



REPUBLIC OF KENYA
TWELFTH PARLIAMENT
THE NATIONAL ASSEMBLY – (FOURTH SESSION)
COMMUNICATION FROM THE CHAIR

_____ (No. 32 of 2020) _____

ON

**ENTITLEMENT OF SLOTS IN SELECT COMMITTEES AND DISCHARGE
OF A MEMBER FROM SELECT COMMITTEES BY PARLIAMENTARY
PARTIES**

Hon. Members,

As you will recall, on Tuesday, 2nd June, 2020, the Member for Ugenya Constituency, the Hon. David Ochieng, MP rose on a *Point of Order* under Standing Orders 172, 173 and 176, requesting for my considered guidance on six issues. The crux of his issues was **whether a Member belonging to a party other than a Parliamentary party may be discharged from a Committee of the House by any Parliamentary party.** To this end, the Member did inform the House that he had received a letter from the Minority Party Whip notifying him of the Party's intention to discharge him from the Departmental Committee on Health pursuant to the provisions of Standing Order 176. I also wish to inform the House that the Member also wrote to the Speaker listing the six issues for which he sought my guidance.

Hon. Members, having reviewed the issues raised by the Member for Ugenya, and others canvassed by the Leader of the Majority Party, the Leader of the Minority Party and other Members who spoke on the issue, I have isolated the following five matters as the ones requiring my guidance –

- (1) whether it is the intention of the Constitution and the Standing Orders that all slots in select committees are to be assigned only to parliamentary parties;
- (2) whether it is the intention of the Constitution that the exercise of the roles of the National Assembly under Article 95 of the Constitution in Committees is exclusive to Members belonging to parliamentary parties to the exclusion of Independent Members and Members belonging to parties other than parliamentary parties;
- (3) whether the Constitution envisages that the inclusion of Independent Members and Members belonging to parties other than parliamentary parties to serve on Committees of the House ought to be the remit only of the parliamentary parties;

- (4) whether a parliamentary party may exercise the discharge powers of a party under Standing Orders 176 to remove a Member who is not a Member of the particular parliamentary party or coalition of parties from a Committee, on the basis of having granted the Member the nomination to the Committee; and,
- (5) whether there is a lacuna or misapplication of the Standing Orders with respect to nomination into, and discharge of Members from Committees, and if so, what is the appropriate remedy, if any?

Hon. Members, The issues for which the Member sought my guidance are fundamental to the functioning of the House as they relate to the mode of inclusion and exclusion of a Member from the Committees of the House. Before I proceed to address the issues for determination, permit me to remind the House that this is not the first time that the Speaker has been invited to guide on questions of membership to select committees and discharge therefrom. Certainly, this is an illustration that one cannot perfectly delink parliamentary politics from the legislature and that, the decision to discipline Members is primarily vested in the Political Parties, but it always finds its way into the Legislature. Indeed, allow me to refer to an expository by a Finnish Professor of Political Science, Dr. Kari Palonen in his write-up titled *Parliamentary Procedure as an Inventory of Disputes: A Comparison between Jeremy Bentham and Thomas Erskine May*. In that write-up, the Professor opines that and I quote, " *Parliamentary politics is inherently procedural....parliamentary politics is not just politics that takes place in Parliament, but politics conducted in a parliamentary manner, in accordance with the rules and practices of parliamentary procedure.*"

Indeed, in the Eleventh Parliament, I was invited by the Leader of the Majority Party, to guide on the application of Standing Order 176 relating to discharge of Members from Committees. This was after the then CORD Coalition discharged the Member for Lunga Lungu, the Hon. Khatib Mwashetani, MP and others from several Committees. In a Considered Ruling that I rendered to the House on 30th November, 2016, I addressed the following three Questions –

- (i) *whether, and to what extent Standing Order No. 176, as then framed, could be employed as a mechanism for enforcing party discipline for breaches outside the proceedings of the House or its Committees;*
- (ii) *whether the provisions of Standing Order No. 176, as then framed were to be applied against Members of the House by instigation of, **or order of persons other than Members of the House;** and,*
- (iii) *whether Standing Order No. 176 as then framed, adequately protected the rights of Members in the performance of their functions in the House (particularly with respect to discharge without an opportunity to be heard).*

