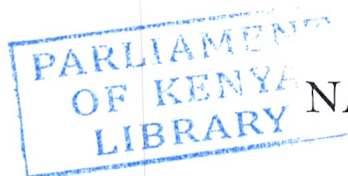




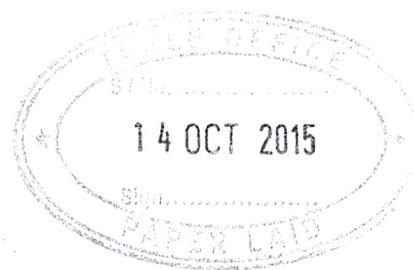
PARLIAMENT OF KENYA

11th Parliament



NATIONAL ASSEMBLY

Third Session



Committee of Privileges

Third Report

Report on the Parliamentary Powers and Privileges Bill, 2014

Thursday October 1, 2015

Office of the Clerk of the National Assembly
Parliament Buildings
NAIROBI

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COMMITTEE MEMBERSHIP

The Members of the committee are: -

1. The Hon. Justin B. N. Muturi, EGH, MP – Speaker, **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichungwah, MP
4. The Hon. Bedzimba Rashid Juma, MP
5. The Hon. Barchilei Kipruto, MP
6. The Hon. James Murgor, MP
7. The Hon. Joyce Emanikor, MP
8. The Hon. James Onyango Koyoo, MP
9. The Hon. Jamleck Kamau, MP
10. The Hon. Simon Ogari, MP
11. The Hon. Zuleikha Juma Hassan, MP

Committee staff

The current Committee Secretariat includes Mr Kipkemoi arap Kirui (Principal Clerk Assistant I), Mr Ronald Walala (Legal Counsel II) and Mr Moses Lemuna (Clerk Assistant III).

Contacts: All correspondence should be addressed to The Clerk of the National Assembly, Parliament Buildings, PO Box 41842, 00100 Nairobi. The telephone number for general enquiries is 020 2848000.

PREFACE

The National Assembly (Powers and Privileges) Act

The National Assembly (Powers And Privileges) Act, now being repealed by the Parliamentary Powers and Privileges Bill 2014, was enacted on April 22, 1952.

The Act declares and defines certain powers, privileges and immunities of the National Assembly and of the members. It also secures freedom of speech in the National Assembly, regulates admittance to and conduct within the precincts of the National Assembly and gives protection to the persons employed in the publication of the reports and other papers of the National Assembly.

The law has been reviewed severally through Act No. 36 of 1961, L.N. 602/1963, L.N. 87/1964, Act No. 14 of 1966, Act No. 21 of 1966, Act No. 4 of 1973 and Act No. 10 of 1981.

The National Assembly (Powers and Privileges) Act establishes the Committee of Privileges. The law on privileges and immunities is applied together with other statutes, the Standing Orders and the usages, conventions and practices of the United Kingdom House of Commons and some Commonwealth jurisdictions where applicable.

As it stands now, the Committee of Privileges consists of the Speaker, as Chairperson, and ten other members of the National Assembly. The House Business Committee (formerly Sessional Committee) of the Assembly nominates the members of the Committee of Privileges other than the Speaker. The quorum of the Committee of Privileges is six including the chairman. The Committee regulates its own meetings and its own procedure. It is important to note that, hitherto, the Committee of Privileges has been a Sessional Committee (appointed at the beginning of every Session).

Parliamentary Powers and Privileges Bill, 2014

The main objective of the Parliamentary Powers and Privileges Bill, 2014 is to give effect to Article 117 of the Constitution, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members and to make provision regulating admittance to and conduct within the precincts of Parliament. The current law on this subject did not envisage a bicameral parliament. The Bill provides for powers and privileges for both the National Assembly and the Senate. It further expands on what the current Act provides.

The Bill establishes for each House of Parliament a Committee of Powers and Privileges. In respect of the National Assembly, the Committee consists of the Speaker as chairperson and fourteen other members of the House appointed in accordance with the Standing Orders of the Assembly. In respect of the Senate, the Committee consists of the Speaker as chairperson and six other members of the House appointed in accordance with the Standing Orders.

The quorum for the proposed National Assembly Committee of Powers and Privileges is the Speaker and four other members, and the Speaker and two other members in the case of the Senate. Each committee regulates its own procedure and reports only to the relevant House of Parliament.

The functions of the Committee of Powers and Privileges are limited to inquiring into the conduct of a member whose conduct is alleged to constitute breach of privilege (defined in clause 17). It may also perform such other functions prescribed by the proposed law.

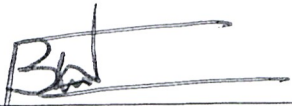
The Committee of Powers and Privileges of its own motion or as a result of a complaint made by any person, can inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege. This must be done within fourteen days of receipt of complaint. The Committee must table its findings together with such recommendations, as it considers appropriate within fourteen days of the conclusion of an enquiry. Each House of Parliament is expected to consider the report and the recommendations and may take such action against the Member concerned as may be appropriate.

The Bill proposes new offences and new penalties.

ACKNOWLEDGEMENT

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their immense contribution. 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 Privileges, I have the honour and pleasure to present the Report to the House.



The Hon. Justin B. N. Muturi, EGH, MP
Chairperson

1ST OCT, 2015.

PART I: MANDATE AND POWERS OF THE COMMITTEE OF PRIVILEGES

The mandate and powers of the Committee are set out in Article 103 (1) (b) and 117 of the Constitution, the National Assembly (Powers and Privileges) Act (Cap 6 of the Laws of Kenya)¹, Leadership and Integrity Act², the Public Officer Ethics Act, 2012³ and the Standing Orders⁴.

Article 117 of the Constitution of Kenya

Article 117 provides that *'there shall be freedom of speech and debate in Parliament'* and that *'Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members'*. The National Assembly (Powers and Privileges) Act (Cap 6 of the Laws of Kenya), the Leadership and Integrity Act, the Public Officer Ethics Act, 2012, the Standing Orders and the Speaker's Rules are such provision.

The Committee of Privileges hears matters arising out of breaches to Speaker's orders regulating the admittance of strangers to and the conduct of strangers within the Chamber and those regulating the admittance of strangers to and the conduct of strangers within the precincts of the Assembly or any other part other than the Chamber. The Committee also enforces the Code of Conduct through directions issued from time to time by the Speaker regulating the conduct of members of the Assembly whilst within the precincts of the Assembly other than the Chamber⁵. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries be laid before the Committee.

The Committee of Privileges, either of its own motion or as a result of a complaint made by any person, may inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued by the Speaker, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber, save when on referral by the Speaker or Presiding Officer) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or that member, or to be contrary to the best interests of the Assembly or the members⁶. However, the current law (Cap 6 of the Laws of Kenya) does not very clearly create offences or conduct constituting breaches of privilege. Neither does it clearly stipulate the penalties for the offences or breaches of privilege.

After conducting an inquiry the Committee of Privileges reports its findings to the Assembly together with such recommendations as it thinks appropriate. The Assembly thereafter, in accordance with rules made by it (which rules need not be published in the *Gazette*, in this case the Sessional Paper No. 2 of 1966), considers the report and the recommendations thereon and may take such disciplinary action against the member concerned as may be provided by those rules. It is instructive to note that these 1966 rules have hitherto not been effectively enforced.

The Committee has power to order attendance of witnesses. This includes ordering any person to attend before it and to give evidence or to produce any paper, book, record or

¹Section 10, National Assembly (Powers and Privileges) Act [Revised by Act No. 14 of 1996, s. 2, Act No. 10 of 1981]

²Section 6 (3), 12, 37 and 42 (2) of the Leadership and Integrity Act, 2012

³ Section 3 (2) (a) and Section 3 (10) of the Public Officer Ethics Act, 2003 (Cap 183)

⁴National Assembly Standing Orders 191 and 258

⁵ Act No. 14 of 1966, s. 2.

document in the possession or under the control of that person. It may also examine witnesses on oath.

The Committee is also the protector of the privileges of witnesses before any committee of the House. However, its jurisdiction is limited to matters taking place within the precincts of Parliament but outside the plenary. On April 26, 2012, while interpreting the jurisdiction of the Committee of Privileges, Speaker Francis Ole Kaparo put it thus *“the jurisdiction of the Committee of Privileges is limited and does not extend to matters which arise on the Floor ... In matters that arise on the Floor of the House, determinations properly belong to the Speaker or the Presiding Officer. The Committee of Privileges will not be seized of such a matter”*.

The Committee also has a mandate of hearing cases of failure by Members to attend Assembly sittings. Article 103 (1) (b) of the Constitution and Standing Order 258 provide that if, *during any Session of a Parliament*, a Member is absent from eight sittings of the National Assembly without permission, in writing from the Speaker, the Speaker shall report the matter to the National Assembly and the matter shall stand referred to the Committee of Privileges for hearing and determination.

The Committee of Privileges inquires into a matter referred to it within fourteen days from the date it is referred to it and thereupon submit 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 from eight sittings of the National Assembly without the permission in writing from the Speaker, there shall be no further proceedings in the House in respect of the matter.

If the report of the Committee finds that the Member has not offered a satisfactory explanation for the Member's absence from at least eight plenary sittings of the National Assembly, the Chairperson of the Committee or a Member of the Committee designated by the Committee for that purpose shall, upon submitting the report, 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...”** with other necessary modification.

A Motion introduced for the purpose must be debated in the usual manner of debating Motions, except that-

- (a) no amendment shall be permitted to the Motion;
- (b) the debate of the Motion shall not be anticipated by a Motion for the adjournment of the House, and no dilatory Motion shall be moved in relation to the business, and the business shall not be interrupted under any Standing Order.

At the conclusion of the debate on the motion, the Speaker shall not put a question but shall declare that, pursuant to Article 103 (1) (b) of the Constitution, the office of the Member concerned has become vacant. This has however never happened.

No proceedings or decision of the Assembly or the Committee of Privileges when determining matters relating to the privileges and immunities of Members can be questioned in any court.

The Committee has power to refuse to allow its public proceedings to be broadcast.

Why the Bill was referred to the Committee of Privileges

The Speaker referred the (National Assembly) Parliamentary Powers and Privileges Bill, 2014 to the Committee of Privileges pursuant to Standing Order 127 (6) (a), being the committee that deals with matters privilege on a day-to-day basis.

Senate Bill on Parliamentary Powers and Privileges

The Committee took cognizance of a similar Bill on Parliamentary Powers and Privileges introduced by Senate Majority Leader the Hon. (Prof.) Kithure Kindiki, which was read the First Time in the Senate on June 12, 2014 and referred to the relevant committee for scrutiny. The Bill has been read a Second Time. The Committee resolved to recommend to the House Business Committee that the Bill sponsored by the Hon. Adan Keynan proceed for Second Reading. The Committee further recommends upon conclusion by the National Assembly, the Bill would be referred to the Senate for their review and input.

Committee Meetings

The Committee held Seven sittings scrutinising the Bill and reviewing views submitted by the public on the Bill.

PART II: AN OVERVIEW OF THE BILL

Sponsor of the Bill

The Parliamentary Powers and Privileges Bill, 2014(National Assembly Bill) is sponsored by the Member for Eldas, the Hon. Adan Keynan.

Objects and Reasons for the Bill

The main objective of the Parliamentary Powers and Privileges Bill is to give effect to Article 117 of the Constitution, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members and to make provision regulating admittance to and conduct within the precincts of Parliament.

The National Assembly (Powers and Privileges) Act (Cap 6), the current law on this subject, does not envisage a bicameral parliament. The Parliamentary Powers and Privileges Bill provides for powers and privileges for both the National Assembly and the Senate. It further expands on what the current Act provides.

Part I of the Bill has preliminary provisions.

