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## THE NATIONAL ASSEMBLY


TWELFTH PARLIAMENT (THIRD SESSION)

### COMMITTEE OF POWERS AND PRIVILEGES

## REPORT OF A STUDY VISIT TO THE PARLIAMENT OF UGANDA

11<sup>TH</sup> – 18<sup>TH</sup> AUGUST, 2019

Clerk's Chambers  
Parliament Buildings  
NAIROBI

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
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<b>TABLED BY:</b>	Hon. Magalo Komasi' Member, PPC
<b>CLERK-AT THE TABLE:</b>	Lemuro 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 Uganda. 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.



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**The Hon. Vincent Mogaka MP**  
**Leader of the Delegation**

25/12/2019

## **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, with 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's mandate includes, but is not limited to:

### **(a) Inquiring into the conduct of a member or any other person whose conduct is alleged to constitute breach of privilege**

Section 15(4)(a) of the Parliamentary Powers and Privileges Act, 2017 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;
- (ii) assaulting, obstructing, molesting or insulting any member proceeding to, being within or leaving the precincts of Parliament, or endeavouring to compel any member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before Parliament or any committee; or assaulting, interfering with, molesting, resisting or obstructing any member of staff while in the execution of his or her duty; or while Parliament or a committee is sitting, create or take part in any unlawful

disturbance which interrupts or is likely to interrupt the proceedings of Parliament or any committee while Parliament or the committee is sitting; or disobeying rules relating to access or possession of firearms.

(iii) committing offences in relation to witnesses<sup>1</sup>, including -

- failing to attend at the time and place specified in a summons, without sufficient cause, having been duly summoned;
- failing to remain in attendance until excused from further attendance by the person presiding at the inquiry;
- refusing to be sworn in or to make an affirmation as a witness;
- failing or disobeying, without sufficient cause, to answer fully and satisfactorily all questions lawfully put to the person;
- 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<sup>2</sup>, including -

- threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under this Act;
- using abusive language directed at a member, a committee or a House of Parliament;
- threatening or obstructing another person in respect of evidence to be given before Parliament or a committee;
- inducing another person to refrain from giving evidence to or to produce a document before Parliament or a committee; or
- inducing another person to give false evidence before Parliament or a committee;
- assaulting or penalising or threatening another person or deprives the person of any benefit on account of the giving or proposed giving of evidence before Parliament or a committee;
- with intent to deceive or mislead Parliament or a committee, producing a false, untrue, fabricated or falsified document; or

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<sup>1</sup> Section 27(1)(a), (b) or (2) and (3)(d), (e), (f) or (g)) Parliamentary Powers and Privileges Act, 2017

<sup>2</sup> *Ibid*

- 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 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<sup>3</sup>; 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.

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. Upon conclusion of the inquiry, the Committee may recommend any or all the sanctions under Section 17 of the Act. 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.**

In the case of an inquiry arising from a complaint, the Parliamentary Powers and Privileges Act envisages such inquiry to be concluded within

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<sup>3</sup> Section 37, Parliamentary Powers and Privileges Act, 2017

**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**.

**(b) Attendance of House proceedings and committees including being responsible for the Absences of Members from the House and its committees;**

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. National Assembly Standing Orders 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.

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.

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..."**

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.

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 ethics and rules governing the conduct of Members of Parliament:**

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.

It states –

*(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.*

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<sup>4</sup>

The Public Officer Ethics Act, 2012 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

The General Leadership and Integrity Code contained in the Leadership and Integrity Act, 2012 is also within the ambit of the Committee of Powers and Privileges with respect to misconduct by Members of Parliament

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 in case of any breach

**(d) Ensuring that any contempt of the House and its committees is sanctioned:**

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.