Hon. Members, I am not about to restate the details of that Ruling but, for the benefit of the House, I hasten to underscore the fact that, arising from the guidance then, and taking into account the dictates of our Constitution on fair administrative action, I hitherto put a temporary embargo on further discharge of Members from Committees by parliamentary parties until the House amended Standing Order No. 176 to provide for a mechanism of giving the affected Member adequate notice and an opportunity to be heard by the Party, before effecting the discharge. This was later actualized by amending Standing Order 176 as reflected now in the 4th Edition of the National Assembly Standing Orders. I have intentionally chosen to underscore that particular ruling because it addressed the issue of rights of Members, which is also part of the subject of guidance this afternoon.

Hon. Members, The practice of placing political parties at the centre of running parliamentary business has a history. This prompts me to perhaps briefly enlighten the House on the history of parliamentary parties as vehicles for constituting House Committees- hence the setting of a threshold of what constitutes a parliamentary party. You will recall that in 1991, the National Assembly repealed Section 2A of the then Constitution and re-introduced multiparty democracy that saw the emergence of many political parties. As a result, political parties took centre stage in the running of the affairs of the House, including composition of the few Committees that were in place at the time. Indeed, the focus of the legislative and oversight functions of the House shifted from the plenary of the House to the Committees. At that time, the Rules of Procedure which had been amended just before the 1992 elections, only contemplated two factions in the House, that is, the *Ruling Party* and the *Official Opposition Party*. As a matter of fact, Standing Order 2 of the Seventh Parliament (1992-1997) defined "Official Opposition Party" as "the party consisting not less than thirty members..." Due to the high number of parties in the House at the time, most of which were neither in the Ruling Party nor the Official Opposition Party, there was a desire to set minimum thresholds to be met by the rest of the political parties represented in the House to qualify to sit at the "bargaining table" to claim any parliamentary opportunity or decide on parliamentary matters.

Hon. Members, Times change and so does the scope of democracy. You will agree with me that, when society transforms its ways of handling its political affairs through various epochs, it is inevitable that the rules that govern conduct of those affairs will change. Between the 7th and the current 12th Parliaments, Standing Order No. 2 has been amended severally, including at one time, amendments to increase the threshold for a party to be recognised as "official opposition", the introduction of an "opposition caucus" and the current definition of a "*parliamentary party*", which means *a party or a coalition of parties consisting of not less than **five percent** of the membership of the National Assembly*".

Hon. Members, May I now address the five matters that I had isolated as requiring my guidance. First, you will note that Standing Order 173 provides that the Committee on Selection shall, in consultation with parliamentary parties, nominate members who shall serve on a Select Committee. As earlier stated, Standing Order 2 defines a Parliamentary party as *a Party or a coalition of parties consisting of not less than five percent of the membership of the National Assembly which is essentially eighteen Members*. We are alive to the fact that not all parties represented in the House met the threshold for being recognized as parliamentary parties under Standing Order 2. Indeed looking at the current representation of this House vis-à-vis the definition of what constitutes a Parliamentary party, permit me to note the following eight facts, which are of significance to my guidance-

- 1.** The total Membership of the National Assembly currently stands at three hundred and forty-eight (348) Members, noting the vacancy with respect to *Msambweni* Constituency.
- 2.** In terms of Political Parties, there are twenty one (21) Parties with representation in the House, out of which, only three meet the threshold of parliamentary party;
- 3.** Standing Order 2 recognizes coalitions and as such several other political parties represented in the House qualify as Parliamentary parties courtesy of pre-and post-election Coalition agreements. In this regard, out of the 21 parties represented in the House, the Jubilee Coalition¹, now comprising of Jubilee Party which has 172 Members, the Kenya African National Union (KANU) which has 10 Members, and the Party for Development and Reform (PDR) which has 4 Members, has a combined total of one hundred and eighty six (186) Members;
- 4.** The National Super Alliance (NASA) Coalition² has a total of one hundred and twenty-six (126) Members, made up of the Orange Democratic Movement (73 Members), the Wiper Democratic Movement-Kenya (23 Members), the Amani National Congress (14 Members), Ford-Kenya (13 Members), *Chama Cha Mashinani* Party (CCM) which has 2 Members, and the *Chama Cha Uzalendo* Party (CCU) which has 1 Member;
- 5.** There are twelve (12) other Parties with representation in the House. According to the records availed to my Office by the Registrar of Political Parties yesterday (8th June, 2020), the 12 Parties do not belong to any Coalition-

