

Hon. speaker  
for your office  
2/5/20

Approved,  
SNA  
5/5/2020



**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT – FOURTH SESSION**

**THE NATIONAL ASSEMBLY**


**THE FOURTH REPORT OF THE PROCEDURE &  
HOUSE RULES COMMITTEE**

**ON**

**AMENDMENTS TO THE STANDING ORDERS TO  
FACILITATE VIRTUAL SITTINGS OF THE  
HOUSE AND ITS COMMITTEES**

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4th MAY 2020

 <b>MEMBERS LAID</b>	
<b>DATE:</b>	06 MAY 2020
<b>DAY:</b>	WED
<b>TABLED BY:</b>	HON KANGOGO BOWEN MEMBER - PHRC
<b>CLERK-AT THE-TABLE:</b>	F. MURIUKI

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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 proceeding, including the proceedings of its committees.” Further, Standing Order 262 of the National Assembly Standing Orders provides that the Procedure & House Rules Committee may at any time propose amendments to the Standing Orders. Following the declaration of the novel coronavirus (COVID-19) outbreak as a global pandemic on March 11, 2020 by the World Health Organization (WHO), various public health protocols were instituted including a reduction of large public gatherings to reduce contact among citizens. This followed the increased number of cases both in the epicentre (Wuhan, China) as well as exponential increase in other countries. This development saw unprecedented measures including closure of schools as well as reduced numbers of staff at workplaces. Measures such as social distancing were established thereby requiring a rethinking of the operations of different organizations. The National Assembly was also affected by these measures.

It on this basis and following the **Speaker’s Guideline No. 2 of 2020** on the *Conduct of Sittings of the House and Committee Meetings during the COVID-19 Pandemic Period* dated April 02, 2020, the Committee resolved to propose amendments to the Standing Orders to align them with the emerging scenario. The Committee held its meeting on Thursday, April 30, 2020 to consider amendments to the Standing Orders to facilitate virtual participation of Members in the proceedings of the House.

In carrying out its mandate, the Procedure and House Rules Committee considered the available legal and procedural options taken by other parliaments as well as the local option for the House. **Chapter One** of this Report gives a background of the situation as well as the methodology adopted by the Committee. **Chapter Two** looks at a comparative review of operations of other parliaments during this pandemic including parliaments conducting virtual meetings. It is noted that whereas there are parliaments that have tried fully virtual proceedings, most of the business conducted in such sittings have been **deliberative** rather than substantive/legislative business. Further, a **hybrid system** that combines both physical and virtual sittings is seen to be the preferred option by many parliaments.

**Chapter Three** considers the emerging issues in conducting virtual parliamentary proceedings as well as the available avenues for virtual/remote meeting. It is noted that issues such as information security, cyber intrusion, lack of reliable internet connection, lack of resources and staff, and constitutional and security implicationsought to be considered in the implementation of virtual proceedings for parliaments. **Chapter Four** considers the legal and procedural alignments necessary for the House to implement virtual participation.

Finally, **Chapter Five** offers findings as well as recommendations to the House. It is noted that the House ought to continue prioritization of critically essential business while affording itself the constitutional responsibilities of, inter alia, representation, oversight and legislation. It is worth noting that, from the research undertaken, **no legislature has adopted a full-virtual proceedings option** at the moment on substantive legislative business.

Most of parliaments that have conducted virtual sittings have mainly been on deliberative issues only, such as questions and debate without resolution. Notably, parliaments within the Commonwealth, particularly the UK and Canada have been cautious of the new procedures especially with regards to **quorum** and virtual **voting** in parliamentary decisions. Canada for example has determined that Members participating through virtual means do not count in establishing quorum and cannot therefore vote. The **hybrid** approach therefore ensures that there are Members present for purposes of quorum and voting in accordance with the dictates of Articles 121 and 122 of the Constitution. This notwithstanding the fact that there are various voting apps in the open market, albeit with security concerns.

The **Schedule** to the Report contains proposed amendments to the Standing Orders to implement the recommendations of the Committee with regards to the facilitation of virtual participation of Members in the proceedings of the House and its committees. The Committee took a two-fold solution. The first stage is to amend the Standing Orders so as to incorporate the option of virtual proceedings. This will be a wider approach, which permits the House to adopt either partial or full virtual option depending on the circumstances. The proposed text is generic and includes a definition of “exceptional circumstances” that lead to use of the partial or full virtual option. Such circumstances has been defined as *“an event or occurrence which precludes the National Assembly from conducting a physical sitting and includes the declaration of an epidemic, pandemic, extreme natural phenomena, pestilence or an act of terrorism”*

**Hon. Speaker,**

The Members of the Committee have provided invaluable input towards the proposed amendments to the Standing Orders, including conducting a Committee sitting using a 'hybrid' combination of physical and virtual participation. The Committee appreciates the support of the office of the Clerk of the National Assembly for providing technical support to the Committee.

This Report, therefore, contains the considerations by the Procedure & House Rules Committee on the matter, the general observations of the Committee and its recommendations regarding the amendments to the Standing Orders to facilitate virtual sittings of the House and its Committees.



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**HON. MOSES CHEBOI, CBS, MP**  
**DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY**  
**THE PROCEDURE & HOUSE RULES COMMITTEE**

## PREFACE

### **Mandate of the Committee**

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.

### **Membership of the Committee**

S/No	Name/Member	Designation/Constituency	Party
1.	<b>The Hon. Justin B.N. Muturi, EGH, MP CHAIRPERSON</b>	<b>Speaker of the National Assembly</b>	
2.	The Hon. Moses Cheboi, CBS, MP	<b>Deputy Speaker</b> Kuresoi North	JP
3.	The Hon. Rosalinda Soipan, CBS, MP	<b>First Chairperson of Committees</b> Narok County	JP
4.	The Hon. Patrick Mariru, MP	<b>Second Chairperson of Committees</b> Laikipia West	JP
5.	The Hon. Jessica Mbalu, CBS, MP	<b>Third Chairperson of Committees</b> Kibwezi East	WDM
6.	The Hon. Christopher Omulele, MP	<b>Fourth Chairperson of Committees</b> Luanda	ODM
7.	The Hon. Cecily Mbarire, MGH, MP	<b>Deputy Majority Party Whip</b> Nominated	JP
8.	The Hon. Ben Momanyi, MP	Borabu	WDM
9.	The Hon. David Kiaraho, MP	Ol Kalou	JP
10.	The Hon. David Kangogo, MP	Marakwet East	JP

11.	The Hon. Abdul Rahim Dawood, MP	Imenti North	JP
12.	The Hon. CornellySerem, MP	Aldai	JP
13.	The Hon. Alfred Keter, MP	Nandi Hills	JP
14.	The Hon. Samuel Arama, MP	Nakuru Town West	JP
15.	The Hon. Olago Aluoch, MP	Kisumu West	FORD-K
16.	The Hon. T. J. Kajwang, MP	Ruaraka	ODM
17.	The Hon. Zuleikha Hassan, MP	Kwale County	ODM
18.	The Hon. Beatrice Adagala, MP	Vihiga County	ANC
19.	The Hon. (Dr.) Pamela Ochieng', MP	Migori County	ODM
20.	The Hon. Teddy Mwambire, MP	Ganze	ODM
21.	The Hon. Samuel K. Gachobe, MP	Subukia	JP
22.	The Hon. Capt. (Rtd) Didmus Barasa, MP	Kimilili	JP
23.	The Hon. Ruweida Mohamed Obo, MP	Lamu County	JP
24.	The Hon. Gathoni Wamuchomba, MP	Kiambu County	JP
25.	The Hon. Abdikhaim Osman, MP	Fafi	KANU

