



THE COUNTY ASSEMBLY OF BOMET
THIRD ASSEMBLY: THIRD SESSION

REPORT OF THE COUNTY ASSEMBLY COMMITTEE ON SELECTION ON THE
RE-CONSTITUTION OF COMMITTEES

APRIL, 2024

Approved for tabling
[Signature]
as of 06/2024.

PREFACE

Mr. Speaker Sir,

The County Assembly Committee on selection is a select committee established under Standing Order 165(1) of the County Assembly Standing Orders. It is a Committee which is mandated to nominate members to serve in Committees, save for the membership of the County Assembly Business and Rules Committee, Liaison Committee and Committee on Appointments.

Mr. Speaker Sir, the County Assembly Committee on selection as currently constituted was established by this County Assembly on 12th October 2022.

COMMITTEE MEMBERSHIP

Mr. Speaker Sir, the Committee as currently constituted consists of the following Honorable members;

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| 1. Hon. Paul Kirui | - Leader of the majority party and Chairperson |
| 2. Hon. Kibet Ngetich | - Leader of Minority party |
| 3. Hon. Richard Ruttoh | - Majority Whip |
| 4. Hon. Dennis Kiplangat | - Minority Whip |
| 5. Hon. Joseah Samoei | -Deputy Majority Leader |
| 6. Hon. Japhet Cheruiyot | -MCA |
| 7. Hon. Rosaline Cheptoo | -MCA |

COMMITTEE'S MANDATE

Mr. Speaker Sir, Standing Order 165(2) provides that the Committee on Selection shall nominate members to serve in committees, save for the membership of the County Assembly Business and Rules Committee, Liaison Committee and Committee on Appointments.

BACKGROUND

Mr. Speaker Sir,

On the Morning Sitting of Wednesday, the 6th of December 2023, Hon.Peter Ronoh, the Hon.Member representing Kipsonoi ward raised a statement seeking for the direction of the Chair on whether the various committees of this County assembly as currently constituted are in conformity with the law and the Standing orders of this County assembly.

The Hon.Member specifically pointed out the provisions of Article 197(1) of the Constitution which provides that ***"not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender."***

The Hon.Member further referred to the provisions of Standing Order 166(2) of the County Assembly Standing Orders which provides that ***"The Committee on Selection shall give consideration to the need for gender balance and shall, so far as may be practicable, ensure that no more than two-thirds of members of a Committee of the County Assembly, including a Committee established through a resolution of the County Assembly, shall be of the same gender."***

The Hon.Member in light of the provisions stated above then sought the direction of the Chair on whether the following select Committees are properly constituted in accordance with the law and the County assembly Standing Orders:-

- (1) Committee on Selection
- (2) Committee on Budget and Appropriations
- (3) Committee on Appointments
- (4) Committee on Agriculture, Fisheries and Livestock
- (5) Committee on Lands, Urban Planning and Housing
- (6) Committee on E-government and Innovation
- (7) Committee on Gender, Culture and Social Services
- (8) Committee on Energy, Environment, Water and Natural Resources.

Mr. Speaker Sir, in your ruling and direction delivered on 7th December, 2023 you quoted in extenso the provisions of Article 27 of the Constitution which provides that:-

"(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender."

Mr. Speaker Sir, you also brought to the attention of the County Assembly, the criteria which the Committee on selection while nominating members to serve in the various committees ought to consider. Standing Order 166(2) of the County Assembly standing Orders which provides that *"The Committee on Selection shall give consideration to the need for gender balance and shall, so far as may be practicable, ensure that no more than two-thirds of members of a Committee of the County Assembly, including a Committee established through a resolution of the County Assembly, shall be of the same gender."*

Mr. Speaker Sir, you then observed that in order to comply and conform to the requirement that no more than two-thirds of members of a Committee of the County Assembly shall be of the same gender, it requires that in a committee of seven (7) members as is the case in most of our committees, then three (3) members must be of the same gender while the remaining four (4) members be of a different gender. You also observed that in a committee of thirteen (13) members as in the case of Budget and Appropriations Committee, then at least five (5) members must be of the same gender.