Part II of the Bill describes the areas that constitute the precincts of Parliament, circumstances under which an officer of a national security organ may access the precincts of Parliament and access to precincts of Parliament by a member of the public. It also provides for freedom from arrest of a Member for a civil debt during session, bar to service of civil process and designated areas for assembling, demonstrating and picketing.

Part III of the Bill provides for the privileges and immunities of members. These are freedom of speech in Parliament, immunity from legal proceedings, freedom from arrest for civil debt during session of Parliament, circumstances where the proceedings of Parliament or Committees are barred from being given as evidence in court and when they can be allowed and determination by the House or a Committee of a question on the right or power of Parliament or Committee.

Part IV of the Bill deals with breach of privileges. It establishes the Committee of Powers and Privileges for both Houses of Parliament, its composition, quorum, functions, determination of breach of privilege and penalties for breach.

PART V of the Bill is in regard to the procedure of summoning witnesses. It sets out the manner of invitation and summoning of witnesses, the procedure if a witness fails to appear, examination of witnesses, privileges of witnesses and the duty of public officers to give evidence.

Offences proposed in the Bill

The offences the Committee of Powers and Privileges may consider include breaches of privilege among other offences, which include the following acts -

- Publishing prohibited journals or proceedings of Parliament without authority
- Broadcasting, televising or otherwise transmitting by electronic means the proceedings of a House or a committee of Parliament or any part of those proceedings except by order or under the authority of relevant Speaker or chairperson of a committee of Parliament. These will undoubtedly limit rights of citizens but is the price to pay to facilitate the immunities of the Houses and the committees of Parliament and to ensure their freedoms of speech and debate

- Assaulting, obstructing, molesting or insulting any member proceeding to, being within or leaving the precincts of Parliament, or compelling 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;
- Assaulting, interfering with, molesting, resisting or obstructing any member of staff while in the execution of his or her duty;
- Assaulting or threatening a member or unlawfully depriving a member of any benefit on account of the member's conduct in Parliament;
- While Parliament or a committee is sitting, creating or taking 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;
- Failing or refusing to comply with an instruction by a duly authorized member of staff or a police officer regarding the presence of the public in the precincts of Parliament including a meeting within the precincts of Parliament, or the possession of any article, including a firearm, within the precincts.
- Improperly influencing members in the performance of the member's functions as a member by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means;
- Improperly influencing members in the performance of the member's functions as a member by inducing a member to be absent from Parliament or a committee at a particular time;
- Improperly influencing members in the performance of the member's functions as a member by attempting to compel a member to declare himself or herself in favour or against a matter pending before or proposed or expected to be submitted to Parliament or a committee;
- Soliciting, receiving or accepting any fee, compensation, gift, reward, favour or benefit of any kind for the member or another person for in respect of voting in any particular manner or not voting on a matter before Parliament, promoting or opposing anything pending before or proposed or expected to be submitted to Parliament or making a representation to Parliament;
- Having been duly summoned and the member fails, without sufficient cause to attend at the time and place specified in the summons; or remain in attendance until excused from further attendance by the person presiding at the inquiry;
- When called upon to be a witness and the member refuses to be sworn in or to make an affirmation as a witness, or fails or disobeys without sufficient cause to answer fully and satisfactorily all questions lawfully put to the person, or fails or disobeys

without sufficient cause to produce any document, paper, book or record in the person's possession, custody or control;

- Inducing another person to refrain from giving evidence to or to produce a document before Parliament or a committee or give false evidence before Parliament or a committee;
- Assaulting or penalizing or threatening another person or depriving that 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, the member produces a false, untrue, fabricated or falsified document; or
- Willfully 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.
- When the member willfully fails or refuses to obey any rule, order or resolution of Parliament;
- When the member contravenes any provision of the Speaker's orders issued under the Act: or
- When the member conducts himself or herself in a manner which, in the opinion of the Committee of Powers and Privileges, 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 interest of Parliament or its Members.

Proposed Penalties

The Bill proposes that where the House finds that a Member has committed a breach of privilege, the House may, in addition to any other penalty to which the Member may be liable under the Act or any other law, impose any or more of the following penalties -

- A formal 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, to a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members
- 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;
- Vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.
- Where the relevant House of Parliament finds a member has committed a breach of privilege, the relevant House of Parliament may, where appropriate, instead of or in addition to the imposition of a penalty, refer the matter to the Director of Public Prosecutions.
- A fine imposed is paid by the member into such bank account Parliament specified by the accounting officer or be deducted from the Member's salary. Where it is not recovered through the bank or salary deductions, it may be recovered by means of a civil action in court.
- A member who is suspended must leave the precincts and cannot, during the period of suspension, without the written permission of the Speaker enter the precincts for whatever purpose or participate in any activity of Parliament or a committee of Parliament.

PART III: SCRUTINY OF THE BILL AND INVOLVEMENT OF THE PUBLIC

On September 24, 2014 the Clerk of the National Assembly posted an advert on two local dailies asking the public to forward their views and comments on the Parliamentary Powers and Privileges Bill, 2014.

The Committee received representations from the Media Council of Kenya, Dr. Fred Matiangi, Cabinet Secretary for Information and Communication, the Parliamentary Initiatives Network, Mr. Njoroge Waweru a member of public and the Kenya Parliamentary Journalists Association (PJA). The Media Council submissions were challenging the constitutionality of clauses 22 (4), 27 (1), and 34. The Parliamentary Initiatives Network (PIN) had issues with limitation of access by the public to the precincts of Parliament, limitation of the right to assemble, demonstrate and picket. They also suggested that freedom of speech in Parliament should be limited as provided under Article 33 (2) of the Constitution.

Clause 10 provides that proceedings or decisions of Parliament or the committee on powers and privileges will not be questioned in court. PIN submitted that this could directly limit the right of access to justice even in cases where unconstitutional procedure is used or decisions are made all in exercise of the powers and privileges of Parliament. They also made suggestions on quorum of the committees of privilege, conduct constituting breach of privilege, penalties for breach of privilege, the right to a fair hearing and witness' privileges, duties of public officers to give evidence, protection in respect of publications, broadcasting of Parliamentary proceedings, powers of police officers given to all members of staff etc.

Dr Fred Matiang'i, Cabinet Secretary for Information and Communication, also cited Article 33 (2) of the Constitution, arguing that the right to freedom of expression does not extend to propaganda for war, incitement to violence, hate speech, advocacy for hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or is based on any ground of discrimination. He also suggested that clause 14, 34 and 35 be harmonized with the right of access to information enshrined in Article 35 of the Constitution in line with clauses 6, 7, 9, 13, 15, 19, 20 and 21 of the Access to Information Bill, 2013 and clause 4 of the Data Protection Bill, 2013.

The Parliamentary Journalists Association recommended the deletion of clauses 27, 34 and 35. Clause 27 was cited as an interference with the freedom of press. Clause 34 and 35 on the other hand proposes the offence of defamation against Parliament, the effect of which would stifle the freedom of the press.

PART VI: APPENDIX

- I. Speaker's Rules (Sessional Paper No. 6 of 1966)
- II. Minutes
- III. Memorandum submitted by the Media Council of Kenya
- IV. Memorandum submitted by the Cabinet Secretary for Information and Communication
- V. Memorandum submitted by the Parliamentary Initiatives Network
- VI. Memorandum submitted by Mr. Njoroge Waweru
- VII. Memorandum submitted by the Kenya Parliamentary Journalists Association
- VIII. Committee Stage Amendments

Appendix. I

Speaker's Rules (Sessional Paper No. 6 of 1966)

SESSIONAL PAPER NO. 2 OF 1966

RULES SUBMITTED FOR THE APPROVAL OF THE HOUSE OF REPRESENTATIVES PURSUANT TO SECTION 7B OF THE NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT (ACT NO. 14/66)

(as agreed by the Sessional Committee on 16.6.66)

RULES PURSUANT TO SECTION 7B OF THE NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT

1. Every Report by the Committee of Privileges concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a member of that Committee on the Table of the House.
2. If such Report does not recommend any disciplinary action there shall be no further proceedings whatsoever in respect thereof, other than (where necessary) further inquiry and Report by the Committee of Privileges.
3. (a) If such Report recommends any disciplinary action, a member of the Committee of Privileges shall as soon as possible after the report has been laid, but after giving at least one day's previous notice, move "That this House adopts the Report and Recommendations of the Committee of Privileges dated the19....."
- (b) Any such Motion shall be debated in the usual manner; except that
 - i. strangers shall be ordered to withdraw throughout the debate; and
 - ii. no amendment may be moved, other than an amendment of the disciplinary action recommended by the Report, in accordance with Rule 4 of these Rules, or an amendment to the effect that the Report be referred back to the Committee of Privileges for further inquiry.
4. Disciplinary action recommended by any such Report may be
 - (a) formal reprimand at the Bar of the House with or without exclusion, for a period not exceeding one month, from specified facilities of Parliament Buildings; or
 - (b) suspension from the service of the House for a period not exceeding sixteen days, whether or not sitting days, and whether or not during the same session.
5. In the event of the House adopting any recommendation of any such Report for disciplinary action, with or without amendment, Mr. Speaker shall forthwith take action accordingly.

Appendix. II

Minutes of the Committee

MINUTES OF THE TWENTY FIRST SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON FRIDAY SEPTEMBER 21, 2015 IN THE SERENA BEACH AND SPA, HOTEL MOMBASA AT 3: 00 PM

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP – Chairperson
2. The Hon. Jamleck Kamau, MP- Chairing
3. The Hon. Peter Shehe, MP
4. The Hon. Simon Ogari, MP
5. The Hon.(Dr.) James Murgor, MP
6. The Hon. James Onyango K'Oyoo, MP
7. The Hon. Kimani Ichungwah, MP
8. The Hon. Barchelei Kipruto, MP
9. The Hon. Joyce Emanikor, MP
10. The Hon. Bedzimba Rashid Juma, MP

APOLOGY

1. The Hon. Zuleikha Juma Hassan, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Michael Sialai - Senior Deputy Clerk
2. Mr. Michael Karuru - Deputy Director Legal Services
3. Mr. Kipkemoi arap Kirui - Principal Clerk Assistant I
4. Mr. Ronald Walala - Legal Counsel II
5. Mr. Moses Lemuna - Clerk Assistant III

MIN.NO. 034/2015: PRELIMINARIES

The Meeting was called to order by the Chair at ten o'clock.

MIN.NO.035/2015: CONFIRMATION OF MINUTES OF THE TWENTIETH SITTING

The Members present agreed to defer confirmation of Minutes of the twentieth sitting to a later date.

MIN.NO. 036/2015: ADOPTION OF THE REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

The meeting was taken through the Report on the Bill by the Legal Counsel and the proposed amendments by the Committee were agreed upon by the Members present.

The Members of the Committee then resolved to adopt the Report for tabling in the House. It was further agreed that the mover would be nominated from among the Members to move the Amendments on behalf of the Chair.

MIN. NO.037/2015: ANY OTHER BUSINESS

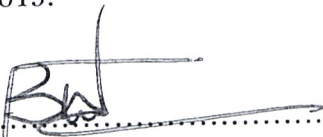
Foreign Trips

- 1) The Members inquired on the progress of the requested foreign study visits to the Parliament of the United Kingdom, Algeria and Uganda and the meeting was informed that letters for request were still awaiting approval by the relevant authorities;
- 2) The committee further resolved to benchmark with the Parliament of Mexico and Singapore. The secretariat was asked to do request letters on the same.

MIN. NO.038/2015: ADJOURNMENT

There being no any other business the Chair adjourned the sitting at eleven o'clock until September, 29, 2015.

Sign.....
(Chairperson)



Date.....

