

Approved
SNA
4/12/24



Rt. Hon. Speaker

The report is in
order for tabling.

[Signature]
04/12/24

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION

DIRECTORATE OF LEGISLATIVE AND PROCEDURAL SERVICES
NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES



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

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2024

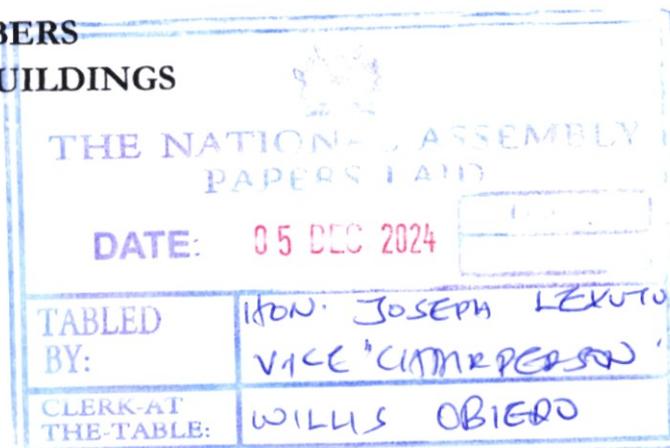


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LIST OF ABBREVIATIONS AND ACRONYMS

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

ANNEXTURES

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

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CHAIRPERSON'S FOREWORD

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

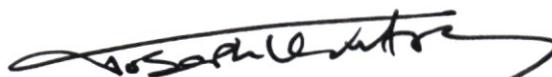
It provides a structured mechanism through which the Executive, Constitutional Commissions and Independent Offices are required to give greater consideration to the issues raised and the recommendations made by Parliament.

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

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

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

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



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

CHAPTER ONE: PREFACE

1.0 ESTABLISHMENT OF THE COMMITTEE

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

receipt of complaint.

- (6) The Committee of Powers and Privileges shall, within fourteen days of the conclusion of an enquiry, table its findings in the relevant House of Parliament together with such recommendations as it considers appropriate.*
 - (7) Each House of Parliament shall consider the report and recommendations by the Committee of Privileges in the manner set out in the Third Schedule.*
3. The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act (Cap. 185B), the Leadership and Integrity Act (Cap. 185C), the Parliamentary Powers and Privileges Act (Cap. 6) and the National Assembly Standing Orders which assigns to the Committee various functions.
 4. The Committee enforces the Rules governing the conduct of Members of Parliament.
 5. The Committee is also responsible for handling matters relating to the declaration of wealth by State officers and holders of Constitutional Commissions and Independent Offices. Custody of the wealth declaration forms by State Officers is vested in the 'responsible Commission'. Section 3 the Public Officer Ethics Act, Cap. 185B defines the responsible Commission for the purposes of members and other designated officers as the Committee of Powers and Privileges of the National Assembly;
 6. The Committee determines what constitutes contempt although the Act does not define what acts or omissions can be termed as being contemptuous, such matters can arguably be determined following the dictates of usages, forms, customs, precedence, procedures and traditions of Parliament as envisaged in section 14 of the Parliamentary Powers and Privileges Act; and
 7. The Committee of Powers and Privileges determines claims of absence of a Member from the House without the permission of the Speaker or where, upon a complaint, a satisfactory explanation for the absence is tenable to the Committee.

1.1 MANDATE OF THE COMMITTEE

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

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

9. Section 15(4)(a) of the Parliamentary Powers and Privileges Act, Cap. 6 mandates the Committee to inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of section 16 of the Act. The breaches contemplated under section 16 are –

(i) the unauthorized publication of any journal, if the publication of the journal is prohibited by or in terms of the Standing Orders or an order or resolution of Parliament, any journal purporting that it has been published under the authority of Parliament or a committee or the Speaker while it has not been published under such authority, or any journal purporting that it is a verbatim account of the proceedings of Parliament or a committee while it is not such account (section 25);

(ii) assaulting, obstructing, molesting, insulting or improper influence (contravening sections 26 or 28);