**Party Key:**

ANC	-	Amani National Congress
FORD-K	-	Forum for the Restoration of Democracy - Kenya
JP	-	Jubilee Party
KANU	-	Kenya African National Union
ODM	-	Orange Democratic Movement
WDM	-	Wiper Democratic Movement

**Committee Secretariat**

1. Mrs. Lucy Wanjohi - Principal Clerk Assistant I
2. Mr. Mainah Wanjiku - First Clerk Assistant
3. Ms. Getrude Chebet - Second Clerk Assistant
4. Mr. Ronald Walala - Legal Counsel
5. Mr. Andrew Jumanne - Serjeant-at-Arms



## CHAPTER ONE

### Background

1. The World Health Organization (WHO) declared the novel coronavirus (COVID-19) outbreak a global pandemic on March 11, 2020. This followed the increased number of cases both in the epicentre (Wuhan, China) as well as exponential increase in other countries.
2. With these developments, various public protocols were instituted including a reduction of large public gatherings. This saw unprecedented measures including closure of schools as well as reduced number of staff at workplaces. Measures such as need for **social distancing** have increasingly required a relook at the operations of different organizations.
3. These measures have had an impact on the normal operations of Parliaments around the world. Most have resorted to reduced number of Members attending proceedings whereas others have shifted to available videoconferencing facilities.
4. The Constitution bestows on the Legislature with legislative, oversight and representative functions. These functions are crucial at such a time as this when the country is battling with the global pandemic that is COVID-19 and therefore require the continued functioning of the House. This raises the issue of the manner in which the House can operate while adhering to appropriate measures to limit and control the spread of the virus and whether in order to operate, amendments need to be made to the Standing Orders of the House
5. The National Assembly has been shifting its operations from the traditional paper-based processes to a paperless system. This is been evident areas such as in the **broadcasting & webcasting** of its proceedings and as well as in the introduction of *EParl* Software for use in the Chamber. The system avails

current and referential/archived documents for Members' use in the Chamber. Documents available include Order Papers, Bills, Committee Reports, Trackers (Bills, Motions, etc) and the Laws of Kenya. This has seen a reduced need for paper documents in the House.

6. Over time, proposals have been made for the consideration of online/virtual transaction of the business of the House in view of the prevailing global technological development. However, none has been firmed up due to various emerging issues including the need for proper legal/procedural foundations for such endeavours.
7. Nonetheless, the current situation brought about by the Covid-19 Pandemic has necessitated the need for a relook of the available options for the House. In the Speaker's Guideline No. 2/2020 on the *Conduct of Sittings of the House and Committee Meetings during the COVID-19 Pandemic Period* dated April 02, 2020, the Speaker of the National Assembly observed the critical need for the House to reevaluate its procedures to allow for virtual transaction of business by use of modern technology.
8. The Procedure & House Rules Committee has therefore spearheaded the alignment of the Standing Orders to facilitate the House to securely and procedurally conduct its business without interruption.
9. In its deliberation of the current situation, the Committee considered, *inter alia*, a comparative analysis of how other parliaments have approached this subject and also areas of amendment to the Standing Orders to actualize the proposals for virtual/remote operations.

### **Methodology**

10. **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.

11. Further, Standing Order 262 of the National Assembly Standing Orders provides that the Procedure & House Rules Committee may at any time propose amendments to the Standing Orders.
12. Based on these provisions and following the **Speaker's Guideline No. 2 of 2020** on the *Conduct of Sittings of the House and Committee Meetings during the COVID-19 Pandemic Period* dated April 02, 2020, the Committee held its meeting on Thursday, April 30, 2020 to consider amendments to the standing Orders to facilitate virtual participation of Members in the proceedings of the House.
13. The Committee considered presentations on the conduct of business in other parliaments during Covid-19 global pandemic, available technological platforms as well as available procedural options for the House.

## CHAPTER TWO

### Comparative Review of Operations of Other Parliaments

14. The Committee reviewed the available information with regards to the operations of other parliaments during the current crisis. It was noted that as at April 28, 2020 the US Congress, the Parliament of Uganda, and the German Bundestag continued to hold their plenary sittings.<sup>1</sup> Other parliaments have also resumed sittings with varied modifications of their procedures. They include the UK Parliament and the Parliament of Canada. This part provides further information on these parliaments-

#### a) The UK Parliament

15. The House of Commons Speaker, Sir Lindsay Hoyle, has insisted that “Parliament should be able to operate 'virtually' if the UK 'is still in the grip of the coronavirus crisis' at the time the House (is due to) return on 21 April.”<sup>2</sup> It has also been made clear that the UK Parliament will be on recess and is not shut down.<sup>3</sup>
16. The House of Commons, having resumed sittings on Monday, April 21, 2020, adopted temporary rules for **hybrid proceedings** of the House. In this system, the House of Commons integrates both physical sittings in the chamber as well as virtual participation. This was seen as a compromise to the operations of the House where virtual participation could not entirely replace physical meetings.

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<sup>1</sup> There is a comprehensive information on IPU website titled “Parliaments in a time of Pandemic” available at <https://www.ipu.org/parliaments-in-time-pandemic>. Accessed on 5<sup>th</sup> April 2020.

<sup>2</sup> Speaker urges 'virtual' Parliament to keep up Commons scrutiny, available at <https://www.parliament.uk/business/news/2020/april/speaker-urges-virtual-parliament-to-keep-up-commons-scrutiny/>.

<sup>3</sup> House of Commons in recess, not ‘shut down’, available at <https://www.parliament.uk/business/news/2020/march/house-of-commons-in-recess-not-shut-down/>.

17. On 31st March, the Chairs of the Administration Committee and the Procedure Committee of the House of Commons issued a statement supporting the temporary measures introduced to ensure the continuation of House of Commons business during the Covid-19 epidemic. Their statement also stressed that the departmental select committees would continue conducting their sittings. They indicated-

*“We recognise that the House’s resources and facilities are not unlimited. Despite this, we are encouraged to see that, in this period while the House is adjourned, departmental select committees are embracing the temporary changes to their working practices – continuing to question Ministers, officials and others on the public’s behalf. Committees are also developing new ways of working, which include holding informal private meetings with witnesses and publishing notes of those meetings. Further IT capacity will be made available to committees in the coming weeks to support this scrutiny function.”<sup>4</sup>*

18. The UK Parliament has been operating scrutiny committees by video-conferencing for the last few weeks. The committees have been using *Zoom* for public meetings, but not yet for private ones due to security concerns.

19. The House of Commons considered and agreed to arrangements for virtual participation in proceedings. For the first two hours of the sitting day, Members were able to ask questions to Ministers via video link or in person. A maximum of 150 members were allowed to attend remotely and a maximum of 50 present physically in the Chamber. Notably, the same rules of procedure will applied to both groups.

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<sup>4</sup><https://www.parliament.uk/business/committees/committees-a-z/commons-select/procedure-committee/news-parliament-2017/chairs-comments-covid-19-work-of-house-19-21/>

20. The House of Lords is also looking to introduce virtual proceedings but in their case, the virtual sessions will be **informal** and there will be no Members physically present in their Chamber. They are also intending not to broadcast these proceedings live, unlike the Commons which is intended to broadcast as usual.
21. The two Houses are also using different technology for their sittings: the Commons is using Zoom and the Lords is using Microsoft.
22. **Skype for Business** has been rolled out to all parliamentary devices pending fast tracking of trials with **Microsoft Teams** for wider use by the House of Commons. On the other hand, the UK Cabinet is meeting through **Zoom**. Skype for Business and Microsoft Teams are hosted and supported by Parliamentary infrastructure.