1ST OCT, 2015

MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY SEPTEMBER 20, 2015 IN THE SERENA BEACH AND SPA, HOTEL MOMBASA AT 3: 00 PM

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP – Chairperson
2. The Hon. Peter Shehe, MP
3. The Hon.(Dr.) James Murgor, MP
4. The Hon. Simon Ogari, MP
5. The Hon. James Onyango K'Oyoo, MP
6. The Hon. Kimani Ichungwah, MP
7. The Hon. Barchelei Kipruto, MP
8. The Hon. Joyce Emanikor, MP
9. The Hon. Bedzimba Rashid Juma, MP
10. The Hon. Jamleck Kamau, MP

APOLOGY

1. The Hon. Zuleikha Juma Hassan, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Michael Sialai - Senior Deputy Clerk
2. Mr. Michael Karuru - Deputy Director Legal Services
3. Mr. Kipkemoi arap Kirui - Principal Clerk Assistant I
4. Mr. Ronald Walala – Legal Counsel II
5. Mr. Moses Lemuna - Clerk Assistant III

MIN.NO. 029/2015: PRELIMINARIES

The Meeting was called to order by the Chair at three o'clock.

MIN.NO. 030/2015: ADOPTION OF THE AGENDA

The Agenda of the Meeting was adopted having been proposed by the Hon. (Dr.) James Murgor and seconded by the Hon. James Koyoo.

MIN.NO.031/2015: CONFIRMATION OF MINUTES OF THE EIGHTEENTH AND NINETEENTH SITTINGS

Minutes of the eighteenth and nineteenth sittings were confirmed as true record of proceedings having been proposed by Hon. (Dr.) James Murgor and seconded by the Hon. Peter Shehe.

MIN.NO. 032/2015: CONSIDERATION OF THE DRAFT REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

The Members having been taken through the draft Report on the Bill by the Principal Clerk Assistant; proposed the following further amendments:

CLAUSE 3

THAT, Clause 3(1) be amended by inserting the following paragraph immediately after paragraph (f)—

“(g) such other areas as the Speaker may designate, in writing, for the purpose of parliamentary business.”

CLAUSE 8

THAT, clause 8 of the Bill be amended in subclause 1 by deleting the words “within or outside” appearing immediately after the words “areas” and substituting therefor the words “proximate to”.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

- (a) in subclause (4) by inserting the expression “(b)” immediately before the words “perform such other functions”
- (b) by deleting subclause (7) and substituting therefor the following subclause—

“(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.”

NEW HEADING

THAT, the Bill be amended by inserting the following new Heading immediately after clause 16—

“PART IVA—BREACHES OF PRIVILEGES”

NEW PART

THAT, the Bill be amended by inserting the following new Part immediately after clause 18—

PART IVB—OFFICE OF STANDARDS AND ETHICS

- Establishment of 18A. (1) There is established the Office of Standards and Ethics in each House of Parliament as an office in the Parliamentary Service.
- Office.
- (2) The Office shall be headed by an Administrator who shall be—
 - (a) nominated for appointment by the Parliamentary Service Commission through a competitive recruitment process;
 - (b) vetted by the relevant Committee of Powers and Privileges; and

(c) approved for appointment by the relevant House of Parliament.

(3) The qualifications for appointment to the Office are the same as for the appointment as a judge of the High Court.

Functions of the Administrator.

18B. The Administrator shall—

- (a) on receipt of a formal complaint from any person or on the recommendation of the relevant Committee of Powers and Privileges, investigate any information or allegation of alleged breaches of parliamentary privilege or the Code of Conduct for Members of Parliament;
- (b) report to the Committee of Powers and Privileges at the conclusion of investigations for the Committee to consider and make recommendations to the House; and
- (c) maintain a register of interests declared by Members of Parliament.

Administrator's term of office and remuneration.

18C. (1) The Administrator holds office for a term of six years and is not eligible for re-appointment.

(2) The terms and conditions of service for the Administrator shall be specified in the instrument of his or her appointment.

Removal from office.

18D. (1) The Administrator may be removed from office for—

- (a) a serious violation of the Constitution, including a contravention of Chapter Six;
- (b) gross misconduct;
- (c) physical infirmity or mental incapacity to discharge his or her

functions;

(d) incompetence; or

(e) bankruptcy.

(2) A person desiring the removal of the Administrator on any ground specified in subsection (1) may present a petition to the relevant House of Parliament setting out the alleged facts constituting that ground.

(3) The Committee of Powers and Privileges of the relevant House shall consider the petition and make recommendations to the relevant House of Parliament.

(4) If the Committee reports that it finds the allegations—

(a) unsubstantiated, no further proceedings shall be undertaken; or

(b) substantiated, the relevant House of Parliament shall vote on the resolution requiring the Administrator to be removed from office.

(4) If a resolution under subsection (4) (b) requiring the removal from office of an Administrator is supported by a majority of the members of the relevant House of Parliament—

(a) the relevant Speaker shall deliver the resolution to the Parliamentary Service Commission; and

(b) the Commission shall dismiss the Administrator.

CLAUSE 41

THAT, clause 41 of the Bill be amended—

(a) in sub clause (1) by deleting the words “the National Assembly” appearing immediately after the words “Speaker of” and substituting therefor the words “either House of Parliament”;

(b) by deleting subclause (3) and substituting therefor the following subclause—

“(3) The Code of Conduct regulating the conduct of Members of the respective House of Parliament shall be as set out in the Fourth Schedule.

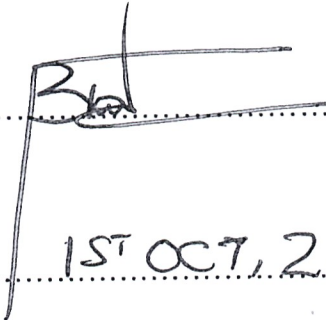
Referral of the Bill to the Senate

The Committee resolved that, upon conclusion by the National Assembly, the Bill would be referred to the Senate for their review and input.

MIN. NO.033/2015: ANY OTHER BUSINESS

There being no any other business the Chair adjourned the sitting at 7:30 pm until September, 21, 2015.

Sign.....
(Chairperson)



Date.....

1ST OCT, 2015

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON TUESDAY AUGUST 25, 2015 IN THE MEMBERS SMALL DINNING MAIN PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT

1. The Hon. Peter Shehe, MP - **Chairing**
2. The Hon.(Dr.) James Murgor, MP
3. The Hon. Joyce Emanikor, MP
4. The Hon. Simon Ogari, MP
5. The Hon. James Onyango K'Oyoo, MP
6. The Hon. Kimani Ichungwah, MP
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Jamleck Kamau, MP

APOLOGY

1. The Hon. Justin B. N. Muturi, EGH, MP – **Chairperson**
2. The Hon. Zuleikha Juma Hassan, MP
3. The Hon. Barchelei Kipruto, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Moses Lemuna - Clerk Assistant III
2. Mr. Ronald Walala - Legal Counsel

MIN.NO. 027/2015: PRELIMINARIES

The Meeting was called to order by the Chair at five minutes past eleven o'clock.

MIN.NO. 028/2015: ADOPTION OF THE AGENDA

The members present resolved to defer adoption of the agenda items for the Meeting and Confirmations of Minutes of the eighteenth sitting until 17th September, 2015. This was occasioned by fact, the Members cited the time to consider the agenda item no.3 was inadequate considering the technicalities surrounding some of the clauses on the Parliamentary Powers and Privileges Bill, 2014.

Consequently Members resolved to retreat to Mombasa, Serana Beach, to consider and do report on the Bill on 17th September, 2015. The dates for the retreat were however subject to convenience with the Speakers Diary for the month.

MIN. NO. 029 /2015: ANY OTHER BUSINESS

There being no any other business the Chair adjourned the sitting at 12. 05 pm until
17th September, 2015

Sign.....
(Chairperson)

Date.....

MINUTES OF THE EIGHTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY JULY 8, 2015 IN THE SPEAKER'S BOARD ROOM MAIN PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP – Chairperson
2. The Hon. Peter Shehe, MP
3. The Hon. (Dr) James Murgor, MP
4. The Hon. Zuleikha Juma Hassan, MP
5. The Hon. Simon Ogari, MP
6. The Hon. James Onyango K'Oyoo, MP
7. The Hon. Kimani Ichungwah, MP
8. The Hon. Barchelei Kipruto, MP

APOLOGY

1. The Hon. Joyce Emanikor, MP
2. The Hon. Bedzimba Rashid Juma, MP
3. The Hon. Jamleck Kamau

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Kipkemoi arap Kirui - Principal Clerk Assistant I
2. Mr. Moses Lemuna - Clerk Assistant III

MIN.NO. 018/2015: PRELIMINARIES

The Meeting was called to order by the Chair at five minutes past eleven o'clock.

MIN.NO. 019/2015: ADOPTION OF THE AGENDA

The Agenda of the Meeting was adopted having been proposed by the Hon. (Dr.) James Murgor and seconded by the Hon. Peter Shehe.

MIN.NO.020/2015: CONFIRMATION OF MINUTES OF THE FIFTEENTH AND SEVENTEENTH SITTINGS

Minutes of the Fifteenth and Seventeenth Sittings were confirmed as true record of proceedings having been proposed by Hon. (Dr) James Murgor and seconded by the Hon. James K'Oyoo.

MIN.NO. 021/2015: MATTERS ARISING

Under MIN.NO. 016/2015, on Consideration of the Parliamentary Powers and Privileges Bill, 2014 the following further amendments were proposed:

1. CLAUSE 28

THAT Clause 28(2) of the Bill be amended by deleting the word “including” and substituting therefor the word “or” immediately after the word person;

2. **CLAUSE 29**

THAT Clause 29(3) (b) of the Bill be amended by inserting the word “a” immediately before the word “member”.

3. **CLAUSE 37**

THAT Clause 37 of the Bill be deleted.

4. **CLAUSE 41**

THAT Clause 41(1) of the Bill be amended by deleting the words “National Assembly” immediately before the word “may” and substituting therefor the words “House of Parliament”.

SCHEDULES

THAT the following new schedules be inserted in the Bill:

THIRD SCHEDULE

General Principles of Conduct on Standards in Public Life

FOURTH SCHEDULE

I. Code of Conduct for Members of Parliament

II. Code of Conduct for Staff

FIFTH SCHEDULE

Disciplinary Rules (Sessional Paper No. 2 of 1966)

MIN. NO. 022 /2015: ESTABLISHMENT OF THE OFFICE OF THE COMMISSIONER FOR STANDARDS

In line with the recommendations in the Committee’s Second Report recently adopted by the House, the committee resolved that the Parliamentary Powers and Privileges Bill be further amended to establish the Office of the Commissioner for Standards.

MIN. NO. 023 /2015: HARMONISATION OF LAWS ON PARLIAMENTARY INTEGRITY

The Committee instructed the Legal Counsel to review and harmonise laws on Parliamentary Integrity to remove the existing inconsistencies and overlaps, and to ensure the incorporation of the General Principles of Conduct on Standards in Public Life, the Code of Conduct, Disciplinary Rules, and to include the establishment of the Office of the Commissioner for Standards in the Parliamentary Powers and Privileges Bill, 2014.

MIN. NO. 024 /2015: LOBBYING (LEGISLATIVE ADVOCACY) BILL

The Chairperson informed the Committee that the Hon. Chris Omulele, MP has sponsored a legislative proposal to provide for the regulation of Lobbying. The Bill will be a key addition to the parliamentary integrity system. The Hon. Kimani Ichungwah also informed the Committee that he had been working on a similar legislative proposal.

MIN. NO. 025 /2015: ANY OTHER BUSINESS

It was agreed that the Committee would proceed on a retreat at the Windsor Golf Hotel & Country Club to consider the proposed amendments and do report on the Bill on **July 21 to 23, 2015.**

MIN. NO.026/2015: ADJOURNMENT

There being no any other business the Chair adjourned the sitting at 1.30 pm until **July 21, 2015.**

Sign.....



