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REPUBLIC OF KENYA



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20/11/18

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (SECOND SESSION)



REPORT OF
THE COMMITTEE OF POWERS AND PRIVILEGES

ON THE INQUIRY INTO ALLEGATIONS OF BRIBERY OF MEMBERS OF THE NATIONAL ASSEMBLY DURING CONSIDERATION OF THE REPORT OF THE JOINT COMMITTEE OF THE DEPARTMENTAL COMMITTEES ON TRADE, INDUSTRY AND CO-OPERATIVES, AND AGRICULTURE AND LIVESTOCK ON THE INQUIRY INTO IMPORTATION OF ALLEGED ILLEGAL AND CONTAMINATED SUGAR INTO THE COUNTRY

National Assembly,
Parliament Buildings
NAIROBI

November, 2018

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1.0 Preface

The Committee of Powers and Privileges is established pursuant to Section 15 of the Parliamentary Powers and Privileges Act 2017. The Committee comprises of the Speaker as Chairperson and fourteen other Members. The Committee is broadly responsible for handling matters concerning powers, privileges and immunities of the House, members and staff. In particular, the Committee is mandated to, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a member alleged to constitute a breach of privilege, and report to the House its findings together with such recommendations, as it considers appropriate.

Further, the National Assembly Standing Orders assigns to the Committee the duty to inquire into allegations of absence by Members from parliamentary proceedings exceeding eight sittings within a session. The committee is also mandated to enforce the Codes of Conduct under Chapter Six of the Constitution, the Leadership and Integrity Act, the Public Officer Ethics Act and the Fourth Schedule of the Parliamentary Power and Privileges Act, and to recommend necessary sanctions following a disciplinary hearing.

The Constitution of Kenya (2010), which is now in its eighth year of implementation, heralded a paradigm shift in the enforcement of the principles of leadership and integrity for holders of public offices. Consequently, this new dispensation necessitated enactment of various legislations relating to leadership and integrity, powers, privileges and immunities, together with Codes of Conduct. Article 117 of the Constitution of Kenya provides that *“there shall be freedom of speech and debate in Parliament ... 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”*. Through the enactment of the Parliamentary Powers and Privileges Act in June 2017, the law relating to the powers, privileges and immunities of Members was changed to accord with the new Constitution. The new law repealed the National Assembly (Powers and Privileges) Act (Chapter 6 of the Laws of Kenya) of 1952. The current Committee of Powers and Privileges, which was reconstituted in February 2018, is the first

to operate and determine matters relating to powers, privileges and immunities, absence of members from the House, registration of members' interests and enforcement of Codes of Conduct under the statutes.

