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THIRTEENTH PARLIAMENT
(SECOND SESSION)

THE NATIONAL ASSEMBLY

SIXTH 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

THE NATIONAL ASSEMBLY	
DATE: 08 MAR 2023	DAY: WEDNESDAY
TABLED BY:	VICE-CHAIRPERSON, PROCEDURE AND HOUSE RULES COMMITTEE Hon. Gladys BOSS
CLERK-AT-THE-TABLE:	Miriam Mudo <u>March 2023</u>

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FOREWORD

Hon. Speaker,

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.” The Procedure and House Rules Committee is established under Standing Order 208 to among other things, consider proposed amendments to the National Assembly Standing Orders. Further, pursuant to Standing Orders 262 and 263, the Standing Orders may be amended at any time as may be proposed by the Procedure and House Rules Committee, or by the initiative of a Member supported by at least fifty other Members.

During the opening of the 13th Parliament on Thursday, September 29, 2022, H.E. the President Dr. William Samoei Ruto, CGH, asked Parliament to consider putting in place a mechanism in the Standing Orders to -

- i) Facilitate Cabinet Secretaries to articulate government agenda; and
- ii) Facilitate Cabinet Secretaries to explain government policy and to answer Questions on the floor of the House in a bid to enhance Executive accountability to the People of Kenya through their elected representatives.

Hon. Speaker, the proposal by H.E. the President seemed to have been intimating that the practice of *having Cabinet Secretaries appear before the House to respond to parliamentary Questions* has a place in the 2010 Constitutional dispensation. He suggested that the House explores mechanisms especially through amending the Standing Orders to actualize this proposal.

Additionally, in his Memorandum to the Speakers of the National Assembly and the Senate dated 9th December 2022, H.E. the President said:

“It is ill-considered to interpret the rigid separation of powers established under the Constitution as the effective insulation of various institutions and organs of government from oversight and accountability. I believe that our government will become more responsive, accountable and effective when it is subjected to rigorous oversight. There is tremendous benefit in experiencing checks and balances in the course of policy implementation.

The Executive has a vested interest in engaging productively with Parliament because the legislature is the custodian of critical instruments that are indispensable for the functioning of government. There is profound value in prosecuting the Executive’s legislative agenda and elaborating government policy from the floor of the House as

opposed to segmented committee engagements. An additional benefit of the executive participation in parliamentary business is transparency of public proceedings, which can close the information gap between citizens and government, thereby enhancing trust.

For these reasons, I recommend and request that Parliament considers formulating a mechanism within its Standing Orders to facilitate the participation of Cabinet Secretaries/Chief Administrative Secretaries in parliamentary proceedings, particularly by responding to Questions raised by MPs”.

Hon. Speaker, the practice of using Statements in a bid to obtain ministerial feedback has not been working effectively because of the fact that Chairpersons of Committees are usually expected to answer Questions on behalf of Cabinet Secretaries, which has been difficult considering the limited access to information sought by the Members of the National Assembly.

Further, majority of the Departmental Committees find themselves spending most of their time seeking information and responding to Questions and Statements instead of focusing on other key mandate including scrutiny of budget estimates; introduction and review of legislation; undertaking investigations, inquiries, and reporting on matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; monitoring and reporting on the implementation of the national budget in respect of their mandate, amongst other roles.

In addition, **Hon. Speaker,** the Committee System is a time-consuming means of obtaining information for Members who do not belong the Committees that may be tasked with responding to Questions. Indeed, Committee meetings on the Questions may take place months after the Question has been raised in the House. It is also worth noting that many Questions are **never answered whatsoever**. For instance, in the 11th Parliament, a total of 391 Questions were submitted, of which 118 were responded to. During the 12th Parliament, out of a total of 1974 Questions referred to relevant Departmental Committees, only 30 percent were replied to and concluded. This has partly led to diminished interest in the current Question Time in Committees and an **increase in the number of Petitions and Statements**.

Hon. Speaker, it is on this basis that the Procedure and House Rules Committee resolved to remedy the current state of affairs by proposing amendments to the Standing Orders to facilitate the appearance of Cabinet Secretaries before the House to respond to parliamentary Questions raised by Members.

To enable the Committee to make a well-considered decision regarding the concept and parliamentary practice on Executive responsibility, answerability and accountability to the Legislature, including the rationale and an assessment as to whether Cabinet Secretaries can be invited to the House to respond to Questions in light of the 2010 constitutional changes, the Committee, on 23rd November 2022 established a Sub-Committee to undertake a comprehensive review of the feasibility of the proposal.

The terms of reference for the Sub-Committee were to consider the proposal to amend the Standing Orders to allow Cabinet Secretaries to respond to Questions in House plenary, and specifically –

- (i) To consider the day of the week to be set aside for Question time, the amount of time to be allocated for Question time; and the number of questions to be answered in any given sitting; and
- (ii) Compile a report and schedule of proposed amendments to the Standing Orders.

Composition of the Sub-Committee

The Sub-Committee comprised the following Members –

- | | | |
|---|---|--|
| 1. The Hon. David Ochieng, MP | - | Second Chairperson of Committees (Chairperson) |
| 2. The Hon. Martha Wangari, MP | - | First Chairperson of Committees |
| 3. The Hon. (Dr.) Rachel Nyamai, MP | - | Sixth Chairperson of Committees |
| 4. The Hon. Murugara Gitonga, MP | - | Member |
| 5. The Hon. Oluoch Anthony Tom, MP | - | Member |
| 6. The Hon. Shimbwa Omar Mwinyi, MP | - | Member |
| 7. The Hon. Emathe Joseph Namuar, MP | - | Member |
| 8. The Hon. Kilel Richard Cheruiyot, MP | - | Member |

Upon completion of review of the feasibility of the proposal, the Sub-Committee presented its Report to the Procedure and House Rules Committee on 24th February 2023 for consideration by the Committee.

The Committee comprehensively reviewed the proposed Sub-Committee report and proposed text and made observations, additions and refinements, before adopting its report for consideration by the House. Based on its deliberations, the Committee recommends to this House as follows;

- a) That, the House operationalizes the provisions of **Article 125 of the Constitution** regarding the power to summon any person to appear before the House or Committees, which stipulates as follows.

“125. (1) 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”.

- b) That, the Standing Orders be amended to allow for ALL Cabinet Secretaries, including the Prime Cabinet Secretary to respond to Questions in plenary every **Wednesday from 2:30pm to 5:30pm**, during regular sittings. The Cabinet Secretaries will be required to-

- (i) Respond to Questions raised by Members of Parliament including Supplementary Questions asked by Members that relate to the original Question;
- (ii) Provide the official government response/position to the House on various matters raised by Members;
- (iii) Provide statements on government policy on various subjects; and
- (iv) Take up any directions that may be issued on the floor of the House.

- c) That, the Speaker designates a suitable place in the Chamber or at the bar of the House for a Cabinet Secretary to reply to Questions and provide Reports concerning matters under his or her control. This is taking into account that Standing Order 25A provides for the designation of a place in the Chamber 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 –

(b) Other persons to make submissions or presentations before the House.”

- d) That, Standing Order 25A be amended to allow Cabinet Secretaries to respond to Questions as envisaged under Article 153 of the Constitution.
- e) That, the Standing Orders be amended to provide for general rules to apply to Questions.
- f) That, the Standing Orders be amended to allow the provisions of the Parliamentary Powers and Privileges to apply to a Cabinet Secretary admitted to the House.
- g) That, the sitting of the Wednesday afternoons be extended by two (2) hours so as to accommodate transaction of other Parliamentary business.

Appended to this Report is the text of the proposed amendments to the Standing Orders (First Schedule), the Memorandum from H. E. the President Dr. William Samoei Ruto, CGH to the Speakers of the National Assembly and the Senate (Second Schedule) and minutes of the Committee on the consideration of the proposed amendments.

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. GLADYS J. BOSS, MGH, MP
DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY

March 01, 2023

MANDATE OF THE COMMITTEE

Hon. Speaker,

1. The Procedure and House Rules Committee is established under Standing Order 208 that stipulates that the Committee –
 - (i) Shall consider and report on all matters relating to the Standing Orders.
 - (ii) May propose amendments to the Standing Orders and any such amendments shall upon approval by the House, take effect at the time appointed by the House.
 - (iii) May propose rules for the orderly and effective conduct of committee business and any such rules, shall upon approval by the House, continue in force until amended or repealed by the House.
2. 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 proceeding, including the proceedings of its committees.” Further, Standing Order 262 of the National Assembly Standing Orders provides that the Procedure and House Rules Committee may at any time propose amendments to the Standing Orders.

COMPOSITION OF THE COMMITTEE

3. The Committee comprises of the following Members –

S/No	Name/Member	Designation	Political Party	Constituency
1.	The Rt. Hon. Moses M. Wetang'ula, EGH, MP - Chairperson	Speaker of the National Assembly	NA	NA
2.	The Hon. Gladys Boss, MGH, MP	Deputy Speaker	UDA	Uasin Gishu
3.	The Hon. Martha Wangari, MP	First Chairperson of Committees	UDA	Gilgil
4.	The Hon. David Ochieng, MP	Second Chairperson of Committees	MDG	Ugenya
5.	The Hon. Omboko Milemba, MP	Third Chairperson of Committees	ANC	Emuhaya
6.	The Hon. Farah Maalim, MP	Fourth Chairperson of Committees	WDM	Dadaab
7.	The Hon. Peter Kaluma, MP	Fifth Chairperson of Committees	ODM	Homa Bay Town
8.	The Hon. (Dr.) Rachel Nyamai, MP	Sixth Chairperson of Committees	JP	Kitui South
9.	The Hon. Baya Yaa, CBS, MP	Deputy Leader of the Majority Party	UDA	Kilifi North
10.	The Hon. George Murugara, MP	Member	UDA	Tharaka
11.	The Hon. Mpuru Aburi MP	Member	NOPEU	Tigania East
12.	The Hon. David Kiaraho, MP	Member	JP	Oi Kalou
13.	The Hon. Anthony Oluoch, MP	Member	ODM	Mathare
14.	The Hon. (Dr.) Lilian Gogo, MP	Member	ODM	Rangwe
15.	The Hon. Shimbwa Omar Mwinyi, MP	Member	ODM	Changamwe
16.	The Hon. Joseph Emathe Joseph, MP	Member	UDA	Turkana Central
17.	The Hon. (Prof.) Bartoo Phylis, MP	Member	UDA	Moiben
18.	The Hon. Kilel Richard, MP	Member	UDA	Bomet Central
19.	The Hon. Gichohi Kaguchia, MP	Member	UDA	Mukurweini
20.	The Hon. Mukunji John, MP	Member	UDA	Manyatta
21.	The Hon. Yakub Adow Kuno, MP	Member	UPIA	Bura

Party Key:

- ANC - Amani National Congress
 FORD-K - Forum for the Restoration of Democracy - Kenya

JP	-	Jubilee Party
KANU	-	Kenya African National Union
MDG	-	Movement for Democracy and Growth
NOPEU	-	National Ordinary People Empowerment Union
ODM	-	Orange Democratic Movement
UDA	-	United Democratic Movement
UPIA	-	United Party of Independent Alliance
WDM	-	Wiper Democratic Movement

Committee Secretariat

4. The Committee Secretariat is composed of the following technical staff –

- | | | |
|-------------------------------|---|-----------------------------|
| 1. Ms. Rachel Kairu | - | Principal Clerk Assistant I |
| 2. Ms. Anna Musandu | - | Senior Clerk Assistant |
| 3. Mr. Ronald Walala | - | Senior Legal Counsel |
| 4. Ms. Perpetual Muiga-Karanu | - | First Clerk Assistant |
| 5. Ms. Getrude Chebet | - | Second Clerk Assistant |
| 6. Mr. Antony Kariuki | - | Assistant Serjeant-at-Arms |