Hon.Speaker, based on the analysis which you made as stipulated above, you then embarked on a fact finding mission to ascertain whether the composition of the various select committees listed by the Hon.Peter Ronoh conforms to the provisions of the law and the Standing Orders and you found the following as it concerns the mentioned committees:-

NO	COMMITTEE	COMPOSITION	MALE	FEMALE	CONFORMITY TO THE 2/3 GENDER RULE
1	Committee on Selection	7	6	1	Non-compliant

2	Committee On Budget and Appropriations	13	12	1	Non-compliant
3	Committee on Appointments	7	6	1	Non-compliant
4	Committee on Agriculture, Fisheries and Livestock	7	7	0	Non-compliant
5	Committee on Lands, Urban Planning and Housing	7	5	2	Non-compliant
6	Committee on E-government and Innovation	7	1	6	Non-compliant
7	Committee on Gender, Culture and Social Services	7	2	5	Non-compliant
8	Committee on Energy, Environment, Water and Natural Resources	7	6	1	Non-complaint

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Mr. Speaker Sir, it was then apparent from your analysis that indeed the mentioned committees do not conform to the constitutional requirement that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Mr. Speaker Sir, you also noted that there is a provision in our standing orders that restricts the membership to sectoral committees. Standing order 167(3) provides that, ***"Except as the County Assembly may otherwise resolve, on the recommendation of the Committee on Selection for reasons to be stated, no Member shall be appointed to serve in more than three Sectoral Committees."***

Mr. Speaker Sir, based on your findings above, it was your considered ruling that the aforementioned committees do not conform to the constitutional threshold that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. You also found out that the composition falls below the threshold set under Standing Order 166(2) of the County Assembly Standing Orders. As for the provisions of Standing Order 167(3), you ruled that if the provision is such that its implementation would conflict with the constitutional principle of gender balance, then the Constitution being the supreme law would prevail and the provisions of standing Order 167(3) can be amended to conform with the law.

Mr. Speaker Sir, based on your findings you then directed the Committee on selection in consultation with the County Assembly parties to rectify the anomaly and ensure that the Composition of the County assembly committees conforms to the provisions of the Constitution and the Standing Orders and this was to be done when the County assembly resumed from the long recess in accordance with the County assembly calendar.

Mr. Speaker Sir, Section 14 (1)(b) of the County Governments Act 2012 provides that the County Assembly subject to Standing Orders made under paragraph(a), may establish committees in such manner and for such general or special purposes as it considers fit, and regulate the procedure of any committee so established. It is therefore the prerogative of this county assembly to establish, re-arrange and re-organize the committees at it deems fit for the effective discharge of the mandate of the county assembly as enshrined in the Constitution and the County Governments Act, 2012.

Mr. Speaker Sir, having received your direction, the leadership of this County assembly embarked on a consensus building expedition to try and build consensus with the members on the best way forward so as to comply with your ruling. It is noteworthy that we have had caucuses as the leadership brainstorming and mulling over the best approach through which the composition of the county assembly committees will be established so as to comply with the constitutional threshold which provides that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Mr. Speaker Sir, the committee on selection while trying to propose the best way forward for compliance with the requirement, also took cognizant of the existence of other provisions in the Standing orders which restricts the membership of members to not more than three sectoral committees. This Mr. Speaker Sir, must have been a well thought out provision in that belonging to more than three sectoral committees would defeat the whole purpose of committee membership because a member would not be in a position to concentrate and be productive in several committees.

Mr. Speaker Sir,

The current County Assembly Standing Orders provides for 12 sectoral committees and 8 other select Committees. Section 15 of the County Assemblies Powers and Privileges Act No. 6 of 2017 also establishes the committee of Powers and Privileges. This then brings in total 21 select committees of the county assembly.