¹Derived from a Letter by the Registrar of Political Parties to the Clerk of the National Assembly dated June 8, 2020

²Derived from a Letter by the Registrar of Political Parties to the Clerk of the National Assembly dated June 8, 2020

These are- the Economic Freedom Party (EFP), with five (5) Members in the National Assembly; the *Maendeleo Chap Chap* Party (MCCP), with four (4) Members in the National Assembly; the Kenya National Congress Party (KNC), the People's Democratic Party (PDP), and the Kenya Patriots Party (KPP), each with two (2) Members in the National Assembly; the Democratic Party of Kenya (DP), the Party of National Unity (PNU), the Frontier Alliance Party (FAP), the National Agenda Party of Kenya (NAPK), the New Democrats Party (ND), the *Muungano* Party, each with one Member in the National Assembly, and the Movement for Democracy and Growth Party (MDG) to which the Member for Ugenya belongs. In terms of total Membership, these Parties which do not fall within the definition of Parliamentary party have a total of twenty two (22) Members;

6. There are 14 elected Independent Members in the House. Since each of them also ought to be independent from the other and are not political parties, none of them would sit at the "bargaining table" reserved for parliamentary parties, even if they were to number more than eighteen (18) cumulatively;
7. Adding the number of Members belonging to parties which are neither parliamentary parties nor in coalition with any parliamentary party, together with the number of Independent Members, they total thirty six (36) Members; and,
8. Save for twenty (20) slots reserved by the Standing Orders for Parliamentary Office Holders, there are currently six hundred and twenty two (622) Committee slots in the committee system of this House, which ideally ought to have been shared amongst the Membership in a fair and transparent criteria that is in keeping with the **full** expectations of the Constitution and the provisions of Standing Order 174.

Hon. Members, With these facts in mind, the questions that now confront the Speaker are- *How should the Thirty Six (36) Members get to sit in Committees? If they are already members of committees, is Standing Order 176 available to a parliamentary party for the Party to exercise the discharge powers therein and discharge any of the Thirty Six Members from the Committees?*

Hon. Members, Article 1 of the Constitution which provides for the sovereignty of the people of Kenya spell out the manner in which the people of Kenya can exercise their sovereign power. In particular, Article 1(2) provides that the *people may exercise their sovereign power either directly or through their democratically elected representatives*. It therefore follows that each elected representative in this House whether elected through a Parliamentary party, a party other than a parliamentary or indeed an Independent Member exercises the sovereign power of the people the Member represents in the House. This is also why Part 3 of Chapter 7 of the Constitution on the *Representation of the People* which is a whole Part with various provisions on Political Parties does not distinguish between Parliamentary parties and other Parties.

It deliberately refers to all Political Parties. To interpret therefore that Members from Parties other than parliamentary parties should be disfranchised due to their few numbers in the House, is to introduce a criteria that is not contemplated in the Constitution. Moreover, Article 85 of the Constitution further recognises and permits any person to stand as an independent candidate for election if the person is not a member of a political party. It cannot thereafter be that Independent Members who are also democratically elected representatives for purposes of Article 1 of the Constitution should be excluded from sitting in Committees on the basis that they do not belong to a parliamentary party. Suffice it to say, no rule or interpretation can be used to take away, disadvantage, limit, stifle or restrict that which the Constitution has laid out in plain and clear terms as being permitted. To do so, would be an attempt to rewrite the Constitution without amending it.

Hon. Members, Article 95 of the Constitution is also clear on the role of a Member of Parliament in the National Assembly, which includes representation, legislation, oversight, budget making and vetting of public appointees, among other key roles. Undoubtedly, this is one of the architectural features and designs of a Presidential System of governance where every representation in the House counts and every Member in the House counts. If a Member of Parliament is to discharge these duties through Committees, would it hold that a Member should be denied the right to exercise these functions on the basis that he or she belongs to a party other than a Parliamentary party or is an Independent Member? If that was the case, would this also imply that the people of the Constituencies represented by such Members ought to be disfranchised by being excluded from having a fair chance to participate in the parliamentary aspects that take place in Committees? This definitely cannot be the case and to argue so would severely negate the principle of participation of the people through their democratically elected representatives, which is enshrined in our Constitution.