CHAPTER ONE

INTRODUCTION

5. Article 124 of the Constitution of Kenya permits each House of Parliament to “... *make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.*” In parliamentary practice, Standing Orders, also known as rules of procedure, regulate the proceedings of a legislative body and govern the procedures to be adopted in carrying out the mandate of that body. By practice, Standing Orders do not lapse at the end of a session or a term of Parliament and thus the continuing or “standing” nature of these rules. Standing Orders remain in force until the House suspends, changes or repeals them, through amendment or review.
6. As parliamentary environments keep evolving, regular reviews of the Standing Orders ensure that the House and its committees continue to operate with efficacy and relevance adapting to the circumstances of the time. Continuous review and improvement allow for refinement of procedures and keeps pace with emerging trends. It is observed that in most parliamentary jurisdictions, reviews of the Standing Orders are conventional considering the ever changing landscape in political governance. Nonetheless, the changes may be necessitated by not only the prevailing political organization of the country but also socio-economic realities of the time.
7. An example of this was experienced in 2020 when the National Assembly realigned its procedures in response to the COVID-19 global pandemic. The House amended its Standing Orders to include a new Part on the *Conduct of Proceedings in Exceptional Circumstances*. The amendment sought to provide for the conduct of plenary and Committee sitting during periods when physical sittings of the House or Committees may not be possible including *declaration of an epidemic, pandemic, extreme natural phenomena, pestilence or an act of terrorism*.
8. Standing Orders are typically derived from four main sources –
 - (i) **Parliamentary practice**, being matters established over the years that do not require to be formally written down or stated;
 - (ii) **General rules** of conduct of business that are altered from time to time by the House;

- (iii) **Rulings** from the Chair and precedents, which give guidance on new or emerging areas of procedure; and
 - (iv) **Constitutional provisions and Statute** governing how the House conducts proceedings on particular/specific matters e.g. the legislative process, financial procedures, approval of appointment of persons to State offices, etc.
9. In many national parliaments, Questions serve a major form of legislative oversight. Question time is the period in which executive officials appear before legislature to answer Questions posed by Members of a legislature seeking information about executive actions and policies. They allow Members to raise concerns about any contemporary matter, including administration policy, responses to events as well as specific constituents concerns. Thereby, the Executive is held to account and scrutinized by the Legislature. The system in turn requires the Executive to explain and defend their actions as well as current policy.
10. Existing Question time in many legislatures vary widely in their format, procedure and particulars. Often, custom and traditions are important as institutional structure in determining how a given Question time functions in practice and how effectively it serves its stated goals.
11. There are written Questions for oral answers, oral Questions for written answers, oral Questions for oral answers and written Questions for written answers. Questions can either be asked to clarify various legislative proposals presented by Cabinet Members or to explain matters of national concern.

CHAPTER TWO

PAST ATTEMPTS AT HAVING MEMBERS OF THE EXECUTIVE APPEAR BEFORE MEMBERS TO ANSWER QUESTIONS

Establishment of the Committee on General Oversight

12. In August 2014 the Procedure and House Rules Committee tabled a report in the House on Review of Standing Orders in a bid to operationalize the provisions of Article 153 (3) of the Constitution and recommended, *inter alia*, the establishment of the Committee on General Oversight.
13. Thereupon, the House resolved to amend the Standing Orders by inserting a new part that established a Committee that was known as the Committee on General Oversight comprising of all Members of the National Assembly before which, Cabinet Secretaries were to appear to answer any Question concerning matters for which they were responsible pursuant to Article 153(3) of the Constitution.

The Committee was to be chaired by the Speaker, and the Deputy Speaker was, in absence of the Speaker, to preside over the Committee.

Key Features of the Committee on General Oversight

14. The key features of the Committee on General Oversight were as follows:
 - a) The Committee was to be chaired by the Speaker of the National Assembly;
 - b) The Quorum at the commencement of the meeting was sixteen (16) Members;
 - c) The Leader of the Majority Party was to consult the Speaker in creating the agenda of the Committee and in Scheduling of Questions;
 - d) The Sittings of the Committee were to be held every Tuesday from 10.00am to 12.30pm;
 - e) A maximum of three (3) Cabinet Secretaries were to be invited at any one time;
 - f) Between ten (10) to twenty (20) Questions were to be posed to the Cabinet Secretaries but on average not more than five (5) Questions were to be directed to each Cabinet Secretary;
 - g) Supplementary Questions were to be allowed so long as they related to the original Question;

- h) The option for obtaining written reply from the Cabinet Secretaries was available;
- i) There was to be verbatim recording of the proceedings; and
- j) The Cabinet Secretaries were to be accorded privileges similar to those of witnesses invited to the National Assembly.

Premise of the Amendment

15. The establishment of the Committee on General Oversight was informed by:

- (i) 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.'*
- (ii) The need to operationalize Article 153 (4) (b) of the Constitution of Kenya 2010, which states that *'A Cabinet Secretary shall provide Parliament with full and regular reports concerning matters under their control;'*
- (iii) The need to change the practice of using Statements in a bid to obtain ministerial feedback. This is because the practice was no longer working effectively owing to the fact that Chairpersons of Committees were expected to answer Questions on behalf of Cabinet Secretaries, which was difficult considering that Chairpersons had limited access to information sought by the Members of the National Assembly;
- (iv) The report obtained after a Study Tour of France where the Procedure and House Rules Committee found that even though Ministers cease to be Members of Parliament upon appointment to the Cabinet, they nevertheless continued to appear in Parliament to answer Members' Questions;
- (v) 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, and;
- (vi) The fact that majority of the Departmental Committees were spending most of their time seeking information and responding to Statements and Questions instead of focusing on other key mandate including scrutiny of budget estimates; introduction and review of legislation; investigation, inquiry into, and reporting

on matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; monitoring and reporting on the implementation of the national budget in respect of their mandate, amongst other mandates.

Speaker's Ruling Suspending the Committee on General Oversight

16. Following a Memorandum from the then His Excellency the President dated 17th October 2014 regarding the amendments to the Standing Orders requiring the attendance of the Cabinet Secretaries before the Committee on General Oversight calling for a stay of the provisions and review of the same in view of the doctrine of separation of powers, the Speaker issued new guidelines.

The then His Excellency, the President recommended the stay of the newly introduced Standing Orders. Consequently, the Speaker ruled that the operations of the Committee on General Oversight be suspended.

17. In unpacking the concept of *executive-legislature accountability*, it is worth revisiting the institutional existence of legislatures, the foundation upon which the legislature exercises legislative authority and the process of legislating. All over the world, parliaments exist to represent the people to ensure government by the people. This is said to be the most profoundly important role that parliament plays as an institution. Parliament represents the people by articulating the views of citizens in decision-making processes.

Additionally, Parliament legislates and exercises oversight over other state organs. Parliament can thus be said to be the bedrock of representational democracies. It is worth noting that the work of Parliament is people-centred, theoretically at least, around transparency and openness. This gives the public insight into governance and critical decision-making.

Doctrine of Separation of Powers

18. The doctrine of separation of powers proposes that principal institutions of state: the Executive, Legislature and Judiciary should be divided in person and in function in order to safeguard liberties and guard against tyranny.

The doctrine of separation of powers was explained by the French Jurist Montesquieu (1689-1755) in his well celebrated work, *The Spirit of Laws*, as follows –

“When legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty... there is no liberty if the powers of judging are not separated from the legislative and executive... there would be an end to everything, if the same man or the same body were to exercise those powers”.

19. This separation of powers ensures that there is a system of checks and balances between the branches of government. The Constitution of Kenya under Article 1 (3), and 174(i) and 175(a) does provide for separation of powers between arms of government for both levels of government. Chapters 8, 9 and 10 of the Constitution also provide for checks and balances, and how these powers and functions of the arms of government overlap.
20. However, borrowing from the words of H. E. the President Dr. William Samoei Ruto, CGH in his Memorandum to the Speakers of the National Assembly and the Senate dated 9th December 2022, H.E. the President said:

“It is ill-considered to interpret the rigid separation of powers established under the Constitution as the effective insulation of various institutions and organs of government from oversight and accountability. I believe that our government will become more responsive, accountable and effective when it is subjected to rigorous oversight. There is tremendous benefit in experiencing checks and balances in the course of policy implementation.”

CHAPTER THREE

A Case for Admission of Cabinet Secretaries to Respond to Questions in the House

21. The Kenyan Constitution does not explicitly provide for Cabinet Secretaries appearance before the House of Parliament, nevertheless, Article 153 (3) of the Constitution requires a Cabinet Secretary to attend before a Committee of Parliament when required by the Committee to answer any Question on a matter concerning their responsibility. However, the direct engagement of a Cabinet Secretary with House plenary is limited to the Cabinet Secretary responsible for Finance to make public pronouncement of the budget policy highlights and revenue raising measures as provided for in Standing Order No. 25A (a) of the National Assembly.
22. The existence of **Article 125 of the Constitution** is crucial for consideration of this matter as it provides room for summoning Cabinet Secretary to appear before the House or Committees.

“125. (1) 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.

(2) For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court—

(a) to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;

(b) to compel the production of documents; and

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

23. This Article is further strengthened and operationalized by the Parliamentary Powers and Privileges Act, 2017 which gives power to the National Assembly to order witnesses to appear before the House or a Committee for purposes of providing information. Standing Order 25A provides for the designation of a place in the Chamber 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 –

(b) Other persons to make submissions or presentations before the House.”

Therefore, amendments as contained in this Report of the Procedure and House Rules Sub-Committee (*Annex one*) to various elements of the Standing Orders will allow the appearance of Cabinet Secretaries in the House to answer Questions.

Accountability of the Executive to Parliament

24. In most presidential systems, the Executive is politically accountable to Parliament. Constitutions in these systems provide for ministers to be responsible for an area of government that falls under their purview. More importantly is the question of how to incorporate members of the Cabinet into plenary to answer Questions. Some jurisdictions have explicit constitutional provisions requiring executive members to appear before the House to exercise their accountability. Others have provisions in their rules of procedures without necessarily having it expressly in the constitution.

Types of Questions and Answers

25. The Executive is held to account by Parliament through putting Questions to Cabinet Members. There are written Questions for oral answers, oral Questions for written answers, oral Questions for oral answers and written Questions for written answers. Questions can either be asked to clarify various legislative proposals presented by Cabinet Members or to explain matters of national concern.

In this regard, the Procedure and House Rules Committee recommends that, Members be accorded the opportunity to ask Questions to the Cabinet Secretaries' and 'supplementary Questions be allowed so long as they relate to the original Question.

Time allotted, Notice Period and Frequency

26. The manner of carrying out Questions vary regarding time allocated, notice period and the frequency of the Question sessions. Some jurisdictions reserve sessions per week particularly for members' Questions and replies. Standing Order 44 provides for Statement Hour. Similarly, the Standing Orders may be amended to provide for Question Hour.

The Procedure and House Rules Sub-Committee recommends that, Question Time by Cabinet Secretaries be scheduled every Wednesday from 2.30pm to 5.30pm.

Debate

27. Some parliaments allow the address by Cabinet Members to give rise to debates while others do not. For example, in some jurisdictions, Questions may only be asked for fact-finding purposes and may not give rise to a debate. For instance, when the Cabinet Secretary responsible for Finance makes a public pronouncement of the budget policy highlights and revenue raising measures for the national government; the Speaker does not allow any Questions or clarifications to the Statement. This may apply to when a Cabinet Secretary of a different ministry intends to articulate a certain policy or provide a House with reports concerning matters under their province to the House.

