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TWELFTH PARLIAMENT
(THIRD SESSION)

THE NATIONAL ASSEMBLY

REPORT OF A STUDY VISIT TO THE PARLIAMENT OF BOTSWANA
BY THE NATIONAL ASSEMBLY COMMITTEE OF POWERS AND
PRIVILEGES

6TH – 10TH MAY 2019

Clerk's Chambers
Parliament Buildings
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2019	
DAY: THURSDAY	
TABLED BY:	Hon. Mafaka Kemosi Member, PPC
CLERK-AT THE TABLE:	Lemuna Mosey.

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Acknowledgement

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their contribution and engagements during the benchmarking study visit to the Parliament of Botswana. The Committee wishes to also thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

On behalf of the Committee of Powers and Privileges, I have the honour and pleasure to present the Report to the House.



The Hon. Vincent Kemosi Mogaka, MP
Leader of the Delegation

05/12/2019

A. BACKGROUND OF THE STUDY VISIT

1. The Committee of Powers and Privileges of the National Assembly is established under Section 15(1) (a) of the Parliamentary Powers and Privileges Act, 2017. The Committee consists of fifteen Members, being the Speaker as the Chairperson and fourteen other Members of the House appointed in accordance with the Standing Orders.
2. The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012, the Parliamentary Powers and Privileges Act, 2017 and the National Assembly Standing Orders which assigns to the Committee various functions.
3. The Committee inquiries into the conduct of a Member whose conduct is alleged to constitute breach of privilege either of its own motion (*suo moto*) or as a result of a complaint made by any person.
4. The Committee nominated five of its Members to undertake a study tour to the Parliament of Botswana in Gaborone from 6th -10th May, 2019.
5. The objectives of the study visit were to share best practices, lessons and challenges relating to the following areas of interest:
 - (i) mechanisms of enforcing and protecting the privileges and immunities of the House, Members, committees and witnesses vis-à-vis the Bill of Rights;
 - (ii) experiences and challenges of enforcing the Code of Conduct and Ethics for Members of Parliament;
 - (iii) experiences and challenges in investigating and disciplining Members for breach of privilege, and breach of the Code of Conduct and Ethics;

- (iv) matters relating to registration of members' interests and attendant enforcement mechanisms and challenges; and
 - (v) the courts' approach to parliamentary matters that are protected by laws of privilege and immunity.
6. The delegation to the study visit was as follows-
- (i) The Hon. Vincent Kemose Mogaka, MP-Leader of Delegation
 - (ii) The Hon. Francis Chachu Ganya, M.P.
 - (iii) The Hon. James Mathew Onyango K' Oyoo, MP
 - (iv) The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, M.P.
 - (v) The Hon. Danson Mwakuwona Mwashako, MP
 - (vi) Mr. Joel Kigundu - Chief Finance Officer
 - (vii) Ms. Jemimah Waigwa - Legal Counsel
 - (viii) Ms. Anne Shibuko - Delegation Secretary
7. During the aforementioned period, the delegation engaged with its counterpart Committee of Members' Rights, Interests and Privileges. The Committee consists of five Members appointed at the first meeting of the life of a Parliament, one of whom is elected as chairperson.
8. The Committee of Members' Rights, Interests and Privileges of the Parliament of Botswana has the mandate to consider all matters affecting the benefits, entitlements, interests and welfare of Members, including, but not limited to, accommodation (official and residential), leisure and recreation.
9. The Committee also considers any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in any code of conduct to which the Assembly has agreed, and to recommend any

modifications to such code of conduct as may from time to time appear to be necessary.

B. MEETING WITH THE SPEAKER OF THE BOTSWANA NATIONAL ASSEMBLY

10. The delegation held a meeting with the Speaker of the National Assembly of Botswana. The Speaker welcomed the delegation and proceeded to inform the delegation of the structure of Parliament of Botswana, which was on recess and would next sit in July, 2019. The Speaker informed the delegation that the National Assembly consists of fifty-seven (57) Members and six (6) special elected Members of Parliament. The National Assembly has also twelve (12) portfolio Committees and five standing committees. The Speaker further informed the delegation that Cabinet Ministers are drawn from Parliament and the President is also an ex-officio Member of Parliament. The Speaker also indicated that the country would be holding its General Elections in October, 2019.

11. The Speaker lauded the existing relationship between the National Assembly of Kenya and Parliament of Botswana and noted the need to sign a memorandum of understanding between the two Parliaments in areas of mutual cooperation. The Speaker also informed the Committee that there exist a Committee of Members' Rights, Interests and Privileges of Parliament of Botswana, whose responsibility is to protect the institution of Parliament and ensure that the Members of Parliament fulfil their constitutional mandate. The Speaker concluded her remarks by observing that the study visit offered the delegation and indeed Parliament of Botswana an opportunity to learn and share information and experiences.