#### b) Canada

23. The House of Commons is developing new ways of conducting its parliamentary activities during these challenging and unprecedented times as a result of the COVID-19 pandemic. A commentary from the legislature notes that while technology provides many tools that can facilitate interactions between Members of Parliament, any innovation must also take into account the rules, procedures and practice of the institution.
24. **Several issues have been observed including –**
  - a) Quorum: Members must be physically present to reach quorum in order for the House of Commons to meet. For committees, normally in order to exercise the powers granted to them by the House, they must also have a quorum at their meetings, as prescribed by the Standing Orders. While a committee can hear witnesses via videoconference, the quorum of members

physically present in the committee room must be met for a meeting to be properly constituted. While committees have occasionally agreed to allow committee members to participate in committee meetings via teleconference or videoconference, participation by such means does not count for the purposes of quorum.

b) Voting: Members participating by technological means are also not eligible to vote. While committee members are able to hold informal discussions via any means of communication available to them, such discussions are not formal, official committee proceedings and no decisions can be taken at such meetings.

25. In the current context, the House of Commons is studying and developing virtual solutions for both the sittings of the House and meetings of the Standing Committees. A motion by the House of Commons is required to establish new procedures that would allow for the implementation of changes to its usual procedure. On March 24, 2020, such a motion was adopted to order meetings either by teleconference or videoconference for two Standing Committees: Health and Finance. A video of the same may be viewed here <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20200415/-1/33015?Language=English&Stream=Video>.

26. The March 24, motion did not make provision for teleconference or videoconference sittings of the House of Commons. The motion read in part as follows-

a) during the period the House stands adjourned pursuant to this order, the Chair of the Standing Committee on Health and the Chair of the Standing Committee on Finance shall each convene a meeting of their respective committee (i) at least once per week, unless the whips of all four recognized parties agree to not hold a

meeting, (ii) within 48 hours of the receipt by email, by the clerk of the committee, of a request signed by any four members of the committee; that during such meetings, committee members shall attend and witnesses shall participate via either videoconferencing or teleconferencing; and that the committees meet for the sole purpose of receiving evidence concerning matters related to the government's response to the COVID-19 pandemic, provided that, for greater certainty, each committee may receive evidence which may otherwise exceed the committee's mandate under Standing Order 108(2), all such meetings shall be made available to the public via the House of Commons website, and notices of membership substitutions pursuant to Standing Order 114(2) may be filed with the clerk of each committee by email;

- b) starting the week of March 30, 2020, the Minister of Finance or his delegate shall provide the Standing Committee on Finance with a bi-weekly report on all actions undertaken pursuant to parts 3, 8 and 19 of the COVID-19 Emergency Response Act and shall appear before the committee to discuss the report, provided that, until April 20, 2020, or any date to which the adjournment period is extended pursuant to paragraph (f), if the committee is not satisfied with how the government is exercising its powers under the act, it may adopt a motion during a meeting by videoconference or teleconference to report this to the House by depositing a report with the Clerk of the House which shall be deemed to have been duly presented to the House on that day;



27. The motion also orders that, if such a report of the Standing Committee on Finance is presented, the Speaker must recall the House to consider a motion to take note of the report.
28. The House of Commons held an extraordinary sitting which had quorum, but was **attended by a reduced number of members** on Saturday, April 11, 2020, at which time another motion was adopted to increase the total number of Standing Committees allowed to meet virtually to study COVID-19 related matters from two to six: *Government Operations and Estimates; Human Resources, Skills and Social Development and Status of Persons with Disability; Industry, Science and Technology; and the Standing Committee on Procedure and House Affairs* which was specifically mandated to “study ways in which members can fulfill their parliamentary duties while the House stands adjourned on account of public health concerns caused by the COVID-19 pandemic, including the temporary modification of certain procedures, sittings in alternate locations and technological solutions including a virtual Parliament”. Its first related meeting took place on April 16, 2020. The Committee’s activities may be viewed here: <https://www.ourcommons.ca/Committees/en/PROC>

### c) The Parliament of South Africa

29. Both the National Assembly and the National Council of Provinces of South Africa have developed rules for the remote participation of Members. As per the rules, the venue of any virtual meeting is deemed to be Cape Town, the seat of Parliament.
30. Also, unlike in the current procedure in the House of Commons of Canada, in the South African Parliament, Members participating through the virtual/remote system are deemed to be present and are allowed to vote.

#### **d) Parliament of Uganda**

31. As of 28th April, 2020 the Parliament of Uganda continued to hold plenary sittings. It held its 43rd Sitting of the 3rd Meeting of the 4th Session but with safety measures in place. Further, Members of Parliament of Uganda have urged the executive to declare a state of emergency in the face of the current COVID-19 crisis. This call followed presentation of four statutory instruments that legalise the presidential directives on actions against COVID-19 pandemic.<sup>5</sup>

#### **e) US Congress**

32. Both the House of Representatives and the Senate have continued with their sittings. The House of Representatives held its previous sitting on May 01, 2020. Both Houses of Congress have instituted measures to reduce contact. Notably, the House rules and the Senate rules require voting in person which has seen both Houses continue with physical meetings.

#### **f) The German Bundestag**

33. The Bundestag continues to sit but with a restricted programme and fewer Members present. Business before the chamber has been prioritized to include only essential debates.

#### **Legislatures Conducting Virtual Meetings: A Comparative Look**

34. A number of Parliaments have already adopted use of conference video links in conducting parliamentary committee sittings and non-legislative plenary sittings. One of the softwares that has been commonly used is *Zoom*. This will be discussed briefly in this brief. Examples of these legislatures include the

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<sup>5</sup> MPs call for declaration of state of emergency, available at <https://www.parliament.go.ug/news/4590/mps-call-declaration-state-emergency>. Accessed on 3<sup>rd</sup> April 2020.

Parliament of Maldives, the National Assembly for Wales, the EU Parliament, the National Congress of Brazil, the Finnish Parliament, among others.

#### a) The Parliament of Maldives

35. The Maldives Parliament conducted its plenary sittings virtually on Monday, 30th March 2020 and was attended by 71 MPs out of 87.<sup>6</sup> The MPs debated a motion on the Government's proposed financial support programme as the country prepares for the economic and social impact of the COVID-19 pandemic. Its online sittings, though not in English language, are available on YouTube.<sup>7</sup>

#### b) The National Assembly for Wales

36. The Senedd conducted its virtual plenary sittings on Wednesday, 1st April 2020 **through a video conferencing platform**. The agenda of the sitting that lasted for almost two hours included Business Statement and Announcement, Statement by the First Minister on Coronavirus (Covid-19), Statement by the Minister for Health and Social Services on Coronavirus (Covid-19), and Statement by the Minister for Economy, Transport and North Wales on Economic Response to Covid-19. A video link of the plenary sitting and the record are available below.<sup>89</sup>

#### c) The European Parliament

37. As of March 26, the European Parliament held its sittings and adopted three urgent proposals: The Corona Response Investment Initiative, the extension

<sup>6</sup>Maldives Parliament to go virtual from March 30, available at <https://www.msn.com/en-in/news/world/amid-covid-19-spread-maldives-parliament-to-go-virtual-from-march-30/ar-BB11QmWE>.

