

FACTSHEET

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PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

Process and Rules of Debate in The House

2nd Edition

Factsheet No. 4

**PROCESS AND RULES OF DEBATE IN
THE HOUSE**

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The Clerk of the National Assembly
Parliament Buildings
Parliament Road
P.O. Box 41842-00100
Nairobi, Kenya

Tel: +254 20 221291, 2848000
Email: nationalassembly@parliament.go.ke
www.parliament.go.ke

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Prepared by:

The National Assembly Taskforce
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Gitonga Ruchiami



Purpose and Acknowledgment

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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Process and Rules of Debate in The House



A Section of Parliament buildings

Overview of the Process of Debate in the National Assembly

Article 95(2) of the Constitution provides that the National Assembly deliberates on and resolves issues of concern to the people. Secondly, the primary function of legislatures the world over is to legislate on any matter for the development and good governance of the country. These roles and many others are mainly executed through Parliamentary debates, deliberations and resolutions. Matters requiring the decision of the House are always decided by putting the question from the Chair (the Speaker) once a Motion has been made.

Parliamentary debates are oral exchanges of opinions intended to facilitate the House in plenary to arrive at a collective decision-making on certain issues. Debates can take place on special occasions such as opening speeches or at different stages of the examination of proposed legislation. In addition, parliamentary debates can address issues that are chosen by parliamentarians or highlight the work of parliamentary committees.

Debates provide opportunities for Members to discuss government policies, proposed laws, and deliberate on current issues. They allow Members of Parliament to consider and address the concerns and interests of their constituents. Members can also speak about issues brought to their attention by the public. Debates are designed to enable the House reach an informed decision on any subject matter.

The Process of Debate begins when the Speaker, upon moving of a motion and having the motion duly seconded, submits it to the House by proposing the question to determine whether the House wishes to debate it. If Members wish to debate the motion, they are recognized and invited by the Speaker to make speeches. The process of debate ends after the motion and any proposed amendments have been considered and no Member wishes to speak or the House has ordered debate to conclude. Debate having ended, the original or amended motion is re-read by the Speaker, and the question for the adoption of the motion is put to the House for a decision. The most basic components of this process are the “motion” and the “question”.

The motion in this context is a proposal that the House do something or express an opinion with regard to some matter; the question being the mechanism used to ask the House if it agrees with the motion, first, when it is proposed by the Speaker, and second, when it is put to the House for a decision at the conclusion of debate.

Upon proposing the motion for debate and before putting of the question on the main motion, amendments may be proposed and the same procedure is followed in proposing and deciding on each amendment at a time.

The key stages of arriving at a decision include:

1. Giving notice of a motion
2. Moving of a motion
3. Seconding of the motion
4. Proposing of the question by the Chair
5. Actual debate
6. Amendments, if any
7. Reply by the Mover
8. Putting of the question by either collection of the voices (Voice vote/ acclamation) by the Chair, or division (Voting)

When the debate ends, the Chair puts the question, collects the voices, and then announces the result that either the 'ayes' or the 'nays' have it. If the Chair's decision is contested by at least thirty Members rising in their places, the House proceeds to a division to determine which side has the majority votes.

It is important to note that moving, proposing, and putting of questions is often undertaken without debate.

MOTIONS

A Motion is a proposal made for the purposes of extracting a decision of the House. They may be substantive or subsidiary. Substantive motions are self-contained (stand-alone) while subsidiary motions may be:

- (a) Ancillary – dependent on an order of the day;
- (b) Motions made for the purposes of superseding questions, such as motions for adjournment of a debate; and
- (c) Motions dependent on other motions, such as amendments



Manner of Debating Motions

Notices of Motion

A Notice of Motion is a mechanism through which the House is notified in advance about a Motion to be considered in a later sitting/ date. It serves as an intention to have a Motion debated by the House and further informs the House on the text of the Motion and the resolution sought from the House. By way of procedure, the Sponsor of a Motion reads out the Notice of Motion before laying it at the Table of the House when the Order for 'Notices of Motions' is called out. With regard to Bills, notice is deemed to have been given during the publication period of Bills, which is typically fourteen (14) days for ordinary Bills and seven (7) days for budget-related Bills. However, by way of a resolution, the House may reduce the publication period of any Bill.

Period of notice

In general, substantive motions require a notice while procedural motions do not. A Motion is typically not debated on the same day as its Notice is given, unless with the leave of the House.



