

COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY

THIRD ASSEMBLY – SECOND SESSION

1<sup>ST</sup> REPORT OF THE SELECT COMMITTEE ON POWERS AND PRIVILEGES ON  
INDUCTION WORKSHOP HELD FROM 1<sup>ST</sup> – 4<sup>TH</sup> DECEMBER, 2022 AT TRAVELLERS  
HOTEL, MOMBASA COUNTY.

Clerk's Chambers  
Nairobi City County Assembly  
City Hall Buildings  
Nairobi

*Paper laid by  
Hon. Kadu, MCA  
on 12th April, 2023  
@ S.V.C.O.  
12/4/2023.*

DECEMBER 2022



## 1.0. PREFACE

### 1.1. Establishment and Mandate

Hon. Speaker,

The Committee on Powers and Privileges is established pursuant to the Standing Order 183 as read together with Section 15 of the County Assemblies Powers and Privileges Act, 2017. The committee consists of fourteen (14) members being; the Speaker as the Chairperson and thirteen (13) other Members of the Assembly appointed in accordance with the Standing Orders.

The foundational basis for the mandate of the Committee is Article 196 of the Constitution, which speaks to public participation and County Assembly Powers, Privileges and Immunities.

It is on the basis of the foregoing that parliament enacted the County Assemblies Powers and Privileges Act, 2017, from whence the Committee draws its specific mandate under Section 15. The Committee is tasked with the duty to enforce codes of ethical conduct and integrity. Also, the committee draws its mandate from the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012 and the Regulations thereon; and the County Assembly Standing Orders.

The committee's mandate as outlined under Section 15 of the County Assemblies Powers and Privileges Act, 2017 includes to;

- a. Inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege; and*
- b. Either of its own motion or a result of a complaint made by any person, inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege*
- c. Investigate, table reports and make recommendations to the floor of the house*
- d. Issue summons to witnesses to appear before the committee,*
- e. Receive evidence and to request for and receive papers and documents from the Government and the public.*

### 1.2. Committee Membership

The Select Committee on Powers and Privileges comprises the following members:

1. The Hon. Kennedy Okeyo Ng'ondi, MCA – Speaker (Chairperson)
2. The Hon. David Magoba, MCA – Vice Chairperson
3. The Hon. Asli Muhamed, MCA



4. The Hon. Maurice Ochieng, MCA
5. The Hon. Hamisi Maleya, MCA
6. The Hon. Absolom Odhiambo, MCA
7. The Hon. Lily Kidenda, MCA
8. The Hon. Benter Obiero, MCA
9. The Hon. Eutychus Mukiri
10. The Hon. Clement Nganga
11. The Hon. Kame Adano
12. The Hon. Susan Makungu
13. The Hon. John Mwaniki Kwenya, MCA
14. The Hon. Hashim Kamau, MCA

### 1.3. Committee Secretariat

The Committee is currently facilitated by:-

1. Mr. Austine Inyundele– Senior Clerk Assistant
2. Mr. Kevin Wasike - Senior Clerk Assistant

### 2.1 Background of the Committee Induction Workshop

Hon. Speaker,

The County Assembly Committees are extensions of the Assembly established under the County Assembly Standing Orders and in accordance with Section 14 of the County Governments Act, 2012. The Committees are to supposed to perform functions that the Assembly is not well fitted to consider in plenary. Following the constitution of County Assembly Committees on 27<sup>th</sup> October, 2022 and consequent election of Chairpersons, the Select Committee on Powers and Privileges held its induction workshop from 1<sup>st</sup> to 4<sup>th</sup> December, 2022 at Travelers Hotel, in Mombasa County. The objectives of the induction workshop included the following; -

- i) To review the understanding of enhance member's knowledge on the importance and application of the immunities and privileges for legislatures and internalize the working relationship of the code of conduct for state and public officers and the said immunities and privileges; and
- ii) Discuss the relevance of the various statutes to the work of the Committee as well as salient procedures in the conduct of the core mandate of the Committee.

### 2.2 Acknowledgement.

Hon. Speaker,

I wish to acknowledge with gratitude the Offices of the Speaker and the Clerk of the County Assembly for the support extended to the Committee in execution of its mandate.

I also thank the Secretariat for their input and valuable contribution during compilation of this report.

Finally, I would like to appreciate the Members of the Committee on Powers and privileges for their commitment and valuable contributions towards ensuring the Committee implements its mandate.