Potential Advantages of a Question time

28. The Committee on Procedure and House Rules is of view that adopting Question time in the National Assembly has the following advantages:-

That, a Question time will;

- a) improve oversight of the executive as it could lead to improved accountability of the executive branch. By serving as a **complement to the Committee system**, a Question time will allow **all Members** direct access to Cabinet Secretaries. It will allow for routine, timely oversight by the entire House membership thus improving the performance of Ministries and Executive departments;
- b) allow for wider oversight participation.- Under the current Committee-based Question system, only the Member who had asked a Question and Committee Members are allowed to Question the Executive branch. A Committee may permit Members of the House who are not Members of his or her Committee to sit in, with written permission of the Chairperson, but such instances are infrequent. Most Members therefore usually have little opportunity to question a Cabinet Secretary. The proposed Question time will allow **any Member** to hear from a Cabinet Secretary and pose supplementary Questions, if they wish, time permitting;
- c) produce timely answers from the Executive branch compared with the current Committee-based System which is, not a speedy means of obtaining information. Committee meetings may take place months after a Question has been raised. It is also worth noting that many Questions **are never answered whatsoever**. For instance, in the 11th Parliament, a total of 391 Questions were submitted, of

which 118 were responded to. During the 12th Parliament, out of a total of 1974 Questions referred to relevant Committee's, only 30 percent were replied to and concluded. This has partly led to diminished interest in the current Question Time in Committees and an **increase in the number of Petitions and Statements**. Indeed, Questions submitted for written response could receive responses even more faster ensuring that Members serve their constituents and play their oversight role;

- d) result in procedural efficiency as Members are not likely to ask the same questions offered by others in their absence as is the case in the current Committee-based system where a Member may be present for only part of the hearings, and thus may inadvertently ask many of the same questions offered by other Members in his or her absence;
- e) promote a more positive relationship between the legislative and the executive arms of the government. Regular interactions by the executive with the legislature will lower the institutional barriers between the two branches. Currently, there's little formal public interaction between Members of the House and the Executive arm as the Cabinet Secretaries only appear before Committees, and consequently, come into direct contact most frequently with only a limited number of Members. Questions by the general Membership of the House will also expose Cabinet Secretaries to a wider variety of House opinion. At the same time, executive branch accountability to the House will be emphasized in a visible manner;
- f) strengthen the political power of the House as an institution relative to the executive branch. By having the Cabinet Secretaries on the same stage as the House, the House will most likely occupy a stronger institutional position in the mind of the public. In addition, public communication between the legislative and executive branch regarding important issues will increase, as well as public attention to issues; and
- g) raise public awareness of contemporary issues and generate increased public interest in legislative activity and policy options. Even if Question time will have little ability to provide Members with substantial information from the executive branch, it certainly will make for lively debate, which in turn will attract a wide public audience to public affairs. Experiences with Question time in other jurisdictions indicate that Question time is very popular among the general public. It raises public awareness about contemporary issues and different policy options available.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF OTHER PARLIAMENTS/JURISDICTIONS HANDLING QUESTIONS IN PRESIDENTIAL SYSTEMS OF GOVERNMENT

29. The practice of *having Cabinet Secretaries appearing before Parliament to answer to Parliamentary Questions* is as old as the institution of Parliament and is manifested in the rules of procedure for many parliaments. Existing Question time in parliamentary democracies vary widely in their format and procedures. Presidential systems of government rely on the principle of separation of powers, transparency, and accountability. Information is power hence, if one branch of government has the power to control information then that represents the ability to control policy, legislation and decision-making.
30. To correct this, access to information by the legislature should be reconsidered alongside its oversight role. Both transparency and accountability have been enhanced in various jurisdictions with presidential systems of government through periodic question and answer sessions between the legislature and executive. The platform allows for close examination of the work of the executive. Parliament can and should continue innovating ways of enhancing the legislative role, especially the accountability of the executive.

The following is a comparative analysis of some parliaments/jurisdictions handling Questions in presidential systems of government:-

(i) The Parliament of Philippines

31. In Philippines, the President has control over the executive under Article 7 (17) of the Constitution hence members of cabinet are directly accountable to him or her. In addition, the Constitution also provides for a system of checks and balances enabling Parliament to conduct oversight of the affairs of the executive. Parliamentarians may ask oral and written Questions for fact-finding purposes but may not give rise to debate. Moreover, heads of departments, cabinet members, governor of the central bank and head of government on their own initiative, with consent of the President, or upon the request of Parliament, appear on any matter concerning their departments pursuant to the provisions of Article 6 (22) of the Constitution. A resolution to summon a public official must state explicitly and succinctly the Questions to be answered including the

date and time when the summoned state officer must appear and give the desired information.

32. There are two sets of appearances: upon initiative of head of the executive department and upon request of the House. When a head of department desires to appear before the House on any matter concerning their docket, he or she may with the consent of the President notify the House through the Speaker who with the concurrence of the House sets a date and hour for that appearance. The House can equally request the departmental head to appear on any matter concerning their department. Such a request shall state specifically the questions sought, the date and hour for the appearance which shall be scheduled at least three (3) days from the receipt of such request.
33. The standards set for Questions are based on facts and asked to obtain information or press for action. Section 31 of the Standing Orders of the Parliament of the Philippines require that Questions are not to be argumentative, pre-empt answers, include unparliamentary language or expressions, pertain to *sub judice* matters, seek an opinion on a Question of law, and repeat previously asked Questions. Unanswered Questions may be answered in writing or where necessary, during a day set by the Speaker before the next Question Hour. The Committee on Rules facilitates coordinates and expedite all matters relating to the conduct of Question hour.

(ii) Parliament of Belarus

34. The House of Representative in Belarus allocates one sitting every month for Members to put oral Questions to Cabinet Members. Such Questions are tabled at least five (5) days before the sitting occurs. A parliamentarian who has placed a written query in advance has the right to ask follow-up Questions after a cabinet member has answered the written Question. If a cabinet member is unable to report to the joint sessions of the Houses of Parliament, he may submit a written reply which is forwarded to the Members of both Houses. If a member is not satisfied with the written reply, he is entitled to address further Questions to the Government pursuant to the provisions of Article 103 of the Constitution.
35. When a written Question is put to the Prime Minister or cabinet members, the official concerned has **twenty (20) session days to provide a reply**. The Question and the reply are published officially. Persons to whom Questions are addressed bear official responsibility for providing timely answers and ensure that the information provided is complete and authentic.

(iii) Parliament of Cyprus

36. A member wishing that any question or matter of general interest be debated at any sitting of the parliament makes his request upon the announcement by the Speaker of the agenda of the next sitting and moves that such question or matter be registered for debate. A member may ask that any question or matter of exceptional interest and unforeseen circumstances be debated immediately or at any sitting of the parliament regardless of whether it has been entered or not in the agenda.

(iv) Parliament of France

37. In the Parliament of France, though Ministers cease to be Members of Parliament upon appointment to the Cabinet, they nevertheless continue to appear before Parliament to answer Members' Questions.
38. The Constitution stipulates that at least one (1) sitting a month is reserved for Questions and government replies. Cabinet members appear before the National Assembly on their own initiative. However, failure to appear can lead to a Cabinet member being censured with the tabling and voting of a motion of censure by the Assembly.
39. Two procedures now used for oral Questions: one period called "oral Questions" and one called "government Question time." Oral Questions, which typically involve Questions local in nature, are currently asked on Tuesday. Such Questions are screened in advance by the President's Conference, a steering committee comprised of the heads of all the parties represented in the chamber. Seven minutes are allotted for each Question, including the answer and follow-up Questions from the Member. In the 2005-2006 ordinary session, 384 Questions were asked.
40. The second procedure, government Question time, usually considers issues more national and political in character. Government Question time takes place for one hour each Tuesday and Wednesday. Five minutes are allotted per Question (including answer and follow-ups), and thus 12 Questions are asked each day. The process is overseen by the President's Conference, which allots the Questions to parties based on numerical strength. The Questions are not screened in advance. The President's Conference may decide to permit a brief period of chamber debate after a Minister responds to a particularly important Question, but most oral Questions are simply

followed up by one or two supplementary Questions from the inquiring Member. Questions for written response form the bulk of inquiries in the assembly and Members are allowed unlimited written Questions, and the Questions often reflect constituent casework inquiries. Answers are expected to be obtained within two months. Both Questions and responses are printed in the official journal. Members may submit Questions electronically, and all Questions and answers are publically searchable on the Parliament's website.

(v) Parliament of Gabon

41. The government conducts its national policy under the authority of and in cooperation with the President. Article 28 of the Constitution stipulated that the government is collectively responsible to the National Assembly and the President. The National Assembly uses hearings in committees and oral and written Questions of Members to exercise oversight as provided for in Article 61 of the Constitution. **One session per week is reserved** for the Questions and answers from Members of Parliament and government respectively.
42. Current issues may be the subject of executive interpellations, even during exceptional parliamentary sessions. The executive is required to supply the National Assembly with all the information required of its management and activities. There is also a provision for turning written Questions into oral Questions with a debate. The executive responds to oral Questions immediately and offers a 30-day response to written Questions. Oral Questions do not give rise to debate except when the answers provoke further Questions or if Members are not satisfied with the information provided.

(vi) The United States of America Congress

43. The United States of America, which is a presidential system of government, does not have Question time with secretaries of State in the Congress. A parliamentary delegation that undertook a study visit in the US Congress in January 2023 learnt that the practice in the US congress is such that no stranger is allowed to enter any part of the Congress. The Congress is a reserve of only elected representatives and officers of the House. However, **congressional hearing** is the principal formal method by which the US Congressional Committees collect and analyze information in the early stages of legislative policymaking.
44. There are six types of Congressional hearings; Legislative, Oversight, Investigative, Confirmation, Ratification and Field. The one type of hearing that may be considered an

equivalent of Question time is oversight hearings. Oversight hearings often seek to improve the efficiency, economy, and effectiveness of government operations. Congressional Committees' hearings take place on the **second Thursday of each month at 10:00am** when the House is in session.

45. During the oversight hearings, the Secretary is seated at the witness table facing the legislators. There are typically three to five witnesses at each hearing. There will be a name placard indicating where the witness will sit, and in front of will be a thin, adjustable microphone attached to box. The box will have a button to work the microphone, a timer, and a set of lights.
46. When oral testimony begins, the Secretary will have five (5) minutes to speak. Additionally, the clock will start to count down and a green light will come on. When the counter is down to thirty (30) seconds, a yellow light will come on whereby the Secretary the needs to start their conclusion. When the red light comes on, time is up, and one needs to stop. After the Secretary has presented, the legislators have five (5) minutes to ask Questions.
47. It is worth noting however, that periodically, several proposals to increase the formal contact between the executive branch and Members of the Congress have been made by American scholars and public officials **to permit, or require, executive branch officials to appear before the Congress to answer questions and to explain policy.** Most of these proposals favoured various forms of Question time for members of the Cabinet, and even for the President to appear on the floor of the House and/or Senate as debate participants, but not to vote.
48. The earliest proposal was made during the Civil War, through introduction of the first of the several bills that sought to permit Cabinet Secretaries to privilege of the House and Senate with the right to debate matters affecting their departments. The Cabinet Secretaries were to be available for Questions submitted by Members and by Committees on two days of the week. Although the measure received the support of many senior Congressmen, the Bill was never taken to a vote. Other proposals include, the Taft proposal of 1912, the Kefauver proposal of 1943, the Mandale proposal of the 1970s, the Gejdenson proposal of 1990 which was actually endorsed by the House Democratic Caucus and the presidential candidate McCain proposal of 2008.
49. Indeed, other accounts have suggested that both President Carter and President Clinton considered the possibility of creating a parliamentary-style Question period in the

congress. During the 1976 presidential election campaign, President Carter indicated his support for a Question period. At a speech announcing his candidacy, carter stated as follows;

“We must better public understating of executive policy, and better exchange of ideas between the Congress and the White House. To do this, Cabinet Members representing the President should meet in scheduled public interrogation sessions with the full bodies of Congress.”