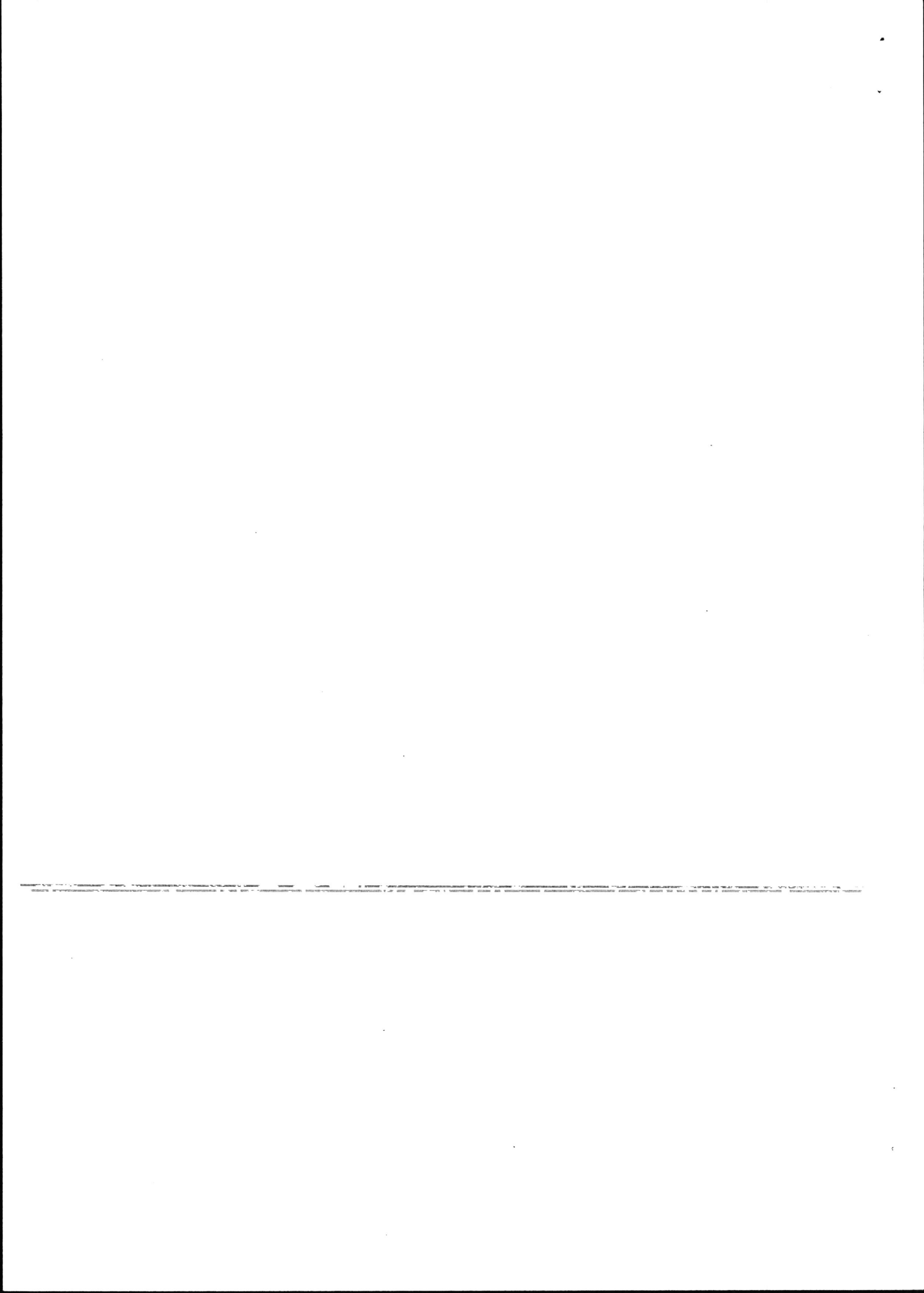
1.1. Acknowledgement

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their immense contribution to the inquiry that culminated in this Report. The Committee wishes to also thank the Offices of the Speaker and the Clerk of the National Assembly for the 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 timely preparation of this Report.

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



THE HON. JUSTIN B. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY/CHAIRPERSON