<sup>7</sup> People's Majlis, 23<sup>rd</sup> Sitting (Online) (First Session) at <https://www.youtube.com/watch?v=i50eTvzLfeA>

<sup>8</sup> Senedd Plenary Sitting on 1<sup>st</sup> April 2020 available at <http://senedd.tv/Meeting/Archive/199b7ee2-8219-4a19-a1af-b5cb60bd438c?autostart=True>. 3<sup>rd</sup> April 2020.

<sup>9</sup> Plenary 01/04/2020 available at <https://record.assembly.wales/Plenary/6267?lang=en-GB#A57438>. 3<sup>rd</sup> April 2020.

of the EU Solidarity Fund to cover public health emergencies, and temporarily suspending EU rules on airport slots.

38. The Members of the European Parliament **voted online via email** and did not gather together when adopting the measures. It is worth noting, however, that the measures that were approved **were not in the nature of legislation**. The European Parliament is scheduled to have its sittings on 16th and 17th April in Brussels and its proposed agenda is Council and Commission statements - EU coordinated action to combat the COVID-19 pandemic and its consequence.

**d) The National Congress of Brazil (Congresso Nacional do Brasil)**

39. Brazil has passed a new resolution which enables the Parliament to work remotely during a public health emergency using **video-conferencing and virtual management tools**. The system allows MPs to register to a session and shows all phases of the legislative process including the bill under discussion, amendments, the results of each voting round, speeches, and committee agendas.
40. The first remote plenary session took place on 20 March 2020 and was livecast to the public through the Parliament's media and digital platforms.

**e) Parliament of Croatia**

41. The Croatian Parliament has limited its physical meetings for Members. Special measures have been passed to enable Committees to holding meetings remotely. **Committees vote via email or SMS**. However, the plenary is currently in session following the severe earthquake of 22 March, 2020.

#### f) Finnish Parliament

42. The Finnish Parliament has put in place specific measures to avoid close contact for roll calls, sittings and voting as well as special seating arrangements. Parliamentarians are allowed to participate in certain parliamentary work remotely. However, remote voting is not possible.

#### g) French Parliament

43. The French Senate is holding reduced plenary sittings – only one plenary sitting a week, limited to 10 questions for the government. They are attended only by the authors of questions and presidents of political groups. Three committees held meetings remotely for hearings with ministers and to exchange views. There is no legal framework for the holding of remote meetings. No special measures have been adopted on holding **video-conference committee meetings as there is no voting**. The software used for remote meetings is Tixeo.
44. The National Assembly of France has reduced the number of its meetings and is holding them remotely. Committee meetings are limited to hearings and debates on issues within their remit regarding the coronavirus crisis. The decision to proceed in this manner was taken by the Conference of Presidents composed of the President and Vice-Presidents of the National Assembly, the presidents of the political groups, committee presidents, and the minister in charge of relations with Parliament. Apart from three urgent bills on the COVID-19 pandemic, committees have not been holding meetings on legislative texts.
45. Remote meetings (**audio and video-conferencing**) are regulated legally and, while remote voting is not legally authorized, committees can carry out

debates and hearings. As for software, Zoom is being tested. No software is being used for the transmission of documents. All parliamentary documents and summary records can be consulted online on the National Assembly's intranet and internet sites. Amendments to legal texts can be uploaded and accessed remotely through "Eloi" (eLaw), an internal application developed by the National Assembly. Remote meeting software is hosted by an external service provider.

#### **h) Parliament of Romania**

46. The Parliament of Romania is holding the plenary and committee meetings remotely. The Standing Orders of the Senate have been **amended** to provide for the holding of remote meetings. According to the amendments, in exceptional situations – including epidemics, pandemics, extreme natural phenomena, acts of terrorism – when parliamentarians cannot be present in the premises of the Senate, meetings of the Standing Bureau, the Committee of Leaders of Parliamentary Groups, the Standing Committees, as well as the plenary sittings of the Senate are to be held through electronic means.
47. Remote plenary sittings are broadcast live on the Senate's webpage. Voting in plenary sittings is done over the phone by roll call.

#### **i) Parliament of Spain**

48. The Cortes (Parliament) of Spain held its plenary during the last week of March. Video-conferencing and remote voting was put in place for deputies who could not attend.
49. **Remote voting is restricted and was already regulated for circumstances such as pregnancy, maternity or paternity leave or serious illness.** Since the imposition of the restrictive measures two plenary sittings took place and the committee on health also met. Parliamentary technical and political

management bodies work remotely (videoconferencing, telematic voting, etc.) as much as possible.

**j) Tynwald** (legislature of the Isle of Man)

50. Tynwald, the legislature of Isle of Man, has made changes to the way votes take place to accommodate a virtual participation of Members. Members will **only be asked to register any opposition to motions**. If only one registers his or her disagreement, members will then be asked to vote using the messaging service within the audio tool. Audio from the sitting will be broadcast via the Tynwald website.

**k) Federal National Council - United Arab Emirates**

51. All parliamentary committees of the UAE have moved to 100 per cent remote working through video-conferencing and other tools.

## CHAPTER THREE

### Conducting Virtual Parliamentary Proceedings: Emerging Issues

52. There is little literature on virtual parliaments and the legal issues that **arise** from them. Much of the available literature is limited to MP's use of ICT to leverage their work and does not extend to the use of ICT in a collective sitting.
53. Concerns have been raised on some of the challenges that ought to be considered by parliaments before embarking on virtual proceedings. These are not only technological but also relate to **information security** and **cybersecurity**.<sup>10</sup>
54. Other challenges that have been identified include **lack of reliable internet connection, lack of resources and staff, and constitutional and security implications** of such a system. Further, it has been pointed out that any move to a "virtual Parliament" may be for the purposes of holding the government to account, through debates, ministerial questions, as well as select committee hearings, **rather than passing legislation**.<sup>11</sup>
55. **Voting** has also been seen as a challenge in parliaments. How to confirm and authenticate a vote received through remote means in the era of cyber interference has delayed implementation of fully virtual parliaments. As a possible resolution, **Proxy voting** has been proposed in the US House of Representatives, where absent members give a present member their proxy to cast their vote for them – as had already been implemented in Oklahoma and Pennsylvania legislatures.

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<sup>10</sup> Security challenges must be overcome before 'virtual parliament' can be set up available at <https://www.eveningexpress.co.uk/news/uk/security-challenges-must-be-overcome-before-virtual-parliament-can-be-set-up/>.

<sup>11</sup> Ibid. Also read Pressure is growing for a 'virtual Parliament' to hold politicians to account available at <https://www.electoral-reform.org.uk/pressure-is-growing-for-a-virtual-parliament-to-hold-politicians-to-account/>.



56. In Germany, lawmakers brought in a requirement reducing the number of MPs needing to be present at a vote, while in France its two-chamber parliament voted largely by proxy (i.e. members letting other representatives vote on their behalf) for its declaration of a health emergency.

### Avenues for Virtual/Remote Meetings

57. In order to conduct a plenary sitting, there are two options available: one, using free video conferencing tools available in the market, e.g. *Zoom*, *Microsoft Teams*, etc.; and two, leveraging the website by having a secure platform that can enable video-conferencing through a custom-made system.

58. The advantage with the first option is that it is readily available and has been used by other parliaments recently including New Zealand Parliament, Parliament of Saint Maarten, and Maldives Parliament etc. Closer home, the Judiciary has been using *Zoom* in delivering rulings and judgements. However, the major drawback of *Zoom* is its **safety and cybersecurity**.