50. Accounts also suggest that President Clinton considered proposing that he answers Questions from Congress, the day after the State of the Union address in 1993. Indeed, House majority leader Richard Gephardt promoted the idea after observing that Clinton’s rhetorical ability at a party caucus meeting but the idea did not go further.

CHAPTER FIVE

CONCLUSION AND OBSERVATIONS

51. From the comparative analysis, appearance of Members of Cabinet in the House of Parliament to answer Questions from Members remains one of the major tools of legislative oversight, scrutiny and accountability for the Executive for parliament. The US Congress is an exemption since it conducts its oversight through congressional hearings. However, periodically, several proposals to increase the formal contact between the executive branch and Members of the Congress have been made by American scholars and public officials to permit, or require, executive branch officials to appear before the Congress to answer questions and to explain policy with most of the proposals favouring various forms of Question time for members of the Cabinet,
52. Some jurisdictions have **explicit constitutional provisions** requiring executive members to appear before the House to exercise their accountability. Others have **provisions in their rules of procedures without necessarily having it expressly in the constitution.**
53. Introducing a Questions statement in the National Assembly will improve the performance of Ministries and State Departments, enhance parliamentary oversight capabilities, promote inter-branch dialogue, increase public knowledge and interest in government affairs and strengthen the institutional position of the National Assembly within the government.
54. Therefore, **introduction of appearance of Cabinet Secretary in plenary is not out of the normal.** However, reflecting on the variations of the reviewed parliaments and transplanting practices from parliaments under presidential systems must be done carefully with consideration of the provisions of the Kenya Constitution and current National Assembly Standing Orders.
55. Introducing Question Time is likely to reduce the number of Petitions and Statements and increase the visibility of the House.
56. In assessing the merits or otherwise of having Cabinet Secretaries appearing before the House to respond to Questions, the Procedure and House Rules appreciated that the Constitution of Kenya is unique and requires careful navigation, especially on matters

that touch on the principle of separation of powers. Much as the provisions relating to appearance of Cabinet Secretaries in the House to respond to Questions were not anchored in the Constitution, its intended spirit transcends constitutional changes. The 2010 Constitution unequivocally recognizes the centrality of Cabinet Secretaries appearing before Committees of the House to make reports and answer to any Questions put to them.

RECOMMENDATIONS

57. Pursuant to Standing Order 262 of the National Assembly Standing Orders and taking into consideration the observations and findings made, the Procedure and House Rules Committee recommends to the House as follows –

- a) That, the House operationalizes the provisions of **Article 125 of the Constitution** regarding the power to summon any person to appear before the House or Committees, which stipulates as follows.

“125. (1) 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”.

- b) That, the Standing Orders be amended to allow for ALL Cabinet Secretaries, including the Prime Cabinet Secretary to respond to Questions in plenary every **Wednesday from 2:30pm to 5:30pm**, during regular sittings. The Cabinet Secretaries will be required to-

- (i) Respond to Questions raised by Members of Parliament including Supplementary Questions asked by Members that relate to the original Question;
- (ii) Provide the official government response/position to the House on various matters raised by Members;
- (iii) Provide statements on government policy on various subjects; and
- (iv) Take up any directions that may be issued on the floor of the House.

- c) That, the Speaker designates a suitable place in the Chamber or at the bar of the House for a Cabinet Secretary to reply to Questions and provide Reports concerning matters under his or her control. This is taking into account that Standing Order 25A provides for the designation of a place in the Chamber 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 –

(b) Other persons to make submissions or presentations before the House.”

- d) That, Standing Order 25A be amended to allow Cabinet Secretaries to respond to Questions as envisaged under Article 153 of the Constitution.
- e) That, the Standing Orders be amended to provide for general rules to apply to Questions.
- f) That, the Standing Orders be amended to allow the provisions of the Parliamentary Powers and Privileges to apply to a Cabinet Secretary admitted to the House.
- g) That, the sitting of the Wednesday afternoons be extended by two (2) hours so as to accommodate transaction of other Parliamentary business.
- h) That, the manner of processing Questions in plenary be as follows;
1. **Designation of a place in the Chamber for Cabinet Secretaries**
The Speaker would designate a suitable place in the Chamber or at the bar of the House for a Cabinet Secretary to reply to Questions and provide Reports concerning matters under his or her control.
 2. **Order Paper**
The Questions shall be appended to the Order Paper printed on green paper on the day when Cabinet Secretaries would appear to answer Questions (**Wednesdays Afternoons**).
 3. **Weekly programmes of the business of the National Assembly**
The Clerk shall prepare and publish on the parliamentary website a tentative list of Cabinet Secretaries scheduled to reply to Questions and provide Reports to the House.
 4. **Sequence of proceeding**
On **Wednesday afternoons**, Questions and Reports by Cabinet Secretaries shall have precedence over all other business for a period not exceeding **three hours**.
 5. **Scheduling of Questions**
 - (i) A Member shall ask his or her Question on the day it is scheduled in the Order Paper.
 - (ii) The Leader of the Majority Party shall inform the House of the date, time and order in which Cabinet Secretaries shall appear to reply to Questions and provide Reports to the House.

- (iii) In determining the date and time when a Cabinet Secretary shall be required to answer a Question, the Leader of the Majority Party shall consider the urgency of the Question as determined by the Speaker.
- (iv) The Speaker may, on request of the Leader of the Majority Party vary the order in which Questions shall be disposed of, or defer a Question scheduled to be responded to.
- (v) A Question may include a request for a Report from a Cabinet Secretary concerning matters under the control of the Cabinet Secretary.

6. Manner of disposing Questions

- (i) A Cabinet Secretary shall provide physical and electronic copies of the reply to a Question at least a day before appearing before the House.
- (ii) The House shall dispose of a Question in the sequence it appears in the Schedule of Questions or as the Speaker may direct.
- (iii) The Speaker may—
 - (a) permit the Member who raised a Question to ask a maximum of **two supplementary Questions** that relate to the original Question;
 - (b) permit a Member other than the Member who asked a Question to ask a further supplementary Question that relates to the original Question;
 - (c) direct a Cabinet Secretary to provide additional information or a further reply to a Question or supplementary Questions to the relevant Committee of the House;
or
 - (d) defer a Question to a different time or day from its scheduled time and day.

7. Questioner's Absenteeism

A Member may ask a Question on behalf of another Member who is absent if the absent Member has given a prior written notice to the Speaker.

8. Deferred Questions

Deferred Questions shall be deferred to the next date when the Cabinet Secretary is scheduled to appear before the House. It is important to note that during any Sitting, it is not possible for the Speaker to know/determine the next date when the Cabinet Secretary would be scheduled to appear.

9. Questions for written reply

Where a Member prefers a written reply to his or her Question—

- (i) the Speaker shall direct that a written reply be provided in respect of the Question; and
- (ii) the Clerk shall forward the Question to the relevant Cabinet Secretary and, upon receipt, provide the written reply to the Member.

10. Timeline for reply

- (i) A Cabinet Secretary shall reply to a Question within **fourteen (14)** days of referral of the Question (The Questions, will be asked, referred and answered on the day to be determined by the Leader of Majority Party)
- (ii) Where the Speaker determines a Question to be urgent, a Cabinet Secretary shall reply to the Question within two (2) days of referral of the Question.

11. Questions to Commissions and Independent Offices

A Commission or Independent Office to which a Question is directed shall reply before the relevant Committee of the House.

12. Rules on Questions

- (i) A Question shall only cover one subject.
- (ii) The Question should be direct, but additional information adding value to the Question can be added into the Question.

ANNEXURES

ANNEXURE 1: ADOPTION LIST



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT – (SECOND SESSION)
THE NATIONAL ASSEMBLY




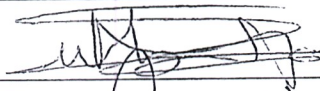
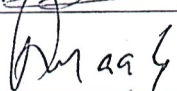
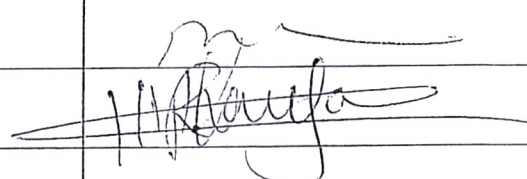
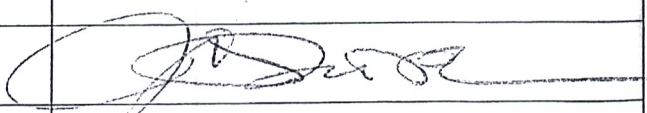

THE PROCEDURE AND HOUSE RULES COMMITTEE

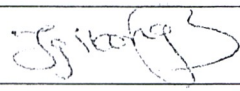
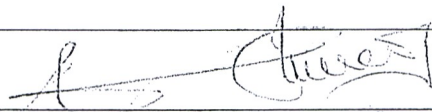
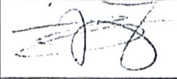

ADOPTION OF THE REPORT OF THE PROCEDURE AND HOUSE RULES COMMITTEE
ON THE PROPOSED AMENDMENTS TO THE STANDING ORDERS TO PROVIDE FOR
PROCEDURE FOR THE APPEARANCE OF CABINET SECRETARIES BEFORE THE
HOUSE TO RESPOND TO QUESTIONS

Date: Wednesday, March 1, 2023

Venue: Committee Room No. 7
Main Parliament Buildings

ADOPTION LIST

No	NAME	SIGNATURE
.	The Rt. Hon. Moses M. Wetang'ula, EGH, MP - Chairperson	
.	The Hon. Gladys Boss, MGH, MP	
.	The Hon. Martha Wangari, MP	
.	The Hon. David Ochieng, MP	
.	The Hon. Omboko Milemba, MP	
.	The Hon. Farah Maalim, MP	
.	The Hon. Peter Kaluma, MP	
.	The Hon.(Dr.) Racheal Nyamai, MP	
.	The Hon. Owen Baya, CBS, MP	
0.	The Hon. Joseph Emathe, MP	
1.	The Hon. George Murugara, MP	
2.	The Hon. (Prof.) Phylis Bartoo, MP	
3.	The Hon. Richard Kilel, MP	

S.No	NAME	SIGNATURE
14.	The Hon. John Kaguchia, MP	
15.	The Hon. John Mukunji, MP	
16.	The Hon. Aburi Mpuru, MP	
17.	The Hon. David Kiaraho, MP	
18.	The Hon. Anthony Oluoch, MP	
19.	The Hon. Lilian Gogo, MP	
20.	The Hon. Omar Mwinyi, MP	
21.	The Hon. Kuno Yakub, MP	

SUBMITTED BY: .....
PRINCIPAL CLERK ASSISTANT

ANNEXURE 2: MINUTES

MINUTES OF THE FIRST MEETING OF THE PROCEDURE AND HOUSE RULES COMMITTEE HELD ON WEDNESDAY, NOVEMBER 23, 2022 IN COMMITTEE ROOM 7 AT 4:30 PM

PRESENT

1. The Rt. Hon. Moses M. Wetang'ula, EGH, MP - Chairperson/Speaker of the National Assembly
2. The Hon. David Ochieng, MP - Second Chairperson of Committees
3. The Hon. (Dr.) Rachel Nyamai, MP - Sixth Chairperson of Committees
4. The Hon. George Murugara, MP - Member
5. The Hon. Antony Oluoch, MP - Member
6. The Hon. Emathe Joseph, MP - Member
7. The Hon. Richard Kilel, MP - Member