In addition, **Hon. Members**, while appreciating that Kenya is a multiparty democratic State as spelt out in Article 4 of the Constitution, you will agree with me that, in so far as representation is concerned, **it is not the intention of this provision to inhibit** the participation of any Member of the House from undertaking the collective roles and functions of Parliament and the National Assembly as provided for under Articles 94 and 95 of the Constitution, **on account of the medium** under which the Member was elected or nominated into the House. Further, my reading of Article 85 does not, in any way, imply that Members elected as Independent candidates are less important legislators.

Hon. Members, it is also notable that Standing Order 174(2) provides that and I quote-

*(2) Despite paragraph (1), a Member belonging to a party other than a parliamentary party or Independent Member may be nominated to serve in a Select Committee and **the allocation of membership of Select Committees shall be as nearly as practicable proportional to the number of Members belonging to such parties and Independent Members.***

It is therefore clear that a Member belonging to a party other than a parliamentary party is **equally** entitled to serve in a Committee of the House. That provision in our Standing Orders even contemplated a situation where a substantial number of Members of the House would belong to small parties or would be Independent Members. The manner in which Standing Order 174(2) is couched also finds its footing from other comparable commonwealth jurisdictions. Indeed, according to the **Commonwealth Parliamentary Association "Recommended benchmarks for Democratic Legislatures" on Committees Organization and allow me to quote "The Legislature's assignment of Committee Members on each Committee shall include both majority and minority party Members and reflect the political composition of the legislature"**.

Hon. Members, I wish to emphasize the words *reflect the political composition of the Legislature* because this is what Standing Order 174(2) tries to achieve by recognizing that a Member belonging to a party other than a parliamentary party is **equally** entitled to serve in a Committee of the House. Otherwise, Committees without such Members cannot be said to be reflective of the political composition of the Legislature. Undoubtedly, we must be alive to the fact that this House has composition not just from parliamentary parties but from other parties and Independent Members. This must be reflected in our committees. It is one which cannot be wished away because even looking at the statistics from the 11th Parliament to date, the composition of the membership to this House has seen more Members from small parties and Independent Members being elected to this House. Certainly, this may arguably continue to grow exponentially in an upward trajectory even in the future. **It is therefore obviously erroneous to advance the idea that the Constitution or the Standing Orders envisaged that Committees are a preserve of Parliamentary Parties, to the exclusion of the Independent Members and Members belonging to small parties.** This settles the first and the second issues that required my determination.

Hon. Members, In addressing the third issue, I reflected on the views advanced by Leader of the Minority Party, that Members belonging to parties other than parliamentary parties and independent Members ought to choose and align themselves to the existing parliamentary parties so as to earn consideration for a slot in committees. While, in so arguing, the Leader of the Minority Party was perfectly within his right, it is my considered view that position does not stand well with the provisions of Articles 94, 95 and 103 of the Constitution and Standing Order 174(2).

Hon. Members, Ideally, a Member elected on a political party ticket is so elected based on a resolve to ascribe to the party's philosophy, manifesto and ideals. Similarly, a Member elected as an independent candidate does so as a matter of principle, due to political circumstances or for other reasons known to him or her. Therefore, to resort to coercing such Member to affiliate with a parliamentary party so as to earn a slot in Committees, notwithstanding that they possibly were competitors in the elections, is essentially to compel them to denounce their stand in exchange for the committee slot. Indeed, the consequence of such a move may expose him or her to the sanctions contemplated under Article 103(1)(e) of the Constitution (*Vacation of office of Member of Parliament*) as read with section 14 of the Political Parties Act, 2012, which read as follows-

"103(1). The office of a member of parliament becomes vacant-

(e) If, having been elected to parliament-

- (i) as a member of a political party, the member resigns from that party or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause(2); or,*
- (ii) as an independent candidate, the member joins a political party."*