59. *Zoom* is an American remote conferencing services company headquartered in San Jose, California which provides a remote conferencing service that combines video conferencing, online meetings, chat, and mobile collaboration.<sup>12</sup> In early 2020, usage of *Zoom* increased sharply as schools and companies adopted the platform for remote work in response to the coronavirus pandemic, rising 67% from the start of the year to mid-March.<sup>13</sup>

However, concerns have been raised about the privacy of *Zoom* and a new form of harassment known as “**Zoombombing**” in which intruders hijack video calls and post hate speech and offensive images such as pornography.<sup>14</sup>

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<sup>12</sup>Zoom Video Communications, available at [https://en.wikipedia.org/wiki/Zoom\\_Video\\_Communications](https://en.wikipedia.org/wiki/Zoom_Video_Communications). Accessed on 3<sup>rd</sup> April 2020.

<sup>13</sup> Ibid.

<sup>14</sup>Zoom - Dark Side — An FBI Warning, available at <https://www.npr.org/2020/04/03/826129520/a-must-for-millions-zoom-has-a-dark-side-and-an-fbi-warning>. 3<sup>rd</sup> April 2020.

60. The second option for a virtual plenary sitting, i.e. **having own system within the available platforms**, has been adopted by the US Congress, the Senedd (the National Assembly for Wales), the Maldives Parliament, and the Ireland's Parliament, etc. The advantage with this option is that it is more **secure** and cybersecurity issues can be addressed. **Privacy** is also enhanced in such a setting. However, since this is a system that has to be developed, it requires **time and resources**.

61. The New Zealand Parliament's Standing Orders have provisions on proxy voting provided under standing order 154 and 155.<sup>15</sup> Standing Order 154 provides as follows—

*154 Proxy voting*

(1) *A member may give authority for a proxy vote to be cast in the member's name or for an abstention to be recorded.*

(2) *A proxy must state the name of the member who is giving the authority, the date it is given, and the period or business for which the authority is valid. It must be signed by the member giving it and indicate the member who is given authority to exercise it.*

(3) *A member who has given a proxy may revoke or amend that proxy at any time before its exercise.*

(4) *The leader or senior whip of each party, or a member acting as the leader or senior whip of the party in the House for the time being, may exercise a proxy vote for any member of the party, subject to any express direction from a member to the contrary.*

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Guardian article on the concerns on Zoom available at <https://www.theguardian.com/technology/2020/apr/02/zoom-technology-security-coronavirus-video-conferencing>.

<sup>15</sup>New Zealand Standing Order 154 and 155 at [https://www.parliament.nz/en/pb/parliamentary-rules/standing-orders-2017-by-chapter/chapter-3-general-procedures/#\\_Toc490062898](https://www.parliament.nz/en/pb/parliamentary-rules/standing-orders-2017-by-chapter/chapter-3-general-procedures/#_Toc490062898). 4<sup>th</sup> April 2020.

62. Standing Order 155 further provides as follows—

155 *Casting of proxy vote-*

- (1) *A proxy vote may be cast or an abstention recorded on a party or personal vote only by the person who has authority to exercise it. In the case of any dispute, the member exercising a proxy must produce the authority to the Speaker.*
- (2) *In the case of a party vote, proxies may be exercised for a number equal to no more than 25 percent of a party's membership in the House, rounded upwards where applicable.*
- (3) *A proxy may be exercised for a member, in addition to the number of proxies that may be exercised under paragraph (2), while that member is absent from the House with the permission of the Speaker granted under Standing Order 38(1).*
- (4) *In the case of a party vote, proxy votes may be exercised for a party consisting of up to five members, or an Independent member, only if at least one of the members of that party or that Independent member is—*
  - (a) *present within the parliamentary precincts at the time,*
  - or*
  - (b) *absent from the House with the permission of the Speaker granted under Standing Order 38(1).*
- (5) *Despite paragraph (2), there is no limit on the number of proxy votes that may be exercised in the period from the declaration of a state of national emergency until that state of national emergency is terminated or expires.*

**CPA Toolkit for Commonwealth Parliaments: COVID-19: Delivering Parliamentary Democracy**

63. The Commonwealth Parliamentary Association (CPA) has developed the above toolkit to help parliaments in dealing with the challenges that have emerged due to the Covid-19 global pandemic. The kit notes that in order to successfully preserve the operation of Parliament during such a time whereby the key functions of Parliament as a legislative body are most needed, it is crucial that Commonwealth Parliaments take appropriate, proportionate and reasonable measures to facilitate this.

64. Any such measures ought to ensure that the safety of Parliamentarians and parliamentary staff is upheld as well as taking into consideration the manner in which the Parliament or Legislature would ordinarily operate.
65. The CPA further notes that it is the responsibility of all Parliaments and Legislatures to scrutinize all legislation and policies proposed by the government including the routine laws required to run the country and the emergency powers that the government proposes as the pandemic unfolds.
66. In order for Parliament to remain operational, it must ensure that it acts just as efficiently in scrutinizing all legislation and holding the Executive to account under all circumstances. Therefore, as Governments do have the option to propose procedural changes to facilitate alternative ways of working, it is for the Speaker and the House Procedure Committees to decide on the most appropriate action to be taken. For many Parliaments for example, there is no standard procedure in place yet for operating the Legislature remotely.
67. The CPA observes that at the Norwegian Parliament (the *Storting*), a number of measures were introduced during the current global pandemic including: a *reduction in the number of Members of Parliament at plenary meetings and during voting from 169 to 87*; the plenary will only take decisions on *urgent issues identified by the President in consultation with the Leaders of parliamentary party groups*; some rules of procedure are *temporarily suspended* including extended deadlines and the requirements for physical presence in Committee meetings with priority given to video conferencing; *reduced Committee workload* with priority given to urgent business; and the cancellation of international and domestic Committee Members' travel. The *Storting* also established a

Coronavirus Special Committee to examine Emergency Legislation and government measures<sup>16</sup>.

68. Some of the practical ways in which parliaments can keep functioning is proper management of '**social distancing**' measures in accordance with official guidance and the incorporation of remote voting in their operations. Further, the CPA guides that to ensure proper functioning, the alternatives should ensure the institution remains transparent, produce digital guidance, restrict non-essential business and support healthcare workers.

69. **Suggested responses by parliaments include –**

- a) **Setting up of Virtual Committees** – Parliaments should consider creating special Committees or holding special inquiries to look at the COVID-19 pandemic and how the government is tackling the issue. This can be done via remote meetings using easily accessible software and equipment.
- b) **Standing Orders** – To accommodate new ways of working online, it may be necessary to update or suspend the Parliament's rules of procedure or Standing Orders. Or the Speaker may need to make special rulings to enable the Parliament to meet virtually.
- c) **e-Etiquette** – Parliamentarians should remember to be patient with new systems and approaches. There will be need for trial and error. However video-conferencing modalities will sometimes require speaking one at a time, muting when not speaking, not always having the benefit of seeing body-language, giving shorter speeches, setting up your meeting much earlier and waiting for sessions to start.

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<sup>16</sup><https://www.stortinget.no/en/In-English/About-the-Storting/News-archive/Front-page-news/2019-2020/the-storting-constitutes-coronavirus-special-committee/>

- d) **e-Voting** –Parliaments may look at ways for legislators to vote electronically. This can be done verbally via video-conference or via special e-voting software. With testing new systems it is important that Members have a chance to approve the process or not. Such a process must be verifiable, accurate , secure and simple to use.
- e) **Systems & Cybersecurity** – Some short-term investment may need to be made to provide suitable equipment and software as well as ensuring IT staffing support is on-hand. It is also important to put in place adequate security and guidance as well to keep systems safe.
- f) **Publish Reports Online** – Parliaments should maximise the use of their websites by publishing Hansard, committee reports and legislation online in a timely fashion.