(Chairperson)

Date.....

1st OCT, 2015

MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY MARCH 5, 2015 IN THE SPEAKER'S BOARD ROOM MAIN PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP – Chairperson
2. The Hon. Peter Shehe, MP– Vice Chairperson
3. The Hon. (Dr.) James Murgor, MP
4. The Hon. Zuleikha Juma Hassan, MP
5. The Hon. Simon Ogari, MP
6. The Hon. James Onyango K'Oyoo, MP
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Kimani Ichungwah, MP
9. The Hon. Jamleck Kamau, MP
10. The Hon. Barchelei Kipruto, MP

APOLOGY

1. The Hon. Joyce Emanikor, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

3. Mr Kipkemoi arap Kirui – Principal Clerk Assistant I
4. Mr Sydney Lugaga – Legal Counsel II
5. Mr Moses Lemuna - Clerk Assistant III

MIN.NO. 013/2015: PRELIMINARIES

The Meeting was called to order at eleven o'clock after the Hon. Kimani Ichungwah read the prayer.

MIN.NO. 0014/2015: ADOPTION OF THE AGENDA

The Agenda of the Meeting was adopted having been proposed by the Hon. (Dr.) James Murgor and seconded by the Hon. Kimani Ichungwah.

MIN.NO.015/2015: CONFIRMATION OF MINUTES OF THE FIFTEENTH AND SIXTEENTH SITTING

Confirmation of Minutes of the Sixteenth Siting were confirmed as a true record of proceedings as proposed by Hon. (Dr.) James Murgor and seconded by the Hon. Kimani Ichung'wah, however confirmation of minutes of the Fifteenth Sitting was deferred to a later date.

MIN.NO. 016/2015: MATTERS ARISING

Under MIN. NO. 011/2015, on Consideration of the Parliamentary Powers and Privileges Bill, 2014, the following further amendments were proposed:

1. CLAUSE 3

THAT, Clause 3(1) (b), be amended by inserting the following new words immediately after the words 'lobbies of the chambers '

'and adjoining, access roads, appurtenant or access routes.';

2. **CLAUSE 8**

THAT Clause 8(1) of the Bill be amended, by deleting the words "or outside" appearing immediately after the words 'areas within' and substituting therefor the words "proximity of the precincts of Parliament.";

3. **CLAUSE 11**

THAT, clause 11 be deleted.

4. **PART IV**

THATPART IV- Sub title "Breach of Privileges" be amended by deleting the words "BREACH OF PRIVILEGES" and substituting therefor the words "COMMITTEE OF POWERS AND PRIVILEGES";

5. **NEW PART- V**

THAT NEW PART- V Sub title "BREACHES OF PRIVILEGES" be introduced immediately after Clause 16 (b) (7);

6. **CLAUSE 18**

THAT Clause 18 of the Bill be amended, amended-

- (a) in sub clause (5), by deleting the words "(5)" and substituting therefor the words "(4)"
- (b) in sub clause (6), by deleting the words "(6)" and substituting therefor the words "(5)"
- (c) in sub clause (7), by deleting the words "(7)" and substituting therefor the words "(6)"

7. **CLAUSE 19**

THAT Clause 19 of the Bill be amended, amended-

- (a) in sub clause (1), by deleting the words "and may order the property of the witness , or any part thereof to be attached and sold for the purpose of satisfying all costs of such attachment together with the amount of the said fine, if any."
- (b) By deleting sub clause (2) and substituting therefor the following clause—
"A person may pay such fine prescribed under subsection 1 to the Clerk of the relevant House."
- (c) by inserting a new sub clause (4) immediately after sub clause (3)—
"(4) Parliament or a committee may order a police officer to arrest a person a person who refuses to honour a summons to appear before it."

MINUTES OF THE SIXTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY FEBRUARY 19, 2015 IN THE SPEAKER'S BOARD ROOM MAIN PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT

1. The Hon. Peter Shehe, MP – Chairing
2. The Hon. (Dr.) James Murgor, MP
3. The Hon. Zuleikha Juma Hassan, MP
4. The Hon. Joyce Emanikor, MP
5. The Hon. Simon Ogari, MP
6. The Hon. James Onyango K'Oyoo, MP
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Kimani Ichungwah, MP
9. The Hon. Barchelei Kipruto, MP

APOLOGY

1. The Hon. Justin B. N. Muturi, EGH, MP – Chairperson
2. The Hon. Jamleck Kamau, MP

IN ATTENDANCE

- | | | |
|---------------------------|---|---|
| 1. Mr Kipkemoi arap Kirui | - | <u>NATIONAL ASSEMBLY</u>
Principal Clerk Assistant I |
| 2. Mr Sydney Lugaga | - | Legal Counsel II |
| 3. Mr Moses Lemuna | - | Clerk Assistant III |

MIN.NO. 007/2015: PRELIMINARIES

The Meeting was called to order at eleven O'clock after the Hon. Joyce Emanikor read the prayer.

MIN.NO. 008/2015: ADOPTION OF THE AGENDA

The Agenda of the Meeting was adopted having been proposed by the Hon. Simon Ogari and seconded by the Hon. Zuleikha Juma.

MIN.NO.009/2015: CONFIRMATION OF MINUTES OF THE FIFTEENTH SITTING

Confirmation of Minutes of the fifteenth sitting was deferred to a letter date.

MIN.NO. 010/2015: MATTERS ARISING

Under MIN. NO. 4/2015, on alleged damage of Chamber delegates unit by the Hon. Millie Odhiambo it was agreed that all available witnesses, including the Hon. Benjamin Langat who drew the attention of the Chair to the alleged damage, be invited to testify before the committee makes a determination.

MIN. NO.011/2015: CONSIDERATION OF THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

The Clerk and the Legal Counsel took the Committee through the various submissions from members of the public and also through the Bill clause by clause.

The Committee resolved to propose the following amendments:

Code by damaging equipment following an initial sanction by the presiding officer. The Committee also learnt that the CCTV equipment installed in the Chamber was not as helpful as a source of evidence since it is yet to be activated. The footage of the plenary proceedings at the time of the incident did not help prove that the Member actually destroyed the equipment. This is because the House Broadcasting Rules (First Schedule of the National Assembly Standing Orders) prohibit officers of Parliamentary Broadcasting Unit from taking shots that are likely to embarrass members. The footage could not therefore be used as a source of evidence. No witness of the incident was as well forthcoming.

The Committee, therefore, does not find the member guilty of any breach of the Members' Code of Conduct and resolves to report to the House thus.

b) Under MIN. NO. 85/ 2014, regarding Benchmarking:

The Secretariat was tasked to follow up the proposed requests to visit Virginia General Assembly, the parliaments of Switzerland, Russia, New Zealand and Kuwait.

MIN. NO.05/2015: PRIORITY BUSINESS FOR THE COMMITTEE

The Committee resolved to prioritize the following matters:

1. Consideration of the Parliamentary Powers and Privileges Bill, 2014;
2. Alleged assault of Mr. Gabriel Maina (a member of staff) by the Hon. Charles Nyamai;
3. A Report on the matter of alleged damaging of chamber equipment by the Hon. Millie Odhiambo Mabona;
4. Hearing on the complaint of alleged harassment of the Hon. Millie Odhiambo by the Hon. Moses Kuria.

MIN. NO.06/2015: ADJOURNMENT

There being no any other business the Chair adjourned the sitting at 1.30 pm until the date to be communicated on notice.

Sign.....

(Chairperson)

Date.....1st OCT, 2015.

8. CLAUSE 23

THAT Clause 23(2) of the Bill be deleted;

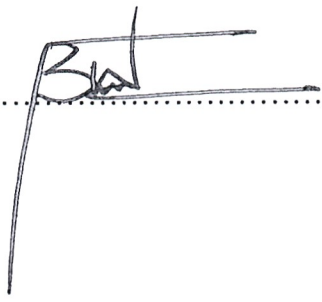
MIN. NO.017/2015: ADJOURNMENT

There being no any other business the Chair adjourned the sitting at 1.30 pm until Monday
March 9, 2015 at 2: 30 pm in the same venue.

Sign.....

(Chairperson)

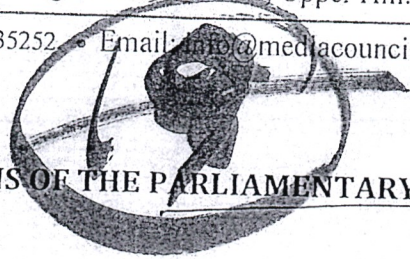
Date.....

 15TH OCT, 2015.

Appendix. III

Memorandum submitted by the Media
Council of Kenya

To call them the Committee of the Council of Kenya



9th September 2014

SUBMISSIONS ON PROVISIONS OF THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

1. INTRODUCTION.

Article 10(2) of the **Constitution of Kenya 2010** provides for national values and principles of governance which binds all State organs and officers in enactment, implementation or interpretation of a legislative enactment or public policy decision. These include good governance, transparency and accountability. Further **Article 35** of the Constitution provides for the right of access to information held by the State. As such the guiding principles applicable to Parliamentary Processes is that Parliament must be open, transparent and accountable to the public in its lawmaking and policymaking functions.

In this regard, the free flow of information from Parliament to its members and the public, as well as avenues for effective public participation, is fundamental to a democratic Parliament. As a best practice many parliaments broadcast and web-cast their Chamber and Committee proceedings utilising bilateral partnership agreements with external broadcasters while in some cases, parliaments have decided to create their own channels in order to maintain editorial control over content as well as to communicate a broader range of activity within the legislature.

Media coverage of Parliamentary proceedings is probably a good test of the robustness of a country's democracy hence progressive parliaments must be reluctant to adopt measures that limit criticism or the flow of information to the public. It is also a cardinal duty for parliaments to review restrictive legislation which may date from a less democratic era. In this context it is worth noting the report of a study group of the **Commonwealth Parliamentary Association (CPA)** on **'Parliament and the Media'** held in February 2003. Among its many recommendations are these:

(6.2) Parliaments should repeal legislation, rescind Standing Orders and/or publicly abandon their traditional authority to punish the media and others for offending the dignity of Parliament simply by criticism of the institution or its Members.

(6.3) Inaccurate reporting should not be considered as contempt of Parliament. Contempt should be reserved for serious cases of interference with Parliament's ability to perform its functions.

(8.2) Questions of eligibility for media access should be determined by the media itself. Parliaments should retain the right to suspend access for media representatives who violate Standing Orders or otherwise disrupt parliamentary proceedings.

(9.2) Criminal laws inhibiting free speech.....should be revoked.



SUBMISSIONS ON PROVISIONS OF THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

The proposed Parliamentary Powers and Privileges Bill, 2014 of Kenya contradicts this position by putting forward proposals which inhibit freedom of expression and of the media in a liberal and democratic society such as the post-2010 Kenyan republic.

