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Rt. Hon. Speaker

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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION

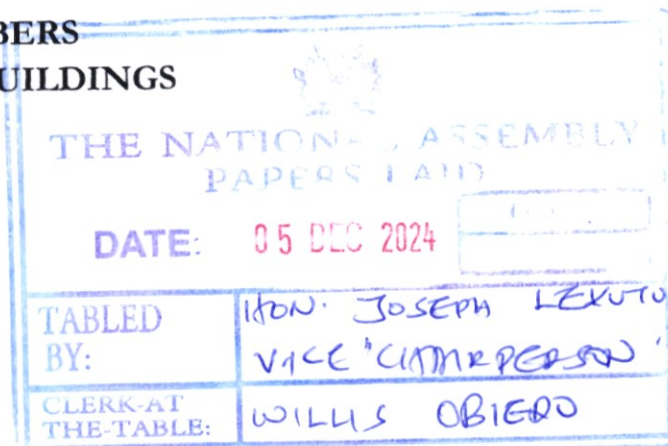
DIRECTORATE OF LEGISLATIVE AND PROCEDURAL SERVICES

NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES



REPORT ON CONSIDERATION OF THE PARLIAMENTARY POWERS AND
PRIVILEGES (AMENDMENT) BILL (SENATE BILL NO. 5 OF 2022)

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI



NOVEMBER, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

EACC	Ethics and Anti-Corruption Commission
LSK	Law Society of Kenya
POEA	Public Officers Ethics Act
LIA	Leadership and Integrity Act

ANNEXTURES

Annexure 1: Adoption Schedule

Annexure 2: The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022)

Annexure 3: Advertisement inviting the public to submit memoranda on the Bill

Annexure 4: Memoranda from the Ethics and Anti-Corruption Commission

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Annexure 6: Memoranda from the Law Society of Kenya

Annexure 7: Committee Minutes

CHAIRPERSON'S FOREWORD

The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022) was read a First Time in the National Assembly on June 27, 2023, and was thereafter referred by the Honourable Speaker to the National Assembly Committee on Powers and Privileges for consideration and reporting to the House. The Bill, which is sponsored by Sen. Danson Mungatana, MP, seeks to place a specific obligation on officials of the Executive, Constitutional Commissions and Independent Offices to comply with the requirement to give feedback to Parliament's resolutions.

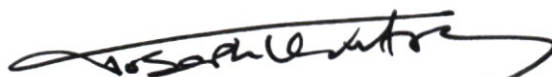
It provides a structured mechanism through which the Executive, Constitutional Commissions and Independent Offices are required to give greater consideration to the issues raised and the recommendations made by Parliament.

The Bill further seeks to amend section 7 and delete section 11 of the Parliamentary Powers and Privileges Act, Cap. 6 in order to comply with the decision of the High Court in *Apollo Mboya v Attorney General & 2 others* (2018).

Pursuant to its mandate under Standing Order 127, the National Assembly Committee on Powers and Privileges undertook the requisite public participation exercise, and invited members of the public as well as various stakeholders to submit their memoranda on the Bill.

Following the holding of several meetings with stakeholders including the Office of the Attorney-General, the Law Society of Kenya, and the Ethics and Anti-Corruption Commission, the Committee resolved to propose the deletion of Clause 5 of the Bill. Clause 5 of the Bill proposes the insertion of a new Part VIA in the Act which deals with how the Executive, Constitutional Commissions and Independent Offices should deal with reports on Parliamentary Resolutions. The Committee was of the view that this is a matter that should be addressed in the Standing Orders.

On behalf of the National Assembly Committee on Powers and Privileges, it is my honour to present to this House this Report of the Committee on its consideration of the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022).



THE HON. JOSEPH LEKUTON, CBS, MP
DESIGNATED VICE CHAIRPERSON
NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES

CHAPTER ONE: PREFACE

1.0 ESTABLISHMENT OF THE COMMITTEE

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, Cap. 6.
2. Section 15 of the Parliamentary Powers and Privileges Act, Cap. 6 provides as follows:
 - (1) *There is established, for each House of Parliament, a committee known as the Committee of Powers and Privileges consisting of—*
 - (a) *in respect of the National Assembly—*
 - (i) *the Speaker who shall be the chairperson of the Committee; and*
 - (ii) *fourteen other members of the House appointed in accordance with the Standing Orders of the Assembly;*
 - (b) *in respect of the Senate—*
 - (i) *the Speaker who shall be the chairperson of the Committee; and*
 - (ii) *six other members of the House appointed in accordance with the Standing Orders of the Senate.*
 - (2) *The quorum of the Committee shall—*
 - (a) *in the case of the National Assembly, be the Speaker and four other members; and*
 - (b) *in the case of the Senate, be the Speaker and two other members.*
 - (3) *Subject to this Act and the Standing Orders of the relevant House of Parliament, the Committee shall regulate its own procedure.*
 - (4) *The functions of the Committee of Powers and Privileges shall be to—*
 - (a) *inquire into the conduct of a member whose conduct is alleged to constitute breach of privilege in terms of section 16;*
 - (b) *perform such other functions as may be specified in this Act.*
 - (5) *The Committee of Powers and Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of section 16 within fourteen days of*

receipt of complaint.