70. Casestudies identified in the operations of parliament include –

- (i) **Committee:** As a direct response to the current global pandemic, the Parliament of New Zealand quickly established an Epidemic Response Committee with government and opposition Members of Parliament to scrutinise government actions and the Committee is meeting via video-conferencing.
- (ii) **Innovation:** In Brazil, the Parliament passed a new resolution which enables Parliamentarians and parliamentary staff to work remotely during the current global health emergency using video-conferencing and virtual management tools. The system allows Members of Parliament to register to a session and shows all phases of the legislative process including the bill under discussion, amendments, the results of each voting round, speeches, and committee agendas. The first remote plenary session took place on

20 March 2020 and was live cast to the public through the Parliament's media and digital platforms.

- (iii) **Reducing the numbers:** The UK Parliament has to-date continued to conduct proceedings with face-to-face plenary sittings, albeit with a reduced number of Members of Parliament in the chamber (the quorum in the House of Commons is 40). Parliamentary staff have also been encouraged to work remotely.
- (iv) **Bi-partisanship:** In Pakistan, a Parliamentary Committee comprising party representatives from across the political divide has been formed to deliberate and make recommendations to the government, on how to manage COVID-19. Likewise in South Africa, there has been a show of unity across all 14 political parties within the national Parliament in response to the spread of the virus across the country.

## CHAPTER FOUR

### Analysis – Legal and Procedural Alignment

71. There are legal and procedural issues that arise from the idea of conducting a plenary sitting virtually. This range from voting to issues of quorum, privilege and security.
72. Article 124 of the Constitution provides that Parliament shall make Standing Orders for the orderly conduct of its proceedings and in this respect it can provide for use of video conferencing facility in conduct of virtual plenary sittings.
73. The first issue that arises when a plenary sitting is conducted through a video conferencing facility with Members participating in the proceedings from different locations outside Parliament is to examine its import vis-a-vis Article 126 of the Constitution (Location of sittings of Parliament). **Article 126(1) of the Constitution** provides as follows—
- 126. Location of sittings of Parliament*
- (1) A sitting of either House may be held at any place within Kenya and may commence at any time that the House appoints.*
74. The Committee noted that whereas this would seem straight forward, the proposed amendment should be clear enough cognizant of the fact that virtual meetings can happen with participants from **anywhere in the world**.
75. The following are some of legal and procedural issues that arise in relation to virtual plenary sittings:
- a) *Do the privileges and immunities enjoyed by Members of Parliament within the precincts of Parliament extend to virtual plenary sittings? What if a member is outside Kenya's territory?*



- b) *How should voting be done? Through email? How is transparency ensured in a video conferencing setting?*
- c) *How are Papers to be Laid? How is this procedure to be aligned in a virtual plenary setting?*
- d) *How will points of order or interventions be raised seamlessly?*
- e) *Will there be dress code to be adhered to in a virtual plenary setting?*
- f) *How will the records of the proceedings be recorded? Will the Hansard Officers be participating in the virtual plenary sitting? What about the Clerks at the Table? What will be the role of Serjeant-at-Arms and other officers?*
- g) *What implications will a virtual plenary sitting have on a member who commits a disorderly conduct or a gross disorderly conduct? And how will the application of disciplinary rules apply?*
- h) *What happens if internet connection fails and the virtual plenary sitting fails to continue? Or what happens if a member's internet connection fails? How will these be addressed so as to ensure that the sittings proceed smoothly?*

### **Issues of Privilege and Immunity of Members in a virtual sitting**

76. The Committee observed that section 3 of the Parliamentary Powers and Privileges Act (No. 29 of 2017) provides for what constitutes *precincts of Parliament*. Although section 3(g) provides for ***“such other areas as the Speaker may designate, in writing, for the purpose of parliamentary business”***, conceptually, it appears that precincts of Parliament tends to refer to physical buildings and not virtual spaces.
77. The Committee further observed that in order to fill the gap that might be a ground for litigation, the **Act may need to be amended to include virtual plenary and committee sittings as constituting precincts of parliament** and

further to extend the privileges and immunities of Members for speeches made in these virtual sittings.

### Quorum

78. Article 121 of the Constitution and Standing Order 34 of the National Assembly Standing Orders provides that the quorum of the House shall be 50 Members. The Standing Order further states that if there's no quorum at commencement, the Speaker will order the Quorum Bell to be rung for 10 minutes and a further order for the bell to be rung for another 5 minutes after which if there is no quorum then the Speaker shall adjourn the sitting. There are two issues that arise here when a plenary sitting is held virtually:

- a) *Should virtual participation count in determining quorum?*
- b) *How should quorum hitches be handled?*

79. On the first question, most of the technology available for example *Zoom* can enable participation of up to 1000 people in videoconferencing. Therefore, this should not present a challenge of hosting at least fifty Members of Parliament. The difficulty that may arise is how to ensure that at least 50 Members are online and that their connectivity is assured since these issues might not be in a controlled environment like in the precincts of Parliament. Therefore, these realities might require consideration in determining the quorum. In addition, since these Members of Parliament will be in their homes, the necessary support might not be as timely or even present. As noted above, in the Parliament of Canada, Members in the virtual system do not count when determining quorum.

80. On the second question, ingenuity will be required in light of the virtual space that the sitting will be held. Would the Speaker then indicate via *Zoom* that ten minutes be given to ensure that there is quorum? Unlike in a physical setting,

how will the ten minutes be utilized so as to whip members to log into the virtual House?

### **Voting**

81. Standing Order 69 provides for the voting in the House as follows—

#### ***Voting in the House***

69. (1) *Unless otherwise provided under the Constitution, a question arising in the House*

*shall be decided by a majority of the Members in the House, present and voting.*

(2) *In ascertaining the results on a question under paragraph (1), the Speaker shall, in the first instance, collect the voices of the “Ayes” and the “Noes” and shall declare the results*

*accordingly.*

(3) *On a question proposed for a decision in the House, the Speaker has no vote.*

(4) *In determining the number of Members of the House for the purpose of voting, the Speaker shall not be counted as a Member.*

82. Two issues arise: one, the Standing Order contemplates that Members must be present in the House to make a decision on any Motion; two, the voice vote presents an immediate challenge in a virtual plenary.

83. The Committee noted that the Romanian Parliament has considered voting in plenary sittings over the **phone by roll call**. The *Cortes* of Spain has allowed **remoting voting** but it is restricted for circumstances such as pregnancy, maternity or paternity leave or serious illness. The Parliament of Ukraine is **considering remote** voting for MPs for a limited period. **The European** Parliament tested **email voting** in March 2020. The Pennsylvania General Assembly has introduced remote voting for the first time.

84. The Committee further notes that, whatever option that may be taken, remote voting is an option **to be explored** since it is aligned to virtual plenary sitting. However the model adopted by the *Cortes* of Spain which places restriction might apply in a scenario that Parliament is still conducting physical plenary sittings and not fully virtual sittings.

### **Public Participation**

85. A valid concern for the Committee was whether a virtual plenary sitting would comply with the constitutional requirements of public participation.