Hon. Speaker, it is therefore my pleasant duty and privilege, on behalf of the Members of the Select Committee on Powers and Privileges to present the report of the induction workshop which was held from 1<sup>st</sup> – 4<sup>th</sup> December, 2022 at Travellers Hotel, Mombasa County.

THE HON. KENNEDY NGONDI, MCA (CHAIRPERSON/ HON. SPEAKER)

Signed.....

Date .....



## 2.3 INTRODUCTION

The workshop entailed the overview establishment and role of the Committee in achieving its mandate of the County Assembly, legal underpinning of the Committee in the Assembly, Committee mandates and specifically review the understanding and enhance member's knowledge on the importance and application of the immunities and privileges for legislatures and internalize the working relationship of the code of conduct for state and public officers and the said immunities and privileges; and the relevance of the various statutes to the work of the Committee as well as salient procedures in the conduct of the core mandate of the Committee.

### PRESENTATION BY THE FACILITATOR

#### INTRODUCTION

The Committee was trained by Mr. Nzofu Mwale from parliament who facilitated discussions on the topics as follows:

- On conduct of state officers, the facilitator reiterated that, as state officers, the good conduct of Members of County Assembly both in public and private life is fundamental to the dignity of the office they hold in public trust for the electorate
- The exercise of the authority of a member's office must be in a manner that promotes public confidence ♣ The conduct of Members of County Assembly within and outside precinct of Assembly is regulated by various laws which seek to uphold the dignity of their office and to enable smooth execution of the Assembly's mandate

#### CONSTITUTIONAL PROVISIONS ON CONDUCT OF MEMBERS

- The Constitution sets out codes of leadership to be founded on ethics, national values, integrity and good governance
- Article 10 sets out the National values and principles of governance & Article 232 sets out the values and principles of public service
- Article 75 of the Constitution (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids-
  - (a) any conflict between personal interests & public or official duties;
  - (b) compromising any public or official interest in favour of a personal interest; or
  - (c) demeaning the office the officer holds.

#### Constitutional provisions on Conduct of Members

The Committee was informed that breaches outside Chamber/committee rooms are subject to disciplinary processes by the Committee of Privileges or externally by criminal justice

system. Article 75 of the Constitution stated that a person who contravenes clause (1), or Article 76, 77 or 78 (2)-

- (a) shall be subject to the applicable disciplinary procedure for the relevant office; and
- (b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

#### Leadership and Integrity Act

The Committee was informed that the Act was enacted to give effect to Chapter Six of the Constitution and Section 6 of the Act prescribes a general Leadership and Integrity Code for State officers.

The provisions of Chapter Six of the Constitution and the provisions of the Public Officer Ethics Act, 2003 forms part of the code. The Committee was also informed that If any provision of the Act is in conflict with the Public Officer Ethics Act, 2003 the Act prevails.

#### General Leadership and Integrity Code

The general leadership and integrity code is prescribed in the Leadership and Integrity Act, 2012 and the Public Officer Ethics Act, 2003 and include the following:

- a) **Rule of Law:** requires that a Member of County Assembly to respect and abide by the Constitution and the law. Also in s. 10 of Public Officer Ethics Act
- b) **Public trust:** states that the exercise the responsibility and authority conferred upon him/her is in the best interest of Kenyans
- c) **Responsibility:** requires that officers to take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office he or she holds
- d) **Performance of duties:** requires upon public officers to:
  - carry out duties of the office in a manner that maintains public confidence in the integrity of the office;
  - treat members of the public and other public officers with courtesy and respect; • not discriminate against any person, except as is expressly provided by the law;
  - to the extent appropriate to the office, maintain high standards of performance and level of professionalism within the organization; and
  - if the State officer is a member of a professional body, observe and subscribe to the ethical and professional requirements of that body in so far as the requirements do not contravene the Constitution or this Act
  - Also provided for in s. 8 of the Public Officer Ethics Act

#### Overarching Laws Governing Conduct of Members

e) Professionalism: requires upon public officers to:

- Carry out the duties of the office efficiently and honestly; in a transparent and accountable manner; keep accurate records and documents relating to the functions of the office; report truthfully on all matters of the organization which they represent and observe professionalism.

f) Financial responsibility:

- States that a State officer not to use their office to unlawfully or wrongfully enrich himself or herself or any other person or accept a personal loan or benefit which may compromise the State officer in carrying out his or her duties

g) Self-declaration

- States that any person intending to be appointed to a State office shall submit to the Commission a self-declaration form in the form set out in the First Schedule.