2.0 ESTABLISHMENT AND MEMBERSHIP OF THE COMMITTEE

2.1. Establishment of the Committee of Powers and Privileges

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

2.2. Membership of the Committee of Powers and Privileges

The membership of the current Committee comprises of the following Members –

Speaker/Chairperson

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

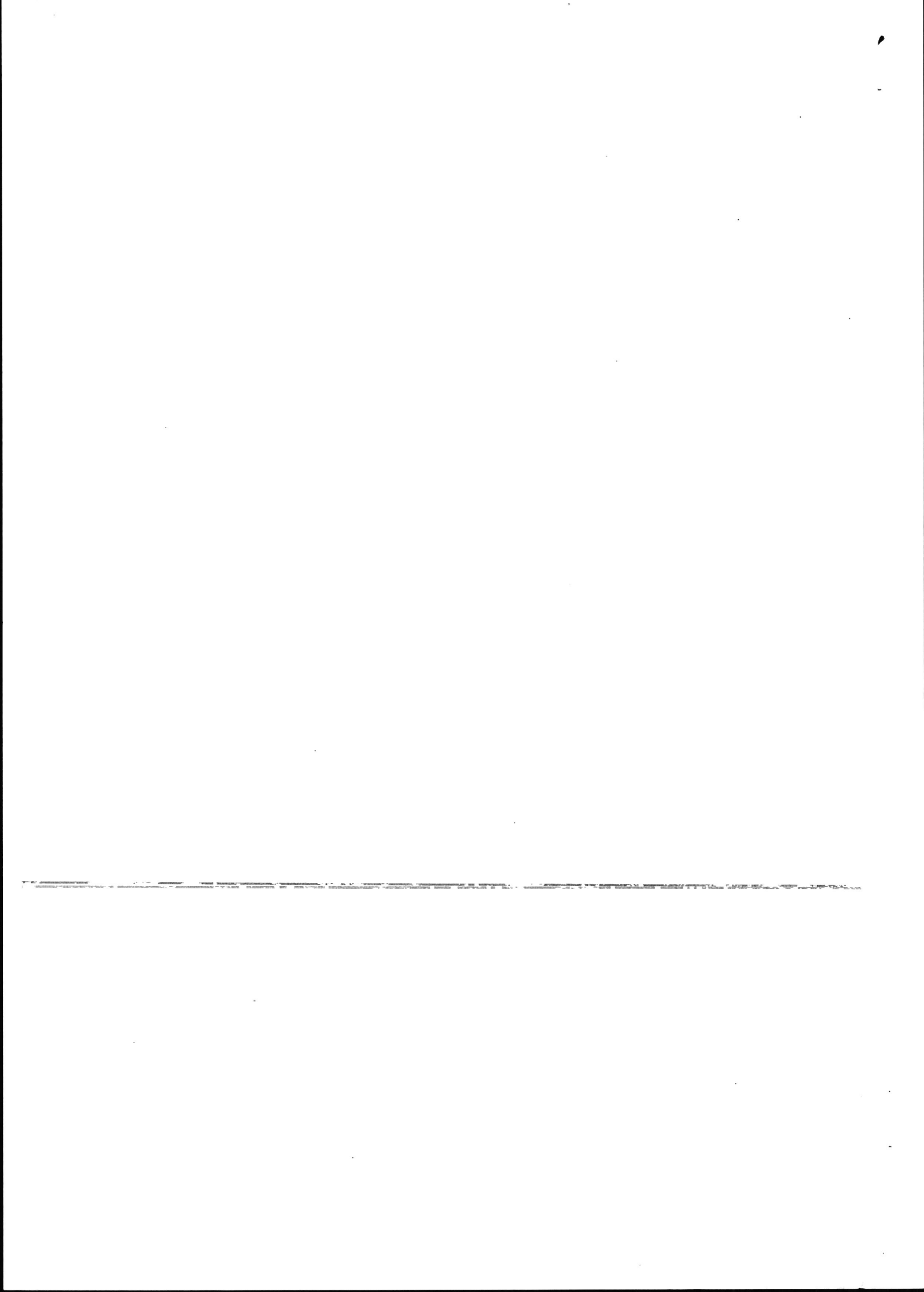
Members

1. The Hon. Peter Mungai Mwathi, M.P.
2. The Hon. Andrew Mwadime, MP
3. The Hon. Jude L. Kangethe Njomo, M.P.
4. The Hon. Francis Chachu Ganya, M.P.
5. The Hon. Shimbwa Omar Mwinyi, MP
6. The Hon. James Mathew Onyango K' Oyoo, MP
7. The Hon. Beatrice Pauline Cheron Kones, M.P.
8. The Hon. Anthony Githiaka Kiai, M.P.
9. The Hon. Vincent Kipkurui Tuwei, M.P.
10. The Hon. Gladwell Jesire Cheruiyot, M.P.
11. The Hon. Marselino Malimo Arbelle, M.P.
12. The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, M.P.
13. The Hon. Danson Mwakuwona Mwashako, MP
14. The Hon. Vincent Kemose Mogaka, MP

Committee Secretariat

The Committee's operations are facilitated by a Secretariat comprising of the following officers -

1. Mr. Kipkemoi arap Kirui - Principal Clerk Assistant
2. Ms. Jemimah Waigwa - Legal Counsel
3. Mr. Benson Inzofu - Third Clerk Assistant
4. Ms. Anne Shibuko - Third Clerk Assistant
5. Ms. Clare Kidombo - Research Officer
6. Mr. Donald Manyala - Research Officer



3.0 MANDATE OF THE COMMITTEE

The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012, the Parliamentary Powers and Privileges Act, 2017 and the National Assembly Standing Orders, which assigns to the Committee various functions, which include the following:

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

Section 15(4)(a) of the Parliamentary Powers and Privileges Act, 2017 mandates the Committee to inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege in terms of section 16 of the Act. The breaches contemplated under section 16 are –

- (a) the unauthorized publication of any journal, if the publication of the journal is prohibited by or in terms of the Standing Orders or an order or resolution of Parliament, any journal purporting that it has been published under the authority of Parliament or a committee or the Speaker while it has not been published under such authority, or any journal purporting that it is a verbatim account of the proceedings of Parliament or a committee while it is not such account;
- (b) assaulting, obstructing, molesting or insulting etc.; improper influence in contravention of sections 25, 26 or 28 of the Act;
- (c) committing offences in relation to witnesses¹, including -
 - (i) failing to attend at the time and place specified in a summons, without sufficient cause, having been duly summoned;
 - (ii) failing to remain in attendance until excused from further attendance by the person presiding at the inquiry;
 - (iii) refusing to be sworn in or to make an affirmation as a witness;

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

- (iv) failing or disobeying, without sufficient cause, to answer fully and satisfactorily all questions lawfully put to the person;
- (v) failing or disobeying to produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce; and on conviction, such offences attract a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both;
- (vi) other serious offences in relation to witnesses², including -
- threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under this Act;
 - using abusive language directed at a member, a committee or a House of Parliament;
 - threatening or obstructing another person in respect of evidence to be given before Parliament or a committee;
 - inducing another person to refrain from giving evidence to or to produce a document before Parliament or a committee; or
 - inducing another person to give false evidence before Parliament or a committee;
 - assaulting or penalising or threatening another person or deprives the person of any benefit on account of the giving or proposed giving of evidence before Parliament or a committee;
 - with intent to deceive or mislead Parliament or a committee, producing a false, untrue, fabricated or falsified document; or
 - wilfully furnishing Parliament or a committee with information which is false or misleading or makes a statement before Parliament or committee that is false or misleading, and on conviction, such offences attract a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment;

² *Ibid*