SECTION	PHRASING	COMMENTARY	RECOMMENDATIONS
1 3(1)(e)	Places provided for the use or accommodation of the members	The reference to places of accommodation of the members is too wide and extensive with the danger that such limiting privileges shall be applicable in domestic households where members reside outside Parliamentary premises	The privileges should be applicable and enjoyed only with relation to official parliamentary proceedings. The word accommodation ought to be excluded from the section.
2 11	No proceedings or Decision of parliament	Only matters which are at a deliberative stage in Parliament should be beyond the scope of judicial oversight. But final decisions of Parliament fall under the High Court's jurisdiction in Article 165 of the Constitution.	The final decisions of Parliament are subject to the High Court's jurisdiction hence the word decision ought to be removed from the section.
3 22(4)	The right to a fair hearing under Article 50 of the Constitution shall be limited	Article 25 of the Constitution is clear that the right to a fair hearing shall NOT be limited under any circumstances.	This section is unconstitutional and ought to be expunged. A legislative provision cannot permit that which the Constitution objects.
4 27(1)	A person shall not broadcast, televise or otherwise transmit by electronic means the proceedings of Parliament or any part of those proceedings except by order or under the authority of the relevant	As phrased this section gives the Speaker and committee chairmen too much discretion to determine the parameters of media coverage. Article 118 of the Constitution provides that generally parliamentary proceedings ought to be open to the public unless	This section ought to be amended by replacing the words, 'except by order or under the authority of the relevant speaker or chairperson of a committee of Parliament' with the following words- 'except by order or under the authority of the relevant House or Houses concerned,

SUBMISSIONS ON PROVISIONS OF THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

	<p>speaker or chairperson of a committee of Parliament and in accordance with the Standing Orders and the conditions and directions determined by the Speaker</p>	<p>under exceptional circumstances camera sessions are justified. In most liberal parliaments the discretion is given to the House or Houses concerned, and in accordance with the conditions, if any, determined by the Speaker or Chairperson in terms of the standing rules. It means the entirety of Parliament ought to have a say in determining the guidelines which have thereafter implemented by the Speaker.</p>	<p>and in accordance with the conditions, if any, determined by the Speaker of chairperson so as to give the plenary session of the parliaments a role to determine the guidelines.</p>
<p>5 34</p>	<p>A person commits an offence if the person- a) publishes any false or scandalous libel on Parliament, its committees or its proceedings or b) speaks words defamatory of Parliament, its committees or its proceedings.</p>	<p>This provision is retrogressive and offends Article 34(2) (b) which provides that the <u>State shall not penalize any person for any opinion or view or the content of any broadcast, publication or dissemination</u>. The section attempts to re-introduce criminal libel laws which the Kenya Constitution has effectively abolished.</p> <p>In fact, in a 2012 ruling on a complaint filed by a broadcaster who had been imprisoned for violating Philippine libel law, the <u>United Nations Commission on Human Rights</u> ruled that the criminalization</p>	<p>This section is unconstitutional and must be expunged. The common law offences of seditious libel, defamatory libel, and obscene libel are old relics which most progressive democracies have abolished from their criminal statutes.</p> <p>The offences of criminal libel and sedition have been abolished by most UN member countries for being arcane offences - from a bygone era when freedom of expression wasn't seen as the right it is today.</p> <p>Freedom of speech is now seen as the touchstone of democracy, and the ability of individuals to criticise the state is crucial to maintaining freedom.</p>

SUBMISSIONS ON PROVISIONS OF THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

	<p>of libel violates <u>freedom of expression</u> and is inconsistent with Article 19 of the <u>International Covenant on Civil and Political Rights</u>.</p> <p>Libel is a <u>tort</u>, which is a civil wrong and so not a <u>criminal offence</u>. So, <u>defamatory statements can be dealt with in the civil courts</u> and not criminal procedure which offends the right to freedom of expression and of the media.</p> <p>The rationale for this is because a defamer in a criminal libel case could, in theory, be sent to prison but the law on this matter is considered a relic and so is more likely to be used by private rather than public prosecutors at the present.</p> <p>The law of criminal libel is several centuries old and in most jurisdictions human rights campaigners have successfully campaigned for both criminal libel and seditious libel abolished. The argument here is that it is dangerous for such laws to remain in existence; especially in light of regimes elsewhere in the world who oppress their peoples with laws preventing free speech and attacking those who</p>	
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SUBMISSIONS ON PROVISIONS OF THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

6 37	Every member of staff shall, for the purposes of the Act and of the application of the provisions of the criminal law have all the powers and enjoy all the privileges of a police officer.	dissent from this. Contradicts the National Police Service Act 2011 which defines who qualifies to be deemed as a police officer.	The phrasing is wide and ought to be amended since not every member of staff of Parliament can be deemed as police officer.
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Article 19 of the International Covenant on Civil and Political Rights.

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order or of public health or morals

Tel. 0725478021.

Haron Mwangi
Chief Executive Officer and secretary to the Council

Appendix. IV

Memorandum submitted by the Cabinet
Secretary for Information and Communication



25

REPUBLIC OF KENYA

MINISTRY OF INFORMATION, COMMUNICATIONS AND TECHNOLOGY

Office of the Cabinet Secretary

Telephone: 020-4920000/4921000

Telegrams:

When replying please quote

Our Ref: MICT/CONF/12/23

TELPOSTA TOWERS

P.O. Box 30025

NAIROBI

KENYA

24th September 2014

Mr. Justin Bundi, CBS

Clerk of the National Assembly

Parliament Buildings

NAIROBI

*Mr. Bundi, Kirvi/Amos
Pls deal
FA 25/9*

Dear

RE: THE PARLIAMENTARY POWERS AND PRIVILEGES BILL, 2014

Reference is made to the above.

The Ministry's attention has been drawn to ongoing public commentary on the Bill now before the National Assembly and specifically on the provisions touching on its effects to the practice of journalism in the country.

The Ministry has drafted a memorandum providing an overview of the institutional and legal framework touching on the media industry.

We enclose the memorandum herewith and request the National Assembly's Departmental Committee on Energy, Communications and Information to favour us with a consideration of the same during its deliberations on the Bill.

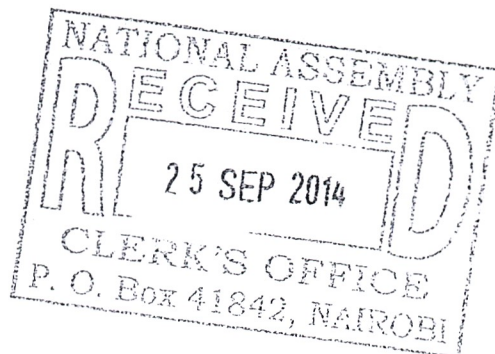
Yours

Sincerely,

Fred Matiang'i

Fred Matiang'i, PhD
CABINET SECRETARY

CC: Hon. Jamleck Kamau, MP
Chairperson
Energy, Communications and
Information Committee
Parliament Buildings
NAIROBI



Hon. Githu Muigai, EGH, SC
Attorney General
State Law Office
NAIROBI

Enc



REPUBLIC OF KENYA

MEMORANDUM

ON

**THE PARLIAMENTARY POWERS AND PRIVILEGES BILL,
2014**

**MINISTRY OF INFORMATION, COMMUNICATIONS AND
TECHNOLOGY**

SEPTEMBER 2014

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1. INTRODUCTION

By dint of Executive Order No. 2 of 2013, the Ministry of Information, Communications and Technology ("the Ministry") mandate comprises of functions such as the making of Information, Communications and Technology (ICT) Policy, Broadcasting Policy and the dissemination of public information.

2. OBJECTIVE OF THE MEMORANDUM

The Ministry is guided by various chapters of the Laws of Kenya in the performance of its duties. In an effort to strengthen existing institutional and harmonization of legislative frameworks in the ICT industry, this memorandum seeks to analyze the provisions of the Constitution granting freedom of speech and debate in Parliament with a view to:

- a) Highlight how the Parliamentary Powers and Privileges Bill, 2014 as currently published in the Kenya Gazette Supplement No. 125 (National Assembly Bills No. 33) ("the Bill") gives effect to section 117 of the Constitution.
- b) The impact of the enactment of the Bill as currently published on the dissemination of public information.

3. BACKGROUND

The Bill seeks to give effect to **Article 117** of the Constitution which safeguards the freedom of speech and debate in Parliament.

Under the same Article, Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairperson of committees and its members.

The Bill has captured the spirit of Article 117 of the Constitution to a large extent and has *inter alia* espoused the following:

- a) Describes the precincts of Parliament and provided a favourable environment to enable members of the National Assembly to exercise freedom of speech and debate in Parliament such as freedom from arrest of members and immunity from service of court process within the precincts of Parliament; and, empowering the Speaker to provide guidelines for and designate areas within or outside the precincts of Parliament where members of the public may assemble, demonstrate, picket or present memoranda to Parliament;

- b) Set out privileges and immunities of members such as freedom of speech and debate in Parliament as well as immunity from legal proceedings emanating from words spoken or contained in documents in the ordinary conduct of the business of the houses of Parliament;
- c) Establishment of the Committee of Powers and Privileges to deal with the breaches of powers and privileges by members;
- d) Sets out clear a clear procedure on the summoning of witness to give evidence to the house and;
- e) Sets out procedures for the enforcement of the Act and miscellaneous matters that will aid in the day to day operations.

4. ANALYSIS OF EXISTING STATUTES CONTAINING MATTERS CANVASSED BY THE BILL

4.1 THE CONSTITUTION OF KENYA

The Constitution of Kenya provides the following;

Article 34

"Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33 (2).

(2) The State shall not—

- a) exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium; or*
- b) penalise any person for any opinion or view or the content of any broadcast, publication or dissemination.*

(3) Broadcasting and other electronic media have freedom of establishment, subject only to licensing procedures that—

- (a) are necessary to regulate the airwaves and other forms of signal distribution; and*
- (b) are independent of control by government, political interests or commercial interests."*

Under **Article 33(2)**, the right to freedom of expression does not extend to propaganda for war; incitement to violence; hate speech; or advocacy for hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm; or is based on any ground of discrimination.

Article 118

"Parliament shall—

- a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and*
- b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees.*
- c) Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion."*

4.2 THE KENYA INFORMATION AND COMMUNICATIONS ACT (CAP 411A)

- a) The Act establishes the Communications and Multimedia Appeals Tribunal at **Section 102**. Under **Section 102A**, a person aggrieved by any publication by or conduct of a journalist or media enterprise; or, anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise may make a written complaint to the Tribunal.
- b) The Tribunal may, after hearing the parties to a complaint among other remedies impose a fine of more than twenty million shillings on any respondent media enterprise and a fine of not more than five hundred thousand shillings on any journalist adjudged to have violated this Act as per **Section 102E** of the Act.

4.3 THE MEDIA COUNCIL ACT, 2013

The is established a Complaints Commission under **Section 27** of the Act with functions under **Section 31** which include to mandate or adjudicate in disputes between the government and between the public and the media and intra media on ethical issues.

The Complaints Commission may, after hearing the parties to a complaint among other remedies impose a fine of more than five hundred thousand shillings on any respondent media enterprise and a fine of not more than two hundred thousand shillings on any journalist adjudged to have violated this Act as per **Section 102E** of the Act.

4.4 THE ACCESS TO INFORMATION BILL, 2013

- a) The Access to Information Bill 2013 emanates from **Article 35** of the Constitution which provides that every citizen has the right of access to information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom.
- b) It is the right of every person to have any misleading or untrue information affecting him deleted or corrected. The State also has an obligation under this Article to publish and publicise any important information affecting the nation.
- c) The Bill confers on the Commission on Administrative Justice created under section 3 of the Commission on Administrative Justice Act("the Commission") the oversight and enforcement functions envisaged by Article 35 of the Constitution.
- d) The Bill does not provide for an unlimited right to access to information especially where the disclosure of such information would *inter alia* likely undermine national security, impede the due process of law or endanger the life of any person or hinder the government from managing the economy of Kenya.
- e) The Commission's functions and powers are also described in detail to include the hearing and determination of complaints arising from inaccessibility of information and requiring any person to disclose any information within such persons knowledge relevant to any investigation by the Commission.

The Bill is awaiting Cabinet approval.

4.5 DATA PROTECTION BILL, 2013

- a) The Data Protection Bill 2013 seeks to give effect to Article 31(c) and (d) of the Constitution which provides that every person has the right to privacy, which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed; or the privacy of their communications infringed.
- b) The Bill seeks to regulate the collection, retrieval, processing, storage, use and disclosure of personal data which is critical in the advent of e-transactions in the global digital economy where a lot of information is processed automatically.