NOMINATION CRITERIA

Mr. Speaker Sir, while nominating members to serve in the various committees, the County Assembly Committee on Selection is expected to take into consideration the criteria set out under Standing Orders. These criteria among others include the following:

- (1) Standing Order 166(1) of the County Assembly Standing Orders provides that the Committee on Selection shall, in consultation with County Assembly parties, nominate Members who shall serve on a select Committee.
- (2) Standing Order 166(2) also provides that the Committee on Selection shall give consideration to the need for gender balance and shall, so far as may be practicable, ensure that no more than two-thirds of members of a Committee of the County Assembly, including a Committee established through a resolution of the County Assembly, shall be of the same gender.
- (3) Standing Order 167(1) provides that in nominating Members to serve in a select Committee, the Selection Committee shall ensure that the membership of each Committee reflects the relative majorities of the seats held by each of the County Assembly parties in the County Assembly.
- (4) Standing Order 167(2) further provides that despite paragraph (1), a Member belonging to a party other than a County Assembly party or independent Member may be nominated to serve in 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.
- (5) Standing Order 167(3) provides that except as the County Assembly may otherwise resolve, on the recommendation of the Committee on Selection for reasons to be stated, no Member shall be appointed to serve in more than three Sectoral Committees.

Mr. Speaker Sir, in addition to the above set criteria, the committee on selection while nominating members to serve in the various select committees considered other parameters which are not explicitly provided for in the Standing Orders. These Hon.Speaker include the inclusion of the minority groups, persons with disabilities,

women and the youth in the critical select committees of the county assembly and the issue of balancing the various sub-counties to ensure that each sub-county is represented in most of the select committees. Mr. Speaker sir, this would foster inclusivity and ensure that the interests of the various sub-counties are taken care of based on our great diversity.

Mr. Speaker Sir, when the electorate of this great county went into the general elections on the 8th of August, 2022 to exercise their solemn right to vote and elect their representatives, the electorate elected 23 male and 2 female representatives to the county assembly of Bomet. In order to comply with Article 177(1) (b) of the Constitution, the Independent Electoral and Boundaries Commission using the party lists submitted by the various parties, nominated 13 other members being the special seat members and the marginalized groups including persons with disabilities and the youth.

Mr. Speaker Sir, it is noteworthy that the County Assembly of Bomet as currently constituted complies with the constitution requirement that no more than two-thirds of the membership of the assembly are of the same gender.

Mr. Speaker Sir, in order to comply with the Constitutional provision on gender balance and as you properly observed, it requires that in a committee of seven (7) members as is the case in most of our committees, then three (3) members must be of the same gender while the remaining four (4) members be of a different gender. You also properly observed that in a committee of thirteen (13) members as is the case in Budget and Appropriations Committee, then at least five (5) members must be of the same gender. Taking that into consideration Hon.Speaker, the committee on selection found out that if that were to be implemented, it would then result in the female members of this county assembly belonging to more than three sectoral committees which would then go against the well thought out provision of the Standing Order 167(3) which restricts membership of sectoral committees to not more than three. Mr. Speaker

Sir, it would also mean that balancing of the interests of the various sub-counties will be affected in that most of the female members do not represent the wards but the special interest groups. Mr. Speaker Sir, this will also affect the clustering of committees which is a tool that has greatly assisted in the effective management of committees.

Mr. Speaker, it is also important to note the wordings of Standing Order 166(2) of the County Assembly Standing Orders which provides that the Committee on Selection shall give consideration to the need for gender balance and shall, ***so far as may be practicable*** ensure that no more than two-thirds of members of a Committee of the County Assembly, including a Committee established through a resolution of the County Assembly, shall be of the same gender. Mr. Speaker Sir, the framers of the Standing Orders were cognizant of the fact that sometimes based on the composition of the county assembly, it is a herculean task to comply with the constitutional provision. Mr. Speaker Sir, the committee on selection has tried its level best to balance the various interests of the county, parties, members and the county assembly at large and has consulted, caucused and involved the various stakeholders in the matter.

