (4) At the commencement of a meeting of the Committee, the Speaker shall inform the House on any approved questions by private notice and may allot time for their replies on the same sitting and, where practicable, such questions may be included in a revised agenda to be circulated.

General rules on Questions for the Committee

- 170H.** (1) These rules apply to questions, including supplementary questions
- (2) Except as the Speaker may otherwise allow, a question by a Member shall not be in effect a speech or limited to give information or framed so as to suggest its own answer or to convey a particular point of view.
 - (3) The facts on which the Question is based may be set out briefly, provided the Member takes responsibility for their accuracy, but extracts from newspapers or quotations from speeches shall not be admissible.
 - (4) A Question shall not contain any argument, inference, opinion, imputation or ironical or offensive expression or epithet and shall not seek an expression of opinion.
 - (5) A Question shall not repeat in substance any matter already addressed, either as a formal request or in the course of a debate in the Committee on General Oversight or in the House, during the same Session.
 - (6) Not more than one subject shall be referred to in any one Question, and a question to the Committee on General Oversight shall not be of excessive length.
 - (7) A question shall neither include the name of any person or any statement not strictly necessary to render the question

intelligible, nor shall it contain any allegation, which the Member is not prepared to substantiate.

- (8) A question shall not be made which makes or implies any allegation of a personal nature or which reflects upon the conduct of any person whose conduct can only be challenged upon a substantive Motion or upon the conduct of any other person otherwise than in the person's official or public capacity.
- (9) Reference shall not be made in a question to any particular matter which is *sub judice*, and in determining whether a matter is *sub judice*, Standing Order 89 (*Matters sub judice or secret*) shall apply.
- (10) A question shall not seek information which, by operation of any written law, is secret.
- (11) A question, the answer to which is readily available in ordinary works of reference or official publications, shall not be made.
- (12) A question shall not refer discourteously to any friendly country, nor to any Head of State or Government or the representative in Kenya of any friendly country and shall not refer to proceedings of a Select Committee before that Committee has made its report to the House.

Rules of debate Manner of disposing question in the Committee

170I.

- (1) The rules of debate applicable in the Chamber shall apply, with necessary modifications, to the consideration of questions before the Committee
- (2) Each Cabinet Secretary shall provide five copies of the reply at least a day before the meeting of the Committee and may also provide electronic copies of the reply;
- (3) Subject to standing order 170G (*Notices of Questions*) Questions shall be disposed of in the sequence appearing in the Order Paper
- (4) Not more than five questions may be put down for reply to a particular Cabinet Secretary at any one sitting

(5) The Speaker may allow the questioner to put up to two supplementary questions, and may permit up to four Member to ask further supplementary questions in so far they relate to the original question

(6) The question may be answered only if the questioner is present, but if the Questioner is absent without Speaker's authority, the question shall be answered in writing, in which case, the Cabinet Secretary shall table the reply before the Committee and no further proceedings shall be allowed.

(7) The Speaker may defer a question not reached, or any other question appearing in the Order Paper to another time on the same day or to another day.

(8) At a meeting of the Committee, the person presiding shall be addressed as the Speaker or Deputy Speaker, as the case may be.

Questions for written reply

170J. The Speaker may direct that a written answer be provided in respect of particular question, in which case the Clerk shall forward the question to the relevant Cabinet Secretary for reply and thereafter provide the written reply to the Member who gave notice.

Proceedings to be recorded

170 K. Proceedings of the Committee shall be recorded verbatim and included in the Votes and Proceedings of the House and the official *Hansard* record, and also covered live.

Application of privileges law

170L. The provisions of the National Assembly (Powers and Privileges) Act shall apply to a Cabinet Secretary admitted to the Committee on General Oversight.

Commencement

2. **THAT**, the House resolves that the amendments take effect from September 1, 2014.

Addendum

3. **THAT**, the House Orders that an addendum be made to the Standing Orders (*Second Edition- as amended on2014*) containing the resolution of the House on the amendments.