Determination of what constitutes contempt is as the House would determine upon occurrence of an incident. It is upon the House to punish for contempt. 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

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<sup>4</sup> Article 75(2)(b) of the Constitution

**(e) Management of financial disclosures - declaration of income, assets and liabilities;**

The Committee of Powers and Privileges is also *the responsible commission* in matters pertaining declaration of wealth by State officers and members of independent Commissions and holders of independent offices. Custody of the wealth declaration forms tendered by State Officers is vested in a 'responsible Commission'. Section 3 the Public Officer Ethics Act No. 4 of 2003 assigns the role of responsible Commission for the purposes of members and other designated officers to the National Assembly Committee of Powers and Privileges.

**(f) Registration of Members' Interests;**

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.

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.

Whereas Rule 6 envisages Members' registering their personal interests with the relevant Speaker, the National Assembly Committee of Powers and Privileges handles questions of Members' registrable interests on behalf of the Speaker.

**Study Visit**

4. The Committee nominated six of its Members to undertake a study tour to the Parliament of Uganda in Kampala from 11<sup>th</sup> -18<sup>th</sup> August, 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 Kemosi Mogaka, MP-Leader of Delegation;
- (ii) The Hon. James Mathew Onyango K' Oyoo, MP;
- (iii) The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, M.P;
- (iv) The Hon. Danson Mwakuwona Mwashako, MP;
- (v) The Hon. Beatrice Kones, MP;
- (vi) The Hon. Andrew Mwadime, MP
- (vii) Mr. Stanley Lagat – Serjeant-At-Arms
- (viii) Ms. Zeinabu Wario –Serjeant-At- Arms
- (ix) Ms. Halima Suleiman-Delegation Secretary

7. During the aforementioned period, the delegation engaged with its counterpart Committee on Rules, Privileges and Discipline. The Committee consists of fifteen Members appointed at the first meeting of the life of a Parliament, one of whom is elected as Chairperson.
8. The Committee on Rules, Privileges and Discipline of the Parliament of Uganda has the mandate to inquire into any complaint of contempt of Parliament or breach of privilege or any matter of privilege which may be referred to it and to recommend to the House such action as the Committee may consider appropriate.
9. The Committee also considers any matter of discipline referred to it by the Speaker or the House, including hearing matters concerning attendance of Members at sittings of Committees, and to report its findings to the House.

10. The Committee reviews the Rules of Procedure of Parliament from time to time and makes such recommendations to the House for amendment as the Committee considers necessary for the satisfactory functioning and efficient transaction of the business of the House and its Committees;
11. The Committee is also responsible for examining and advising the House on amendments proposed to the Rules of Procedure by Members or other Committees of the House.
12. The Committee also carries out such other functions as are conferred by the Rules of Procedure or as the House may from time to time assign it.

#### **B. MEETING WITH THE SPEAKER OF THE PARLIAMENT OF UGANDA**

The delegation held a meeting with the Speaker of the Parliament of Uganda. She stated the classic definition of parliamentary privilege as found in Erskine May's treatise, which is, "***Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is, to a certain extent, an exemption from the general law.***

She further informed the delegation that Parliamentary privilege may be divided into rights and immunities enjoyed by individual Members of Parliament and parliamentary officers, and the collective rights and powers of the House of Parliament. Additionally the Speaker apprised the delegation of the Parliamentary Privilege in Uganda which she stated to be as follows:-

#### **PARLIAMENTARY PRIVILEGE IN UGANDA**

- Article 97 of the Constitution of Uganda entitles the Speaker, the Deputy Speaker, Members of Parliament and any other person participating or assisting in or acting in connection with or reporting the proceedings of Parliament or any of its committees to such immunities and privileges as Parliament shall by law prescribe.
- Article 90 of the Constitution of Uganda empowers Parliament to appoint committees necessary for the efficient discharge of its functions.