IN ATTENDANCE

1. Mr. Samuel Njoroge - Clerk of the National Assembly
2. Mr. Kipkemoi Arap Kirui - Ag. Director, Legislative & Procedural Services
3. Ms. Rachel Kairu - Principal Clerk Assistant I
4. Ms. Anna Musandu - Senior Clerk Assistant
5. Mr. Ronald Walala - Senior Legal Council
6. Ms. Getrude Chebet - Second Clerk Assistant
7. Mr. Moses Lomale - Third Clerk Assistant
8. Ms. Mary Kamande - Public Relations Officer
9. Mr. Antony Kariuki - Assistant Serjeant- at- Arms

APOLOGIES

1. The Hon. Gladys Boss, CBS, MP - Deputy Speaker
2. The Hon. Martha Wangari, MP - First Chairperson of Committees
3. The Hon. Omboko Milemba, MP - Third Chairperson of Committees
4. The Hon. Farah Maalim, MP - Fourth Chairperson of Committees
5. The Hon. Peter Kaluma, MP - Fifth Chairperson of Committees
6. The Hon. Baya Owen Yaa, MP - Member
7. The Hon. David Kiaraho, MP - Member
8. The Hon. Lilian Gogo, MP - Member
9. The Hon. Aburi Mpuru, MP - Member
10. The Hon. Shimbwa Omar Mwinyi, MP - Member
11. The Hon. (Prof) Phylis Bartoo, MP - Member
12. The Hon. John Kaguchia, MP - Member
13. The Hon. John Mukunji, MP - Member
14. The Hon. Yakub Adow Kuno, MP - Member

MIN./PHRC/01/2022: PRELIMINARIES

The Chairperson called the meeting to order at 5:00 p.m., after which opening prayers were said by the Clerk of the National Assembly, Mr. Samuel Njoroge. After a round of introductions by Members and Secretariat, the Chair thanked Members for attending the first meeting of the Committee.

MIN./PHRC/02/2022: ADOPTION OF AGENDA

The proposed agenda to constitute business of the meeting was adopted, having been proposed by the Hon. George Murugara, MP who was seconded by the Hon. (Dr.) Rachel Nyamae, MP.

MIN./PHRC/03/2022: BRIEFING OF THE MANDATE OF THE COMMITTEE

Upon invitation by the Chair, the Clerk took Members through the mandate of the Committee and the manner of initiating amendments, which he highlighted as follows

-
- a) The Procedure and House Rules Committee is established under **Standing Order 208** to—
 - (i) consider and report on all matters relating to the National Assembly Standing Orders;
 - (ii) propose amendments to the Standing Orders; and
 - (iii) propose rules for the orderly and effective conduct of committee business.
 - b) Amendments to the National Assembly Standing Orders may be initiated by a Member or the Procedure and House Rules Committee. **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,'*
 - c) On its part, **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.'*

The Clerk informed Members that previously the Committee used to be known as the Standing Orders Committee and the 6th Edition of the Standing Orders incorporates amendments made by the National Assembly on various dates as follows –

- (i) 25th April 2013;
- (ii) 6th May 2013;
- (iii) 4th December 2013;

- (iv) 11th June 2014;
- (v) 28th August 2014;
- (vi) 15th June 2017;
- (vii) 7th December 2017;
- (viii) 23rd August 2018;
- (ix) 6th May 2020; and
- (x) 7th June 2022.

MIN./PHRC/04/2022: PRIORITY BUSINESS BEFORE THE COMMITTEE

The Clerk took the Committee through the priority business as consideration of the following Bills –

- (a) The Political Parties (Amendment) Bill, 2022 to require the Registrar of Political Parties to convey certified copies of all coalition agreements to the Clerk of each House of Parliament;
- (b) The Public Finance Management (Amendment) Bill, 2022 to increase the period for consideration of the Budget Policy Statement from 14 to 21 days;
- (c) The Parliamentary Powers and Privileges (Amendment) Bill, 2022 to streamline the qualifications required for Membership of the Committee of Powers and Privileges;
- (d) The Statutory Instruments (Amendment) Bill, 2022 to ensure the negative resolutions of the House on Statutory instruments are implemented; and
- (e) The Petitions to Parliament (Procedure) (Amendment) Bill, 2022 to involve the Public Petitions Committee in the determination of the admissibility of petitions and the full consideration of all admissible petitions.

It was resolved that the said amendment Bills be considered by the Procedure and House Rules Committee since the proposed amendments are largely procedural in nature and referring the bills to Departmental Committees may unnecessarily widen the scope of the amendments.

MIN./PHRC/05/2022: PROPOSED AMENDMENTS TO THE STANDING ORDERS

The Clerk informed the Committee of the proposal to amend the Standing Orders to provide for –

- (i) The appearance of Cabinet Secretaries before the House; and
- (ii) Procedure of admitting and dispensing with petitions regarding delimitation of forest boundaries. Currently, the only avenue available for such petitions is only provided for in the Forest Act and the Petitions Act.

The Committee resolved as follows –

That, the proposal to amend the Standing Orders be considered as a priority business of the Committee. In this regard, the Committee appointed a sub-committee to fast-track consideration of the proposed amendments to the Standing Orders and report back to the main Committee to enable it table its report for approval by the House at the commencement of the Second Session.

The sub- Committee appointed comprised the following seven (7) Members –

1. The Hon. Martha Wangari, MP - First Chairperson of Committees
2. The Hon. David Ochieng, MP - Second Chairperson of Committees
3. The Hon. (Dr.) Rachel Nyamai, MP - Sixth Chairperson of Committees
4. The Hon. George Murugara, MP - Member
5. The Hon. Anthony Oluoch , MP - Member
6. The Hon. Shimbwa Omar Mwinyi, MP- Member
7. The Hon. Joseph Emathe, MP - Member
8. The Hon. Richard Kilel, MP - Member

The terms of reference for the Sub-Committee were set out as follows–

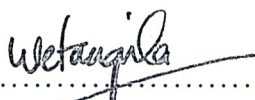
To consider;

- (i) The day of the week to be set aside for question time;
- (ii) The amount of time to be allocated for question time; and
- (iii) The number of questions to be answered in any given sitting.

The sub-committee was given the go ahead to elect its chairperson and to sit during the recess period.

MIN/PHRC/06/2022: ADJOURNMENT AND DATE OF THE NEXT MEETING

The Chairperson adjourned the meeting at thirty-two minutes past five O'clock. The next meeting will be by notice.

Sign: 
(Chairperson)

Date: 8/3/23
Date: 8/3/23

**MINUTES OF THE SECOND MEETING OF THE PROCEDURE AND HOUSE
RULES COMMITTEE HELD ON FRIDAY, FEBRUARY 17, 2023 IN
COMMITTEE ROOM 9 AT 11:00 AM**

PRESENT

1. **The Rt. Hon. Moses M. Wetang'ula, EGH, MP – Chairperson/Speaker
of the National Assembly**
2. The Hon. Omboko Milemba, MP - Third Chairperson of Committees
3. The Hon. Farah Maalim, MP - Fourth Chairperson of Committees
4. The Hon. (Dr.) Rachel Nyamai, MP - Sixth Chairperson of Committees
5. The Hon. Baya Owen Yaa, CBS, MP - Member
6. The Hon. Shimbwa Omar Mwinyi, MP - Member
7. The Hon. Anthony Oluoch, MP - Member
8. The Hon. Joseph Emathe, MP - Member
9. The Hon. Mukunji John Mwaniki, MP - Member

IN ATTENDANCE

1. Ms. Serah Kioko, MBS - Deputy Clerk of the National Assembly
2. Mr Kipkemoi arap Kirui- Ag. Director, Legislative & Procedural Services
3. Mr. Rana Tiampati - Ag. Deputy Director, Legislative & Procedural Services
4. Ms. Rachel Kairu - Principal Clerk Assistant I
5. Ms. Anna Musandu - Senior Clerk Assistant
6. Ms. Jemimah Mureithi - Legal Counsel
7. Ms. Perpetual Muiga - First Clerk Assistant
8. Mr. Moses Lomale - Third Clerk Assistant

APOLOGIES

1. The Hon. Gladys Boss, MGH, MP - Deputy Speaker
2. The Hon. Martha Wangari, MP - First Chairperson of Committees
3. The Hon. David Ochieng, MP - Second Chairperson of Committees
4. The Hon. Peter Kaluma, MP - Fifth Chairperson of Committees
5. The Hon. (Prof) Phylis Bartoo, MP - Member
6. The Hon. George Murugara, MP - Member
7. The Hon. John Kaguchia, MP - Member

8. The Hon. Mpuru Aburi, MP - Member
9. The Hon. David Kiaraho, MP - Member
10. The Hon. Lilian Gogo, MP - Member
11. The Hon. Yakub Adow Kuno, MP - Member
12. The Hon. Richard Kilel, MP - Member

MIN./PHRC/01/2023: PRELIMINARIES

The Chairperson called the meeting to order at 11:33 a.m., after which opening prayers were said by Deputy Clerk of the National Assembly, Mrs. Serah Kioko, MBS,.

MIN./PHRC/02/2023: ADOPTION OF AGENDA

The proposed Agenda to constitute business of the meeting was adopted, having been proposed by Hon. Omboko Milemba, MP and seconded by Hon. Shimbwa Omar Mwinyi, MP.

MIN./PHRC/03/2023: CONFIRMATION OF MINUTES OF PREVIOUS MEETING

The Minutes of the First Meeting of the Committee held on Wednesday, November 23, 2022 were confirmed as a true record of the deliberations of the Committee, having been proposed by the Hon. Omar Mwinyi, MP and seconded by the Hon. Omboko Milemba, MP.

MIN./PHRC/04/2023: MATTERS ARISING

The meeting recorded no matters arising from the Minutes of the First Sitting of the Committee held on 23th November 2022.

MIN./PHRC/05/2023: CONSIDERATION OF THE SUB-COMMITTEE REPORT ON PROPOSED AMENDMENTS TO THE STANDING ORDERS

Upon invitation by the Chairperson, the Hon. Oluoch Anthony, MP presented the Report of the Procedure and House Rules Sub-Committee on amendments to Standing Orders on behalf of the Sub-Committee. He highlighted the establishment, membership and the Terms of Reference for the Sub-Committee. The meeting was informed that the Sub-

Committee was mandated to consider proposals to amend the Standing Orders to allow Cabinet Secretaries to respond to Questions in the House and specifically –

- (i) Consider the day of the week to be set aside for question time, the amount of time to be allocated for question time; and the number of questions to be answered in any given sitting; and
- (ii) Compile a report and schedule of proposed amendments to the Standing Orders.

The Hon. Member reported that the Sub-Committee chaired by the Hon. David Ochieng', MP held its sittings on 14th and 15th December 2022 where it considered the proposals and adopted its Report on 28th January 2023. He informed Members that, in furtherance of the provisions of Standing Order 262 of the National Assembly Standing Orders and taking into consideration the observations and findings contained in the Report of the Procedure and House Rules Sub-Committee (*appended herein*) made the following recommendations: -

A. MANNER OF PROCESSING QUESTIONS IN PLENARY

That, the Standing Orders be amended to allow Cabinet Secretaries to respond to Questions on **Wednesday from 2:30pm to 5:30pm**, during regular sittings. The Cabinet Secretaries will be required to-

- (i) Respond to Questions raised by Members of Parliament including Supplementary Questions asked by Members;
- (ii) Provide the official government response/position to the House on various matters raised by Members;
- (iii) Provide statements on government policy on various subjects; and
- (iv) Take up any directions that may be issued on the floor of the House of Parliament.