12. The leader of the Kenyan Delegation thanked the Speaker for the warm welcome and began by providing a brief description of structure of Parliament of Kenya, which consists of two Houses, namely the National Assembly and the Senate. The leader of delegation further informed the meeting that the National Assembly and the Senate have distinct roles as enshrined in Articles 95 and 96 of the Constitution, respectively.
13. The Leader of Delegation informed the meeting that the Committee of Powers and Privileges of the National Assembly is established under Section 15(1)(a) of the Parliamentary Power and Privileges Act, 2017. The Committee consists of fifteen Members, being the Speaker as the Chairperson and fourteen other Members of the House appointed in accordance with the Standing Orders.
14. The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012, the Parliamentary Powers and Privileges Act, 2017 and the National Assembly Standing Orders, which assigns to the Committee various functions.
15. He stated that the Committee inquiries into the conduct of a Member whose conduct is alleged to constitute breach of privilege either of its own motion (*suo moto*) or as a result of a complaint made by any person.
16. The leader of delegation further observed that where the Committee finds that a Member has committed a breach of privilege, the Committee may, in

addition to any other penalty to which the Member may be liable under a specific law issue a formal warning;

- (a) a reprimand;
- (b) an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges;
- (c) the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by Parliament;
- (d) the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member;
- (e) such fine in terms of the Member's monthly salary and allowances as the House may determine;
- (f) the suspension of the Member for such period as the House may decide, whether or not Parliament or any of its committees is scheduled to meet during that period; or
- (g) vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

17. In terms of timelines, the leader of delegation informed the meeting that in case of an inquiry arising from a complaint, the Parliamentary Powers and Privileges Act envisages such inquiry to be concluded within fourteen days of receipt of complaint. Moreover, the Committee is expected to table its findings in the House, together with such recommendations, as it considers appropriate for consideration, within fourteen days of the conclusion of an enquiry. However, section 36 of the Act permits the Committee to seek an extension of time for inquiring into a complaint.

18. The leader of delegation concluded his remarks by lauding the existing ties between Kenya and Botswana evidenced by free movement of citizens between the two countries devoid of visa restriction requirements and proposed the creation of friendship parliamentary groups between the Parliament of Kenya and the Parliament of Botswana.

C. MEETING WITH THE CHAIRPERSON OF THE HOUSE OF CHIEFS (NTLO YA DIKGOSI)

19. The Chairperson of the Ntlo Ya Dikgosi also known as the House of Chiefs or traditional leaders of Botswana, Kgosi Gaborone, welcomed the delegation to the meeting. The Chairperson lauded the strong relationship ties that exist between Kenya and Botswana and observed that there existed a huge number of Kenya citizens in Botswana who were contributing to the economic development of the country.

20. The Chairperson also informed the delegation as follows-

- (i) The 1961 Constitution of the Republic of Botswana established an institution known as House of Chiefs where some traditional leaders could meet and discuss issues affecting their tribes, customs and traditional privileges.
- (ii) The 1966 Constitution retained the House of Chiefs as it was in the Bechuanaland Protectorate.
- (iii) The House of Chiefs which comprised of 15 members was dissolved following a Constitutional Amendment Act of 2005 which sought to amend the Constitution in order to render them tribally neutral.

- (iv) The Ntlo ya Dikgosi was established in January 2007 under the Constitution of Botswana and is mandated to advise the National Assembly and the Executive.
- (v) Section 65 of the Constitution of Botswana also empowers the House of Chiefs to consider certain Bills referred to the National Assembly. Such Bills include Bills touching on appointment and designation of traditional leaders; tribal property and preservation and promotion of culture.
- (vi) During the pre-independence period, various communities in Botswana were ruled by traditional leaders and chiefs had enormous responsibilities of taking care of the welfare of societies.
- (vii) Initially the House of Chiefs was established as a platform for dealing with community issues but now they are part and parcel of Parliament of Botswana.
- (viii) After the enactment of the Constitution of Botswana which saw the creation of various arms of government the tradition leadership structures were not abolished and instead exist side by side with the political leadership.
- (ix) There are two legal systems that exist in Botswana namely customary law and the common law system all geared towards the attainment of justice.
- (x) The House consists of thirty-five (35) Members. Eight (8) Members are hereditary Chiefs (Kgosi) from Botswana's principal tribes. Another twenty-two (22) Members are indirectly elected and serve five-year terms. The remaining five (5) members are appointed by the President.

(xi) The House consists of three Committees namely the Committee of Powers and Privileges, Committee on Culture and the Management (Business Advisory Committee).