The Speaker also stated the Provisions of **Parliament (Powers and Privileges) Act, 1955 CAP 258**. She made reference to Section 2 of Parliament (Powers and Privileges) Act 1955 Cap 258 which provides for immunity from legal proceedings for words spoken or action by a Member of Parliament in Parliament or committee. She also addressed the delegation on the provision of Section 3 of the Parliament (Powers and Privileges) Act which provides for freedom from arrest for civil debt during session or while going to attend or returning from a sitting of Parliament. In her conclusion she brought the delegation up to speed with other important sections of the Parliamentary Powers and Privileges Act which she stated as enumerated below:

- Section 4 of the Parliament (Powers and Privilege) Act provides that no exercise of civil process shall be served or executed within the precincts of Parliament.
- Section 7 of the Parliament (Powers and Privilege) Act provides that the Speaker may, at any time, order any stranger to withdraw from the precincts of Parliament.
- Section 8 permits Parliament or any sectoral committee to order any person to attend before a committee for purposes of giving evidence.

She informed the delegation that Section 10 empowers the Speaker to direct the Clerk to issue a warrant to compel attendance of persons before Parliament or committee.

The Speaker lauded the existing relationship between the National Assembly of Kenya and Parliament of Uganda 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 on Rules, Privileges and Discipline of the Parliament of Uganda, 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, the Parliament of Uganda an opportunity to learn and share information and experiences.

13. The leader of the Kenyan Delegation began by thanking the Speaker for the warm welcome and proceeded to give a brief description of the structure of the 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.

14. 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 and further gave the constitution and mandate of the Committee.

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 any of the following sanctions;

- (a) a formal warning;
- (b) a reprimand;
- (c) an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges;
- (d) 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;
- (e) the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member;
- (f) such fine in terms of the Member's monthly salary and allowances as the House may determine;
- (g) 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
- (h) 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.

### **C. MEETING WITH THE CHAIRPERSON AND MEMBERS OF THE COMMITTEE ON RULES, PRIVILEGES AND DISCIPLINE OF THE PARLIAMENT OF UGANDA**

18. The Chairperson of the Committee on Rules, Privileges and Discipline welcomed the Delegation to the meeting. The Chairperson lauded the strong relationship ties that exist between Kenya and Uganda and observed that there existed a huge number of Kenya citizens in Uganda who were contributing to the economic development of the country.

19. The Chairperson also informed the Delegation as follows-

- Rule 155 of the rules of procedure of parliament establishes the Committee on Rules, Privileges and Discipline.
- Rule 172 of the rules of Parliament provides for the functions of the committee on Rules, Privileges and Discipline.
- The Committee is also mandated to consider any matter of discipline referred to it by the Speaker of Parliament.

He further informed the delegation of the following two cases that were referred to the Committee which after considering the Committee recommended to the House that the Seats of the two Members be declared vacant and the members lost their seats:-

- a. on the 26th day of September, 2013, the Speaker of Parliament referred a matter of two members of Parliament Hon. Kipoi and Hon. David Sejusa to the Committee on Rules, Privileges and Discipline for investigation on their continued absence from sittings, in accordance with rule 101 (8) ( now rule 111 (8) of the rules of procedure of Parliament)\_.
- b. on Thursday, 15<sup>th</sup> March 2018 when Hon. David Abolo of Ngoro County raised concern over various utterances reported in the media regarding Hon. Persis Namugcinza to the Speaker of Parliament. The Rt Hon. Deputy Speaker, Jacob Oulanyah, referred the matter to the Committee on Rules, Privileges and Discipline to handle the matter

expeditiously and report back to the House.

The Committee informed the Delegation that the powers and privileges that are ordinary utilized by Parliament include the following:

***Summoning of witnesses:***

- Under Section 9 of the Parliament (Powers and Privileges) Act and Rule 211 of the Rules of Procedures of Parliament, it is provided that a person is required to appear as a witness to give evidence on a matter being investigated by a committee.
- Section 10 of the Parliament (Powers and Privileges) Act empowers the Clerk, on the direction of the Speaker, to issue an arrest warrant for the apprehension of a person who refuses to appear once summoned or willfully avoids service to appear before parliament or committee of Parliament.