This recommendation provides that Questions will be processed and dispensed with, in the following manner: -

1. Designation of a place in the Chamber for Cabinet Secretaries

The Speaker would designate a suitable place in the Chamber or at the bar of the House for a Cabinet Secretary to reply to Questions and provide Reports concerning matters under his or her control.

2. Order Paper

Questions shall be appended to the Order Paper printed on **green paper** on the day when Cabinet Secretaries would appear to answer the Questions (**Wednesdays Afternoons**).

3. Weekly programmes of the business of the National Assembly

The Clerk shall prepare and publish on the parliamentary website a tentative list of Cabinet Secretaries scheduled to reply to Questions and provide Reports to the House.

4. Sequence of proceeding

On **Wednesday afternoons** Questions and Reports by Cabinet Secretaries shall have precedence over all other business for a period not exceeding **three** hours.

5. Scheduling of Questions

- a) A Member shall ask his or her Question on the day it is scheduled in the Order Paper.
- b) The Leader of the Majority Party shall inform the House of the date, time and order in which Cabinet Secretaries shall appear to reply to Questions and provide Reports to the House.
- c) In determining the date and time when a Cabinet Secretary shall be required to answer a Question, the Leader of the Majority Party shall consider the urgency of the Question as determined by the Speaker.
- d) The Speaker may, on request of the Leader of the Majority Party vary the order in which Questions shall be disposed of, or defer a Question scheduled to be responded to.
- e) A Question may include a request for a Report from a Cabinet Secretary concerning matters under the control of the Cabinet Secretary.

6. Manner of disposing Questions

- a) A Cabinet Secretary shall provide physical and electronic copies of the reply to a Question at least a day before appearing before the House.

- b) The House shall dispose of Questions in the sequence it shall in the Schedule of Questions or as the Speaker may direct.
- c) The Speaker may—
 - i. permit the Member who raised a Question to ask a maximum of two **supplementary Questions** that relate to the original Question;
 - ii. permit a Member other than the Member who asked a Question to ask a further supplementary Question that relates to the original Question;
 - iii. direct a Cabinet Secretary to provide additional information or a further reply to a Question or supplementary Questions raised; or
 - iv. defer a Question to a different time or day from its scheduled time and day.

7. Questioner's Absenteeism

A Member may ask a question on behalf of another Member who is absent as long as the absent Member has given prior written notice to the Speaker.

8. Deferred Questions

Deferred Questions shall be deferred to the next date when the Cabinet Secretary is scheduled to appear before the House. However, it is important to note that during any Sitting, it will not be possible for the Speaker to know/determine the next date when the Cabinet Secretary would be scheduled to appear.

9. Questions for written reply

Where a Member prefers a written reply to his or her Question—

- (a) the Speaker shall direct that a written reply be provided in respect of the Question; and
- (b) the Clerk shall forward the Question to the relevant Cabinet Secretary and, upon receipt, provide the written reply to the Member.

10. Timeline for reply

- (a) A Cabinet Secretary shall reply to a Question within **thirty (30)** days of referral of the Question (The Questions, will be asked, referred and answered on the day to be determined by the Leader of Majority Party).

- (b) Where the Speaker determines a Question to be urgent, a Cabinet Secretary shall reply to the Question within three days of referral of the Question.

11. Questions to Commissions and Independent Offices

A Commission or Independent Office to which a Question is directed shall reply before the relevant Committee of the House.

12. Rules on Questions

- a) A question shall only cover one subject.
- b) The Question shall be Direct, but additional information adding value to the Question can be added into the Question

B. PROPOSED AMENDMENTS TO THE STANDING ORDERS

The meeting was informed that the Sub-Committee therefore recommended that the Standing Orders be amended as provided below;

1. Amend Standing Order 25A by inserting a new clause (b) to read as follows—

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

(b) a Cabinet Secretary to reply to Questions and provide Reports concerning matters under his or her control; and

Rationale: To provide for the designation of a place in the House for a Cabinet Secretary to reply to Members' Questions and provide Reports

2. Amend Standing Order 39 to read as follows—

39. The Clerk shall prepare and publish on the parliamentary website a tentative list of Cabinet Secretaries scheduled to reply to Questions and provide Reports to the House, a weekly programme showing the business of the House and a schedule of sittings of the various committees; and shall circulate such programmes to Members, State Departments, and the media not later than the Friday of the week preceding such business.

***Rationale:** To require the Clerk to publish a tentative list of Cabinet Secretaries scheduled to reply to Questions and provide Reports to the House together with the weekly programmes of the House.*

3. Amend Standing Order 40 by inserting a new clause 3A to read as follows-

(3A) On Wednesday afternoon Questions and Reports by Cabinet Secretaries shall have precedence over all other business for a period not exceeding three hours.

***Rationale:** To set aside a maximum of 3 hours every Wednesday afternoon during which priority is to be given to Questions and Reports by Cabinet Secretaries to the House.*

4. Amend Part IXA to read as follows—

Notice of Question

42A. (5) A Member shall ask his or her Question on the day it is scheduled in the Order Paper.

(5A) The Leader of the Majority Party shall inform the House of the date, time and order in which Cabinet Secretaries shall appear to reply to Questions and provide Reports to the House, subject to paragraph (6).

(6A) The Speaker may, on request of the Leader of the Majority Party vary the order in which Questions shall be disposed of, or defer a Question scheduled to be responded to.

(6B) A Cabinet Secretary shall attend and answer any Question concerning matters for which the Cabinet Secretary is responsible.

(7) Where the Minority Party is the party forming the National Government, the duties under paragraph (5A), (6) and (6A) shall be undertaken by the Leader of the Minority Party.

General rules on Questions

42B. (1) These rules apply to Questions raised in the House.

(4) A Member may, with leave of the Speaker, ask a supplementary question to a Question raised in the House before it is referred to a Cabinet Secretary for reply.

(7) A Question may include a request for a Report from a Cabinet Secretary concerning matters under the control of the Cabinet Secretary.

Manner of disposing Questions

42C. (3) The Speaker may—

- i. permit the Member who raised a Question to ask a maximum of two supplementary Questions that relate to the original Question;
 - ii. permit a Member other than the Member who asked a Question to ask a further supplementary Question that relates to the original Question;
 - iii. direct a Cabinet Secretary to provide additional information or a further reply to a Question or supplementary Questions raised; or
 - iv. defer a Question to a different time or day from its scheduled time and day.
- (4) A Cabinet Secretary shall reply to a Question on the day it is scheduled for reply notwithstanding the absence of the Member who raised the Question.

Timeline for reply

42E. (1) Subject to paragraph (2), a Cabinet Secretary shall reply to a Question within thirty days of referral of the Question.

(2) Where the Speaker determines a Question to be urgent, a Cabinet Secretary shall reply to the Question within three days of referral of the Question.

42F. (deleted).

Questions to Commissions and Independent Offices

42G. (1) Subject to paragraph (2) this Part shall apply to a Question directed to a Commission or Independent Office with necessary modifications.

(2) A Commission or Independent Office to which a Question is directed shall reply before the relevant Committee of the House.

Rationale:

- (1) To realign references to committees in the Part with the shift to Questions being replied to in the House;
- (2) To allow a Question to include a request for a Report from a Cabinet Secretary
- (3) To permit the Member who raises a Question to ask a maximum of two supplementary Questions that relate to the original Question;
- (4) To permit a Member other than the Member who asked a Question to ask a further supplementary Question that relates to the original Question;

- (5) To require a Cabinet Secretary to reply to a Question on the day it is scheduled for reply, notwithstanding the absence of the Member who raised the Question;
- (6) To delete the requirement for Committees to give reports of Questions;
- (7) To provide for replies to Questions directed to a Commission or Independent Office to be replied to before Committees.

5. Amend Standing Order 216 as follows—

Appointment and mandate of Departmental Committees

216.

- (5) The functions of a Departmental Committee shall be to—
 - (a) examine any Question raised by a Member to a Commission or Independent Office.
- (6) (deleted).
- (7) (deleted).

Rationale:

- (1) *To provide for the examinations of Questions directed to a Commission or Independent Office as part of the general mandate of Departmental Committees;*
- (2) *To delete references to committees in the Standing Order as a consequence of the shift to Questions being replied to in the House.*

After an extensive consideration of the Report of the Sub-Committee and the recommendations therein, the Committee resolved as follows;

- (i) That, although Cabinet Secretaries will appear before House to respond to Questions, Committees may on their own volition summon them to respond to issues that may be raised and under their responsibility.
- (ii) That, the day and time for appearance by the Cabinet Secretaries shall be every Wednesday from 2:30pm to 5:30 pm.
 - a) That the sitting of the Wednesday afternoon shall be extended by two (2) hours so as to accommodate transaction of other Parliamentary business.

- b) That, limiting supplementary questions from Members shall be at the discretion of the Presiding Officer.
- c) That, the timeline for replying ordinary questions should be within 14 days and that for urgent (Questions by Private Notice) questions should be replied within two days.
- d) The recommendation by the Sub- Committee to delete Standing Orders 216(6) and (7) was not negatived.

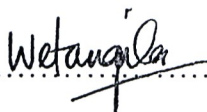
The Speaker directed the Secretariat to incorporate in the Report, the recommendations made during the meeting.

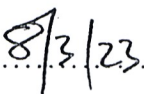
MIN./PHRC/06/2023: CONSIDERATION OF OTHER PROPOSED AMENDMENTS TO THE STANDING ORDERS

The Speaker deferred the agenda on consideration of other proposed amendments to the Standing Orders to the next Sitting of the Committee.

MIN/PHRC/07/2023: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at ten minutes past one O'clock. The next meeting will be held on Wednesday, March 1, 2023 in Committee Room 9 at 11: 00 am.

Sign: 
(Chairperson)

Date: 

ANNEXURE 3: PROPOSED AMENDMENTS TO THE STANDING ORDERS

ANNEXURE 3:

PROPOSED AMENDMENTS TO THE STANDING ORDERS

PROPOSED AMENDMENTS TO THE STANDING ORDERS

1. Amend Standing Order 25A to read as follows—

Designation of a place in the Chamber 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) a Cabinet Secretary to expound on government policy, reply to Questions and provide Reports concerning matters under his or her control; and
- (c) other persons to make submissions or presentations before the House.

Rationale: To provide for the designation of a place in the House for a Cabinet Secretary to reply to Members' Questions and provide Reports.

2. Amend Standing Order 30(2) to read as follows —

(2) Unless the Speaker or the Chairperson (as the case may be) directs earlier or later interruption of business for the convenience of the House, the Speaker or the Chairperson of Committees shall interrupt the business then under consideration and if the House is in Committee the Chairperson shall leave the Chair and report progress and ask leave to sit again—

- (a) at 1.00 p.m. during a morning sitting;
- (b) at 7.00 p.m. during an afternoon sitting on Tuesday and Thursday;
- (c) at 9.00 p.m. during an afternoon sitting on Wednesday; or
- (d) if it is an Allotted Day—
 - (i) at 7.30 p.m. during an afternoon sitting on Tuesday and Thursday;
 - (ii) at 9.30 p.m. during an afternoon sitting on Wednesday.

Rationale:

To extend the Wednesday afternoon sitting of the House to 9.00 p.m. to cater for the priority proposed to be given to Questions during the sitting.

3. Amend Standing Order 39 to read as follows—

Weekly programmes of the business of the National Assembly

39. The Clerk shall prepare and publish on the parliamentary website a tentative list of Cabinet Secretaries scheduled to reply to Questions and provide Reports to the House, a weekly programme showing the business of the House and a schedule of sittings of the various committees; and shall circulate such programmes to Members, State Departments, and the media not later than the Friday of the week preceding such business.