86. Article 118 of the Constitution provides as follows—

#### ***118. Public access and participation***

*(1) Parliament shall—*

*(a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and*

*(b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees.*

*(2) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.*

87. The Committee observed that most virtual platforms that may be opted for can be made accessible to members of the public through a feed to the Parliamentary Broadcasting Unit (PBU), the *YouTube Channel* for the National Assembly of Kenya, and even *Facebook Live* on Parliament's Facebook Page. With this, the requirement of Article 118 of the Constitution would have been fulfilled. This measure will be in addition to video conferencing by Committees especially when the Committee is considering a matter that will ultimately be considered by the House.

c) Based on the experience of other parliaments thus far, it is noted that parliaments may not effectively conduct business on a ‘fully virtual’ arrangement. In this regard, a **hybrid model** incorporating both physical and virtual sittings of the House and its committees may be the best compromise given the current extraordinary. THEREFORE, the National Assembly should adopt a hybrid system that combines both physical and virtual sittings of the House and its committees. {*The Procedure & House Rules Committee and the Departmental Committee on Finance & National Planning have previously conducted meetings using such model*}.

d) That the voting practice of the House during division is either through electronic means or by roll call in the event of failure of the electronic system, and further that both of these require the presence of Members in the Chamber. In this regard, the physical attendance of Members presented by a hybrid system is desirable especially considering the provisions of **Article 122 of the Constitution** which presumes the presence of Members within the Chamber. Article 122(1) of the Constitution states –

*“122(1) Except as otherwise provided in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of members in that House, present and voting.”*

Given the current scenario, the House may consider introducing a system of “deferred voting” where voting is delayed to a later day but only in instances where the Constitution requires a fixed majority.

e) In considering a platform for the conduct of its business, the House should ensure that the system has capabilities for, *inter alia*, –

- (i) *Registration of the attendance of Members,*
- (ii) *Voting that is simple, accurate and authenticable with a proper record,*
- (iii) *Documentation sharing and record keeping,*
- (iv) *Security from attacks including espionage,*
- (v) *Compatibility with existing systems in use including audio and video capabilities,*
- (vi) *Ability to have the proceedings transcribed in Hansard, and,*
- (vii) *Ability to allow public to participate and have the proceedings broadcast live.*

f) Subject to the adoption of this report, the Procedure & House Rules Committee will develop guidelines for the conduct of virtual sittings and pursuant to Standing Order 262, propose other amendments necessary for the continued development of the rules of procedure of the House. **The development of the guidelines may take a week or two and may be ready by 18<sup>th</sup> May, 2020.**

#### **Committee Recommendation**

89. Pursuant to Standing Order 262 of the National Assembly Standing Orders and taking into consideration the Observations and Findings made, the Procedure & House Rules Committee recommends—

**THAT, the House adopts the Fourth Report of the Procedure & House Rules Committee on *Amendments to the Standing Orders to Facilitate Virtual Sittings of the House and its Committees*, and pursuant to the provisions of Article 124(1) of the Constitution and Standing Order 265 –**

- (i) **resolves to amend its Standing Orders as contained in the Schedule to the Report; and,**
- (ii) **orders that the amendments to the Standing Orders as contained in the Schedule to the Report shall come into effect on Monday, May 18, 2020.**

## SCHEDULE

The Standing Orders are amended by inserting the following new Part immediately after Part XXIX-

### **PART XXIXA—CONDUCT OF PROCEEDINGS IN EXCEPTIONAL CIRCUMSTANCES**

#### **Application**

**265A.**(1) This Part shall apply to the conduct of proceedings of the House and its Committees in an exceptional circumstance.

(2) The provisions of the Standing Orders preceding this Part shall remain in force except as may be modified in this Part.

(3) Where any provision of this Part conflicts with or is inconsistent with the provision of any preceding Standing Order, whether in part or whole, the provisions of this Part shall prevail.

(4) In this Part, “exceptional circumstance” means an event or occurrence as may be lawfully declared in accordance with any written law which precludes the National Assembly from conducting a physical sitting and includes the declaration of an epidemic, pandemic, extreme natural phenomena, pestilence or an act of terrorism.

#### **Alternative sitting arrangements.**

**265B**(1) The Speaker shall invoke the provisions of this Part and permit the House and its Committees to conduct sittings either—

- (a) physically and virtually, where the House is partly precluded from conducting a physical sitting by an exceptional circumstance; or
- (b) virtually, where the House is wholly precluded from conducting a physical sitting by an exceptional circumstance.

(2) The Speaker shall, upon invoking the provisions of paragraph (1) and upon the recommendation of the Procedure and House Rules Committee, prescribe guidelines governing—

- (i) the conduct of the proceedings;

- (ii) the manner of voting, manner of conducting a division and the ascertainment of a vote in the proceedings;
  - (iii) the conduct of Members during the proceedings;
  - (iv) access to the proceedings by members of public and media;
  - (v) public participation and involvement;
  - (vi) etiquette; and
  - (vii) such other matter as may be relevant to the conduct of the proceedings.
- (3) The guidelines prescribed under paragraph (2) shall cease to apply upon revocation by the Speaker or the cessation of the exceptional circumstance, whichever is earlier.

### **Other arrangements**

**265C.** During the pendency of an exceptional circumstance—

- (a) the House may, by resolution, vary its ordinary sittings to such a number as the circumstance permits;
- (b) the House Business Committee shall determine and prioritize essential business to be considered by the House; and
- (c) The Speaker may—
  - (i) designate a place outside the chamber but within the precincts of Parliament from where Members may participate in the proceedings;
  - (ii) prescribe the number of Members who may participate in the proceedings from the chamber or any designated place outside the chamber;
  - (iii) permit a Member or any other person required to file, deliver or table any document under the Standing Orders or any written law to file or submit the document electronically for tabling;
  - (iv) where the House is wholly precluded from conducting a physical sitting, deem a document submitted, including a document submitted electronically, to have been tabled, subject to its admissibility; and
  - (v) preclude public access to the House and committees pursuant to Standing Order 252(1).



## **Use of technology**

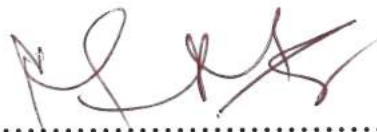
**265D.** (1) The Speaker may, taking into account the provisions of Article 126(1) of the Constitution, prescribe an appropriate information and communications technology platform for the conduct of the virtual proceedings under this Part.

(2) The platform prescribed under paragraph (1) shall—

- (a) incorporate video and audio or text;
- (b) allow the participation of Members in the proceedings in real-time and the broadcast of the proceedings;
- (c) facilitate the proceedings to be recorded and transcribed under Standing Order 248; and,
- (d) where the House is wholly precluded from conducting a physical sitting, incorporate a system that allows Members to vote.

(3) The voting system incorporated under paragraph (2) (d) shall be simple, accurate, verifiable, secure, accountable, transparent and facilitate the prompt declaration of the result of each vote taken.

(4) The Clerk shall facilitate the participation of Members in virtual proceedings through the use of standard electronic devices specifically configured for the proceedings.