h) Observance of moral and ethical requirements: requires upon officers:

- demonstrate honesty in the conduct of public affairs subject to the Public Officer Ethics Act No. 4 of 2003
- not engage in activities that amount to abuse of office
- accurately and honestly represent information to the public
- not engage in wrongful conduct in furtherance of personal benefit
- not misuse public resources
- not discriminate against any person, except as expressly provided for under the law
- not falsify any records
- not engage in actions which would lead to the State officer's removal from the membership of a professional body in accordance with the law; and
- not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap. 63), the Sexual Offences Act (No. 3 of 2006), the Counter-Trafficking in Persons Act (No. 8 of 2010), and the Children Act (No. 8 of 2001). Also in s. 21 of Public Officer Ethics Act

i) Gifts or benefits in kind (s. 14): provides that a State officer shall not:

- accept or solicit gifts, hospitality or other benefits from a person who:
  - o has an interest that may be achieved by the carrying out or not carrying out of the State officer's duties;
  - o carries on regulated activities with respect to which the State officer's organization has a role; or
  - o has a contractual or legal relationship with the State officer's organization



- Accept gifts of jewelry or other gifts comprising of precious metal or stones ivory or any other animal part protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora; or any other type of gift specified by the Commission in the regulations. It also provides that a state officer shall not receive a gift which is given with the intention of compromising the integrity, objectivity or impartiality of the State officer
- A State officer who receives a gift or donation shall declare the gift or donation to the Commission and the public entity General Leadership and Integrity Code Wrongful or unlawful acquisition of property
- A State officer shall not use the office to wrongfully or unlawfully influence the acquisition of property

j) Conflict of interest: requires that

- A State officer or a public officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties.
- A State officer or a public officer whose personal interests conflict with their official duties shall declare the personal interests to the public entity or the Commission.

In this regard, the Clerk is required to maintain Register of Interests

k) Participation in tenders: states that:

- A State officer or a public officer shall not participate in a tender for the supply of goods or services to a public entity in which he or she is serving or is otherwise similarly associated, but the holding of shares by a State officer or a public officer in a company shall not be construed as participating in the tender of a public entity unless the State officer or public officer has a controlling shareholding in the company

l) Public collections: provides that:

- A State officer shall not solicit for contributions from the public for a public purpose unless the President has, by notice in the Gazette, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law
- A State officer shall not participate in a public collection of funds in a way that reflects adversely on that State officer's integrity, impartiality or interferes with the performance of the official duties • Also provided for in s. 13 of POEA

m) Bank accounts outside Kenya: provides that:



- Subject to Article 76(2) of the Constitution or any other written law, a State officer shall not open or continue to operate a bank account outside Kenya without the approval of the Commission

n) Acting for foreigners: states that:

- A State officer shall not be an agent of, or further the interests of a foreign government, organization or individual in a manner that may be detrimental to the security interests of Kenya, except when acting in the course of official duty • Also provided for in s. 14 of the Public Officer Ethics Act.

o) Care of property: States that:

- A State officer shall take all reasonable steps to ensure that public property in the officer's custody, possession or control is taken care of and is in good repair and condition
- A State officer shall not use public property, funds or services that are acquired in the course of or as a result of the official duties, for activities that are not related to the official work of the State officer
- State officer shall return to the issuing authority all the public property in their custody, possession or control at the end of the appointment, or election term.

p) Misuse of official information requires that a State officer shall not directly or indirectly use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether financial or otherwise.

q) Political neutrality provided for in Section 23 of the Act and requires that an appointed State officer, other than a Cabinet Secretary or a member of a County executive committee shall not, in the performance of their duties.

r) Impartiality: the Section states that:

- A State officer shall, at all times, carry out the duties of the office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and shall not practice favoritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

s) Giving advice: provided for in Section 25 of the Act and requires upon State officer who have a duty to give advice to give honest, accurate and impartial advice without fear or favour.

t) Gainful employment states that Subject to subsection (2), a State officer who is serving on a full time basis shall not participate in any other gainful employment.