(xii) The Parliament of Botswana undertakes capacity building of the members of the house of chiefs in particular on the use of Information and Communication Technology.

21. The leader of delegation thanked the Chairperson of the House of Chiefs for the warm welcome and observed that Parliament of Kenya is bicameral consisting of the National Assembly and the Senate.

22. The leader of delegation observed that the Senate consists of forty-seven (47) Members of Parliament, sixteen (16) nominated women Members, two (2) Members representing the youth, two (2) Members representing persons with disabilities and the Speaker as an ex-officio Member.

23. The leader of delegation also informed the meeting that the Senate is responsible for legislating on Bills concerning county governments, allocation of national revenue among counties and oversight of state officers.

D. MEETING WITH THE CHAIRPERSON AND MEMBERS OF THE COMMITTEE MEMBERS' RIGHTS, INTERESTS AND PRIVILEGES OF PARLIAMENT OF BOTSWANA

24. The Chairperson of Committee of Members' Rights, Interests and Privileges of Parliament of Botswana informed the delegation as follows-

(i) The National Assembly of Botswana consists of fifty-seven members and six special elected members totalling to sixty-five members.

(ii) Parliament of Botswana does not have a code of conduct for Members of Parliament.

- (iii) The Committee considers matters affecting benefits, interests and privileges of Members and makes recommendation on salaries of Members.
- (iv) A Member of Parliament is entitled to a salary, commuting allowance, hospitality allowance, sitting allowance, car grant, constituency development fund, entertainment allowance, house allowance and gratuity at the end of term of Parliament.
- (v) A Member of Parliament is also entitled to a constituency office, an administrator of the office and security personnel.
- (vi) The National Assembly is considering establishing a Salaries and Remuneration Commission to be mandated with the responsibility of determining salaries for Members of Parliament.
- (vii) The budget of Parliament is determined by the Executive and hence the independence of Parliament is highly compromised.
- (viii) The country has very effective social programmes aimed at eradicating poverty and these include the poverty eradication programme where eligible persons are given 1500 US dollars for starting business, destitute policy where eligible persons are given food coupons worth 75 dollars per month, disability policy and support for needy students and free education for children all the way to the university.

25. The leader of delegation informed the meeting as follows-

- (i) The Committee of Powers and Privileges of the National Assembly is established under Section 15(1)(a) of the Parliamentary Power and Privileges Act, 2017. The Committee consists of fifteen Members, being the Speaker as the Chairperson and fourteen other Members of the House appointed in accordance with the Standing Orders.

- (ii) The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012, the Parliamentary Powers and Privileges Act, 2017 and the National Assembly Standing Orders which assigns to the Committee various functions.
- (iii) The Committee may inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege either of its own motion (*suo moto*) or as a result of a complaint made by any person.
- (iv) Upon conclusion of the inquiry, the Committee may recommend any or all the sanctions under Section 17 of the Act which include issuing a formal warning; a reprimand; the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member; or vacation of seat pursuant to Articles 75(2) (b) and 103(1) (c) of the Constitution.
- (v) In the case of an inquiry arising from a complaint, the Parliamentary Powers and Privileges Act envisages such inquiry to be concluded within fourteen days of receipt of complaint. Moreover, the Committee is expected to table its findings in the House, together with such recommendations, as it considers appropriate for consideration, within fourteen days of the conclusion of an enquiry. However, section 36 of the Act permits the Committee to seek an extension of time for inquiring into a complaint.
- (vi) Article 103(1) (b) as read together with Standing Order 258 of the National Assembly Standing Orders assigns to the Committee of Powers and Privileges the function of determining claims of absence of a Member from the House without the permission of the Speaker or where, upon a complaint, a satisfactory explanation for the absence is tenable to the Committee.

- (vii) Chapter Six of the Constitution of Kenya prescribes leadership and integrity benchmarks for holders of State and public offices. Article 75 of the Constitution assigns the Committee the role to exercise penal authority over contravention of the Leadership and Integrity Code.
- (viii) Registration of Members' Interests is regulated by Section 16 of Leadership and Integrity Act, 2012, and the Second Schedule of the Act, and Rule 6 of the Code of Conduct for Members of Parliament contained in the Fourth Schedule to the Parliamentary Powers and Privileges Act, 2017.
- (ix) The Committee of Powers and Privileges is also responsible for handling matters relating to the declaration of wealth by State officer and holders of independent Commissions.
- (x) Custody of the wealth declaration forms by State Officers is vested in the 'responsible Commission'. Section 3 the Public Officer Ethics Act No. 4 of 2003 defines the responsible Commission for the purposes of members and other designated officers as the Committee of Powers and Privileges of the National Assembly. In furtherance of the mandate of the Committee, the Committee in 2018 released the wealth declaration forms of the Members of the National Land Commission upon request by the Ethics and Anti-Corruption Commission.