Hon. Members, To advance the view of the Minority Leader that an Independent Member or one from a small Party ought to be aligned to a parliamentary party to earn a slot in a Committee, would amount to assuming that, the three parliamentary parties also have the authority to **shut the door of this Chamber** from any member who is Independent or who is elected on a small Party, and admit such Member into the plenary **ONLY** if he or she undertook to align with the Parliamentary Parties! Ideally, as is the practice in the Chamber and indeed in the committee system of many other multiparty legislatures, the issue of lobbying and "enticing" the smaller parties comes in **after** they are already in the Committees membership. It is therefore inconceivable that the Constitution or the Standing Orders contemplated that an Independent Member or a Member belonging to a party other than a parliamentary party would get to sit in a committee only if they affiliated with a parliamentary party. Since Standing Order 174(2) is clear, I must assert, respectfully so, that I find the opinion that "*Members belonging to parties other than parliamentary parties and independent Members ought to choose and align themselves to the existing parliamentary parties so as to earn consideration for a slot in committees*" as being a perfect example of misapplication of the Constitution and the Standing Orders.

Hon. Members, Let me now turn to the fourth issue of *whether a parliamentary party may exercise the discharge powers of a Party under Standing Order 176 to remove a Member who is not a Member of the particular parliamentary party (or a Coalition) from a Committee, on the basis of having granted the Member the nomination to the Committee.*

To address that question, I will refer to the provisions of Standing Order 176, which provides for the discharge of Members from Committees. In particular, Standing Order 176(1) provides that-

- (1) *A parliamentary party may discharge a Member from a Select Committee after according the Member an opportunity to be heard.*

Hon. Members, a fair reading of the said Standing Order clearly indicates that the responsibility of discharging Members from Committees is placed on parliamentary parties. From the onset, the question of who "donated" the position occupied by the Members belonging to Parties other than parliamentary parties or Independent Members is no longer tenable. This is because, as I have observed from the three preceding questions I have addressed, and the plain reading of Standing Order 174(2), all Members should have a fair chance to sit in **at least one Committee**, without appearing to entreat or beg any other party for a reasonable opportunity. If that is not what actually transpired in the composition of the current Committees, it is said that, "two wrongs do not make a right". As leaders, we ought to correct the wrongs, whenever we encounter them. To this end, it is apparent that **no parliamentary party may discharge a Member unless the Member belongs to or formally affiliates with the Parliamentary party, by way of a coalition agreement as contemplated under the Political Parties Act.** This is because the exercise of the discharge powers under Standing Order 176 ought to be exercised by a parliamentary party **only** on Members belonging to that Party.

Hon. Members, In the case for the Member for Ugenya, it is a fact that he was elected on the platform of the Movement for Democracy and Growth (MDG) Party and he is the single Member elected in this House on that Party's ticket. To the best of my knowledge and from the information availed to my office by the Registrar of Political Parties yesterday, the MDG Party is not part of the parties forming the Majority Party or the Minority Coalition in the House. **It therefore follows that neither the Minority Party nor the Majority Party may exercise the discharge powers under Standing Order 176 on the Member for Ugenya at the moment.**

On the secondary question of whether the Committee on Selection acted equitably in allocating the Member for Ugenya one Committee, Standing Order 174 is clear on the criteria used by the Committee on Selection to nominate Members to serve in a Select Committee. This includes ensuring that the allocation of membership of Select Committees is as nearly as practicable proportional to the number of Members belonging to Parties other than Parliamentary parties and Independent Members. It is however notable that Standing Order 174(3) further provides as follows—

"Except as the House may otherwise resolve, on the recommendation of the Committee on Selection for reasons to be stated—

(a) no Member shall be appointed to serve in more than two Departmental Committees;"

From a reading of Standing Order 174(3), it is therefore within the prerogative of the Committee on Selection to nominate Members to serve in at least one or more Committees. It therefore follows that the jurisdiction to determine whether a Member should serve in one or two Committees lies with the Committee on Selection and this House when approving the motions for appointment of Members to respective Committees.