-----End-----

MINUTES OF THE FOURTH MEETING OF THE PROCEDURE AND HOUSE RULES COMMITTEE HELD ON WEDNESDAY, 27TH AUGUST, 2014 IN THE SPEAKER'S BOARDROOM, MAIN PARLIAMENT BUILDINGS, AT 12.25PM.

PRESENT

- | | |
|-------------------------------------|------------------------------------|
| 1. Hon. Justin B. Muturi, EGH, MP | - Hon. Speaker/Chairperson |
| 2. Hon. (Dr.) Joyce Laboso, MGH, MP | - Vice Chairperson |
| 3. Hon. Moses Cheboi, M.P. | - First Chairperson of Committees |
| 4. Hon. Jessica Mbalu, M.P. | - Fourth Chairperson of Committees |
| 5. Hon. (Dr.) James Murgor, M.P. | |
| 6. Hon. Abdikadir Omar Aden, MP | |
| 7. Hon. Abdul Rahim Dawood, MP | |
| 8. Hon. David Wafula, MP | |
| 9. Hon. Peter Njuguna, M.P. | |
| 10. Hon. Johnson Many Naicca, MP | |
| 11. Hon. Joe Musyimi Mutambu, MP | |
| 12. Hon. Robert Mbui, MP | |
| 13. Hon. Alice Wahome, MP | |
| 14. Hon. Alice Ng'ang'a, MP | |

APOLOGIES

- | | |
|-------------------------------|------------------------------------|
| 1. Hon. Rachael Shebesh, M.P. | - Second Chairperson of Committees |
| 2. Hon. T.J. Kajwang, M.P. | - Third Chairperson of Committees |
| 3. Hon. Issack Mwaura, MP | |
| 4. Hon. David Kiaraho, M.P. | |
| 5. Hon. Oscar Sudi, M.P. | |
| 6. Hon. Bare Shill, M.P. | |
| 7. Hon. Ken Obura Mirenga, MP | |

IN ATTENDANCE

- | | |
|-----------------------|-----------------------------------|
| 1. Mr. Michael Sialai | - Senior Deputy Clerk |
| 2. Mr. Samuel Njoroge | - Deputy Director, L & P Services |

3. Mr. Michael Karuru - Deputy Director, Legal Services
4. Ms. Jennifer Ndeto - Principal Legal Counsel
5. Ms. Wanjiru Ndindiri - Clerk Assistant I
6. Ms. Miriam Modo - Clerk Assistant III

MIN. NO. 09/2014: CONSIDERATION OF THE REPORT OF THE STUDY TOUR TO FRANCE

The Chair gave a brief overview of the Committee's study tour to the Parliament of France. However, due to time constraints, the Committee resolved to review and adopt the report of this study tour at a later date.

MIN. NO. 10/2014: CONSIDERATION AND ADOPTION OF THE REPORT ON AMENDMENTS TO THE STANDING ORDERS

The Committee was informed of the need to review amendments to the Standing Orders as adopted by the House in June 2014. There continued to be need for provision of comprehensive information on statements requested by Members, as Committees chairpersons could not adequately respond to issues raised, and in some cases, could not obtain sufficient information from the Executive.

The Committee was taken through the report, with rationale and comparative examples given of Parliaments where Ministers who were non-Members of Parliament appeared to respond to parliamentary questions, either in plenary or in special committees. The recommendation was proposed to form a Committee on General Oversight, comprising of all Members of the National Assembly, to primarily deal with questions.

The Committee considered the report, made minor amendments, and adopted it unanimously. It was resolved the report be tabled and notice of motion given on the afternoon of Wednesday, 27th August 2014. The report will then proceed for consideration in the House on Thursday, 28th August 2014.

MIN. NO. 11/2014: ANY OTHER BUSINESS

The Committee was also updated on the proposed trip to the German Bundestag. The preparations were still ongoing, with confirmation of appointments with the counterpart committee still being awaited from the Kenyan Embassy in Berlin.

MIN. NO. 12/2014: ADJOURNMENT

There being no other business the meeting was adjourned at 1.40pm until a date to be announced later.

Sign.....


(Chairperson)

Date 27TH AUGUST, 2014.....