**Appearance/Attendance before a Committee other than as a witness**

A committee of Parliament may request the appearance of a person before it in order to submit memoranda or avail the Committee with such information as it might be interested in. In the circumstance, where the matter is not contentious, the Committee does not issue summons but may issue a letter to such person. There are no legal consequences for non-attendance against that person.

Committees must be mindful of the people they summon to appear before them. For instance, certain persons who are accorded certain superiority under the laws of Uganda or who occupy certain religious or cultural offices should be treated with the dignity they deserve. Committees of Parliament should not summon the President, Judicial officers (including judges), or traditional, religious and cultural leaders to appear before them. Instead of summoning such persons, the Committee may instead write to the person, requesting to meet such a person in any place convenient for him or her. The Committee on Legal and Parliamentary Affairs has held such meetings with the Chief Justice in his Chambers. The Committee has also sought audience with the President.



### **Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise:**

Committees of Parliament also enjoy the privilege of enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise. This privilege is connected to the earlier discussed privilege of summoning a person to submit memoranda or appear before them to give evidence. This privilege, as enunciated under Article 90 (3) (c) (i), Rules 209 and 205 (d) (ii) as well as Section 11 of the Parliament (Powers and Privileges) Act, empowers Committees of Parliament to examine persons appearing before them on oath, affirmation or otherwise.

The Chairperson went on to explain to the Delegation that the use of an oath or affirmation is to put the person giving the evidence before the Committee on notice that he or she must tell the truth and if he or she does not, there are legal consequences for his or her actions. This is one of the most important privileges enjoyed by Committees of Parliament since they make proceedings before the committee from the moment the person takes oath, quasi-judicial in nature and any person who lies under oath commits the offence of perjury.

### **Privilege to compel the production of documents**

The Chairperson stated that Section 10 of the Parliament (Powers and Privileges) Act empowers Parliament or a Committee of Parliament to issue summons requiring that person named in the summons to produce documents.

Section 12 of the Parliament (Powers and Privileges) Act empowers the Speaker to require a person who has refused to produce a document to produce such and where such a person so refuses, he or she can be held to be in contempt of Parliament. Contempt of Parliament is defined in Rule 221 of the Rules of Procedure of Parliament.

The Committee informed its counterpart that this privilege is not absolute since its application is limited by Section 13 of the Parliament (powers and privileges) Act. Section 13 empowers a witness summoned to produce documents to be entitled to the same right or privilege as before a court of law as far as production of documents is concerned. This provision means that where a document cannot be produced under any act of Parliament before a court of law, then such a document may not be produced before a Committee of Parliament even if a person has been summoned to do so.

### **Privilege to issue commissions or request to examine witnesses abroad**

This is one of the rarely used parliamentary privileges. The privilege empowers Parliament or its Committee to issue a commission to examine a witness abroad. Whereas the rules of procedure don't elaborate on how this privilege may be exercised, regard can be had to a similar procedure used by courts of judicature in Uganda.

### **Privilege to confine a recalcitrant witness for any specific periods**

The privilege allows a committee of Parliament to confine a recalcitrant witness for a specified period of time. Whereas the rules do not prescribe what a recalcitrant witness is, the Oxford Advanced Learner's Dictionary defines that term to mean,

*"unwilling to obey rules or follow instructions; difficult to control."*

When a Committee is faced with a recalcitrant witness, it may either, in accordance with Rule 208 (3) of the Rules of Procedure of Parliament, refuse to hear any irrelevant evidence or listen to him or her or confine such a person for a specified period of time. Whereas it appears that a Committee of Parliament has unlimited power to confine a recalcitrant witness, the Committee needs to be mindful of **Article 23 of the Constitution on protection of personal liberty** and that of false imprisonment. The Alberta Queen's Bench defined false imprisonment in the case of *Chopra v. T. Eaton Company*, 1999 A.J. 277 and 240 A.R. 2011 to mean

***"The detention of a person contrary to his will, the restraint of a person's personal liberty, coercion exercised upon a person to prevent the free exercise of his powers of locomotion. "***

The Committee must ensure that this privilege is used restrictively, otherwise Parliament or even the Chairperson or Members of Parliament may be sued for false imprisonment.