(iii) committing offences in relation to witnesses, including -

a) failing to attend at the time and place specified in a summons, without sufficient cause, having been duly summoned;

b) failing to remain in attendance until excused from further attendance by the person presiding at the inquiry;

c) refusing to be sworn in or to make an affirmation as a witness;

d) failing or disobeying, without sufficient cause, to answer fully and satisfactorily all questions lawfully put to the person;

e) failing or disobeying to produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce; and on conviction such offences attract a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both;

(iv) other serious offences in relation to witnesses, including -

a) threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under this Act;

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

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

11. Where the relevant House finds that a Member has committed a breach of privilege, the relevant House may, in addition to any other penalty to which the Member may be liable under a specific law, issue a formal warning, a reprimand, an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges, the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by Parliament, the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member, such fine in terms of the Member's monthly salary and allowances as the House may determine, the suspension of the Member for such period as the House may decide, whether or not Parliament or any of its committees is scheduled to meet during that period or vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

12. In the case of an inquiry arising from a complaint, the Parliamentary Powers and Privileges Act, Cap. 6 envisages such inquiry to be concluded within fourteen days of receipt of complaint. Moreover, the Committee is expected to table its findings in the House, together with such recommendations, as it considers appropriate for consideration, within fourteen days of the conclusion of an inquiry. However, section 36 of the Act permits the Committee to seek an extension of time for inquiring into a complaint.

b) Absence

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

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

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

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

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

d) Registration of Members' Interests

25. Registration of Members' Interests is regulated by Section 16 of Leadership and Integrity Act, Cap. 185C, and the Second Schedule of the Act, and Rule 6 of the Code of Conduct for Members of Parliament contained in the Fourth Schedule to the Parliamentary Powers and Privileges Act, 2017.
26. Rule 6 of the Code of Conduct for Members of Parliament provides that Members shall register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions; declare any relevant interest in the context of parliamentary debate or the matter under discussion before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants; and observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.
27. Whereas Rule 6 envisages Members' registering their personal interests with the relevant Speaker, the Committee of Powers and Privileges handles questions of Members' interests on behalf of the Speaker.

e) Contempt

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

f) Declaration of Wealth for State Officers

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

1.2 COMMITTEE MEMBERSHIP

33. The National Assembly Committee of Powers and Privileges consists of fifteen Members, with the Speaker as the Chairperson and fourteen other Members of the House appointed in accordance with the Standing Orders.

34. Members of the Committee during the Third Session of the Thirteenth Parliament are as follows:

- 1) The Rt. Hon. (Dr.) Moses M. Wetang'ula, EGH, MP – *Chairperson/ Honourable Speaker of the National Assembly*
- 2) The Hon. Joseph Lekuton, CBS, MP - *Designated Vice Chairperson*
- 3) The Hon. Farah Maalim, EGH, MP
- 4) The Hon. Mishi Mboko, MP
- 5) The Hon. Mwangi Kiunjuri, EGH, MP
- 6) The Hon. Jessica Mbalu, CBS, MP
- 7) The Hon. James Onyango Oyoo, MP
- 8) The Hon. Samuel Gonzi Rai, MP
- 9) The Hon. Fabian Kyule Muli, MP
- 10) The Hon. Jayne Kihara, MP
- 11) The Hon. Samuel Moroto, MP
- 12) The Hon. Rose Museo Mumo, MP
- 13) The Hon. Wakili Edward Muriu, MP
- 14) The Hon. Kaguchia John Philip Gichohi, MP
- 15) The Hon. John Okano Bwire, MP

1.3 COMMITTEE SECRETARIAT

35. **The Committee Secretariat is composed of the following officers:-**

- | | |
|--------------------------|---|
| a) Mr. Noah Too | Principal Clerk Assistant I (<i>Lead Clerk</i>) |
| b) Ms. Sophie Otieno | Principal Legal Counsel |
| c) Ms. Jemimah Waigwa | Principal Legal Counsel |
| d) Ms. Emma Esendi | Senior Legal Counsel |
| e) Ms. Halima Suleiman | First Clerk Assistant |
| f) Mr. Kanda Tililei | Third Clerk Assistant |
| g) Ms. Catherine Mukunyi | Serjeant-at-Arms |

CHAPTER TWO: THE BILL

2.0 OVERVIEW OF THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL (SENATE BILL NO. 5 OF 2022)

36. The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022) was read a First Time in the National Assembly on June 27, 2023, and was thereafter referred by the Honourable Speaker to the National Assembly Committee on Powers and Privileges for consideration and reporting to the House.