In this regard, gainful employment means work that a person can pursue and perform for money or other form of compensation or remuneration which is inherently incompatible with the responsibilities of the State office or which results in the impairment of the judgement of the State officer in the execution of the functions of the State office or results in a conflict of interest

u) Offers of future employment: provides that:

- A State officer shall not allow himself or herself to be influenced in the performance of their duties by plans or expectations for or offers of future employment or benefits.
- A State officer shall disclose, in writing, to the public entity and the Commission, all offers of future employment or benefits that could place the State officer in a situation of conflict of interest General Leadership and Integrity Code Former State officer acting in a Government or public entity matter (s. 28)
- A former State officer shall not be engaged by or act for a person or entity in a matter in which the officer was originally engaged in as a State officer, for at least two years after leaving the State office. General Leadership and Integrity Code Misleading the public(s. 29)
- A State officer shall not knowingly give false or misleading information to any person.

v) Falsification of records: provided for in Section 30 of the Act and states that a State officer shall not falsify any records or misrepresent information to the public. Further, subject to Article 78(3) of the Constitution, a State officer who acquires dual citizenship shall lose his or her position as a State officer.

w) Conduct of private affairs, provided for in Section 32 of the Act and states that:

- A State officer shall conduct private affairs in a manner that maintains public confidence in the integrity of the office • Also in s. 20 of the Public Officer Ethics Act General Leadership and Integrity Code Tax, financial and legal obligations (s. 33)
- A State officer shall pay any taxes due from him or her within the prescribed period.
- A State officer shall not neglect their financial or legal obligations.

x) Code Bullying

Section 34 of the Act states that State officer shall not bully any person. In this context, bullying includes repeated offensive behaviour which is vindictive, cruel, malicious or humiliating and is intended to undermine a person General Leadership and Integrity Code

y) Acting through others Section 35 states that a State officer contravenes the Code if the officer:

- Allows or directs a person under their supervision or control to do anything that is in contravention of the Code.



— causes anything to be done through another person that would constitute a contravention of the Code if done by the State officer; or

**z) Reporting improper orders: States that:**

— If a State officer considers that anything required of them is in contravention of the Code or is otherwise improper or unethical, the State officer shall report the matter to the Commission. Also provided for in s. 25 of the Public Officer Ethics Act

**PARLIAMENTARY PRIVILEGES**

The Committee was informed that Parliamentary privilege refers to the powers and immunities possessed by individual Houses of Parliament, their members, and other participants in parliamentary proceedings, without which they could not perform their functions. It was noted that the privileges are provided to legislatures in order to work effectively and efficiently and to discharge its functions without any kind of obstruction or interference.

— Sir Erskine May - “Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.

In addition, the Committee was informed that:

- The rights exceed those possessed by other bodies or individuals and are to a certain extent an exemption from the general law.
- Privileges and immunities are akin to exemptions from common law. They place honorable Members in a hallowed position. Rationale of Privilege & Immunity
- Protects the House from being obstructed in the execution of its functions or members being obstructed in the performance of their duties.
- In other words, without parliamentary privileges Parliament and members will not be able to discharge their legislative, oversight and representative functions under the Constitution effectively.

**Sources of Parliamentary Powers and Privileges**

The Committee was informed that legislatures in Kenya derive their privileges, powers and immunities from:

1. The Constitution of Kenya
2. The County Governments Act
3. The County Assemblies Powers and Privileges Act, 2017

4. Standing Orders of both Houses of Parliament 4. Standing Orders of the County Assembly Usages, precedents, and practice of the Commonwealth largely based on the Parliament of the United Kingdom.

The Committee noted that the privileges are enjoyed individually by Members or collective by the Assembly Privileges extended to Members individually 1. Freedom of Speech in Parliament.

- Art 117(1) of the Constitution provides that- “There shall be freedom of speech and debate in Parliament”.
- Section 8 of the County Assemblies Powers and Privileges Act No civil or criminal proceedings may be instituted in any court or tribunal against a member of a county assembly by reason of any matter said in any debate, petition, motion or other proceedings of a county assembly
- The privileges and immunities are secured to members not for their personal benefit but to enable them to discharge their functions of representing their constituents without fear of civil or criminal prosecution.

#### a) Freedom of Speech in Parliament

The Committee was informed that this privilege:

- Enables free, frank and fearless discussion in the legislature
- Allows members to make statements or allegations about outside bodies or persons, which they may hesitate to make without the protection of privilege’
- Members are able to speak and criticize without fear of penalty Limitations on Freedom of Speech
- The privilege of freedom of speech protects speeches and debates made in the House or in a committee.