The Committee noted that committees of Parliament have in the past irregularly detained witnesses within the precincts of Parliament or "arrested" witnesses during field visits and brought them to Parliament or left them at police stations or even confined them for long periods for purposes of forcing them to produce documents in their possession. These acts are

illegal and have in the past led to suits filed against Parliament as well as Committee Chairpersons. (**Oliver Namyeka and others Vs Parliamentary Commission**).

Where a Committee believes that there is need for a witness to be detained in exercise of the privilege confining recalcitrant witnesses, the Committee should hand over the witness to the police officer attached to the Committee, if any.

The Committee or a Member should always make clear to the witness the reasons he or she is being handed over to the police.

### **Privilege to cite any person for contempt**

The privilege empowers a Committee of Parliament to cite a person for contempt of Parliament. Contempt of Parliament is defined in Rule 221 of the Rules of Procedure of Parliament as follows-

***An act or omission which obstructs or impedes parliament in the performance of its functions or which obstructs or impedes a Member or Officer of Parliament in the discharge of his duties or affronts the dignity of Parliament or which tends, either directly or indirectly, to produce such a result shall be contempt of Parliament.***

Examples of such contemptuous acts include failure to appear when summoned, failure to produce documents when required to, when he or she appears before Parliament but becomes recalcitrant or when he or she does any act that affronts the dignity of Parliament, to mention but a few. Whereas the rules of procedure of Parliament do not prescribe punishments for contempt of Parliament, Section 18 of the Parliament (Powers and Privileges) Act prescribes punishments for acts or omission which would ordinarily be categorized as contemptuous.

The rights, privileges and immunities of individual Members of the House are restricted, and can be examined by the courts. Moreover, privilege does not exist "at large" but applies only in context, which means within the confines of the parliamentary precinct or a "proceeding in Parliament".

### **Enforcement of Privilege vis-à-vis the Bill of rights**

- Privilege to confine vis-à-vis the right to liberty

- Immunity for words spoken while in Parliament (freedom of expression)
- To a fair hearing- a person alleged to be in contempt of parliament may be represented by Counsel, evidence of every witness recorded and a copy availed to witness.

### **Experiences and challenges of enforcing the code of conduct and Ethics for Members of Parliament**

The Code of Conduct for the Uganda Legislature is adopted and incorporated into the current normative framework as part of the Parliamentary Rules of Procedures in place. The Rules of Procedures are supplemented with an annex (Appendix F) outlining the code of conduct. Part XIII provides for the behavior of Members during Debate and in the House generally.

### **Rule 84 of the Rules of Procedure provides for general behavior of Members.**

**It states as follows:**

*84. General behavior - in all other matters, the behavior of Members shall be guided by the Code of Conduct of Members prescribed in Appendix F.*

- The purpose of the Code is to assist Members in the discharge of their obligations to the House, their constituents and the public.
- Whereas the immunities and privileges are for Members of Parliament for words and actions within Parliament, the Code of Conduct refers to Members' conduct in the House, to their Constituents and the public at large.

### **Challenges**

Enforcing a Code of Conduct can present challenges, including:

- When an enforcement body exists as part of the legislature as in the case of the Uganda, (the House, Speaker or by the Committee on Rules, Privileges and Discipline), there is a risk that the decisions become politicized.
- The Code of Conduct for Members of Parliament is a self-regulating nature of code, the "regulator" of the code are the same bodies and individuals that are to be "regulated".
- The Code of Conduct is not exhaustive and specific enough in addressing the conduct of Members outside the House.
- Lack of clarity in the sanctions for breach of the Code of Conduct, e.g. the Rules do not necessarily provide for withdrawal of emoluments during the period of suspension. Experiences and challenges in

investigating and disciplining Members for Breach of Rules and privileges.