Hon. Members, let me now address the final question of *whether there is lacuna or misapplication of the Standing Orders with respect to nomination to, or discharge of Members from Committees and what would be an appropriate remedy.*

As I have observed, it is **incorrect to assume that the Constitution or the Standing Orders envisaged that Committees being a preserve of parliamentary parties, to the exclusion of the Independent Members and Members belonging to small parties.** In this regard, the primary formula of allocation of Members to serve in Committees ought to have embraced a criteria where a proportion of total membership to Committees would be allocated to parliamentary parties based on their relative majorities but at the same time also reserve a proportion of seats for Independent Members and Members belonging to Parties that are not parliamentary parties. To guarantee fairness, the criteria ought to look at the totality of slots available, isolate the slots that are to be shared by parliamentary parties and share out to the existing parliamentary parties in accordance with their numerical strength in the House as required under Standing Order 174(1)(a). When it comes to Members belonging to parties other than parliamentary parties and the independents, the criteria ought to ensure that such Members serve on at least one Committee, as required under Standing Order 174(2). This will correct the misapplication of the Standing Orders and the erroneous impression that such Members must first affiliate with Parliamentary parties to serve in Committees.

Hon. Members, Having said that, I am inclined to observe that part of the terms in Standing Orders 173, 174 and 176 as currently couched do not guarantee fairness to independent Members and Members belonging to political parties other than parliamentary parties. For instance, Standing Order 173(1) (*Nomination of Members of select committees*) provides as follows –

*(1) Unless otherwise provided by any written law or these Standing Orders, the Committee on Selection shall, **in consultation with parliamentary parties**, nominate Members who shall serve on a select committee.*

As presently couched, this provision does not contemplate consultations with the independents or political parties that do not meet the threshold set out in Standing Order 2 for recognition as parliamentary parties. For political parties, they may have to designate a spokesperson to advance their interests even when they do not qualify to be a parliamentary party. The case is worse for the independents because, as a matter of fact, each independent Member is independent of the other and no matter how many they could be in the House, they cannot be construed as a political formation. While parliamentary parties ordinarily consult with the Committee on Selection through their party Leaders and Whips, there is no mechanism in the Standing Orders for consultations with smaller political parties and independents when it comes to sharing of slots in select committees.

Hon. Members, allow me however to note that even with the shortcomings that are occasioned by the manner in which Standing Order 174(2) is couched, the Standing Order envisaged a ratio in which the slots to committee membership would be shared taking into account the Independent Members and Members belonging to Parties other than other parliamentary parties. It is therefore obvious that at the commencement of this Parliament there was a misapplication of the Standing Order in the criteria that was used to share committee slots. In the end, the criteria used did not ensure that the Independent Members and Members belonging to Parties other than other parliamentary parties got their rightful share in terms of Committee membership.

Hon. Members, Taking into consideration the six hundred and twenty two (622) slots available for sharing out, a fair criteria that is in keeping with the provisions of Standing Order 174(2) ought to have arrived at a committees' distribution outcome which is approximately close to the following quotas³-

- (a) The **Jubilee Coalition** with a combined total of One Hundred and Eighty Six (186) Members in the House, is entitled to a total of **Three Hundred and Thirty (330)** slots spread out in committees, to be shared between the Members of the three Parties that form the Jubilee Coalition, that is; JP, KANU and PDR;
- (b) The **National Super Alliance (NASA) Coalition**, comprising of the Orange Democratic Movement, The Wiper Democratic Movement–Kenya, the Amani National Congress, FORD-Kenya, *Chama Cha Mashinani* Party (CCM), and the *Chama Cha Uzalendo* Party (CCU), is entitled to a total of **Two Hundred and Twenty Six (226)** slots in committees to be shared out amongst the One Hundred and Twenty Six (126) Members who make up the Coalition.
- (c) The **Economic Freedom Party**, is entitled to a total of **eight (8)** slots in committees to share out among its 5 members;

³ The Statistics are to the closest approximate computation and assume that Msabweni constituency seat, which is currently vacant will to be occupied by a Member of the Orange Democratic Movement (ODM)

- (d) The **Maendeleo Chap Chap Party** is entitled to **seven (7) slots** in committees, to share amongst it four (4) Members;
- (e) The **People's Democratic Party, Kenya Patriots Party and Kenya National Congress**, with two (2) Members each, are entitled to **four (4) slots**, each Party, in committees;
- (f) The **Frontier Alliance Party, the Party of National Unity, the Democratic Party of Kenya, the National Agenda Party of Kenya, Muungano Party⁴, New Democrats** and the **Movement for Democracy and Growth**, each with a one (1) Member in the House, are entitled to **two (2) slots** per Party, in our Committees; and,
- (g) The fourteen (14) Independent Members are cumulatively entitled to share out **Twenty Five (25) slots** in committees.