Motions moved without notice

Generally, Motions require the giving of Notice prior to moving. However, certain motions may be moved without notice. These include:

- (a) Motion by way of amendment to a question already proposed from the Chair;
- (b) Motion for the adjournment of the House or of a debate;
- (c) Motion that the House do dissolve itself into a Committee of the Whole House;
- (d) Motion moved when the House is in Committee;
- (e) Motion for the suspension of a Member;
- (f) Motion made in accordance with the Standing Orders governing the procedure as to Bills;
- (g) Motion for the agreement of the House with a Committee of the Whole House in a resolution reported, or for the re-committal thereof or for the postponement of the further consideration thereof;
- (h) Motion raising a question of privilege;
- (i) Motion for the orders of the House under these Standing Orders;
- (j) Motion made to exempt business from Standing Orders;
- (k) Motion made for the limitation of a debate;
- (l) Motion made for the postponement or discharge of, or giving precedence to an order of the day;
- (m) Motion for the extension of sitting time of the House, and
- (n) an exceptional Motion for the Tributes of the House

(a) Admissibility



The Speaker of The National Assembly (12th Parliament) Hon. Justin B. Muturi guiding the House on a motion under consideration

The Speaker may direct that a Motion will not be admitted if the Motion:

- (i) is one which infringes, or the debate on which is likely to infringe, any provision in the Standing Orders;
- (ii) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;
- (iii) is too long;
- (iv) is framed in terms which are inconsistent with the dignity of the House;
- (v) contains or implies allegations which the Speaker is not satisfied that the Mover can substantiate; or
- (vi) calls for the commitment of public funds for which no provision is made in the Annual Estimates as adopted by the National Assembly. Such Motion may be also referred it to a relevant committee of the Assembly, pursuant to Article 114(2) of the Constitution.

It is also important to note that Motions sponsored by a party have precedence over all other Motions on such days as the House Business Committee, in consultation with the Speaker, may determine. However, where a party has sponsored two or more motions, the Motions are considered in such order as the sponsoring party elects.

Rules of Debate in the House



A sitting of the House in progress

Debates in Parliament are regulated by the Rules of Procedure which are formulated in accordance with Article 124 of the Constitution. For the orderly conduct of business before the House, Members are expected to observe the following aspects of debate -

1. **Language:** proceedings of the House are to be transacted in official languages, being English, Kiswahili and the Kenya Sign Language. A Member must speak in the same language and conclude his/her contribution in the language which the Member began;
2. **Reference to the Speaker:** all requests to speak to a Motion or raising any matter in the House must be channeled through the Chair. Further, a Member speaking to a Motion has to address the Speaker at all times;
3. **Number of Members speaking to a Motion:** at any one given time only one Member shall speak to a Motion. In the event that two or more Members have requested to speak, the Member recognized and called by the Speaker shall speak to the Motion;
4. **Reference to written materials:** During debate, a Member shall not read speeches. Nonetheless, reading short extracts from documents and the use of printed papers in support of the argument being prosecuted may be allowed or used of talking notes in providing explanation, clarification and justification of proposed amendments to legislation. Speech may only be read when the Speaker is satisfied that it is necessary for precision of facts and avoidance of doubt on the matter being prosecuted.
5. **Speaking to a Motion for which a question has been put:** no Member shall speak to a motion after the question has been put by the Speaker, regardless of whether it is decided in the affirmative or negative;
6. **Speaking twice on a question:** no Member shall speak more than once to a motion except under the following circumstances:

- (a) in the Committee of the Whole House;
- (b) when required to offer explanation on some material part of the Member's speech;
- (c) when replying to a substantive motion which s/he had moved; or
- (d) when speaking to an amendment to a substantive motion before the House.

7. Points of Order: A point of order is an intervention by a Member who believes that the rules or customary procedures of the House have been incorrectly applied or overlooked or abused during the proceedings. Members may rise on points of order to bring to the attention of the Chair any breach of the relevance or repetition rules, unparliamentary remarks, or a lack of quorum, among other violations. Any Member may raise a point of order at any time during the speech of another Member through the Speaker. If the request is acceded to, the Member shall be required to indicate the Standing Order upon which the point of order is raised;

When a Member has the floor, other Members must listen in silence. However, interruptions of debate are only allowed;

- (a) by raising a point of order;
- (b) upon a matter of privilege suddenly arising;
- (c) upon a point of information or elucidation;
- (d) by raising a point of procedure.

8. Personal Statement: a Member wishing to explain matters of a personal nature with the indulgence of the House is allowed to issue a Personal Statement.

9. Anticipating debate: no Member is allowed, while contributing to a particular motion, to raise matters relating to a Bill, report or Motion that the House is already seized of.

10. Reference to proceedings of Select Committees: Members are not allowed to refer to the proceedings of a select committee before the Committee has laid its report on the Table of the House.

11. Contents of speeches: Members are precluded from using and relying on excerpts/ extracts from the Media as authorities when addressing the House. Further, they are barred from discussing, or adversely referring to or discussing the conduct of head of state or government, a representative of a friendly country, the Speaker, a judge, or a holder of an office whose removal is dependent upon a decision of the House without a substantive Motion. Such substantive Motion requires a Notice of at least three days.