Rule 155 of the Rules of Procedure establishes the Committee on Rules, Privileges and Discipline. Rule 172 provides for the functions of Committee on Rules, Privileges and Discipline which shall by order of the House among others inquire into any complaint of contempt of Parliament or breach of privilege or any matter of privilege which may be referred to it and to recommend to the House such action as the Committee may consider appropriate.

The Committee is also mandated to consider any matter of discipline referred to it by the Speaker or the House including attendance of Members at sittings of Committees, and to report its findings to the House.

Parliament has the right to punish actions that, though not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or defamations upon itself, its officers and members.

Rule 172 (2), (3), and (4) provide as follows:

- (i) The findings and recommendations of the Committee on Rules, Privileges and Discipline shall be presented, debated and approved by the House;
- (ii) Without prejudice to sub-rule (2), where affected parties agree to the findings and recommendations referred to in that rule, there shall be no debate save approval of the report by the House;
- (iii) Once the House has pronounced itself on any report presented under this rule, the decision of the House shall be binding on the parties

This power gives the House flexibility to protect itself and its Members against new or unusual threats. Matters can be dealt with under this authority even if there is no precedent for them. Where it is established that a breach of privilege or breach of code has occurred, the House must decide whether to take action to punish persons. Punishment in this context may take the following forms;

1. **Reprimand or admonition-** The House may punish a person found guilty of breach of privilege or contempt of the House either by reprimand or admonition. This sanction is not clearly expressed under our Rules; however it is a commonwealth parliamentary practice in India, Australia.
2. **Suspension-** A member found in breach of parliamentary privilege may be suspended from the service of the House. The Rules provide for suspension of Members especially where a member is disorderly in the house. The Speaker recently exercised her powers and suspended Members from the House.
3. **Fines and Imprisonment-** In some jurisdictions, suspension leads to loss of salary for the period the member is under suspension.
4. **Apology-** An order directing the Hon. Member to apologize to the Parliament, in a manner determined by Parliament. This is also provided for under Rule 90(3). Where this committee reports that a member's statement has been defamatory of another, the member has to apologize and if he or she refuses to do so. Then the Speaker has power to suspend the member for the remainder of the Session.
5. **Vote of Censure-** This only applies to members who are *also* Ministers and can only be achieved where an individual member initiates censure proceedings under rule 108, and thereafter moves the House to pass a vote of censure a minister.
6. **Prosecution.** Where the punishment in the power of the Parliament is inadequate for the nature of the offence, then the House may refer the matter to another competent authority to investigate further and prosecute. The House may also direct a prosecution as either a substitute for, or in addition to, its own punishment.

**There are a number of challenges in investigating and disciplining members for Breach of Rules and Privileges:-**

- (i) The Parliament (Powers and Privileges) Act, Cap 258 is the governing law on the parliamentary privilege. This law is a 1955 law. So much has evolved in parliamentary practice since then. There is urgent need to review this Act , to exhaustively consider among

others:

- (a) detailed privileges
- (b) regulate the code of Conduct
- (c) offences
- (d) Penalties imposed by Houses.

- (ii) Complaints of breach of privilege are not properly regulated by the Rules. A member alleging that a member or any other person has breached the privilege of another member or the House must do so by way of motion. Detailing the breach and particulars. This would help the Speaker determine whether a prima facie case of privilege has been made. This would help in avoiding frivolous claims, which have the effect of wasting the time of Parliament;
- (iii) There is no proper mechanism of collecting evidence from a Member or compelling other Members to give evidence against a Member who is accused of breach;
- (iv) The Rules do not provide for sanctions for non-compliance with the Rules of the House for example, there is no express provisions for suspension, reprimand, demand for apology and fines;

Rule 8 of the Rules of Procedure provide Procedure in case not provided for and precedents in case of any doubt and for any question of procedure not provided for in these Rules, the Speaker shall decide, having regard to the practices of the House, the constitutional provisions and practices of other Common wealth Parliaments in so far as they may, be applicable to Uganda's Parliament;

Paragraph 12 of Appendix (F) of the Code of Conduct states that matters "For any matter, which is not provided for, Members may seek advice of the Speaker or of the Committee on Rules, Privileges and Discipline."