From the numbers enumerated, it can be seen that there are thirty six (36) Members who are either Independent Members or from small parties that do not meet the threshold of parliamentary parties pursuant to the Standing Orders and are not in any Coalition. These Members are thus cumulatively entitled to approximately a total of **Sixty Six (66) slots** out of the 622 slots available in committees.

Hon. Members, With regard to discharge of Members from select committees, it is clear that Standing Order 176(1) does not contain mechanisms for discharging Members belonging to political parties other than a parliamentary party and the Independents. For avoidance of doubt, Standing Order 176(1) provides that-

- (1) *A parliamentary party may discharge a Member from a Select Committee after according the Member an opportunity to be heard.*

As Members may be aware, this provision was added to the Standing Orders at the tail end of the last Parliament. By not providing for de-whipping of Members from political parties other than a parliamentary party and the Independents, the Standing Order leaves room for unwarranted speculations that parliamentary parties may stretch their tentacles to also discharge such Members, even as such Members are also subject to the disciplinary sanction of their respective primary parties, however small they may be. Needless to say, the smaller parties which are not considered as parliamentary parties have no effective avenue for discharging members.

⁴ According to a Letter from the Registrar of Political Parties to the Clerk of the National Assembly dated June 8, 2020, the Coalition Agreement between WDM-K and Muungano Party was terminated vide their respective letters of June 7th and 20th, 2019.

Nevertheless, the Committee on Selection ought to be at liberty to propose to the House, reallocation of committee memberships to ensure balance as envisaged under Standing Order 174(2).

Hon. Members, Allow me to contrast the foregoing comparative cases from the sister Parliament of Uganda, which has a total of Eighty Three (83) Independent Members of Parliament. From a reading of Standing Order 157 of the National Assembly of the Republic of Uganda, entitlement of slots in committees in the Parliament of Uganda with respect to Members elected through political parties is pegged on Parties represented in Parliament without any thresholds being set. For independent Members, the Standing Orders have assigned the responsibility to the Speaker in mandatory terms. A practice has also emerged where Independent Members elect one of them as the **"Dean of Independents"** who liaises with the Speaker in allocating seats to the Independent Members. In terms of discharge from select committees, the Standing Orders of Parliament of Uganda vest the power to discharge party sponsored members in the sponsoring parties, provided that the Member so discharged is relocated to another Committee. It is noteworthy that, just like those of the National Assembly of Kenya, the Standing Orders of Parliament of Uganda, are silent on the discharge procedure for Independent Members. It is also good to appreciate that there are lessons that this House may draw from the Parliament of Uganda particularly on the matter of ensuring fairness and equity in access to slots in select committees for all Members irrespective of them belonging to a parliamentary party, political party other than a parliamentary party or independently elected.

Hon. Members, in the House of Commons of the United Kingdom⁵, the Members of a select Committee, other than a Chair elected by the House, are appointed by way of a Motion in the House. Motions in respect of most select Committees are made on behalf of the Committee of Selection. The House of Commons has endorsed a principle that, in proposing nominations for select committee Membership for the Committee of Selection or the Government to put to the House, parties should elect members of select committees in a secret ballot or whichever other transparent and democratic method they choose. On the other hand, In the House of Commons of Canada⁶, it is the House, and the House alone, that appoints the Members (and associate Members) to its Committees, as well as the Members who will represent it on Joint Committees. The Speaker has ruled that this is a fundamental right of the House. The Committees themselves have no powers at all in this regard. In the vast majority of cases, the House sets the number, or the maximum number, of members of each Committee.

⁵ *Erskine May, 24th Edition, page 801.*

⁶ *The House of Commons Procedure and Practice, 3rd Edition, 2017, page 1027.*

The number of members to be selected from each of the recognized parties is subject to negotiation among the parties at the beginning of each Parliament. The resulting agreement is not set down in the Standing Orders, but reflected in the composition of each Committee, which generally reflects the proportions of the various parties represented in the House.