37. The Bill is sponsored by Sen. Danson Mungatana, MP.

2.1 SUMMARY OF THE BILL

38. The Bill seeks to place a specific obligation on officials of the Executive, Constitutional Commissions and Independent Offices to comply with the requirement to give feedback to Parliament's resolutions.

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

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

CHAPTER THREE: PUBLIC AND STAKEHOLDERS PARTICIPATION

3.0 LEGAL FRAMEWORK FOR PUBLIC PARTICIPATION

41. Article 118 of the Constitution provides as follows:

(1) 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.*

(2) 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.

42. In addition, Standing Order 127(1), (1A) (2), (3), and (3A) of the National Assembly Standing Orders provide as follows:

(1) A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question put.

(1A) Save for a Finance Bill, the Speaker may refer various provisions of a Bill proposing to amend more than one statute in its principal provisions to the relevant Departmental Committees in accordance with their mandates

(2) Notwithstanding paragraph (1), the Assembly may resolve to commit a Bill to a select committee established for that purpose.

(3) The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.

43. Notwithstanding the aforementioned provisions, the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022) was committed to the National Assembly Committee of Powers and Privileges pursuant to Standing Order 127(6)(a), which states that:

6) *Despite paragraph (1)—*

(a) the Speaker may direct that a particular Bill be committed to such committee as the Speaker may determine.

3.1 PUBLIC PARTICIPATION

44. On July 3, 2023, the National Assembly Committee of Powers and Privileges, under the authority of the Clerk of the National Assembly, placed an advert in two newspapers of national circulation, namely the Daily Nation and the East African Standard, inviting members of the public and other stakeholders to forward submissions on the Bill.

45. Copies of the Bills were availed at the National Assembly Table Office, Main Parliament Buildings as well as online via www.parliament.go.ke/the-national-assembly/house-business/bills.

46. The public was further requested to submit hard copies of memoranda by posting them to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, to hand-deliver them to the Office of the Clerk, Main Parliament Buildings, Nairobi or to email them to cna@parliament.go.ke.

47. A deadline of Tuesday, July 18, 2023 at 5.00 p.m. was indicated on the advert.

48. By the set deadline, only the Law Society of Kenya had submitted its memorandum.

49. In order to obtain more feedback on the Bill, the Committee resolved to invite the Attorney-General of the Republic of Kenya, the Chief Executive of the Ethics and Anti-Corruption Commission, and the Chief Executive Officer of the Law Society of Kenya, with their invitation letters being dispatched on July 24, 2023.

3.2 SUBMISSIONS BY THE ETHICS AND ANTI-CORRUPTION COMMISSION

50. On August 3, 2023, representatives of the Ethics and Anti-Corruption Commission, namely Mr. David K. Too (Director of Legal Services, EACC) and Mr. David Kaboro (Deputy Director of Ethics, EACC) appeared before the Committee to present their memorandum on the Bill.

51. The EACC representatives submitted their written memorandum, which they highlighted as follows:

Provision of the Bill:	Observation by EACC	Recommendation by EACC
<p>Clause 23A on the Interpretation of the term ‘responsible officer’</p>	<p>An entity of government may have more than one public officer who fits the definition of ‘responsible officer’. EACC gave the example of Constitutional Commissions that have a Chairperson as well as a Secretary/ Chief Executive Officer who is additionally the Accounting Officer.</p>	<p>EACC viewed both as being within the definition of ‘responsible officer’, and thus proposed the need for more clarity when a resolution is addressed to such government entity</p>
<p>Clause 23A(f)</p>	<p>It is not clear whether the terms ‘chairperson’ and the ‘accounting officer’ of a corporate body are meant to be conjunctive or mutually exclusive.</p>	<p>For greater clarity therefore, EACC proposed the replacement of ‘and’ with ‘or’.</p>
<p>Clause 23B on Reports on Parliamentary Resolutions</p>		<p>a) In order to enhance compliance particularly by investigative agencies, the Resolutions of the National Assembly or Report of a Committee conveyed to a responsible officer of an investigative body recommending investigations to be conducted to be accompanied by:</p> <p>i. any documentary evidence collected by the Committee or the National</p>