- (v) The Rules do not expressly state that it's a breach of parliamentary privilege for a Member of Parliament to *discuss* rafters under consideration by a committee of Parliament; and
- (vi) The Rules do not regulate conflicts among Members of Parliament, which arise outside Parliament but are likely to cast a very bad image on the Institution of Parliament.

#### **4. Matters relating to registration of Members' interest and attendance enforcement mechanisms and challenges**

Rule 84 of the Rules of Procedure of Parliament provides that, the behavior of Members shall be guided by the Code of Conduct of Members. The purpose of the code is to assist Members in the discharge of their obligations to the House, their constituents and the public at large. More importantly, paragraph 7 clearly provides as follows:

##### **Declaration of Interest**

*Members shall fulfill conscientiously the requirements of the House in respect of the declaration of interest and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with the Minister, Government Departments or Executive Agencies.*

The purpose of this provision is to ensure that a Member discloses every interest which may create a perception of conflict between an interest and the duties and responsibilities set out in PRINCIPLES.

##### **Members always have interest in business being handled by Parliament by virtue of their representation capacity.**

The Chairperson informed the delegation that there are a number of isolated cases that have happened, where a Member has recused himself or herself on ground of personal interest. In 2017, a Member on the Committee of Physical Infrastructure recused himself from participating in the discussion pertaining to an Inquiry into the mandatory inspection of Motor vehicles by SGS. The Member had previously been a Member of the Contracts Committee in the Ministry of Works that had awarded the contract for inspection of motor vehicles to SGS.

The provision relating to declaration is not elaborative enough to cover all aspects that constitute personal interests. For example;

- It does not Give a clear Guideline on how members should register their interests.
- Further, the Code of Conduct does not provide for clear sanctions in case of breach.

**A clear provision should have had the following aspects:**



- Each Member shall disclose to the Parliament all relevant interests that a reasonable person might think could give rise to the perception of influencing behavior between the Member's duties and responsibilities and his/her personal interests (e.g. land and property assets, shareholdings, gifts, foreign travel, symbolic rewards (e.g. honorary degree), sources of income, remunerated employment, directorships, liabilities, hospitality and affiliations). These may be subject to specified thresholds. This applies to items received and would also apply to items donated or given. These shall be disclosed immediately following election and continuously updated within a reasonable period specified by the Parliament above a specified threshold.
- Member shall not vote in a division on a question about a matter, other than public policy (i.e. government policy, not identifying any particular person individually and immediately) in which he or she has a particular direct pecuniary interest above a threshold (if specified).
- A Member shall not use for personal benefit confidential information (i.e. non-public information) gained as a public officer.
- There should be an effective mechanism to verify any disclosure and to immediately notify any discrepancy in a public report to the House. Parliament shall publish the interests disclosed and the purposes and amounts of expenditure of public funds by each Member as soon as practicable in the most accessible means available e.g. parliamentary website.
- These provisions also apply to interests held by the member's spouse or close family members.

**D. MEETING WITH THE CHAIRPERSON AND MEMBERS OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS OF PARLIAMENT OF UGANDA**

20. The Chairperson of Committee on Legal and Parliamentary Affairs of Parliament of Uganda informed the delegation as follows-

- (i) **The Parliamentary Powers and Privileges Act (Cap. 258)** is an Act to declare and define certain powers, privileges and immunities of Parliament, and of the members of Parliament, to secure freedom of speech in Parliament, to regulate admittance to the precincts of Parliament, to give protection to the persons employed in the publication of the reports and other papers of Parliament and for purposes incidental to or connected with the matters aforesaid.
- (ii) The provisions of the said Act merely wish to protect the MPs during debates in the House to promote the aspect of freedom of speech and do not in any way exonerate the MPs for utterances that do not relate to the execution of their duties as MPs.
- (iii) The Courts must set parameters on what is duly protected under the Act and what is not otherwise there can be an abuse of the privileges and immunities entitled to the MPs.
- (iv) Therefore the Courts must evaluate each matter before it on a case by case basis vis-a-vie the role of MPs as provided for under the laws of the country.