- c) Under the Bill, the right to privacy may be limited to the extent necessary to safeguard overriding legitimate interests but the right shall be limited in a manner that is least intrusive to the data subject.
- d) The Bill imposes on any agency collecting personal information from a data subject-
 - i. The fact that the data is being collected;
 - ii. Purpose of the data collection;
 - iii. Intended recipient of the information and the name and address of the agency collecting the information;
 - iv. Legislation requiring data to be collected where applicable; and whether the supply of the information by the data subject is voluntary or mandatory
- e) The Bill seeks to ensure that a person subjected to manual or automated data processing of his personal information may have that information provided to him on request, be informed of where the data originated, use to which data collected will be put to, information regarding any other person to whom the data will be transmitted and rectification of incorrect data or the deletion of illegally processed data.
- f) The Bill confers on the Commission on Administrative Justice created under section 3 of the Commission on Administrative Justice Act ("the Commission") the oversight and enforcement functions envisaged by Article 31 (c) and (d) of the Constitution.
- g) The Commission's functions include the provision of a framework or mechanism for the effective management of conflicts, the resolution of disputes under the Bill and the inquiry into and settlement of complaints.
- h) The Commission has the powers to issue restraining orders, performance orders to remedy violation and any other relief it considers appropriate and the cabinet secretary has powers to enact regulations for this Bill.

The Bill is awaiting Cabinet approval.

5. WAY FORWARD AND REQUEST TO THE NATIONAL ASSEMBLY

The National Assembly is invited to consider the contents of this Memorandum and is requested to incorporate the provisions of the Statutes and Bills highlighted and more specifically provided in the matrix below to the Parliamentary Powers and Privileges Bill, 2014 and:

	THE PARLIAMENTARY POWERS AND PRIVILEGES BILL	EXISTING STATUTE/BILL
1	Clause 14	<p>a) Access to Information Bill Clauses 6, 7, 9, 13, 15, 19, 20, 21</p> <p>b) Data Protection Bill, 2013 Clause 4</p>
2	Clauses 34 and 35	<p>a) Articles 31 (c) and (d), 33(2), 34, 35 and 118 of the Constitution of Kenya</p> <p>b) Restrict Clauses 34 and 35 to persons other than the media. Complaints against the media are adequately catered for by the Communications and Multimedia tribunals established under section 102 of the Kenya information and Communications Act (Cap 411A) and the Complaints commission established under section 27 of the Media Council Act, 2013</p>

Dated thisday of..... 2014

.....
Fred Matiang'i PhD
Cabinet Secretary,
Ministry of Information, Communications and Technology

Appendix.V

Memorandum submitted by the Parliamentary
Initiatives Network



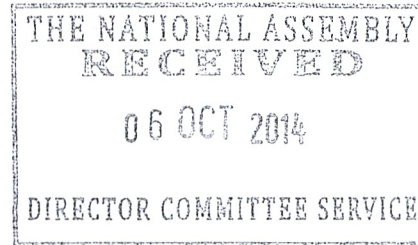
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KO/PIN/L.2014/051

3rd October, 2014

Hon. Samuel Chepkonga
The Chairperson,
Justice and Legal Affairs Committee
Kenya National Assembly
Parliament Buildings, Nairobi



RE: MEMORANDUM TO THE PARLIAMENTARY POWERS AND PRIVILEGES
BILL, 2014

The Parliamentary Initiatives Network (PIN) is a forum for non-state actors in Kenya with a programmatic interest in Parliament. PIN brings together a number of CSOs including professional associations, think tanks and research institutions that focus on affecting Parliamentary business from a technical perspective. PIN supports legislature in reviewing policies and drafting legislations. PIN also provides support and research in areas of oversight, legislation and representation as well as developing tools to assist Parliament monitor implementation of its decisions and laws. To this end, PIN supports enactment and implementation of enabling policy/legislation incidental to the realization of its objectives.

The promulgation of the Constitution of Kenya 2010 was a big milestone in Kenyan history for particularly enhancing the Bill of Rights under Chapter 4. Chapter 4 provides for rights and fundamental freedoms, the scope and limitations as well as rights which can and cannot be limited. To be emphasized is the freedom of media, the right of access to information and the right of access to justice.

Article 117 of the Constitution provides that Parliament shall have the freedom of speech and debate in Parliament. It also give Parliament the discretion to provide for the powers, privileges and immunities of Parliament, its committees, the leader of majority and minority and chairpersons of the committees and members. Pursuant to the Article, the Senate drafted the Parliamentary Powers and Privileges Bill, 2014. Having reviewed the Bill, the following are our recommendations.

i) Definition section

An officer of Parliament has been referred to in the Bill particularly in clause 6. This should be defined to avoid improper interpretation and differentiate between member of staff and officer of Parliament.



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ii) Precincts of Parliament

Clause 3 of the Bill defines what constitutes precincts of Parliament. This definition is too wide as it includes the area of land and every building or part of a building under parliament's control or used in connection with Parliament's purposes. The definition extends to chambers of parliament including galleries and lobbies of those chambers, all parts of a building where chambers are situate, places provided for use or accommodation being used in connection with Parliamentary proceedings. This may include any place as long as it is connected with the business of Parliament. The definition should be thus revised and confined to places which are absolutely necessary for carrying out Parliaments' business.

The wide definition under Clause 3 read together with clause 5 limits the right of access to Parliament and should be reviewed.

iii) Access to precincts of Parliament

Clause 5 provides for a member of the public to access Parliament precincts subject to the Standing Orders and such directions or orders given by the speaker. This deviates from the spirit of Article 118 of the Constitution which promotes openness and public participation in the affairs of Parliament. This article does not qualify the right of access which clause 5 makes subject to directions by the Speaker. It should first assert the right of the public to access Parliament, then give limitations subject to the Constitution and the Act. The word 'shall' should replace 'may'.

iv) Service of civil process

The provisions of clause 6 of the Bill limit the right of access to justice. It prohibits service of process within precincts of Parliament while either of the Houses is sitting. This is too wide and does not provide rationale while a member of one house cannot be served while the other house is sitting. How does service to one house affect the sitting of the other?

The clause should provide for a mechanism of service which shall not interfere with sittings of the houses. This may be through the Speaker or Clerk's office.

Sub-clause provides that the right of access to justice shall be limited as provided in this section. This sub clause should assert the right of access to justice before limiting. It should thus provide that the right of access to justice shall not be limited unless it is necessary for the better conduct of the business and the affairs of Parliament.



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v) **The right of assembling demonstrating and picketing**

Clause 7 provides that the Speaker may designate areas within or outside the precincts of Parliament where members of the Public may assemble, demonstrate, picket or present petitions or memoranda to Parliament. There is no rationale for assembling, demonstrating etc to be done outside the precincts of Parliament. This requires to be done within or near Parliament. Outside can be anywhere including places where the impact intended to be created through such demonstration may not be felt. The word 'outside' should be deleted.

Sub-clause 2 provides for any assembling and demonstration, picketing or presentation of petitions or memoranda to be done as per guidelines that the speaker may issue. This should be subject to constitutional provisions as well. Further, the issue of assembling and demonstration, picketing and that of presentation of petitions or memoranda should be provided under different sub-clauses. The clause should also designate an office to receive petitions and memoranda and in this case we propose the clerk's be designated for this purpose.

Moreover, sub-clause 4 provides that the right assembly, demonstration, picketing and petition under article 37 shall be limited as provided in this section. This sub clause should assert the right before limiting. It should thus provide that the right of right assembly, demonstration, picketing and petition shall not be limited unless it is necessary for the better conduct of the business and the affairs of Parliament.

vi) **Freedom of speech in Parliament**

Clause 8 protects members of Parliament and guarantees the freedom of speech and debate in parliament. A sub-clause should be introduced to limit this freedom of expression as provided under Article 33(2). The freedom of speech and debate should not extend to matters prohibited by this Article e.g. hate speech etc.

vii) **Postponement of disqualification to enable appeal**

The clause provides for postponement of a sentence whose effect would result to removal of a member of Parliament from office until the possibility of any appeal or review is exhausted. The process or appeal or review may take a long process. While it is unconstitutional to vacate a member's seat until the appeal or review is finalized, there should be a mechanism to show that the member is still in office because the effect of sentence has been postponed. We propose that a sub-clause be included to provide that while awaiting such outcome, a member should be under half pay just in the same way it is for members of the judiciary.



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viii) Parliamentary Proceedings and decisions not to be questioned in court

Clause 10 provides that proceedings or decisions of Parliament or committees on powers and privileges will not be questioned in court. This directly limits the right of access to justice even in cases where unconstitutional procedure is used or decisions are made all in exercise of powers and privileges of Parliament. The clause should be deleted as it sets the powers of Parliament or committee before the Constitution and the law which is against the principle of rule of law. If the provision is retained, it should be possible to challenge the legality of such proceedings or decisions.

ix) Immunity from legal proceedings

Clause 11 should be amended to introduce a sub-clause to limit immunity from proceedings for words spoken before parliament to provisions of Article 33(2). Immunity should not extend to words that offend the provisions of this article- hate speech, propaganda for war.

x) Freedom from arrest for civil debt during session

Clause 12 in turn provides that a member shall not be liable to arrest for a civil debt while the member is going to, attending or returning from a sitting of Parliament or a committee of Parliament. This Clause limits access to justice. Further, the provision is too broad by providing arrest for civil debt shall not be executed while a member is proceeding to or returning from a parliamentary meeting. While an arrest while proceeding to a Parliamentary meeting could interfere with execution of agenda and issues of quorum, it may be abused. A member can at any time claim that they are going to Parliament or leaving from Parliament even when they are not. This is majorly a limitation of the right to access justice which is not justified. This is because the members of Parliament are already protected from arrests within Parliament precincts when the houses are sitting. It should be reasonably possible for an arrest to be made except when the houses are in session.

Article 24 of the Constitution provides that the rights under Chapter 4 can only be limited by law and to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors including:

- i. the nature of the right or fundamental freedom
- ii. the importance of the purpose of the limitation
- iii. the nature and extent of the limitation
- iv. the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others, and
- v. the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.



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In light of the above considerations, the protection from arrest while proceeding to or returning from a parliamentary sitting is not in tandem with the importance of the purpose which is to protect Parliamentarians while executing the business of Parliament.

xi) Giving of evidence of proceedings

The Bill under Clause 13 requires full house leave in order for a member of Parliament, committee or a person employed to take minutes before Parliament to give evidence before court. This is a direct limitation to the right of access to justice. It also affects the independence of the judiciary in dispensing its mandate contrary to the principle of separation of powers. If Parliament is opposed to the evidence being sought, they should bring this to notice of the court for further directions. Therefore clause 13(1) and (2) should be deleted.

The sub-clause 3 should not be tied to leave in the preceding sub-sections. Further, the test of reasonability in light of Article 35 of the Constitution should be defined. Sub-clause 4 should also be amended to asset the right of access to information first and limit it only to the extent necessary.

xii) Determination of a question arising in the House on right or power of Parliament

Such questions are to be determined by Parliament. Clause 14 provides that where there is no express provision in the Act for the determination of such a question, the question shall be determined in accordance with precedence, customs, traditions, forms and usages. We propose that the phrase 'or any other law' be added so that the usages, forms etc will apply where there is no provision in the Act or any other law. This is because statutes are above the customs in the hierarchy of laws.

xiii) Quorum of the Committee of Powers and Privileges

In case of the National Assembly the quorum is 5 members and in case of the Senate, 3 members. The National Assembly Committee is made of 15 members while the Senate comprises 7 members. The quorum of 5 out of 15 and 3 out of 7 is small and should be increased.

xiv) Conduct constituting breach of privilege

Clause 16 specifies what may constitute breach of privilege by a member of Parliament. Sub-clause 16 (e) provides: if the member conducts himself in a manner which in the opinion of the Committee on Powers and Privileges is intended 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.