		<p>Assembly, and</p> <p>ii. any witness statements recorded.</p> <p>b) The EACC proposed that there should be a concurrent provision to allow a responsible officer to whom a resolution is submitted to seek any clarification that may be necessary, and in such cases, the timeline of sixty (60) days begins to run when the clarification sought is availed by the Committee of National Assembly.</p>
<p>Clause 23C on Penalty for failure to report to Parliament</p>	<p>a) This provision establishes criminal liability for failure to comply with the requirement to submit a status report to Parliament. This presupposes that there will be an investigation and arraignment of the concerned responsible officer. However, the Bill silent on the institutional arrangements to enforce the offence created.</p> <p>b) The laws that establish various public entities have immunity clauses which protect public officers from personal civil or criminal liability for actions or omissions done in good faith in exercise of their public duties. Clause 23C (2) therefore conflicts and negates those provisions.</p>	<p>Parliament should thus note that a responsible officer may fail to comply due to reasons that are beyond the officer's control.</p>

3.3 SUBMISSIONS BY THE ATTORNEY - GENERAL

52. On August 17, 2023, representatives of the Office of the Attorney-General, namely Mr. Fredrick Mwachi (Deputy Chief Parliamentary Counsel, Office of the Attorney-General) and Ms. Maureen Odendo (Senior State Counsel, Office of the Attorney-General) appeared before the Committee to present their memorandum on the Bill on behalf of the Attorney - General.

53. The representatives from the Office of the Attorney-General submitted their written memorandum, which they highlighted as follows:

Provision of the Bill:	Observation by the Attorney General	Recommendation by the Attorney General
<p>Clause 2</p>	<p>Clause 2 of the Bill seeks to amend section 7 of the Act relating to service of civil processes by replacing the words “<i>either one or both Houses</i>” with the reference to be “<i>A House of Parliament</i>”.</p> <p>This proposal is in order as it makes an editorial change to the provision by harmonizing the reference to either House of Parliament.</p>	-
<p>Clause 3</p>	<p>Clause 3 of the Bill seeks to delete section 11 of the Act which provides that <i>No proceedings or decision of Parliament or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court.</i></p> <p>This proposal is in order as it upholds the judicial authority of the Courts enshrined in Article 159 the Constitution which vests judicial authority in the Courts.</p>	-
<p>Clause 4</p>	<p>Clause 4 of the Bill seeks to amend section 16 (d) of the Act by replacing the reference to “section 38 (<i>Repeal of Cap. 6 and transition</i>)” with the reference to “section 37 (<i>Speaker’s orders</i>)”.</p> <p>The proposal is in order as it seeks to correct a misquoted reference to the section of the Act in the provision.</p>	-

Clause 5	Clause 5 of the Bill proposes the insertion of a new Part into the Act to impose an obligation on responsible officers to report to Parliament on parliamentary decisions and specifies the procedure for submission of reports on action taken on parliamentary decisions.	Although the provision does not raise any significant constitutional issues, the AG's concern is the criminalization of an administrative inaction against a responsible officer. For that matter, the Office of the A-G recommends that should the provision be retained, it should attract administrative sanctions such as suspension, reprimand or reporting to the appointing authority for administrative action.
General Observations and Recommendations:	<p>The Bill does not raise significant constitutional issues.</p> <p>However, PART VIA of the Bill appears to criminalize an administrative inaction against a responsible officer.</p> <p>The Office of the Attorney-General therefore recommends that if the provision is retained, it should attract administrative sanctions such as suspension, reprimand or reporting to the appointing authority for administrative action.</p>	

54. Members engaged with the representatives of the Office of the Attorney-General and agreed on the large part with their submissions, particularly on the potential disorder of creating a criminal offence as a sanction for an administrative inaction.

3.4 SUBMISSIONS BY THE LAW SOCIETY OF KENYA

55. Representatives of the Law Society of Kenya were unable to physically avail themselves to present their memorandum on the Bill due to engagement with a different Committee of Parliament on the same day they had been scheduled to appear before the National Assembly Committee of Powers and Privileges.