COMMITTEE OBSERVATIONS AND FINDINGS

Mr. Speaker Sir, having considered all the factors, parameters, suggestions and criteria set out in the constitution and the Standing Orders, the committee makes the following observations on the re-constitution of committees in line with your ruling and direction delivered on 7th December, 2023:

- (1) **THAT**, indeed the following committees falls short of the constitutional requirement that no more than not more than two-thirds of the members of elective or appointive bodies shall be of the same gender:
 - (a) Committee on Budget and Appropriations
 - (b) Committee on Appointments
 - (c) Committee on Agriculture, Fisheries and Livestock
 - (d) Committee on Lands, Urban Planning and Housing
 - (e) Committee on E-government and Innovation
 - (f) Committee on Gender, Culture and Social Services
 - (g) Committee on Energy, Environment, Water and Natural Resources

(h) Committee on Selection

(2) **THAT**, in order to comply with the constitutional gender balance requirement, it requires that in a committee of seven (7) members as is the case in most of our committees, then three (3) members must be of the same gender while the remaining four (4) members be of a different gender. It also requires that in a committee of thirteen (13) members as in the case of Budget and Appropriations Committee, then at least five (5) members must be of the same gender.

(3) **THAT**, the composition of the following committees **grossly** violates the gender balance requirement:

(a) Committee on Agriculture, Fisheries and Livestock

(b) Committee on Budget and Appropriations

(c) Committee on Appointments

(d) Committee on E-government and Innovation

(e) Committee on Energy, Environment, Water and Natural Resources

(f) Committee on Selection

NO	COMMITTEE	COMPOSITION	MALE	FEMALE
1	Committee on Agriculture, Fisheries and Livestock	7	6	1
2	Committee On Budget and Appropriations	13	12	1
3	Committee on Appointments	7	6	1
4	Committee on E-government and Innovation	7	1	6
5	Committee on Selection	7	6	1

6	Committee on Selection	7	6	1
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- (4) **THAT**, based on the current composition of the County assembly of Bomet, it is impractical to comply with the constitutional provision on gender balance.
- (5) **THAT**, interfering with the current composition of the county assembly committees would result in de-stabilization of the Committee clusters which is an effective tool in the management of committees.
- (6) **THAT**, apart from the gender balance requirement, other parameters were taken into consideration while constituting the current committee membership. These include the inclusion of the minority groups, persons with disabilities, women and the youth in the critical select committees of the county assembly and the issue of balancing the various sub-counties to ensure that each sub-county is represented in most of the county assembly select committees.
- (7) **THAT**, in order to have those committees which are grossly in violation of the gender balance requirement have at least some semblance of gender balance, there is need for committee members to voluntarily relinquish their membership in those committees through voluntary resignation so as enable the committee on selection in consultation with the County assembly parties to re-constitute those committees.

COMMITTEE'S RECOMMENDATION

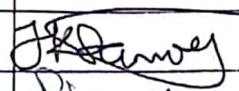
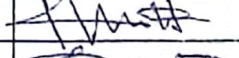
Mr. Speaker Sir, based on the aforementioned observations and findings, the committee makes the following recommendation:

THAT, in order to comply with the Constitutional requirement on gender balance, the members of the select committees which grossly do not conform to the gender balance requirement should voluntarily resign from those committees within a period of sixty days so as to allow the county assembly parties and the committee on selection to re-constitute them.

gender balance requirement should voluntarily resign from those committees within a period of sixty days so as to allow the county assembly parties and the committee on selection to re-constitute them.

ADOPTION OF THE REPORT

We, the Honourable Members of the County Assembly Committee on Selection do hereby append our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity: -

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Paul Kirui	Chairperson	
2.	Hon. Kibet Ngetich	Member	
3.	Hon. Richard Ruttoh	Member	
4.	Hon. Dennis Kiplangat	Member	
5.	Hon. Joseah Samoei	Member	
6.	Hon. Rosaline Cheptoo	Member	
7.	Hon. Japhet Cheruiyot	Member	