- (6) The Committee of Powers and Privileges shall, within fourteen days of the conclusion of an enquiry, table its findings in the relevant House of Parliament together with such recommendations as it considers appropriate.*
- (7) Each House of Parliament shall consider the report and recommendations by the Committee of Privileges in the manner set out in the Third Schedule.*

- 3. The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act (Cap. 185B), the Leadership and Integrity Act (Cap. 185C), the Parliamentary Powers and Privileges Act (Cap. 6) and the National Assembly Standing Orders which assigns to the Committee various functions.
- 4. The Committee enforces the Rules governing the conduct of Members of Parliament.
- 5. The Committee is also responsible for handling matters relating to the declaration of wealth by State officers and holders of Constitutional Commissions and Independent Offices. Custody of the wealth declaration forms by State Officers is vested in the 'responsible Commission'. Section 3 the Public Officer Ethics Act, Cap. 185B defines the responsible Commission for the purposes of members and other designated officers as the Committee of Powers and Privileges of the National Assembly;
- 6. The Committee determines what constitutes contempt although the Act does not define what acts or omissions can be termed as being contemptuous, such matters can arguably be determined following the dictates of usages, forms, customs, precedence, procedures and traditions of Parliament as envisaged in section 14 of the Parliamentary Powers and Privileges Act; and
- 7. The Committee of Powers and Privileges determines 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.

1.1 MANDATE OF THE COMMITTEE

8. The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act, Cap. 185B, the Leadership and Integrity Act, Cap. 185C, the Parliamentary Powers and Privileges Act, Cap. 6 and the National Assembly Standing Orders which assign to the Committee various functions that include the following:

a) Inquiring into the conduct of a member whose conduct is alleged to constitute breach of privilege

9. Section 15(4)(a) of the Parliamentary Powers and Privileges Act, Cap. 6 mandates the Committee to inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of section 16 of the Act. The breaches contemplated under section 16 are –
- (i) the unauthorized publication of any journal, if the publication of the journal is prohibited by or in terms of the Standing Orders or an order or resolution of Parliament, any journal purporting that it has been published under the authority of Parliament or a committee or the Speaker while it has not been published under such authority, or any journal purporting that it is a verbatim account of the proceedings of Parliament or a committee while it is not such account (section 25);
 - (ii) assaulting, obstructing, molesting, insulting or improper influence (contravening sections 26 or 28);
 - (iii) committing offences in relation to witnesses, including -
 - a) failing to attend at the time and place specified in a summons, without sufficient cause, having been duly summoned;
 - b) failing to remain in attendance until excused from further attendance by the person presiding at the inquiry;
 - c) refusing to be sworn in or to make an affirmation as a witness;
 - d) failing or disobeying, without sufficient cause, to answer fully and satisfactorily all questions lawfully put to the person;
 - e) failing or disobeying to produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce; and on conviction such offences attract a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both;
 - (iv) other serious offences in relation to witnesses, including -
 - a) threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under this Act;

- b) using abusive language directed at a member, a committee or a House of Parliament;
 - c) threatening or obstructing another person in respect of evidence to be given before Parliament or a committee;
 - d) inducing another person to refrain from giving evidence or to produce a document before Parliament or a committee; or
 - e) inducing another person to give false evidence before Parliament or a committee;
 - f) assaulting or penalising or threatening another person or depriving the person of any benefit on account of the giving or proposed giving of evidence before Parliament or a committee;
 - g) with intent to deceive or mislead Parliament or a committee, producing a false, untrue, fabricated or falsified document; or
 - h) wilfully furnishing Parliament or a committee with information which is false or misleading or makes a statement before Parliament or committee that is false or misleading; and on conviction such offences attract a fine not exceeding five hundred thousand shillings or a term of imprisonment not exceeding one year or to both such fine and imprisonment;
- (v) willfully failing or refusing to obey any rule, order or resolution of Parliament;
- (vi) contravening any provision of the Speaker's orders; or
- (vii) conducting himself or herself in a manner which, in the opinion of the Committee, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interests of Parliament or its Members.

10. The Committee may inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege either of its own motion (*sui moto*) or as a result of a complaint made by any person. Upon conclusion of the inquiry, the Committee may recommend any or all the sanctions under Section 17 of the Act.