However, it was noted that this privilege does not extend to the debates and speeches outside of Parliament. Therefore, it would be prudent for members to be aware that utterances which are absolutely privileged when made within a parliamentary

#### b) Limitations on Freedom of Speech

The Committee was informed that a speech may not be privileged, when repeated in outside of Assembly such as –

- in a press release;
- on an Internet site;
- radio interview;
- at a public meeting;
- in the constituency office;



- The member who was chairing a Parliamentary Select Committee that was inquiring into murder of the late Dr. Ouko, was ordered to pay 5M in damages to the respondent for defaming him.
- It was held that the defamatory statements complained of were not privileged since they were uttered in the car park of Parliament on a Saturday afternoon and not during the proceedings of Parliament or the PSC.

c) Immunity from legal proceedings

- Section 11 of the County Assemblies Powers and Privileges Committee
- Protects Members and Assembly Leadership from civil or criminal processions relating to discharge of legislative work. Surendra v. Naba Krishna – Court found that the offending speech was privileged and that the Court had no jurisdiction
- Clerk and staff are also protected from civil or criminal liability or enjoined in such proceedings relating to discharge of legislative work.

d) Freedom from arrest for civil debt during session

The Committee was informed that Section 12 of the County Assemblies Powers and Privileges Act provides that “*A member shall not be liable to arrest for any civil debt except a debt the contraction of which constitutes a criminal offence, whilst going to, attending at or returning from a sitting of a Assembly or any committee.*”

However, the Committee noted that this privilege does not extend to arrests or imprisonment on a criminal charge e.g Martin Shikuku and Jean Marie Seroney case Shikuku sarcastically referred to KANU government as “dead” then Deputy Speaker of the House, the late Jean Marie Seroney defended Shikuku by saying his remarks were self explanatory and needed no further substantiation Both Shikuku and Seroney were arrested within the precincts of Parliament and placed on detention without trial. In addition, in 200, Embakasi MP David Mwenje and his Makadara counterpart, Reuben Ndolo, were holed up in Parliament's precincts where they took advantage of its privileged status to avoid arrest.

e) Prohibition of service of legal process within the precincts of Assembly

The Committee was informed that Section 7 of the County Assembly Powers and Privileges Act Limits application of Article 48 of the Constitution to Members of the Assembly relating to conduct of business and affairs of the Assembly

f) Prohibition against giving evidence of proceedings

The Committee noted that Section 13 of the County Assemblies Powers and Privileges Act:

- Exempts Members or officers of the House from giving evidence or producing documents in courts of law, relating to the proceedings of the House without the permission of the Speaker”.
- Limits the right to access to information (Art. 35 of the Constitution)

g) Postponement of disqualification to enable appeal

This is provided for in Section 9 of the County Assemblies Powers and Privileges Act and it exempts Members from being disqualified to run for election until all appeal mechanisms are exhausted.

h) Privileges and powers extended to the House collectively

- Proceedings in Assembly not to be questioned in the courts
- Section 10 of the County Assemblies Powers and Privileges Act – decisions and proceedings in accordance with the Act are insulated from being questioned in courts
- Intended to allow the Assembly to conduct business without fear for review
- Case NO. 129 of 2015 R versus NA & Ex Parte Ababu Namwamba. The Court held that the National Assembly had the responsibility of taking action and it would be crossing its boundaries were it to direct the National Assembly on the manner it ought to have handled the matter
- Limited by Article 165(6) of the Constitution (High Court has supervisory power over actions taken by all other bodies)
- Judicial Review Application No. 258 OF 2016 James Opiyo Wandayi versus National Assembly & 2 Others. The Court stayed the decision made by the Speaker to suspend Hon. Wandanyi.

i) The power to legislate

The Committee was informed that Article 185 of the Constitution preserves the Assembly’ power to legislate. “ *The legislative authority of a county is vested in, and exercised by, its county assembly..... Assembly may, by law, delegate its legislative power to executive to make Regulations, which are subject to its approval*”

j) The Power of the Assembly to regulate its own affairs

The Committee noted that legislative bodies operate within a set of rules, practices and traditions that regulate among other things, the calendar of the Assembly and the orderly conduct of business. To this effect, Section 14(1) of the County Governments Act provides for powers to the county assembly to make its own Standing Orders and establish committees

k) Power to regulate admittance of visitors/public

The Committee noted that:



- Assemblies have power to safeguard access to precincts
- Section 4 County Assemblies Powers and Privileges empowers the Assembly (through Speaker) to determine admittance and presence of security organs within precincts of Assembly
- Section 5 of the County Assemblies Powers and Privileges Act gives power to the Assembly to regulate admittance of the public to its precincts. Speaker's Rules
- Section 7 of the County Assemblies Powers and Privileges Act reserves the Assembly's power to designate place for the public to picket, demonstrate and present petitions
- 5. Power to summon witnesses
- Section 18 of the County Assemblies Powers & Privileges Act grants Assembly/Committees power to invite/summon any person, including public officer to appear before it to give evidence or provide information/document
- Section 19 of the Act gives power to Assembly to examine witnesses on oath/affirmation to provide or verify information
- Section 22 obligates every public officer with the duty to give evidence to county assembly/its committees
- Article 195 of the Constitution contemplates that the power to summon witnesses is similar to that of the High Court.

#### l) Power to summon witnesses –

The Committee was informed that Section 20 of the Act safeguards obligations, rights and privileges of witnesses as follows: – same rights and privileges as those applicable to a person appearing before the Court. In addition, evidence given or documents provided on oath/affirmation cannot be used against a witness in court or any other place outside the county assembly except in proceedings pursuant to section 27(1)(c) or (3)(g) ( failure or disobedience to answer fully or satisfactorily questions lawfully put to them or produce documents pursuant to section 18).Further, right to fair hearing and fair administrative action is limited – reasonable compensation for costs incurred to appear before Assembly or its committees

#### m) The power to discipline Members

The Committee noted that this power is derived from Powers and Privileges Act and section 14(1) of the County Governments Act pursuant to which the Assembly prescribes disorderly conduct and sanctions. In addition, the power to discipline members found guilty of misconduct or conduct unworthy of the House is dispensed by the Speaker or the Presiding Officer in accordance with Standing Order 107; or b) referral, by the Speaker, of a matter to the Committee on Powers and Privileges.

#### n) Precincts of the Assembly

The Committee was informed that precincts comprises the area of land and every building or part under the county assembly's control and include: chambers and whole buildings, offices, Committee rooms and other places provided for use, accommodation and connected to proceedings (Standing Order 2)

It was note that Speaker has sole authority to admit an officer of a national security organ to enter or remain in the precincts and that Public are allowed to access precincts. Further, no service of civil process except for employees and in instances for attachment of a member's salary. Article 48 (right of access to justice) is limited within the precincts

#### PROHIBITED ACTS IN RESPECT TO COUNTY ASSEMBLY AND ITS MEMBERS

The Committee was informed that Section 26 of the County Assemblies Powers and Privileges Act provides that A person shall not—

- assault, threaten, use abusive language, obstruct, molest or insult any member proceeding to, being within or leaving the precincts of a county assembly, or endeavour to compel any member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before a county assembly or any committee;
  - assault, threaten, use abusive language, interfere with, molest, resist or obstruct any member of staff while in the execution of his or her duty;
  - assault or threaten a member or unlawfully deprive a member of any benefit on account of the member's conduct in a county assembly;
  - while a county assembly or a committee is sitting, create or take part in any unlawful disturbance which interrupts or is likely to interrupt the proceedings of a county assembly or any committee while a county assembly or the committee is sitting; or
- Prohibited acts in respect to county assembly ant its members
- fail or refuse to comply with an instruction by a duly authorized member of staff or a police officer regarding:
    - (i) the presence of the public in the precincts of a county assembly including a meeting within the precincts of a county assembly; or
    - (ii) the possession of any article, including a firearm, within the precincts. (2) A person, including a member who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.



Contravention is an offence liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both

**a) Offences relating to witnesses**

The Committee was informed that Section 27(1) outlines the following offences relating to witnesses:

- (a) Having been duly summoned in terms of section 18 fails, without sufficient cause to:
  - (i) attend at the time and place specified in the summons; or
  - (ii) remain in attendance until excused from further attendance by the person presiding at the inquiry;
- (b) When called upon under section 18, refuses to be sworn in or to make an affirmation as a witness; or
- (c) Fails or disobeys without sufficient cause to—
  - (i) answer fully and satisfactorily all questions lawfully put to the person under section 18;
  - (ii) produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce under section 18.