Hon. Members, In the National Assembly of Zambia, the mechanism for establishing select committees is anchored in Standing Order 135. In a radical departure from the practice here and across other jurisdictions, selection of Members to select committees is domiciled in the Office of the Speaker. Standing Order 135 provides that, and I quote

—
(1) Unless otherwise directed by the Standing Orders Committee, the Speaker shall determine the number of, and nominate, the members to serve on a select committee.

Hon. Members, Let me be clear that I have no intention of moving this House to domicile nomination of Members to serve on select committees to the Speakership. What I am deducing from the said provision and that of Parliament of Uganda is that the mechanism for selecting Members to serve on select committees is designed in a manner to afford every Member a fair opportunity to discharge their constitutional roles through committees, just as they do in the plenary. I can only urge the House to embrace that spirit and propose a mechanism to actualize it.

Hon. Members, turning to the question of appropriate remedy, there is need to review part of our Standing Orders relating to criteria for nomination to select committees and discharge of Members from committees. **The review should not weaken the grip that parliamentary parties have on allocation of slots in committees to their Members and invocation of the discharge rule as a tool for enforcing party discipline,** but should stretch the democratic space in the House with a view to incorporating fairness and inculcating the expectations of Articles 1, 94, 95, 97 and 103 of our Constitution in the criteria for sharing of Committee slots. This will guarantee the right of every Member of this House to execute their constitutional roles, particularly budget making, scrutiny of legislation and vetting of appointments that are carried out in Committees, without any curtailment in the Standing Orders.

In conclusion, **Hon. Members,** you will now agree with me that, it will be procedurally improper and a sanction of recurrence of a procedural error, if I were to permit the discharge from committees, of Members belonging to small political parties and the Independents by parliamentary parties which have not entered into formal coalition agreements with the small parties. To this end, it is my considered guidance-

- (1) **THAT**, the exercise of the discharge powers of a party under Standing Orders 176 is restricted to Members belonging to the particular parliamentary party and those from other smaller parties who have entered into formal coalition agreements;
- (2) **THAT, NO** parliamentary party is to exercise the discharge powers of a party under Standing Orders 176 to remove a Member who is not a Member of the particular parliamentary party from any Committee of the House, even on the basis of having granted the Member the nomination to the particular Committee as that conception is based on misapplication of the Standing Orders;
- (3) **THAT**, since the Member for Ugenya Constituency, the Hon. David Ochieng, MP neither belongs to any parliamentary party nor has his Movement for Democracy and Growth Party entered into a coalition with any of the parliamentary parties, the notice given by the Minority Party Whip to discharge the Member from the Departmental Committee on Health was erroneous *ab initio* and therefore invalid;
- (4) **THAT**, in view of the continued misapplication of Standing Order 174 by assuming that all committees' slots are reserved for the exclusive distribution to the membership of parliamentary parties thereby alienating the Independent Members and Members belonging to parties other than parliamentary parties, soonest possible, the Committee on Selection in consultation with the Procedure and House Rules Committee does devise a criteria for nomination of Members to Committees that guarantees that Members who belong to Parties other than Parliamentary parties and Independent Members also get their rightful share of the six hundred and twenty two (622) slots available for sharing in Committees. This may include proposals for registration of desired committee(s) and the use of lots as a means of determining how to place such Members in their entitled slots few as they may be;
- (5) **THAT**, the Procedure and House Rules Committee does initiate the process of proposing amendments to the Standing Orders so as to expressly provide for the said criteria. The Committee may also propose the manner of ordinary re-allocations of the slots in Committees, corporately reserved for Independent Members and parties other than parliamentary parties, **amongst** the Independent Members and those belonging to the small parties that do not constitutes parliamentary parties; and,

- (6) **THAT**, in the meantime, I will not admit any requests to discharge any Member who is an Independent Member or belongs to a party other than a parliamentary party from a Committee until such time as the criteria has been developed or the Standing Orders accordingly amended to entrench fairness and justice.

The House is thus accordingly guided.



THE HON. JUSTIN B. MUTURI, E.G.H., MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, 9th June, 2020