56. Subsequently, the President of the Law Society of Kenya, Mr. Eric Theuri, forwarded a softcopy of its memorandum to the Committee Secretariat, which was highlighted as follows:

Provision of the Bill	Observation by the Law Society of Kenya	Recommendation by the Law Society of Kenya
<p>Clause 5 on insertion of a new Part immediately after Part VI</p>	<p>This part amends the Parliamentary Powers and Privileges Act by inserting “<i>PART VIA – REPORTS ON ACTION TAKEN ON PARLIAMENTARY RESOLUTIONS</i>”</p> <p>The numbering of this new part as “<i>PART VIA</i>” should be amended as this new part that is being inserted into the Bill is not related to Part VI of the 2017 Act which provides for the summoning of witnesses</p>	<p>LSK suggested that this part be amended to rename the new part as: “PART VII – REPORTS ON ACTION TAKEN ON PARLIAMENTARY RESOLUTIONS”</p>
<p>Clause 5 sub clause 23C</p>	<p>This part provides that;</p> <p><i>“(1) A responsible officer who fails to comply with section 23B commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.</i></p> <p><i>(2) A person liable for an offence under subsection (1) shall be personally liable for the fine and public funds shall not be used to pay such a fine.”</i></p> <ul style="list-style-type: none"> • LSK submitted that providing a penalty of a fine to a responsible officer is not a sufficient form of penalty. This is because the responsible officer is likely to use public funds to pay the fine issued to them. 	<p>LSK proposed that this clause be amended to provide;</p> <p><i>“(1) A responsible officer who fails to comply with section 23B commits an offence and is liable, on conviction, to suspension without pay for a period of three months or to imprisonment for a term not exceeding six months or to both.”</i></p>

	<ul style="list-style-type: none">• In spite of sub clause 23C (2) providing that the responsible officer shall be personally liable for the fine and public funds shall not be used to pay such a fine, this sub clause does not provide for the mechanisms that will be used to distinguish between personal funds and the public funds.• The public funds may be channeled in the guise of per diem or salary bonus whereas the same is used to cover for the fine.	
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CHAPTER FOUR: OBSERVATIONS

4.0 COMMITTEE OBSERVATIONS

Having considered the Bill and submissions from the Attorney- General, the Law Society of Kenya and the Ethics and Anti-Corruption Commission, the Committee made the following observations—

Clause 2 of the Bill

1. The Bill seeks to safeguard the powers and privileges of Parliament and facilitate the Members of Parliament to perform their constitutional functions without interference.
2. The Bill recognizes the authority of Parliament by providing that no process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of Parliament while either a House of Parliament is sitting; or through the Speaker or any member of staff unless it relates to the attachment of a member's salary; or if the subject matter relates to a member exercising their personal duty.
3. Further, in light of the provisions of Article 48 of the Constitution on access to justice, the Bill aligns the Parliamentary Powers and Privileges Act, Cap. 6 with the provisions of Article 48 of the Constitution by providing that the proposed new section 7(1) shall not apply to service made to a member of staff of Parliament authorized to receive service on behalf of either House of Parliament or the Parliamentary Service Commission.

Clause 3 of the Bill

4. The Bill aligns the Act with the provisions of Article 165(3)(d) of the Constitution on the jurisdiction of the High Court to hear any question in respect to the interpretation of the Constitution including the determination of the question on whether any law or anything said or done under the authority of the Constitution is inconsistent with or in contravention of the Constitution.

Clause 4 of the Bill

5. Additionally, the Bill seeks to correct a typographical error in section 16 in terms of cross referencing by making reference to the correct section which is section 37 of the Act.