**Contravention:** a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both. In addition, Section 27(3): a person commits an offence where the person:

- threatens, obstructs, assaults or insults a member of staff or police officer carrying out service of summons issued under this Act;
- uses abusive language directed at a member of a county assembly or its committees;
- threatens or obstructs another person in respect of evidence to be given before a county assembly or a committee;
- induces another person to:
  - (i) refrain from giving evidence to or to produce a document before a county assembly or a committee; or
  - (ii) give false evidence before a county assembly or a committee
- assaults or penalizes or threatens another person or deprives that person of any benefit on account of the giving or proposed giving of evidence before a county assembly or a committee;
- with intent to deceive or mislead a county assembly or a committee, produces a false, untrue, fabricated or falsified document; or

- Willfully furnishes a county assembly or a committee with information which is false or misleading or makes a statement before a county assembly or committee that is false or misleading.

Contravention (s.27(4): Section 27 (4) prescribe a fine not exceeding two hundred thousand shillings or imprisonment of a term not exceeding one year or both

The Committee was further informed that Section 28(1) provides that a person shall not, 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 mean:

- influence a member in the performance of the member's functions as a member;
- induce a member to be absent from a county assembly or a committee at a particular time; or 15 No. 6 of 2017 County Assemblies Powers and Privileges
- attempt to compel a member to declare himself or herself in favor or against a matter pending before or proposed or expected to be submitted to a county assembly or a committee.

#### b) Improper influence of members

The Committee noted that Section 28(2) provides that a member shall not solicit, receive or accept any fee, compensation, gift, reward, favour or benefit of any kind for the member or another person for in respect of:

- (a) voting in any particular manner or not voting on a matter before a county assembly; (b) promoting or opposing anything pending before or proposed or expected to be submitted to a county assembly; or
- (c) making a representation to a county assembly.

#### c) Breaches that constitute misconduct

The Committee was informed that Section 30 of the Act provides that a State officer who is convicted of an offence under this Act shall be deemed to have committed an act of gross misconduct within the meaning of Article 251(1) (b) of the Constitution. Offences relating to access to precincts of a County Assembly are provided for in Section 31 provides and states that:

- (1) A person commits an offence where the person:
  - (a) enters or attempts to enter a chamber of a county assembly or the precincts of a county assembly in contravention of section 5 of this Act;
  - (b) fails or refuses to withdraw from the precincts of a county assembly when ordered to do so; or

(c) contravenes any order made under this Act regulating the admittance of the public or the conduct of the public within the precincts of a county assembly.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

**d) Defamation against a county assembly**

This provided for in Section 32 of the Act and states that a person commits an offence if the person:

(a) publishes any false or scandalous libel on a county assembly, its committees or its proceedings; or

(b) speaks words defamatory of a county assembly, its committees or its proceedings

General penalty is provided for in Section 33 of the Act which provides that a person convicted of an offence under this Act for which no penalty is provided shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.

Applicable to offences for which the law has not expressly provided for under the relevant section.

**e) Request to the Director of Public Prosecutions**

The Committee was informed that Section 34 of the Act opens up assembly to the penal intervention of Director of Public Prosecutions. Where an offence is suspected to have been committed under this Act, the Clerk shall, on the directions of the Speaker, make a request to the Director of Public Prosecutions to take such action as may be appropriate. Further, where an offence is suspected to have been committed under section 26(1)(b), the Clerk shall make a request to the Director of Public Prosecutions to take such action as may be appropriate.

The Committee noted that the Director of Public Prosecutions shall, within thirty days from the date of receipt of a request from the Clerk under subsection (1), and within such other subsequent period as the Speaker may determine, submit a report to the Clerk stating the action taken on the matter.

Section 17(4) states that where a County Assembly finds a member has committed a breach of privilege, the county assembly may, where appropriate, instead of or in addition to the imposition of a penalty under subsection (3), refer the matter to the DPP.

**f) Power of member of staff**



The Committee was informed that Section 35 of the Act provides that every member of staff 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. This is applicable to staff serving summonses

## CONCLUSIONS AND WAY FORWARD

### CONCLUSION

The Assembly Liaison Committee approved the schedule for the induction workshops for all Assembly Committees. Accordingly, the Select Committee on Powers and Privileges undertook its workshop from 1<sup>st</sup> to 4<sup>th</sup> December 2022. The objective of the Committee was to equip the Committee Members with the relevant knowledge regarding the importance and application of the immunities and privileges for legislatures and internalize the working relationship of the code of conduct for state and public officers and the said immunities and privileges and discuss the relevance of the various statutes to the work of the Committee as well as salient procedures in the conduct of the core mandate of the Committee.