Rationale: To require the Clerk to publish a tentative list of Cabinet Secretaries scheduled to reply to Questions and provide Reports to the House together with the weekly programmes of the House.

4. Amend Standing Order 40 to read as follows—

Sequence of proceedings

40. (1) Each day after Prayers have been said and the House has been called to order, the Business of the House shall be proceeded with in the following sequence—

- (a) Administration of Oath;
- (b) Communication from the Chair;
- (c) Messages;
- (d) Petitions;
- (e) Papers;
- (f) Notices of Motion;
- (g) Questions and Statements;
- (h) Motions and Bills.

(2) Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the House, direct.

(3) On Wednesday morning a Bill or a motion not sponsored by the Majority or Minority Party or by a Committee shall have precedence over all other business in such order as the House Business Committee shall ballot.

(3A) On Wednesday afternoon Questions and Reports by Cabinet Secretaries shall have precedence over all other business for a period not exceeding three hours.

(4) The Speaker shall direct the Clerk to read the Orders of the Day without question put.

Rationale: To set aside a maximum of 3 hours every Wednesday afternoon during which priority is to be given to Questions and Reports by Cabinet Secretaries to the House.

5. Amend Part IXA to read as follows—

PART IXA—QUESTIONS

Notice of Question

- 42A. (1) A Member proposing to ask a Question in the House shall give notice to the Clerk.
- (2) The Member shall deliver a signed copy of the proposed Question to the Clerk for submission to the Speaker for approval.
- (3) Where the Speaker approves a Question and determines the Cabinet Secretary responsible for the matters to which it relates, the Clerk shall, at an appropriate time, publish the Question in the Order paper.
- (4) In scheduling a Question in the Order Paper, the Clerk shall consider the urgency of the Question as determined by the Speaker.
- (5) A Member shall ask his or her Question on the day it is scheduled in the Order Paper.
- (5A) The Leader of the Majority Party shall inform the House of the date, time and order in which Cabinet Secretaries shall appear to reply to Questions and provide Reports to the House and committees, subject to paragraph (6).
- (6) In determining the date and time when a Cabinet Secretary shall be required to answer a Question, the Leader of the Majority Party shall consider the urgency of the Question as determined by the Speaker.
- (6A) The Speaker may, on request of the Leader of the Majority Party vary the order in which Questions shall be disposed of, or defer a Question scheduled to be responded to.
- (6B) A Cabinet Secretary shall attend and answer any Question concerning matters for which the Cabinet Secretary is responsible.
- (7) Where the Minority Party is the party forming the National Government, the duties under paragraph (5A), (6) and (6A) shall be undertaken by the Leader of the Minority Party.

General rules on Questions

- 42B. (1) These rules apply to Questions raised in the House and replied to in the House or before a committee.

(2) Except as the Speaker may otherwise allow, a Member may not ask a Question which—

- (a) is in effect a speech;
- (b) is lengthy;
- (c) is limited to giving information;
- (d) is framed so as to suggest its own reply or to convey a particular point of view;
- (e) includes extracts from newspapers or quotations from speeches;
- (f) contains any argument, inference, opinion, imputation or ironical or offensive expression or epithet;
- (g) seeks an expression of opinion;
- (h) repeats in substance a matter already addressed by a Committee of the House or in the course of debate in the House during the same Session;
- (i) refers to more than one subject;
- (j) includes the name of a person or a statement not strictly necessary to render the Question intelligible;
- (k) contains an allegation which the Member is not prepared to substantiate;
- (l) implies an allegation of a personal nature or which reflects upon the conduct of a person whose conduct can only be challenged through a substantive motion or upon the conduct of any other person otherwise than in that person's official or public capacity;
- (m) relates to a matter which is sub judice or which by any written law is secret pursuant to Standing Order 89 (Matters sub judice or secret);
- (n) falls within the functions and powers of county governments as contemplated under Part II of the Fourth Schedule to the Constitution;
- (o) seeks a reply that is readily available in ordinary works of reference or official publications;
- (p) refers discourteously to a friendly country, a Head of State or Government or the representative in Kenya of a friendly country; or
- (q) refers to a matter under consideration by the House or a Committee.

(3) A Member shall take responsibility for accuracy of the facts upon which a Question is based.

(4) A Member may, with leave of the Speaker, ask a supplementary question to a Question raised in the House before it is referred to a Cabinet Secretary for reply.

(5) Where the Member scheduled to raise a Question in the House is absent without the Speaker's permission, the Question shall be dropped and no further proceedings shall be allowed on the Question during the same session.

(5A) A Member scheduled to ask a Question in the House may—

- (a) request the Speaker to defer a Question to another time or day;
- (b) withdraw a Question where it has been overtaken by events; or
- (c) at least two hours before a sitting, nominate another Member to ask the Question in his or her absence by notifying the Speaker in writing;

(6) The Speaker may defer a Question to a different time or day from its scheduled time and day.

(7) A Question may include a request for a Report from a Cabinet Secretary concerning matters under the control of the Cabinet Secretary.

Manner of disposing Questions

42C. (1) A Cabinet Secretary shall provide physical and electronic copies of the reply to a Question at least a day before appearing before the House.

(2) Subject to Standing Order 42A (*Notice of Question*), the House shall dispose of a Question in the sequence it appears in the Schedule of Questions or as the Speaker may direct.

(3) The Speaker may—

- (a) permit the Member who raised a Question to ask a maximum of two supplementary Questions that relate to the original Question;
- (b) permit a Member other than the Member who asked a Question to ask a further supplementary Question that relates to the original Question;
- (c) direct a Cabinet Secretary to provide additional information or a further reply to a Question or supplementary Questions to the relevant committee of the House; or
- (d) defer a Question to a different time or day from its scheduled time and day.

(4) A Cabinet Secretary shall reply to a Question on the day it is scheduled for reply notwithstanding the absence of the Member who raised the Question.

Questions for written reply

42D. Where a Member prefers a written reply to his or her Question—

- (a) the Speaker shall direct that a written reply be provided in respect of the Question; and

- (b) the Clerk shall forward the Question to the relevant Cabinet Secretary and, upon receipt, provide the written reply to the Member.

Timeline for reply

42E. (1) Subject to paragraph (2), a Cabinet Secretary shall reply to a Question within fourteen days of referral of the Question.

(2) Where the Speaker determines a Question to be urgent, a Cabinet Secretary shall reply to the Question within forty-eight hours of referral of the Question.

Report on Questions

42F. The Chairperson of a Committee shall by way of a Statement report to the House on Questions—

- (a) referred to the Committee;
- (b) replied to;
- (c) which the Committee has directed a Cabinet Secretary to provide additional information or further reply; and
- (d) pending before the Committee.

Questions to Commissions and Independent Offices

42G. (1) Subject to paragraph (2) this Part shall apply to a Question directed to a Commission or Independent Office with necessary modifications.

(2) A Commission or Independent Office to which a Question is directed shall reply before the relevant Committee of the House.

Rationale:

- (1) To allow for Questions to be replied to before the House and Committees realign references to committees in the Part with the shift to Questions being replied to in the House;
- (2) To allow a Question to include a request for a Report from a Cabinet Secretary
- (3) To permit the Member who raises a Question to ask a maximum of two supplementary Questions that relate to the original Question;
- (4) To permit a Member other than the Member who asked a Question to ask a further supplementary Question that relates to the original Question;

- (5) To require a Cabinet Secretary to reply to a Question on the day it is scheduled for reply, notwithstanding the absence of the Member who raised the Question;
- (6) To allow a Member to request the Speaker to defer a question or withdraw a question where the question sought to be asked has been overtaken by events;
- (7) To require a Cabinet Secretary to provide reply to a question within 14 days and within 48 hours for a question that is urgent.
- (8) To provide for replies to Questions directed to a Commission or Independent Office to be replied to before Committees.

6. Amend Standing Order 216 to read as follows—

Appointment and mandate of Departmental Committees

216. (1) There shall be select committees to be known as Departmental Committees whose Members shall—

- (a) be nominated by the Committee on Selection in consultation with parliamentary parties, parties other than parliamentary parties and Independents at the commencement of every Parliament; and
- (b) not exceed fifteen in number.

(2) A Member appointed to a Departmental Committee at the commencement of a Parliament or at any other time during the term of a Parliament shall, unless the House otherwise resolves, serve for the term of that Parliament, subject to Standing Order 176 (*Discharge of a Member from a Committee*).

(3) Unless the House otherwise directs, the Departmental Committees and the subject matter respectively assigned to them shall be as set out in the Second Schedule.

(4) The mandate of Departmental Committees in respect of the subject matter assigned under the Second Schedule of these Standing Orders shall only be exercised within the limits contemplated under Part 1 of the Fourth Schedule to the Constitution.

(5) The functions of a Departmental Committee shall be to—

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
- (c) study and review all legislation referred to it;

- (d) study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- (fa) examine treaties, agreements and conventions;
- (g) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (h) (deleted).
- (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 the order in which Cabinet Secretaries shall appear to answer questions raised under paragraph (5)(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 (5)(j) shall be disposed of in a Committee, or defer a question scheduled to be responded to.

(8) Where the Minority Party is the party forming the National Government, the duties under paragraph (6) and (7) shall be undertaken by the Leader of the Minority Party.

Rationale: To allow the Leader of the Minority Party to liaise with the Speaker in the Scheduling of Questions in the event that the Minority Party is the party forming the National Government.

ANNEXURE 4:
PRESIDENTIAL
MEMORANDUM OF 9TH
DECEMBER 2022 TO
PARLIAMENT



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - (SECOND SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE PRESIDENT

(No.001 of 2023)

**REGARDING CERTAIN PROPOSALS TO AMEND THE
CONSTITUTION AND THE STANDING ORDERS TO ACTUALIZE
THE ASPIRATIONS OF KENYANS**

1. **Honourable Members**, Standing Order 42(2) states, and I quote –
"(2) If a message is received from the President, at a time when the House is not in session, the Speaker shall forthwith cause the message to be transmitted to every Member and shall report the message to the House on the day the House next sits."
2. In this regard **Honourable Members**, I wish to report to the House that on **9th December 2022**, I received a Message from H.E. the President regarding various proposals including proposals to amend the Constitution and the Standing Orders through *gender inclusion and affirmative action; establishment of the Constituency Development; Senate Oversight and National Government Affirmative Action Funds; establishment of the Office of the Leader of the Official Opposition and strengthening of parliamentary oversight of the Executive.*

3. In the Message, H.E. the President notes the legislative endeavours to facilitate greater political participation by women as well as the sustained increase in the number of elected women leaders in the current political formation. The situation however falls short of the minimum constitutional requirement and therefore necessitating deliberate action from all stakeholders. This would, for example, include the amendment of the Constitution to provide for a formula to guide the computation of the gender ratio in the National Assembly based on the number of those elected from the constituencies in the case of the National Assembly, and the counties, in the case of the Senate in line with Articles 97(1)(a) and 98(1)(a) of the Constitution.
4. Additionally, **Honourable Members**, the Message also conveys proposals to institutionalize the Constituency Development Fund, the Senate Oversight Fund and the National Government Affirmative Action Fund noting the great impact that such Funds have had to the general public.
5. In order to ensure greater political inclusivity and to promote effective checks and balances and sound institutional practices, H.E. the President has proposed the establishment of the Office of the Leader of Official Opposition noting that this would inculcate bipartisan symmetry between the majority and minority sides extends to its full logical extent.

Honourable Members,

6. The Message from the President also conveys a proposal for increased parliamentary oversight of the Executive through the facilitating avenues for accountability through parliamentary business. Specifically, it is proposed that the Rules of the House be aligned to allow Cabinet Secretaries to respond to questions raised by Members on the floor of the House. This would enhance transparency and close the information gap between citizens and the government and thereby enhancing public trust.

