

OPINION

THE MEMBERSHIP OF THEME COMMITTEE 6

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We have been requested to express our view on the legal implications of the rules 27(5) and 22(1) of the Standing Rules of the Constitutional Assembly on the membership of Theme Committee 6 in particular the membership of the subcommittees thereof. Theme Committees are examples of select committees in terms of rule 20 of the above Standing rules. The rule provides :

Committees , other than the Constitutional Committee, consisting of members of the Constitutional Assembly only are in the rules referred to as select committees.

Rules 27(5) and 22(1) therefore apply to Theme Committees. Rule 27(5) provides:

A select Committee may appoint subcommittees from among its members to consider or investigate and report to the select committee on any matter falling within the select committees functions.

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This provision authorises a Theme Committee to appoint subcommittees for itself from among **its members**. **Its members** can be interpreted to mean **full members only** or **full members as well as alternate members**. In terms of the Constitutional Assembly Resolution 4.3 of 5 September 1994, each Theme Committee is constituted of 30 members. Theme Committee 6 therefore, is expected to have appointed its four subcommittees from its 30 members.

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Theme Committee 6 appointed its subcommittees from among its 30 members, its alternate members as well as from other members of the Constitutional Assembly. Theme Committee 6 has gone beyond its members and therefore has violated rule 27(5).

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Rule 22(1) provides for not more than 50 members. However the rule provides, for an exception to this general rule, that the Rules Committee can direct that a particular committee can have more than 50 members. The rule reads:

A select committee shall not have more than 50 members, unless the Rules Committee directs otherwise in the case of a particular committee.

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Theme Committees therefore cannot have more than 50 members each. As has indicated above the Constitutional Assembly, on 5 September 1995, resolved that each Theme Committee shall be constituted of 30 members. Both the above provisions apply irrespective of the number of subcommittees. The Standing Rules make no provisions as to how many members each subcommittee shall be constituted of. It is our view nevertheless that when subcommittees are put together must form a Theme Committee of 30 members for a Theme Committee to have complied with the provisions of Constitutional Assembly Resolution 4.3 of 5 September 1994.

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Theme Committee 6 subcommittees brought together, give us neither the total of 50 nor 30 members as required above. The total number of the members of the said subcommittees put together is more than 30 and even 50. Therefore they form a Theme Committee of more than 30 members. The Rules Committee has not given a directive for Theme Committee 6 to have more than 50 members in terms of rule 22(1). The Theme Committee therefore has violated both Resolution 4.3 of the Constitutional Assembly of 5 September 1995 and rule 22(1) of the Standing Rules.

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It is however our view that the acceptance of the broad interpretation of the words **its members** in rule 27(5) could eliminate the present problems. In paragraph 2 above, two approaches have been suggested viz: **full members only** or **full members as well as alternate members**. The former approach does not only restrict the functioning of Theme Committees, but also complicates the process. Theme Committee 6 is the practical example of this fact. Rule 27(5) (appointment from among its members) together with the Constitutional Assembly Resolution 4.3 of 5 September 1994 (30 members for each Theme Committee) fail to accommodate the circumstances of Theme Committee 6.

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Our view is that the latter approach coupled with the amendment of rule 22(1) could remedy this problem. In terms of this approach **its members** mean **the 30 members** as well as the **alternate members**. The Constitutional Assembly can then restrict the numbers of each Theme Committee to 120 members with no restrictions on numbers of the alternate members. This approach does not only allow greater participation of the Constitutional Assembly members in the constitution-making process, but also provides Theme Committees with the personnel they require to ensure the proper functioning of the Constitutional Assembly.

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The other important thing about these subcommittee members, is the fact that some are Theme Committee members and some are alternate members while others are Constitutional Assembly members. The important thing about this is that, alternate members do not have participatory capacities in Theme Committee meetings unless they are substituting a full member who has not made it to a meeting. It is not compulsory for alternate members to attend Theme Committee meetings and therefore the provisions of section 3 of the Payment of Members of Parliament Act 6, 1994 on absenteeism from Theme Committee meetings do not apply to subcommittee members. Section 3 applies to Theme Committees only and not to subcommittees.

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The object of the provisions of section 3 is to ensure the smooth functioning of the Constitutional Assembly committees. It is our view that subcommittees ought to be regarded as committees of the Constitutional Assembly. For this reason, subcommittee members participating in the subcommittees in the same capacity as Theme Committee members, ought to be treated like Theme Committee members. Therefore section 3 should apply mutatis mutandis to such members irrespective of whether or not they are alternate members in their Theme Committees or that they are other members of the Constitutional Assembly.

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In view of the above, it is recommended that:

- i) rule 22(1) be amended to read :A select committee shall not have more than 120 members, unless the Rules Committee directs otherwise in the case of a particular committee.
- ii) rule 27(5)A be added and read :A subcommittee shall elect one of its members as its chairperson.
- ii) rule 20A be added and read :Any member of the Constitutional Assembly appointed to a select committee, full or alternate shall be referred to as a member of that particular select committee.