### WAY FORWARD

Upon conclusion of the workshop, the Committee adopted the following resolutions:

That,

1. County Assembly to Petition the Senate in order to align Section 10 of the Powers and Privileges Act with the constitution – the County Assembly can petition the Senate by a correspondence;
2. Members of committee to be facilitated with a compendium of laws governing devolution; Standing Orders and Speakers Rules.
3. Committee members to set standards by being role models to other legislatures; curbing breaches or contravention of the laws



MINUTES OF THE SITTING OF THE SELECT COMMITTEE ON POWERS AND PRIVILEGES HELD ON 15<sup>TH</sup> MARCH, 2023 AT 10:00 A.M IN CHAMBER BOARD ROOM, CITY HALL BUILDINGS.

MEMBERS PRESENT:

1. The Hon. David Magoba, MCA - Vice-Chairperson
2. The Hon. Eutychus Mukiri, MCA
3. The Hon. Clement Nganga, MCA
4. The Hon. Kame Adano, MCA
5. The Hon. Hashim Kamau, MCA
6. The Hon. Maurice Ochieng, MCA
7. The Hon. Hamisi Maleya, MCA

MEMBERS ABSENT

1. The Hon. Kennedy Okeyo Ng'ondi, MCA – Speaker (Chairperson)
2. The Hon. Susan Makungu, MCA
3. The Hon. Benter Obiero, MCA
4. The Hon. Asli Muhamed, MCA
5. The Hon. Absolom Odhiambo, MCA
6. The Hon. Lily Akoth Kidenda, MCA
7. The Hon. John Mwaniki Kwenya, MCA

SECRETARIAT

1. Mr. Austine Inyundele – Senior Clerk Assistant (Committee Clerk)

AGENDA

1. Preliminaries (Prayers and Adoption of the Agenda)
2. Confirmation of previous minutes
3. Matters arising
4. *Adoption of Committee's induction report*
5. Any Other Business
6. Adjournment

MIN.001/NCCA/P&PC/NOV/2022 – PRELIMINARIES

The Vice-Chairperson called the meeting to order at 10.00 and opened the meeting with a word of prayer. The Vice-Chairperson then read the agenda of the day which was subsequently adopted for discussion as proposed by Hon. Eutychus Mukiri, MCA and seconded by Hon. Clement Ng'ang'a, MCA.

MIN.002/NCCA/P&PC/NOV/2022 – CONFIRMATION OF PREVIOUS MINUTES

The minutes of the Committee's Sitting that was held on 1<sup>st</sup> March 2023 were read by the Vice-Chairperson and confirmed as the true record of proceedings as proposed by Hon. Eutychus Mikiri, MCA and seconded by Hon. Hashim Kamau, MCA.

MIN.002/NCCA/P&PC/NOV/2022 – MATTERS ARISING

There were no matters arising from the previous minutes

MIN.002/NCCA/P&PC/NOV/2022 – ADPTION OF THE COMMITTEE'S INDUCTION REPORT

The Committee was informed that the substantive agenda of the day was to be the meeting with the delegation from Kakamega County Assembly who had communicated their inability to show up due to matters beyond their control. The Clerk of Kakamega County Assembly would communicate the date they are ready to meet the Committee.

The Committee considered the draft report of its induction workshop that was held from 1<sup>st</sup> to 4<sup>th</sup> December 2022 in Mombasa and adopted it having confirmed that the comments by the Members during the previous meeting of its consideration were taken into account. Hon. Eutyclus Mukiri, MCA proposed and Hon. Hashim Kamau, MCA seconded the adoption of the report. The report will therefore be processed for tabling in the Assembly.

MIN.004/P&PC/NOV/2022 – AOB

- The Committee resolved that the Secretariat does research on the best practice for benchmarking for the Committee
- The Committee resolved that the 3<sup>rd</sup> Quarter workshop night be increased by one (1)

MIN.004/P&PC/NOV/2022 - AOB&ADJOURNMENT

The Committee having dispensed with the business of the day and the time being thirty minutes past Eleven Thirteen (11.13 am), the Vice-Chairperson adjourned the sitting. The date and venue of the next sitting was going to be communicated by notice.

CONFIRMED AS A TRUE RECORD OF THE PROCEEDINGS

	SIGN	DATE
CHAIRPERSON	 .....	5/4/2023 .....
SECRETARY	5/4/2023 .....	 .....