12. Retraction and apologies: whenever the Speaker determines that a Member has used exceptionable words that demeans or imputes improper motive on the dignity of the House or a Member of the House, the Member shall be ordered to withdraw and apologize. A Member who defies the order is deemed to be of disorderly conduct and is sanctioned by the Speaker in accordance with the Standing Orders.

13. Matters sub judice (pending in court): a matter is considered sub judice if civil or criminal proceedings relating to it are ongoing in a court of law or constitutional tribunal and deliberations on the same by the House is likely to influence fair determination of the matter. The determination of whether a matter is sub judice or not is based on the criteria set out under Standing Order 89(3) and (4). The sub judice rule is based on the assumption that the privilege of freedom of speech in the Assembly places a corresponding duty on Members to use their freedom responsibly. Therefore, Members are not allowed to refer to any particular matter which is active in a court of law or constitutional tribunal, or which, by the operation of any written law, is secret, save in exceptional circumstances where the Speaker may allow reference to such matters.

14. Declaration of interest: a Member who wishes to speak on any matter in which they have a pecuniary or proprietary interest shall first declare that interest. This is meant to eliminate the eventuality of conflict of interest. However, the Speaker may allow a Member to speak

in a matter in which the Member has interest, and have the matter enter the record of the House.

- 15. Allegations of fact(s):** Members must not allege specific matters of fact as being true unless they can substantiate them by producing evidence, which reasonably justifies such allegations. A Member is responsible for the accuracy of any fact(s) they allege to be true and shall be required to substantiate immediately or not later than the next Sitting Day as may be ordered by the Speaker.
- 16. Debate on amendments:** any Member contributing to an amendment must confine their contribution to the amendment. A Member who speaks to an amendment to a Motion but had not spoken to the main Motion reserves the right to speak to the motion once the amendment is disposed of, save for the circumstances contemplated under Standing Orders.
- 17. Reserving the right to speak after seconding a Motion:** a Member who has been called upon by the Mover to second a motion may reserve the right to contribute to that motion at a later stage by simply bowing to signify agreement to have seconded the Motion.
- 18. Questions for which the Mover has a right to reply:** at point of deliberation on a Motion whose Mover has the right to reply has been proposed, any Member may move the House to close debate on the question. This is done by way of a motion, "that the Mover be now called upon to reply." However, the discretion to put the question or not rests with the Speaker. If the Speaker decides to put it and the House decides in the affirmative, then the Mover replies forthwith.
- 19. Adjournment of debate:** refers to a motion that a Member invokes when the Member wishes to postpone debate on a Motion to a future date or sitting. The Motion is couched "that the debate be now adjourned." If the Speaker is satisfied that the motion is not tantamount to an abuse of proceedings of the Assembly, the Speaker puts the question forthwith. If carried, debate is adjourned but if negatived, debate continues.
- 20. Limitation of debate:** is a procedure applied by the House to impose a limit on the duration of each speech in a debate and ensure priority in speaking on a particular motion and includes the time each Member speaks in debate. Such motions are commonly moved at the commencement of a Session or Part of a Session but may also be moved during a Sitting of the House, provided that such a motion is moved after a question has been proposed but before commencement of debate. The House may from time to time, amend the motion on limitation of debate to take care of the prevailing circumstances.
- 21. Irrelevance or repetition:** while speaking to questions before the House, Members shall ensure that their speeches are relevant to the subject matter of the Motion. Persistent irrelevance or tedious repetition of arguments already advanced by the Member in question or any other Member who has already spoken may necessitate the Speaker to discontinue the Member's debate after warning the Member. Irrelevance may also cause the Speaker to discontinue a Member's speech. The rule against repetition helps to ensure the expeditious conduct of debate by prohibiting the repetition of arguments already made.
- 22. Unparliamentary Language:** the proceedings of the House are based on a long-standing tradition of respect for the integrity of all Members. Thus, the use of offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscenities are not in order.
- 23. Naming** is the term used to designate a disciplinary measure invoked against a Member who persistently disregards the authority of the Chair. If a Member refuses to heed the Speaker's requests to bring his or her behaviour into line with the rules and practices of the House, the Member is named, that is, to address the Member by name rather than by constituency or title as is the usual practice, and to order his or her withdrawal from the Chamber for the remainder of the sitting day. The Speaker may also let the House take any supplementary disciplinary action it may choose. In either case, naming is a coercive measure of last resort.

References

1. National Assembly Standing Orders, 2022
2. Erskine May, T, Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 24th ed. London: LexisNexis, 2011



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Parliament Buildings,
PO Box 41842 - 00100,
Nairobi, Kenya.

Email: nationalassembly@parliament.go.ke
Tel: (254-2) 222 12 91 or 284 80 00
Fax: (254-2) 224 36 94
Website: www.parliament.go.ke