Honourable Members,

7. In line with the resolution of the House of Wednesday, 12th October 2022 relating to *Consideration of Certain Business received during the Recess Periods*, I did transmit this Message to all Members vide my Notification No. 004 of 9th December 2022. I also referred the Message to respective Committees as follows –

- (i) The *Departmental Committee on Justice & Legal Affairs* to consider the Message from H.E. the President with respect to the implementation of the Two-Thirds Gender Rule; and the establishment of the Office of the Leader of Official Opposition;
- (ii) The *Joint Parliamentary Ad Hoc Committee on Proposals to amend the Constitution to entrench certain Specialized Funds* to consider the Message from H.E. the President with respect to the establishment of the Constituency Development, Senate Oversight and National Government Affirmative Action Funds; and

- (iii) The **Procedure and House Rules Committee** to consider the Message from H.E. the President with respect to request to consider amending the Standing Orders to strengthen parliamentary oversight of the Executive.
8. The Committees are required to consider the Message from H.E. the President, undertake necessary public participation as required under Article 118 of the Constitution and submit their respective reports to the House for consideration.
9. Noting the weighty nature of the proposal contained in the Message from the H.E. the President, I urge the respective Committees to hasten in the consideration of the specified matters and report back to the House as soon as is practicable.
10. Additionally and pursuant to Standing Order 114(7A), I shall facilitate general debate on the Message from H.E. the President on the matters relating to amendment of the Constitution as part of the collation of views on the proposed changes. Indeed, **Honourable Members**, you will notice from the Notice Paper, the General Debate on these three matters is schedule to commence Wednesday 15th December 2023, subject to approval by the House Business Committee. Members who may have similar or related proposals are encouraged to make submissions at the appropriate time.

I thank you!


THE RT. HON. MOSES M. WETANGULA **MP**



EXECUTIVE OFFICE OF THE PRESIDENT

MEMORANDUM

By His Excellency the Honourable
William Samoei Ruto, PhD, CGH, President
and Commander-in-Chief of the Kenya Defence
Forces.

Submitted to:

The Speaker of the National
Assembly; and
The Speaker of the Senate.

Honourable Speakers, I write to engage you as the apex of parliamentary leadership, outside the rigid framework of Executive-Parliament interaction set out in Article 132 of the Constitution.

The purpose of this engagement is to initiate a collaborative exploration of existing opportunities to enrich Kenya's democratic experience by enhancing the institutional capacities, strengthening complementary interrelationships and refining the mandates, in order to develop the potential to conform with the constitution and actualise the nation's expectations.

A number of these opportunities call for measures to adjust the constitutional framework. At the same time, I am mindful of the imperative to defer to the judiciary's guidance, laid down



through the constitutional court's determination, that the president lacks legitimate authority to initiate changes to the constitution.

Nevertheless, I hold the firm belief that as president, I can and indeed must engage authorised entities like Parliament. Accordingly, the purpose of this letter to you, dear **Honourable Speakers**, is to request that Parliament considers all policy measures necessary and sufficient to fully actualise the promise of our constitution.

In effect, I am urging Parliament to exercise its full authority and precisely calibrate the balance of constitutional powers, deepen good governance, enhance inclusion in the democratic space, strengthen parliamentary oversight of the executive and promote the responsiveness of elected representatives to citizen aspirations. Broadly, the matters in which I request this purposive intervention are:

1. Implementation of the two-thirds Gender Rule.
2. Constituency Development, Senate Oversight and National Government Affirmative Action funds.
3. The position of the leader of official opposition.
4. Parliamentary oversight of the executive.

I am persuaded that the intrinsic implications of these matters are sufficiently fundamental to mobilise effective bipartisan parliamentary collaboration and ultimately generate broad consensus among citizens throughout the country.

1. **Gender Inclusion and Affirmative Action**

On compliance with the gender inclusion framework of the two-thirds rule, it is regrettable that implementation has



become a conundrum that has remained unresolved for too long. There is a profound sense that we have failed Kenya's women, and I believe that it is time to make a decisive breakthrough.

There has been notable legislative endeavour to facilitate greater political participation by women, especially by encouraging more women to vie for elective positions. Equally appreciable are the significant gains made in terms of sustained increase in the number of women leaders elected to various positions. Despite this, the composition of the 13th Parliament remains far short of the constitutional minimum requirement. This non-compliance has far-reaching consequences.

We must recall that in 2020, the Chief justice wrote to the President calling for the dissolution of Parliament due to its non-conformity with the two-thirds gender inclusion principle.

I am committed to all efforts that will help us avert a similar constitutional predicament. Our government pledged to champion the promotion and realisation of women's inclusion and effective participation in every sphere of national endeavour. We have an opportunity to collaborate and deliver this critical mandate.

The constitution mandates the progressive realisation of the gender representation ratio set out in the gender inclusion principle through legislative and other policy measures.

I therefore propose that, if Parliament concurs, a constitutional amendment be enacted, establishing a



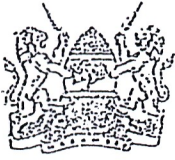
formula to guide the computation of the gender ration in the National Assembly based only on the numbers of those members elected from the constituencies (National Assembly) and counties (Senate) per Art. 97(1)(a) and 98(1)(a) respectively. The proposed amendment can be set out under Art. 97(3).

For the National Assembly, the effect of this formula would establish one-third at 97 members. There already exist 47 affirmative action seats dedicated to women leadership. The maximum number of seats required to fulfil the constitutional threshold would therefore be only 50. In the case of the current National Assembly, with 26 women elected from the constituencies, the nomination of an additional 24 women would suffice to meet the constitutional requirement.

By the same formula, the constitutional gender inclusion threshold would be met through the nomination of 16 women to the Senate.

I believe that trading off the increase in the parliamentary wage bill with the achievement of compliant inclusion of women in parliament is eminently worthwhile. I therefore encourage you to seriously consider it.

Another modality of achieving compliance is for political parties to deliberately embark on sustained, institutionalised and robust initiatives that facilitate the empowerment of women to successfully contest legislative seats in greater numbers. Apart from minimising or even eliminating the necessity of top-up nominations, this modality is superior as



it captures the proper spirit of affirmative action, and expresses the essence of the gender inclusion agenda.

There is empirical evidence to support the proposition that equipping and promoting more women to run for office will, in a few election cycles, bring the number of women contesting and winning elections to at least the same level as men.

In order to actualise this intention, I further propose that under an article 97(3)(b), existing legislation be amended to establish a Women's Inclusion and Political Participation Fund. The Fund will be drawn from a percentage of funds allocated to political parties, and will finance education and training, mentorship and capacity building as well as support for women seeking competitive elected representative positions.

It is my further suggestion, **Honourable Speakers**, that such amendments be subject to an appropriate sunset clause to retire it upon attainment of the constitutional requirement.

2. Constituency Development, Senate Oversight and National Government Affirmative Action Funds

I have followed the public discourse, parliamentary debate as well as judicial determinations on the constitutionality of the Constituency Development Fund and its successor, the National Government Constituency Development Fund, with great interest. It is essential, Honourable Speakers, that as leaders, we lead the way in following the law. It is equally paramount that we do not risk undermining our credibility by appearing to employ mischievous legalities and technicalities to skirt about constitutional boundaries. At the same time,



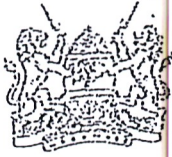
Parliament is the proper forum with full authority to develop laws that are not only constitutionally sound, but which are also responsive to citizens' aspirations.

In my days in Parliament, I served when there was no CDF, and also served when there was CDF. Localised problems often demand expeditious local interventions. CDF empowers legislators to perform their function of representation more effectively by keeping them in touch with the pulse of their constituencies. The CDF also makes the constituency a forum for continuous engagement on critical issues, and effective mobilisation to solve problems in the spirit of collective action. There is, therefore, a strong case to be made, rooted in the essence of the very idea of representative democracy, for the CDF to exist under an appropriate framework.

I am encouraged to note that the 13th Parliament is very much alive to the imperative of this moment, and has already taken up the issue through the Constitution of Kenya (Amendment) Bill, 2022. The proposed insertion of an Article 204A to establish the National Government Constituency Development, Senate Oversight and the National Government Affirmative Action Funds to be drawn out of the national government's shareable revenue, in my considered opinion, are sufficient for purposes of conformity with the express and implicit parameters set out by the constitutional court.

3. The Leadership of the Official Opposition

The commitment to robust democracy, rule of law and effective checks and balances comes with the mandate to respect institutions and to promote sound institutional practices. The 2010 constitution defined and entrenched the



institutions established through democratic elections. However, whilst it provided adequately for the institutional subsistence of the majority side, in my view, the constitution fell short in providing similar clarity on the full post-election fate of the minority side. This is to say that the bipartisan symmetry between the majority and minority sides does not extend to its full logical extent.

The transition to the Presidential system, coupled with the exclusion of presidential candidates from simultaneously contesting parliamentary seats in a General Election created a novel political paradigm. The consequence is that the overall political leader of the minority side is effectively excluded from meaningful political participation, and left to rely on the minority house leaderships to perform the function of oversight. No sound rationale has been proffered to adequately allay the sense that this anomaly is the result of a monumental oversight.

I believe that the idea of Official Opposition, above and beyond mere minority parliamentary leadership, makes tremendous sense in terms of institutionalising governance, strengthening oversight and deepening democracy. The time has come for us to explore the possibility of remedying this shortcoming.

I therefore propose that Parliament consider an amendment to Chapter nine, Part IV of the constitution to establish the office of the Leader of the Official Opposition, with its operational dimensions to be provided for in consequential legislation.



4. **Parliamentary Oversight of the Executive**

It is ill-considered to interpret the rigid separation of powers established under the constitution as the effective insulation of various institutions and organs of government from oversight and accountability. I believe that our government will become more responsive, accountable and effective when it is subjected to rigorous oversight. There is tremendous benefit in experiencing checks and balances in the course of policy implementation.

The Executive has a vested interest in engaging productively with Parliament because the legislature is the custodian of critical instruments that are indispensable for the functioning of government. There is profound value in prosecuting the Executive's legislative agenda and elaborating government policy from the floor of the House, as opposed to segmented committee engagements. An additional benefit of executive participation in parliamentary business is transparency of public proceedings, which can close the information gap between citizens and government, thereby enhancing trust.

For these reasons, I recommend and request that Parliament consider formulating a mechanism within its Standing Orders to facilitate the participation of Cabinet Secretaries/ Chief Administrative Secretaries in parliamentary proceedings, particularly by responding to questions raised by MPs.

Honourable Speakers,

I have taken this opportunity to transmit the foregoing proposals in good faith, trusting that Parliament will consider them in the spirit of perfecting our democratic institutions,



unlocking the promise of our constitutional dispensation and enhancing our nation's capacity to actualise the aspirations of Kenyans.

I am sensitive to the current state of our nation, which is settling down after a long season of vigorous political mobilisation. For this reason, it is important that we endeavour to pursue only those pathways to institutional changes by means which do not entail the resumption of disruptive and potentially divisive mobilisation for a referendum, or campaigning. The proposals set out above, in my considered view, satisfy this critical prudential safeguard.

It is my hope then, that these proposals elicit appropriate consultation and bipartisan deliberation, and, in due course, enable the people's representatives do their part in liberating the country from contradictions and dilemmas which have cost us a lot of opportunities.

I HAVE SET MY HAND unto this Memorandum on this **NINTH** Day of **DECEMBER**, 2022.

A handwritten signature in black ink, appearing to read 'William Samoei Ruto'.

WILLIAM SAMOEI RUTO
PRESIDENT.