11. Where the relevant House finds that a Member has committed a breach of privilege, the relevant House may, in addition to any other penalty to which the Member may be liable under a specific law, issue a formal warning, a reprimand, an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges, 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, the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member, such fine in terms of the Member's monthly salary and allowances as the House may determine, 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 vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

12. In the case of an inquiry arising from a complaint, the Parliamentary Powers and Privileges Act, Cap. 6 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 inquiry. However, section 36 of the Act permits the Committee to seek an extension of time for inquiring into a complaint.

b) Absence

13. Article 103(1)(b) as read together with Standing Order 258 of the National Assembly Standing Orders assign 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.
14. A State Officer (including a Member) who does not behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids any conflict between personal interests and public or official duties, or behaves in a manner compromising any public or official interest in favour of a personal interest, or demeans the office the officer holds (*and thus contravening Articles 75(1), 76, 77 or 78 (2)*) shall be subject to the applicable disciplinary procedure for the relevant office; and may, in accordance with the disciplinary procedure, be dismissed or otherwise removed from office.
15. Standing Order 258 provides that if, during any Session, a Member is absent from eight sittings of the Assembly without the Speaker's written permission, the Speaker reports the matter to the Assembly and the matter stands referred to the Committee of Powers and Privileges for hearing and determination.
16. The Committee inquires into the matter within fourteen days from the date the matter is referred to it and thereafter submits a report to the House. If the report of the Committee finds that the Member has offered a satisfactory explanation for the Member's absence, the matter ends.
17. If the report of the Committee finds that the Member has not offered a satisfactory explanation for the Member's absence, the Chairperson or a Member of the Committee designated by the Committee for that purpose, upon submitting the report, must give a three days' notice of a Motion that, "*This House notes the Report of the Committee of Privileges laid on the Table of the House on ... regarding...*"
18. The Motion is debated in the usual manner, except that –

- (a) no amendment to the Motion is permitted;
- (b) the debate of the Motion cannot be anticipated by a Motion for the adjournment of the House, and no dilatory Motion is allowed in relation to the business, and the business cannot be interrupted; and
- (c) at the conclusion of the debate, the Speaker does not put a question but declares that, pursuant to Article 103 (1) (b) of the Constitution, the office of the Member concerned has become vacant.

19. It is however important to note that Article 105 of the Constitution provides that the High Court shall hear and determine any question whether a person has been validly elected as a Member of Parliament or the seat of a member has become vacant. The question must however be heard and determined within six months of the date of lodging the petition.

c) Enforcement of the Rules Governing the conduct of Members of Parliament

20. Chapter Six of the Constitution of Kenya prescribes leadership and integrity benchmarks for holders of State and public offices.
21. Article 75 of the Constitution assigns the Committee the role to exercise penal authority over contravention of the Leadership and Integrity Code.
It states as follows –
(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2) –
(a) shall be subject to the applicable disciplinary procedure for the relevant office; and
(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.
22. The Public Officer Ethics Act, Cap. 185B also assigns to the Committee the function of investigating and enforcing compliance with the Code of Conduct. Section 35(1) provides that the responsible Commission for a public officer may investigate to determine whether the public officer has contravened the Code of Conduct and Ethics.
23. The General Leadership and Integrity Code contained in the Leadership and Integrity Act, Cap. 185C is also within the ambit of the Committee of Powers and Privileges with respect to misconduct by Members of Parliament.
24. Section 37(3) of the Parliamentary Powers and Privileges Act provides for a Code of Conduct for Members of Parliament, provided in the Fourth Schedule to the Act. Rule 12 of the Code specifically obligates the Committee of Powers and Privileges to enforce the Code and recommend penalties for its breach

d) Registration of Members' Interests

25. Registration of Members' Interests is regulated by Section 16 of Leadership and Integrity Act, Cap. 185C, 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.
26. Rule 6 of the Code of Conduct for Members of Parliament provides that Members shall register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions; declare any relevant interest in the context of parliamentary debate or the matter under discussion before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants; and observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.
27. Whereas Rule 6 envisages Members' registering their personal interests with the relevant Speaker, the Committee of Powers and Privileges handles questions of Members' interests on behalf of the Speaker.

e) Contempt

28. Contempt are acts or omissions which obstruct or impede either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his/her duty or which has a tendency, directly or indirectly, to produce such results. Any disorderly, contemptuous or disrespectful conduct in the presence of either House or a committee constitutes a contempt, which may be committed by members of the public, parties, witnesses or by Members of either House.
29. Determination of what constitutes contempt is as the House would determine on occurrence of an incidence and is the power of the House to punish for contempt being discretionary to the House itself.
30. It is notable that although the Act does not define what acts or omissions can be termed as being contemptuous, such matters can arguably be determined following the dictates of usages, forms, customs, precedence, procedures and traditions of Parliament as envisaged in section 14 of the Parliamentary Powers and Privileges Act.

f) Declaration of Wealth for State Officers

31. 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.
32. Custody of the wealth declaration forms by State Officers is vested in the 'responsible Commission'. Section 3 the Public Officer Ethics Act, Cap. 185B defines the responsible Commission for the purposes of members and other designated officers as the Committee of Powers and Privileges of the National Assembly.