We propose that the words 'or of the Members or to be contrary to the best interests of Parliament or its Members' be deleted. Parliament should be protected as an institution but not the members.



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xv) Penalty for breach of privilege

Clause 17 provides for the penalties that the relevant house may impose for breach of privilege by member. Among them Parliament may impose suspension for a certain period or vacate a members seat pursuant to Articles 5(2)(b) and 103(1)(c). a member of Parliament can only be removed from office in accordance with the law, through recall, court order or through another process provided under law. Parliament can therefore not impose suspension or vacation from office. It can only institute the process of vacation from office. Sub- clause (g) and (h) should be amended accordingly. Suspension in this case should refer to suspension from parliamentary proceedings.

Sub-clause 7 limits the right to property under Article 40 of the Constitution and the right of access to justice. The limiting of right to property is unclear in the context of protection of privileges and immunities of Parliament. Further it can only be limited in as far as the Constitution provides to protect the private land owners from arbitrary deprivation.

Further, these rights should not be limited except as the Constitution allows and for orderly conduct of Parliament's business.

xvi) The right to a fair hearing and witness' privileges

Clause 20 of the Bill provides that parliament has power to summon a witness to give evidence or produce a document. Such a witness shall be required to answer any question put to him/her or to produce any document even if the evidence or document would expose him to criminal or civil charges.

The Clause goes further to limit the right to a fair hearing as provided under Article 50 of the Constitution for purposes of enhancing the freedom of speech and debate.

These sub-clauses (2 and 4) are unconstitutional as they requires a witness once summoned they must give evidence or produce a document even if it would be incriminating contrary to Article 50 (i) and (l). Further, limiting the right to fair hearing, which under Article 25(c) is among the rights that shall not be limited is untenable.

xvii) Objection to answer question or to produce papers

Clause 21 (1) and (2) are similar. Clarity should be given on whether clause 1 is meant to refer to Parliament and 2 to committees of Parliament.

xviii) Duties of public officers to give evidence

Public officers are mandated by the Bill to produce any document or give evidence to Parliament or a Committee of Parliament relating to correspondence between security organs as set out under Article 239 of the Constitution, or any independent Commission or any other public office as defined under the Constitution. Refusal to produce the document or give evidence is an offence which attracts a penalty on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.



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The duty is mandatory and does not take into account special circumstances such as non-disclosure for security reasons. The provision should be subject to other provisions to which a public officer may be subject.

Where a House passes a resolution that a public officer has contravened Clause 22(1) above, the resolution of the House shall constitute a ground for removal from office of the public officer in accordance with the Constitution or any other law. Failure to give evidence before Parliament or a committee should constitute a ground for removal from office as it can be suspect to abuse. Someone may be asked questions which are known they cannot answer unless some other process is invoked.

Further, there should be another penalty or mechanism or punishing persons who refuse to give evidence other than removal from office. Even the courts do not order removal from office on account that a witness refused to give evidence or produce a document in court. Such a matter should be referred to the Public Service Commission which has the duty to hire, fire and discipline public officers. An exemption should be made to answering questions on basis of self-incrimination and confidentiality principle.

xix) Protection in respect of publications

Clause 23(3) should be amended. The right of access to justice should be affirmed before limiting it. It should not be limited unless it is necessary for conducting the business and affairs of Parliament or for attaining freedom of speech and debate as stated therein.

xx) Proceedings for unauthorized publishing

In any civil or criminal proceedings instituted for publishing or an abstract from a journal, if the Court finds that the publication was bona fide, without malice, judgment or verdict, the Bill provides that the court shall find for the defendant or accused (Clause 24(2)). This provision is usurping the discretionary power of courts in making decisions. It should provide that in such proceedings the courts will determine the matter as it deems fit. Otherwise it interferes with the independence of the judiciary under the doctrine of separation of powers. Parliament should not instruct the judiciary on how to make court decisions through legislation.

Sub-clause 3 should also be amended to assert the right of access to justice first as discussed in this paper.

xxi) Broadcasting of Parliamentary Proceedings

Clause 25 prohibits any broadcast, televise or otherwise transmit by electronic means of proceedings of Parliament or a committee without authority of the Speaker or the chairperson of the committee. This provision limits the freedom of media and the right of access to information under Articles 34 and 35 of the Constitution respectively. These are directly limited under Clause 25 (3).



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Article 118 of the Constitution provides that Parliament shall conduct its business in an open manner and its sittings and those of its committees shall be open to the public. The Article also provides that the public or media may only be excluded from the sittings in exceptional circumstances where the Speaker deems it justifiable to do so.

Article 34 prohibits the state from exercising control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium. This is a blanket provision which though it can be limited by law, the limitation must fulfill the threshold of Article 24.

Article 24 of the Constitution provides that the rights under Chapter 4 can only be limited by law and to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors including:

- i. the nature of the right or fundamental freedom
- ii. the importance of the purpose of the limitation
- iii. the nature and extent of the limitation
- iv. the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others, and
- v. the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

Therefore, restriction to broadcast, televise or otherwise transmit by electronic means parliamentary or committee proceedings must be reasonable and justified. The excuse to bar media from parliamentary proceedings must consider the nature of the freedom of media and right to access information. These are meant to promote access of information by the public and thus promote accountability. It is only through media that the public could know of the happenings in Parliament. The purpose of the limitation which is to promote privileges and immunity, freedom of speech and debate of the Houses, is not justified because whether Parliamentary business is conducted in open doors or not, the members are still protected under Article 117 of the Constitution. To the extent that the Bill constitutes a total ban to media in Parliament, it does not consider Article 24 (iii) above unless it provided for special cases such as security matters which cannot be discussed in public because the sensitivity of those matters. Moreover, the provision does not consider the need to ensure enjoyment of the two rights under Article 34 and 35 in limiting the two rights.

Section 25 changes the general rule as provided in the Constitution to be the exception. Generally, media and the public are allowed to access sittings of parliament or its committees unless where it is otherwise justified. The section turns this around by providing that the media shall not broadcast, televise etc, without permission of the Speaker or Chair of a committee. This is unconstitutional.

In addition, Sub-clause 3 should also be amended to assert the right of access to information and freedom of media first as discussed in this paper.



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xxii) Part VII

This part deals with enforcement of the Act. It creates offences and stipulates their penalties. The Bill should be clear on who is to enforce the provisions of the Act. Under Clause 26(1) (a), the word 'insult' should be deleted. Its interpretation may be too wide which will in turn limit the right to picket, demonstrate and assemble as well as the freedom of speech. Alternatively, there should be guidance on what amounts to insult by way of definition in the interpretation section.

Clause 32 on defamation against Parliament should be deleted. The law on defamation should apply even to cases of defamation of Parliament.

Further, the word 'suspected' should be replaced with 'alleged'. Clause 35 gives powers of police officers to every member of staff. It is unjustified for every member of staff to have powers of the police. They may be suspect to abuse and accountability on their execution impaired. We propose that officers can be seconded to Parliament from time to time.

xxiii) Repeal of the National Assembly (Powers and Privileges) Act

Clause 40 (2) provides that the repeal of the above Act shall not affect any privilege or immunity acquired under the repealed Act. It is not clear what this clause means. One interpretation is that the effect of the immunity or privilege enjoyed under the former law shall continue which makes it inconsistent with sub-clause 1 on repeal. The other interpretation is that the immunity or privilege that a member enjoyed shall not be taken away by passing of the Bill in so far as it relates to a period prior to passing into law.

We propose that the sub-clause be given a marginal note on transition. Further, its wording should be clear so that the meaning is not left to interpretation.

In conclusion, the immunity and privilege of Parliament is critical owing to the nature of the affairs and business of Parliament. However, the importance of powers and privileges must be measured against public interest. The foregoing proposals will go a long way to striking a balance in the two important but sensitive interests.

Yours faithfully,

Samuel Kimeu
For PIN STEERING COMMITTEE

Appendix.VI

Memorandum submitted by Mr. Njoroge
Waweru, a Member of public

DEAR MR SIALAI;

I am contributing to the Parliamentary Powers and Privileges bill. I am an ordinary citizen, a hoi polloi so to speak! How much I believe my views would be considered. I propose that members of Parliament have freedom to say whatever they have to say in the house of Parliament and within the precincts of Parliament. I would like a member of Parliament to be as effective as possible. Parliamentary committees should be given the powers of high court, any summonses from them snubbed should attract the crime of contempt ready to be tried at the High Court at the slightest opportunity.

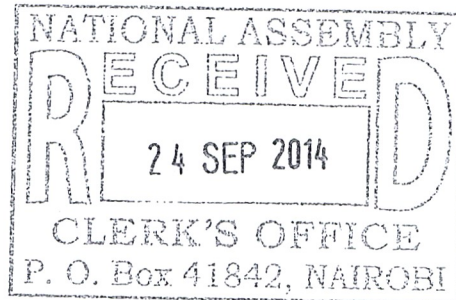
I am proposing for a free and liberal Parliament in the way it attracts with its customers who are the public and the media. I am humbly appealing that Parliament exercises utmost courtesy and restraint when dealing with the media and the public.

I am humbly requesting Parliament to invest as much goodwill in the media. I propose that no penalties or offenses should be preferred against the public and media for how we regard the National Assembly and debate Parliamentary activities. I humbly request that the public and the media be given freedom to debate members of Parliament in any way they deem fit, Kenyans should be allowed to talk about their Parliament freely without any restrictions.

Finally I humbly request the office of the Clerk of the National Assembly, as a means of opening up Parliament as a public institution to the public, to consider opening email accounts for all committees of Parliament so that the public can interact freely and effectively with those committees. I strongly feel when we the public address to the Clerk when we are addressing the committees, our views are never received. The office of the Clerk is an executive office and it handles many letters through that single email, I fear not all emails to that email address to the Clerk are read. The office of the Clerk should handle only administrative issues of Parliament, but the public should be allowed avenues which to reach the committees directly.

yours faithfully

NJOROGE WAWERU



Mr. Kivini

*Please note
and Summoned for
the Court of Appeal.
Acknowledge using his email.*

26/9/14

Appendix.VII

Kenya Parliamentary Journalists Association

**MEMORANDUM BY THE KENYA
PARLIAMENTARY JOURNALISTS
ASSOCIATION**

ON

**THE POWERS AND
PRIVILEGES (AMENDMENT) BILL 2014**

As the members of the Kenya Parliamentary Journalists Association, below are some of the clauses we considered for amendment...

1.1 CLAUSE 27 ON BROADCASTING OF PROCEEDINGS

The clause generally requires that the permission of the Speaker or the chairperson be sought before the electronic transmission of House or committee proceedings.

We recommend that this clause be deleted in its entirety as it interferes with the freedom of the press as provided for in the Constitution and the Standing Orders.

Already, the Standing Orders and the Speaker's Rules provide sufficient guidance on the transmission of House proceedings.

Parliament has a working broadcasting unit that, its weaknesses and areas worth strengthening aside, has sufficient ways of providing access to the proceedings of the House.

Regarding the transmission of committee proceedings, the Standing Orders also provide sufficient guidance on the manner in which the media gets to have the sittings transmitted.

This section also purports to provide for how a media house or other entity would package content from these proceedings, which would be contrary to the established practice.

Abdullah
17/09/2015
Chair - KPJA

1.2 CLAUSES 34 AND 35 ON DEFAMATION AGAINST PARLIAMENT

These clauses create the offence of defamation against Parliament and provide for the penalty of Sh500,000 or a maximum two years' jail term for offenders.

We recommend that these clauses be deleted in their entirety.