Clause 5 of the Bill

6. The Bill seeks to ensure the implementation of the resolutions of Parliament by providing mechanisms through which responsible officers shall report to Parliament on the status of implementation of resolutions made by Parliament through the relevant Committee.
7. There is, however, need to amend the new proposed section 23A to provide clarity on who the responsible officer is in respect of body corporates and constitutional commissions.
8. The resolutions of Parliament including reports have annexures containing documentary evidence relating to the subject matter on the issues for which a House of Parliament has made a resolution. In this regard, the resolutions of the House are self-executing and contain all information necessary to guide on implementation of resolutions.
9. Further, the proposed amendments for a responsible officer to seek clarification on the resolution sought may cause inordinate delay on the implementation of the resolutions of the House.
10. The new proposed section 23B requires a responsible officer to provide a status report on parliamentary resolutions within 60 days of a resolution which is ample time to enable a responsible officer to comply. The provision further provides for extension of the 60 days period upon the written request of a responsible officer. In this regard, the proposal seeks to guard against complete inaction by a responsible officer to submit a status report and hence does not conflict with provisions on immunity for actions or omissions done in good faith.
11. Additionally, on the submissions that the new proposed section 23C criminalizes an administrative inaction and hence appropriate sanctions such as suspension, reprimand or reporting to the appointing authority should be provided, it is noteworthy that the sanctions can only be implemented by the appointing authority of the responsible officer which may not deter non-compliance with the requirements of reporting on parliamentary resolutions by responsible officers.
12. It is also notable that the sanction for suspension without pay may also be challenged in terms of the provisions of Article 41 of the Constitution on the right to fair labour practices.
13. The drafting format of the new Part cannot adopt Number PART VII as it is being inserted between existing provisions in the Act.
14. The Bill expressly provides that the responsible officer shall be personally liable for payment of the fine prescribed as penalty for non-compliance. The law already defines

what public funds are and hence there exists no ambiguity that the responsible officer cannot use public funds to pay for the penalty.

15. The Bill proposes the inclusion of a new Part VIA which deals with report on action taken on Parliamentary Resolutions. It is worth noting that the National Assembly has established the Committee on Implementation under Standing Order 209. The mandate of the Committee is espoused under S. O. 209 (2) as follows:

(2) The Committee shall scrutinize the resolutions of the House (including adopted committee reports), petitions and the undertakings given by the National Executive and examine—

(a) whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and

(b) whether or not legislation passed by the House has been operationalised and where operationalised, the extent to which such operationalisation has taken place within the minimum time necessary.

16. The implication of this is that the National Assembly already has a system of implementing or following up on its resolutions which has so far been effective without legislative intervention.

17. In addition, the Bill appears to criminalize an administrative inaction against a responsible officer. It is worth noting that the laws that establish various public entities have immunity clauses which protect public officers from personal civil or criminal liability for actions or omissions done in good faith in exercise of their public duties. The proposed Clause 23C therefore conflicts with these provisions.

CHAPTER FIVE: RECOMMENDATIONS

5.0 COMMITTEE RECOMMENDATIONS

Pursuant to Standing Order 127, the Committee recommends that the Bill does proceed for Second Reading subject to the following amendments—

Clause 5

THAT, clause 5 of the Bill be amended —

- (a) by deleting the proposed new section 23A;
- (b) by deleting the proposed new section 23B;
- (c) by deleting the proposed new section 23C;
- (d) by deleting the proposed new section 23D; and
- (e) by deleting the proposed new section 23E.

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2024 DAY: 	
TABLED BY:	
CLERK AT THE TABLE:	

Justifications

The Committee proposes the deletion of new Part VIA in its entirety. It is worth noting that the National Assembly has established the Committee on Implementation under Standing Order 209. The implication of this is that the National Assembly already has a system of implementing or following up on its resolutions which has so far been effective without legislative intervention.

In addition, the Bill appears to criminalize an administrative inaction against a responsible officer. It is worth noting that the laws that establish various public entities have immunity clauses which protect public officers from personal civil or criminal liability for actions or omissions done in good faith in exercise of their public duties. The proposed Clause 23C therefore conflicts with this provision. In light of the above, the Committee proposes the deletion of new Part VIA.

SIGNED.......... DATE 23/11/2024.....