.....  
**THE HON. MOSES CHEBOI, CBS, MP**  
**DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY**  
**THE PROCEDURE & HOUSE RULES COMMITTEE**

Dated: May 04, 2020

# **ANNEXURES**

**(Copy of Minutes of the Committee – 30.04.2020)**

**MINUTES OF THE SEVENTH MEETING OF THE PROCEDURE & HOUSE RULES COMMITTEE HELD ON THURSDAY, 30<sup>TH</sup> APRIL, 2020 AT COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.**

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**PRESENT**

1. The Hon. Moses Cheboi, CBS, MP - Deputy Speaker (**Chairing**)
2. The Hon. Christopher Omulele, MP - 4<sup>th</sup> Chairperson of Committees
3. The Hon. Cecily Mbarire, MGH, MP - Deputy Majority Party Whip
4. The Hon. T.J. Kajwang, MP
5. The Hon. Samuel Arama, MP
6. The Hon. Samuel K. Gachobe, MP
7. The Hon. Teddy Mwambire, MP
8. The Hon. Capt. (Rtd.) Didmus Barasa, MP
9. The Hon. Beatrice Adagala, MP
10. The Hon. David Kangogo, MP

**VIRTUAL PARTICIPATION {ZOOM APP}**

11. The Hon. Abdul Rahim Dawood, MP
12. The Hon. Olago Aluoch, MP
13. The Hon. Zuleikha Hassan, MP
14. The Hon. Ruweida Mohamed Obo, MP
15. The Hon. Gathoni Wamuchomba, MP
16. The Hon. Cornelly Serem, MP

**ABSENT WITH APOLOGIES**

1. **The Hon. Justin B. N. Muturi, EGH, MP -Speaker of the National Assembly/Chairperson**
2. The Hon. Rosalinda Soipan, CBS, MP -First Chairperson of Committees
3. The Hon. Patrick Mariru, MP -Second Chairperson of Committees
4. The Hon. Jessica Mbalu, CBS, MP -Third Chairperson of Committees
5. The Hon. David Kiaraho, MP
6. The Hon. Ben Momanyi, MP
7. The Hon. Alfred Keter, MP
8. The Hon. Abdihakim Osman, MP
9. The Hon.(Dr.) Pamela Ochieng', MP

### IN ATTENDANCE

1. Mr. Samuel Njoroge - Director, Legislative & Procedural Services
2. Mr. Kipkemoi Arap Kirui - Deputy Director, Legislative & Procedural Services {Zoom App}
3. Mr. Mainah Wanjiku - First Clerk Assistant
4. Mr. Ronald Walala - Legal Counsel

### MIN./PHRC/016/2020 PRELIMINARIES

1. The Deputy Speaker (Hon. Moses Cheboi, CBS) called the meeting to order at 11.10 am. The meeting was opened with prayers by Hon. Samuel K. Gachobe, MP. The Deputy Speaker welcomed the Members both present in the meeting and those participating virtually and encouraged open interaction.
2. The Deputy Speaker brought to the attention of the Committee the Speaker's Guideline No. 2/2020 on the *Conduct of Sittings of the House and Committee Meetings during the COVID-19 Pandemic Period* dated April 02, 2020. In the guidelines, the Speaker had, *inter alia*, called on the Procedure & House Rules Committee to consider the amendment of the Standing Orders to facilitate the virtual participation of Members in the business of the House and its committees. It is on this basis that the Committee was to consider proposals for amendment to the Standing Orders. Issues of concern would be for example dressing, language and discipline.

### MIN./PHRC/017/2020 ADOPTION OF THE AGENDA

The agenda for the meeting was adopted as:

1. Prayers
2. **Confirmation of Minutes of the previous Meetings**
3. **Consideration of proposed amendments to the Standing Orders in response to Covid-19**

4. Any Other Business
5. Date of the next meeting

**MIN./PHRC/018/2020                      CONFIRMATION OF THE PREVIOUS  
MINUTES**

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The confirmation of the Minutes of the Sixth Meeting of the Committee held on Monday, October 28, 2019 was deferred.

**MIN./PHRC/019/2020                      CONSIDERATION OF PROPOSED  
AMENDMENTS TO THE STANDING  
ORDERS IN RESPONSE TO COVID-19**

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1. The Director of the Directorate of Legislative & Procedural Services informed the Committee that the Clerk of the National Assembly had taken administrative steps that would help in the event of a virtual proceeding of the House. The Director noted that the Clerk had established a Taskforce that reviewed the available systems. The Taskforce had recommended to the Clerk the specifications that would be appropriate for a virtual system considering the needs of the institution. A decision was being awaited from the Procurement Department.
2. The Committee was briefed on the various aspects of virtual operations of Parliament. The briefing covered the various aspects including the response by other parliaments as well as possible areas of amendment. The briefing also covered the emerging issues in conducting virtual parliamentary proceedings as well as the available avenues for virtual/remote meeting. – *The Briefing Paper is attached.*
3. The meeting was also presented with the proposed amendment to the Standing Orders as well as draft Rules. These covered the proposed introduction of Standing Order 28A to, *inter alia*, allow for the Speaker to, in exceptional circumstances, permit proceedings of the House to be conducted remotely

through a prescribed ICT platform. On the other hand, the guidelines proposed to provide for the holding of virtual proceedings, quorum, voting and privileges of Members.

### **Committee Observations**

4. In its consideration of the briefings, the Committee observed that there is need to rework the proposed amendments to the Standing Orders especially in terms of placing. The committee was of the view that the provisions ought to be placed as part of the *General Provisions* of the Standing Orders. The Committee also observed that the Guidelines ought to take note of the transient nature of the issue at hand. The guidelines and the amendments should be simple and clear.
5. The Committee also deliberated on whether when operating on a virtual system, Member of Parliament must be within the precincts of Parliament or participation can be from anywhere. This was especially important when considered against sections 3 & 9 of the *Parliamentary Powers and Privileges Act, 2017*. The matter was discussed at length and it was agreed that this be left to the Guidelines to be developed.
6. The Committee also observed that Guidelines to be developed should be clear on the construing of quorum for Members participating through virtual means. Further, the system ought to provide a safe and verifiable voting platform for Members.
7. A proposal was made that in keeping with the Speaker's Guideline No. 2/2020 on the *Conduct of Sittings of the House and Committee Meetings during the COVID-19 Pandemic Period*, some areas including Committee Rooms and lobbies be designated as Chamber areas with the attendant facilitation. The committee deferred decision on this matter noting that the current arrangement had been very successful.

## Committee Resolutions

After consideration of the matters, the Committee resolved that –

1. The proposed Standing Order 28A be placed under the General Provisions or at the end of the Standing Orders. The amendments to take cognizance of the transient nature of the current situation and adapt as appropriate. The amendment should therefore not be specific to the Covid-19 pandemic but rather be generic and all encompassing.
2. There be establish a Sub-Committee to consider the Guidelines and report back to the Committee. The Sub-Committee was mandated to –
  - a. Consider the draft Guidelines presented by the secretariat,
  - b. Consider the available options for virtual/remote transaction of business of the House taking into consideration the facilities currently available,
  - c. Consider the most appropriate voting mechanisms/options that the House can adopt in view of the prevailing or similar circumstances,
  - d. Make recommendations to the Committee with regards to the guidelines on matters of interpretation of location, dressing, language among other things that will facilitate virtual proceedings of the House and its committees including ability to broadcast,
3. The Sub-Committee to comprise –
  - (i) The Hon. T.J. Kajwang, MP
  - (ii) The Hon. Teddy Mwambire, MP
  - (iii) The Hon. Abdul Dawood, MP
  - (iv) The Hon. Zuleikha Hassan, MP
4. The Report of the Committee with regards to the amendment to the Standing Orders be ready for tabling and possible debate by Wednesday, May 02, 2020.



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**ANY OTHER BUSINESS, ADJOURNMENT  
AND DATE OF THE NEXT MEETING**

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There being no other business, the Deputy Speaker adjourned the meeting at twenty minutes past twelve o'clock. The next meeting shall be by notice.

Sign: .....

(Chairperson)

Date: .....