



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT

(FIRST SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

COMMUNICATION REGARDING PROCEDURE ON STATEMENTS
UNDER S.O. 44 (2)

Honourable Members,

YOU may recall that the Deputy Leader of the Minority Party and Member for Gem (Hon. Jakoyo Midiwo), rose on a Point of Order on 23rd May, 2013 to seek the Speaker's guidance on status of Statements that were being sought in the House by the Honourable Members pursuant to Standing Order 44 (2) (c). The Deputy Minority Leader's request was based on the fact that, in this new constitutional dispensation, the Executive is not in the House. In his request, the Deputy Leader of the Minority Party, added that, and I quote " **I think it will be over reaching for a Committee chair to purport to issue a statement, or answer on behalf of the Government.**" He also sought to know the role of the Majority Leader in the House as pertains to responses to Statements. Several Honourable Members have also approached me seeking guidance as to the best way a Chairperson of Committee, a Leader of Majority and a Leader of Minority in particular may issue Statements, and the scope or limits of such statements, if any.

The issues raised by the Deputy Leader of the Minority Party are fundamental and will essentially, determine how this House will operate in a Presidential system of governance.

Hon. Members,

Before I give my guidance on this matter, let me take the House through the a brief history of place of the Order "Statements" and Statements hour: Section 17(3) of the Old Constitution provided that (and I quote) "The Cabinet shall be collectively responsible to the National Assembly for all things done by or under the authority of the President, or

the Vice-President or any other Minister in the execution of his office". It was therefore clear that, in addition to being Members of the National Assembly, Ministers were, in the previous dispensation, responsible to the House. In this regard, the progressive parliaments under the previous constitutional order devised ways of holding the cabinet ministers to account, **in the floor of the House**. This gave rise to the famous Question time. The practice of requests for statements started in the Eight Parliament. At that time, Members would rise on a point of order to request for Statements. However, this was limited to matters of **urgent national importance**, that would not await a response through Questions. The practice continued during the Ninth Parliament and was codified in the 2008 Standing Orders as a separate Order named "Statements". During Statements time, the Ministers would respond to Statements requested by Members in the Plenary. In addition, every Wednesday at 3.30 pm, the Prime Minister would also, either respond to Questions or give Statements to the House. Indeed, this was a popular time of the House. However, these remained outside the matters considered as "business of the House".

Hon. Members,

That is now history! Allow me now to focus on the present circumstances: Article 136 of the Constitution provides for direct election of the President by the people and is both the Head of State and head of Government. Cabinet Secretaries, on the other hand, are appointed by the President with the approval of the National Assembly. Article 153 (2) and (3) provides that "**Cabinet Secretaries are accountable individually, and collectively, to the President for the exercises of their powers and the performance of their functions**" It is therefore clear that , the Executive Branch, which the President heads, is distinct from the Legislative and Judicial branches of government, which are all independent of one another. This separation of powers serves to check and balance certain actuations of either Branch of government. This is a far different from the Parliamentary system where there is a clear fusion of powers between the executive and the legislative branches.

Hon. Members,

In our case therefore, the tools for holding the government to account will significantly change to be in tandem with the new dispensation. Article 153 (3) of the Constitution of Kenya Provides 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".

Thus, the interaction between the Executive and the Legislature is in the Parliamentary Committees.

Honourable Members,

Hitherto, and prior to adoption of the current Standing Orders, we had Members' Half-Hour Statements (Order 24 of 2008 SOs) where every Thursday at 6.30 pm or at 7.00 pm if it is an allotted day, the Speaker could interrupt the business of the House to allow Members to raise any matter. A Member would issue a written notification to the Speaker before 3.00 pm on the day the Statement was being made or before 1.00 pm if the statement required a response from the Government. We have retained this in Order 43 of the current Standing Orders. The Speaker allows an interruption of business on Tuesday at 6.00 pm to facilitate members to make general statements of topical concern with a time limit of three minutes.

Members also had an opportunity to make Personal Statements (Order 76 of 2008 SOs) where, by indulgence of the House, a Member would explain matters of a personal nature although there is no question before the House without allowing any debate on the matter. This has been retained under Order 84 of the current Standing Orders.

Honourable Members,

I have had an opportunity to also benchmark our practice with other similar jurisdictions. In Philippines, which is also bicameral and Presidential like our case, most of these matters are dealt with in committees. However, if a Minister, desires to appear before a committee, he or she may, with the concurrence of the House, set a date and hour for his appearance to answer to any matters pertaining to his department.