The effect of passing this Bill with these clauses intact would be to stifle the freedom that the press has reported on Parliament.

Defamation of Parliament is an amazingly vague term given anything deemed as negative - such as an initiative by MPs to reduce allocations to the Judiciary for frivolous reasons- is bound to be interpreted as constituting defamation or libel against Parliament.

It would be fair to say that the provision that a person commits an offence if they as much as "speak words defamatory of Parliament, its committees or its proceedings" is not only absurd but open to all manner of abuse.

Abdullah
17/09/2015
Chair - KEITA

Appendix.VIII

Committee Stage Amendments

COMMITTEE STAGE AMENDMENTS

September 29, 2015

The Clerk of the National Assembly,
Parliament Buildings,
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE PARLIAMENTARY
POWERS AND PRIVILEGES BILL, 2014**

NOTICE is given that the Chairperson of the Committee of Privileges intends to move the following amendments to the Parliamentary Powers and Privileges Bill, 2014 at the Committee Stage—

CLAUSE 2

THAT, Clause 2 of the Bill be amended by inserting the following definition in its proper alphabetical sequence—

“Proceedings” means—

- (a) all things said, done or written by a Member or by any officer of either House of Parliament or by any person ordered or authorised to attend before such House or its committees, in or in the presence of such House or its committees and in the course of a sitting for the purpose of transacting the business of the House or its committees; and
- (b) all things said, done or written between Members or between Members and officers of either House of Parliament for the purpose of enabling any Member or any such officer to carry out his or her functions.

CLAUSE 3

THAT, Clause 3(1) be amended by inserting the following paragraph immediately after paragraph (f)—

“(g) such other areas as the Speaker may designate, in writing, for the purpose of parliamentary business.”

CLAUSE 8

THAT, clause 8 of the Bill be amended in subclause 1 by deleting the words “within or outside” appearing immediately after the words “areas” and substituting therefor the words “proximate to”.

CLAUSE 13

THAT, the Bill be amended by deleting clause 13.

PART IV

THAT, Bill be amended by deleting the title to PART IV and substituting therefor the title— “COMMITTEE OF POWERS AND PRIVILEGES”.

CLAUSE 16

THAT, clause 16 of the Bill be amended—

- (a) in subclause (4) by inserting the expression “(b)” immediately before the words “perform such other functions”
- (b) by deleting subclause (7) and substituting therefor the following subclause—

“(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.”

NEW HEADING

THAT, the Bill be amended by inserting the following new Heading immediately after clause 16—

“PART IVA—BREACHES OF PRIVILEGES”.

CLAUSE 17

THAT, clause 17 of the Bill be amended in sub clause (a) by deleting the expression “27(1)” appearing immediately before the words “sections 26,”.

CLAUSE 18

THAT clause 18 of the Bill be amended by—

- (a) renumbering subclause (5) as subclause (4);
- (b) renumbering subclause (6) as subclause(5);
- (c) renumbering sub clause (7) as subclause (6).

NEW PART

THAT, the Bill be amended by inserting the following new Part immediately after clause 18—

PART IVB—OFFICE OF STANDARDS AND ETHICS

Establishment of Office.

- 18A. (1) There is established the Office of Standards and Ethics in each House of Parliament as an office in the Parliamentary Service.
- (2) The Office shall be headed by an Administrator who shall be—
- (a) nominated for appointment by the Parliamentary Service Commission through a competitive recruitment process;

- (b) vetted by the relevant Committee of Powers and Privileges; and
 - (c) approved for appointment by the relevant House of Parliament.
- (3) The qualifications for appointment to the Office are the same as for the appointment as a judge of the High Court.

Functions of the Administrator.

18B. The Administrator shall—

- (a) on receipt of a formal complaint from any person or on the recommendation of the relevant Committee of Powers and Privileges, investigate any information or allegation of alleged breaches of parliamentary privilege or the Code of Conduct for Members of Parliament;
- (b) report to the Committee of Powers and Privileges at the conclusion of investigations for the Committee to consider and make recommendations to the House; and
- (c) maintain a register of interests declared by Members of Parliament.

Administrator's term of office and remuneration.

18C. (1) The Administrator holds office for a term of six years and is not eligible for re-appointment.

- (2) The terms and conditions of service for the Administrator shall be specified in the instrument of his or her appointment.

Removal from office.

18D. (1) The Administrator may be removed from office for—

- (a) a serious violation of the Constitution, including a contravention of Chapter Six;
- (b) gross misconduct;
- (c) physical infirmity or mental incapacity to discharge his or her functions;
- (d) incompetence; or
- (e) bankruptcy.

(2) A person desiring the removal of the Administrator on any ground specified in

subsection (1) may present a petition to the relevant House of Parliament setting out the alleged facts constituting that ground.

(3) The Committee of Powers and Privileges of the relevant House shall consider the petition and make recommendations to the relevant House of Parliament.

(4) If the Committee reports that it finds the allegations—

(a) unsubstantiated, no further proceedings shall be undertaken; or

(b) substantiated, the relevant House of Parliament shall vote on the resolution requiring the Administrator to be removed from office.

(4) If a resolution under subsection (4) (b) requiring the removal from office of an Administrator is supported by a majority of the members of the relevant House of Parliament—

(a) the relevant Speaker shall deliver the resolution to the Parliamentary Service Commission ;and

(b) the Commission shall dismiss the Administrator.

CLAUSE 20

THAT, clause 20 of the Bill be amended—

(a) in sub clause (1), by deleting the words “,and may order the property of the witness , or any part thereof to be attached and sold for the purpose of satisfying all costs of such attachment together with the amount of the said fine, if any”.

(b) by deleting sub clause (2) and substituting therefor the following clause—
“(2) A person may pay the fine under subsection (1) to the Clerk of the relevant House.”

(c) By deleting subclause (3) and substituting therefor the following subclause—
“(3) Parliament or its committee may order the arrest of a person who fails to honour a summons.”

CLAUSE 23

THAT, clause 23 of the Bill be amended by deleting subclause (2).

CLAUSE 27

THAT, the Bill be amended by deleting clause 27.

CLAUSE 28

THAT, clause 28 of the Bill be amended in sub clause (2) by deleting the word "including" appearing immediately after the word "person" and substituting therefor the word "or".

CLAUSE 29

THAT, clause 29 of the Bill be amended in sub clause (3) by inserting the word "a" immediately after the words "directed at" appearing in paragraph (b).

CLAUSE 34

THAT, the Bill be amended by deleting Clause 34.

CLAUSE 37

THAT, the Bill be amended by deleting clause 37 and substituting therefor the following clause—

Officers of a House of Parliament to have powers of police officer.

37. (1) Every officer of a House of Parliament shall, for the purposes of this Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.

(2) In this section, "officer of a House of Parliament" means any officer acting within the precincts of Parliament under the orders of the Speaker."

CLAUSE 41

THAT, clause 41 of the Bill be amended—

- (a) in sub clause (1) by deleting the words "the National Assembly" appearing immediately after the words "Speaker of" and substituting therefor the words "either House of Parliament";
- (b) by deleting subclause (3) and substituting therefor the following subclause—

"(3) The Code of Conduct regulating the conduct of Members of the respective House of Parliament shall be as set out in the Fourth Schedule."
- (c) in subclause (4) by deleting the words "and Code of Conduct" appearing immediately after the words "copies of orders";

NEW SCHEDULES

THAT, the Bill be amended by inserting the following new schedules immediately after the Second Schedule—

THIRD SCHEDULE

CONSIDERATION OF REPORT BY THE

COMMITTEE OF POWERS AND PRIVILEGES

(s. 16 (7))

1. Every Report by the Committee of Powers and Privileges concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a member of that Committee on the Table of the House.
2. If the Report does not recommend any disciplinary action there shall be no further proceedings whatsoever in respect thereof, other than (where necessary) further inquiry and Report by the Committee of Powers and Privileges.
- 3.(1) If the Report recommends any disciplinary action, a member of the Committee of Powers and Privileges shall as soon as possible after the report has been laid, but after giving at least one day's previous notice, move that the House adopts the Report.
(2) A Motion to adopt the Report shall be debated in the usual manner and in the open; except that—
 - (a) in exceptional circumstances to be determined by the Speaker, strangers maybe ordered to withdraw throughout the debate; and
 - (b) no amendment may be moved, other than an amendment of the disciplinary action recommended by the Report or an amendment to the effect that the Report be referred back to the Committee of Powers and Privileges for further inquiry.
4. Where the House adopts any recommendation of the Report for disciplinary action, with or without amendment, the Speaker shall forthwith take action accordingly.

FOURTH SCHEDULE

CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT

(s. 41(3))

- | | |
|---|---|
| Application and Purpose | 1. (1) This Code applies to and provides a framework of reference for Members of Parliament when discharging their duties and responsibilities.
(2) The purpose of this Code is to create public trust and confidence in Members of Parliament and to protect the integrity of Parliament. |
| Members bound by General Principles of Conduct. | 2. (1) Members are bound by the General Principles of Conduct whenever any of them performs the roles of either House of Parliament set out under Articles 97 and 98 of the Constitution.
(2) The General Principles of Conduct include— <ol style="list-style-type: none">(a) selflessness; |

- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness;
- (f) honesty; and
- (g) leadership.

Members to be faithful, conscientious and impartial.

3. Members of the House shall—

- (a) be faithful and bear true allegiance to the people and the Republic of Kenya.
- (b) faithfully and conscientiously discharge their duties and obey, respect, uphold, preserve, protect and defend the Constitution and the rule of law;
- (c) do right to all persons in accordance with the Constitution and the laws and conventions of Parliament; and
- (d) promote unity among Kenyans, irrespective of race, tribe, colour, creed or sex.

Members to act in the public interest.

4. Members of the House shall, in the conduct of their parliamentary duties, act in the public interest, and resolve any conflict between their personal interest and the public interest in favour of the public interest.

Members not to accept improper reward.

5. Members of the House shall not—

- (a) accept or agree to accept any financial inducement as an incentive or reward for the performance of their duties;
- (b) seek to profit or profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services; or
- (c) incur a financial or other obligation that unduly influences the Member in the performance of his or her duties.

Members to register interests.

6. (1) Members of the House shall—

- (a) register with the Office of Standards and Ethics all financial and non-financial interests that may reasonably influence their parliamentary actions;
- (b) before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants, declare any relevant interest in the context of parliamentary debate or the matter under discussion;
- (c) observe any rules agreed of the House in respect of financial support for Members or the facilities of the House

(2) A relevant interest is an interest that may be seen by a reasonable member of the public to influence the way in which a Member

discharges his or her parliamentary duties.

(3) Members shall ensure that registered interests are accurate and updated within one month of any change in particulars.

Members to uphold the dignity of the House.

7. A member of the House shall uphold the dignity and integrity of the House by—

(a) promoting respect for the House and its institutions at all times.

(b) ensuring that the member's non-parliamentary activities do not interfere with or compromise the member's official duties or bring the House into disrepute.

Members to treat others with respect.

8. A member of the House shall treat other members with respect and strive to have cordial relations with all other members.

Members' official duties to take precedence.

9. A member of the House shall ensure that parliamentary duties of the member take precedence over the member's other activities.

Members to abide by Code.

10. Members undertake to abide by this Code upon taking the oath of office and at the start of each Parliament.

Members to comply with General Code.

11. A member of the House shall comply with the requirements imposed under the General Leadership and Integrity Code set out in Part II of the Leadership and Integrity Act, 2012.

No. 19 of 2012.

Committee to enforce Code, prescribe penalties for breach.

12. The Committee shall enforce this Code and have power to recommend penalties for its breach similar to penalties for breach of parliamentary privilege.



HON. JUSTIN MUTURI, EGH, MP
CHAIRPERSON, COMMITTEE OF PRIVILEGES