The Committee informed the delegation on **whether resolution 9(c), whereby Parliament directed the Rt. Hon. Amama Mbabazi, the Prime Minister of Uganda, Hon. Kutesa, the Minister of Foreign Affairs and Hon. Hillary Onek, the Minister of Internal affairs to step aside from their respective offices with immediate effect pending investigations and the report of the Ad- hoc committee, contravened the Constitution**, Court held that

*“Even where Parliament, by resolution passes a vote of censure against a Minister under **Article 118** of the Constitution, it is not vested with powers under the Constitution to order that the censored Minister vacates the office of minister”*

The meeting further told the delegation that on **Whether Parliament acted unconstitutionally to appoint an Ad-hoc committee to investigate the allegations.**

The Chairperson told the delegation that the Court took cognizance of **Article 90** of the Constitution which vests powers in Parliament to appoint Committees necessary for the efficient discharge of its functions and these committees have the powers of the High Court as provided for in **Article 90(c)**

He further informed the delegation that the Court agreed with the Submission of counsel for the petitioner that resolution 9(b) was passed in a very emotional, hostile and unparliamentary fashion.

The Chairperson informed the delegation that the petitioners and the applicants (present respondents) challenged the constitutionality of the decision by the Speaker of Parliament by which she declined to declare as vacant the seats in Parliament of each of the present four (1<sup>st</sup> to 4<sup>th</sup>) applicants following their expulsion from the NRM party. The Constitutional Court declared the actions of the Rt. Hon. Speaker unconstitutional.

In the matter Suleiman Kakaire and David T. Lumu Vs Parliamentary Commission and the Clerk to Parliament, as a punitive measure against the applicants for writing certain articles about the Speaker and the Deputy Speaker, the applicants were suspended from Parliament by a letter on grounds that the articles were inaccurate and damaging to the offices and persons of the Speaker and Deputy Speaker of Parliament. Justice Nyanzi Yasin ruled that:

Article 42 of the Constitution provides that "Any person appearing before any administrative official or body has a right to be treated -justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her"

Article 44(c) of the Constitution provides that the right to a fair hearing cannot be done away with. All administrative bodies should therefore accord the persons appearing before them a fair hearing. Kampala University Vs National Council for Higher education"

The leader of delegation informed the meeting as follows-

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.

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.

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.

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.

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.

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**

The delegation toured the following buildings and facilities-

- (i) The Chambers of the Parliament of Uganda;
- (ii) The Office of the Speaker of the Parliament of Uganda;
- (iii) The VIP facilities for the Members of Parliament of Uganda; and
- (iv) The Office of the Leader of the Official Opposition.

## **F. CONCLUSION**

The study visit provided the delegation and staff with an opportunity to meet and exchange ideas with their counterparts from the Parliament of Uganda and gain skills and knowledge from the wide range of presentations made during the visit and meetings held between the delegation and the host. It also enhanced the existing cordial relationship and mutual co-operation between the National Assembly of Kenya and Parliament of Uganda.

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**END**

## **I. CONCLUSION**

30. The study visit provided the delegation and staff with an opportunity to meet and exchange ideas with their counterparts from the Parliament of Botswana and gain skills and knowledge from the wide range of presentations made during the visit and meetings held between the delegation and the host. It also buttressed the existing cordial relationship and mutual co-operation between the National Assembly of Kenya and Botswana National Assembly.

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**END**