Honourable Members,

Quite new in our Standing Orders and practice is the Statements Hour (Order 44) coming every Thursday not later than 3.00 pm. During the Statements Hour, three different types of business may be transacted-

One, a member of the House Business Committee designated by the Committee for that purpose has ten minutes to present and lay on the Table a statement informing the House of the business coming before the House in the following week.

Two, the Leader of the Majority Party, or the Leader of the Minority Party as the case may be, or their designees may make a statement relating to their responsibilities in the House or the activities of a Committee;

Three, a member may request for a statement from a Committee Chairperson relating to matters under the mandate of the Committee and the Speaker may either appoint a day for the statement or direct that the statement be issued on the same day.

This is the part of our Standing Orders that the Deputy Leader of the Minority Party, and indeed many Members sought my clarification. The House will agree with me that, the use of parts two and three of that Order, are becoming quite controversial. There is a real threat of introducing Questions, yet, it is clear that no Member can reply or give answers for the Executive in the House. There is also the risk of pre-occupying committees with responding to Statements, other than focusing on their programmes. In any case, neither the Leader of the Majority Party nor Chairs of Committees can hold brief for the Executive. However, they can seek for replies from the Executive and deliver such replies to the House.

Honourable Members,

I now wish to guide the House on the matters raised by the Member for Gem. Regarding the roles of the Leader of the Majority, I wish to guide as follows: From an institutional perspective, the majority leader has a number of duties. Scheduling floor business is a prime responsibility of the majority leader. Although scheduling the House's business is a collective activity of the majority party, the majority leader has a large say in shaping the chamber's overall agenda and in determining when, whether, how, or in what order legislation is taken up. In addition, the majority leader is active in constructing winning coalitions for the party's legislative priorities; acting as a public spokesman — defending and explaining the party's program and agenda; serving as an emissary to the President, *especially when the President is of the same party*; and facilitating the orderly conduct of the House's business.

Honourable Members,

I now wish to issue guidelines on the use of Statements Hour under Standing Order 44 henceforth as follows-

- (a) Where a Member of the House Business Committee designated by the Committee presents and lays on the Table a statement informing the House of the business coming before the House in the following week, the statement must be strictly restricted to informing the House of the business of the week;
- (b) Where the Leader of the Majority Party, or the Leader of the Minority Party as the case may be, or their designees make a statement relating to *their responsibilities* in the House or the activities of a Committee, their statements should be strictly restricted to their responsibilities in the House. However, the Leader of Majority may also respond to matters of **urgent national scope, arising from Statements sought**. However, this will be limited to matters of national scope that, in the opinion of the Speaker, would not be referred to a particular Committee, either due to their nature or to the urgency. Further, the

Statements should not be more than **two**, at any particular **Thursday**. In this case, the Leader of the Majority Party will be expected to seek an answer from the relevant arms of the Executive and **read** the Statement to the House. The Speaker may allow **minimal** interventions thereafter. In this regard, I will require the Leader of the Majority to restrict himself to the actual response given by the Executive as opposed to his opinion;

- (c) Where a Member requests for a statement from a Committee Chairperson relating to matters under the mandate of the Committee, the Speaker may either appoint a day for the statement or direct that the statement be issued on the same day. However, the statement sought must be restricted to matters within the mandate of the Committee and which have been exhaustively dealt with and concluded by the Committee or where the Chairperson is authorized by Members to issue preliminary reports to the House. In this case, Members will be allowed to seek statements, on **Thursdays** on the floor of the House. Chairs will be required to take over the requests **and prioritize them, according to the Committee's programme. Committees therefore will not be obliged to deviate from their programmes to address the statements;** The Member who requested the Statement will be expected to attend the meeting of the Committee and also interrogate the matter requested. The Committee may thereafter choose to report back to the House by way of a Statement or a report in response. In this case, the discretion to report back to the House will therefore be that of the Committee. If a report of a committee arising from a Statement is adopted by the House, it will form part of the resolution of the House for the Committee on Implementation to follow-up.

Honourable Members,

This direction is meant to allow committees to conduct oversight functions without interference or premature demands on them from the House. The use of the Statements Hour by Chairs of Committees to respond to statements should not therefore be too regular a feature but a rare intervention with the sanction of the Committee.

Thank you!

THE HON. JUSTIN B.N. MUTURI, MP
SPEAKER OF THE NATIONAL ASSEMBLY
June 12, 2013