E. TOUR OF PARLIAMENT BUILDINGS AND FACILITIES

26. The delegation toured the following buildings and facilities-

- (i) The Chambers of the National Assembly of Botswana;
- (ii) The Chambers of Ntlo Ya Dikgosi also known as the House of Chiefs;
- (iii) The recreational facilities for the Members of Parliament of Botswana; and

- (iv) The Parliamentary Village consisting of accommodation Houses for the Members of Parliament.

F. PARLIAMENTARY PRIVILEGE AND THE LAW

27. The Parliamentary Counsel of the National Assembly of Botswana informed the meeting as follows-

- (i) The law governing matters relating to the powers and privileges of Members of the National Assembly of Botswana is the National Assembly (Powers and Privileges) Act.
- (ii) The Act provides for the immunity of Members from legal proceedings, and freedom of arrest akin to the Parliamentary Powers and Privileges Act, 2017.
- (iii) The Act also provides that no process issued by any court shall be served or executed within the precincts of the Assembly.
- (iv) The Act also gives powers to the Committees of the House power to order attendance of witnesses through issuance of summons and examine witnesses on oath.
- (v) The witnesses or persons who appear before Committees are also entitled to the same right or privilege as before a court of law.
- (vi) The Act also provides that when a person gives evidence before the Assembly or Committee the proceedings shall be deemed to be judicial proceedings for the purposes of a prosecution for perjury.
- (vii) Sections 18, 19 and 20 of the Act prescribes various offences under the Act. It is noteworthy that section 20 prescribes a penalty for members who accepts or agrees to accept any bribe, fee or compensation of any kind for speaking, voting or acting as such Member or from refraining from speaking, voting or acting. A member found liable is punishable by a fine not exceeding 40 dollars or to

imprisonment for a term not exceeding two years. The delegation observed that the penalty for accepting bribes by Members was lenient and may not act as a deterrent mechanism for Members from engaging in such actions.

G. THE COURTS APPROACH TO PARLIAMENTARY MATTERS IN THE CONTEXT OF PARLIAMENTARY PRIVILEGE AND RIGHTS

28. The Parliamentary Counsel of the National Assembly of Botswana informed the meeting as follows-

- (i) The Constitution of Botswana clearly establishes the arms of government and confers on them the powers and privileges to be able to act independently without undue influence or interference by others. This is premised on the concept of separation of powers by the different arms of government.
- (ii) Section 76 of the Constitution of Botswana provides that the National Assembly may regulate its own procedure.
- (iii) Parliament enjoys the exclusive right to determine its internal rights, however such privilege is not absolute as it is subject to the Constitution.
- (iv) Courts have no jurisdiction in matters of internal regulation and will not interfere "without good reason".
- (v) The principle of judicial restraint espouses that courts should not interfere in matters of internal nature of Parliament and it originates from the Westminster system of democratic government.
- (vi) Various case laws have also held that courts have no jurisdiction to inquire into the lawful internal processes of the National Assembly otherwise the court would be intruding into the affairs of another branch of government.

- (vii) Section 76 of the Botswana Constitution guarantees the independence of Parliament which is exercised through the Standing Orders and contains binding rules to regulate internal matters.

H. TOUR OF CONSTITUENCY OFFICES AND JWANENG MINE

29. The delegation toured the following -

- (i) **The Constituency Offices at Jwaneng and Moshupa:** During the tour, the delegation accompanied by Members of the Botswana National Assembly Committee of Members' Interests, Rights and Privileges was informed of the organizational structure of the constituency offices by the administrators of the offices and also met the local leaders of the constituencies of Jwaneng and Moshupa.
- (ii) **The Jwaneng Mine:** The management of the Jwaneng Mine which is owned by Debswana, a partnership between the De Beers company and the Government of Botswana briefed the delegation on the operations of the Mine. The Mine is located west of the city of Gaborone about 120 Kilometers from Gaborone. The Jwaneng is also known as the Prince of Mines is an open pit mine and produces 9.3 million tons per year of ore and an additional 37 million tons per year of waste rock. The Jwaneng employs over 2,100 people and is known for its excellent safety record, winning multiple national and international safety awards. The delegation was also briefed on the social corporate responsibility's activities of the Debswana. The leader of delegation thanked the management for the briefing and urged the company to consider investing in sponsoring students to pursue courses on mining either through sponsorship to foreign universities or by establishing a university on science and technology. After the briefing, the delegation took a tour of the Mine.