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

AMENDMENTS

6.0 SCHEDULE OF AMENDMENT(S)

	Clause(s)	<u>Justification(s)</u>
1	<p>Clause 5 THAT, clause 5 of the Bill be amended —</p> <p>(a) by deleting the proposed new section 23A; (b) by deleting the proposed new section 23B; (c) by deleting the proposed new section 23C; (d) by deleting the proposed new section 23D; and (e) by deleting the proposed new section 23E.</p>	<p>The Committee proposes the deletion of new Part VIA in its entirety. It is worth noting that the National Assembly has established the Committee on Implementation under Standing Order 209. The implication of this is that the National Assembly already has a system of implementing or following up on its resolutions which has so far been effective without legislative intervention.</p> <p>In addition, the Bill appears to criminalize an administrative inaction against a responsible officer. It is worth noting that the laws that establish various public entities have immunity clauses which protect public officers from personal civil or criminal liability for actions or omissions done in good faith in exercise of their public duties. The proposed Clause 23C therefore conflicts with this provision. In light of the above, the Committee proposes the deletion of new Part VIA.</p>



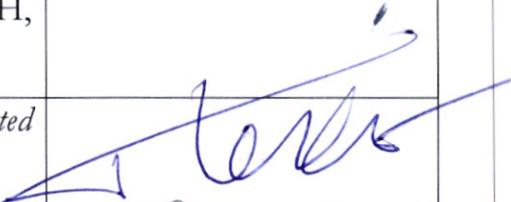
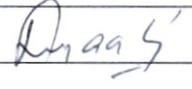
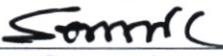
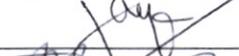
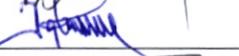
THE THIRTEENTH PARLIAMENT – THIRD SESSION

NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES

**REPORT ADOPTION LIST OF THE
NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES
ON THE PARLIAMENTARY POWERS AND PRIVILEGES
(AMENDMENT) BILL (SENATE BILL NO. 5 OF 2022)**

We, the undersigned Members of the National Assembly Committee of Powers and Privileges do hereby append our signatures to adopt this Report.

Date.....

S/NO	NAME	SIGNATURE
1.	The Rt. Hon. (Dr.) Moses F. M. Wetang'ula, EGH, M.P – <i>Speaker of the National Assembly/ Chairperson</i>	
2.	The Hon. Lekuton, Joseph, CBS, M.P – <i>Designated Vice Chairperson</i>	
3.	The Hon. Farah Maalim, EGH, MP	
4.	The Hon. Mishi Mboko, M.P.	
5.	The Hon. Kiunjuri, Festus Mwangi, EGH, M.P	
6.	The Hon. Muriu, Wakili Edward, M.P	
7.	The Hon. Rai, Samuel Gonzi, M.P	
8.	The Hon. Muli, Fabian Kyule, M.P	
9.	The Hon. Kihara, Jayne Wanjiru Njeri, M.P	
10.	The Hon. Samuel Moroto, M.P	
11.	The Hon. Gichohi, Kaguchia John Philip, MP	
12.	The Hon. Mbalu, Jessica Nduku Kiko, CBS, M.P.	
13.	The Hon. Mumo, Rose Museo, M.P.	
14.	The Oyoo, James Onyango, M.P.	
15.	The Hon. Bwire, John Okano, M.P	

ANNEXTURE 2:

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



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 5 of 2022)

**THE PARLIAMENTARY POWERS AND
PRIVILEGES (AMENDMENT) BILL, 2022**

(A Bill published in the Kenya *Gazette* Supplement No. 176 of 8th November, 2022 and passed by the Senate, with amendments, on 13th June, 2023.)



**THE PARLIAMENTARY POWERS AND PRIVILEGES
(AMENDMENT) BILL, 2022**

A Bill for

AN ACT of Parliament to amend the Parliamentary Powers and Privileges Act to provide a structured mechanism through which Parliament is able to receive reports from public officers on the resolutions passed by Parliament; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Parliamentary Powers and Privileges (Amendment) Act, 2022.

Amendment of
section 7 of No. 29
of 2017.

2. The Parliamentary Powers and Privileges Act, hereinafter referred to as the principal Act is amended by deleting section 7 and substituting therefor the following new section—

Service of civil
processes.

7 (1) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed—

- (a) within the precincts of Parliament while a House of Parliament is sitting;
- (b) through the Speaker or any member of staff—
 - (i) unless it relates to the attachment of a Member's salary; or
 - (ii) if the subject matter relates to a Member exercising their personal duty.

(2) Subsection (1)(a) shall not apply to service made to a member of staff of Parliament authorised to receive service on behalf of—

- (a) either House of Parliament; or
- (b) the Parliamentary Service Commission.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as

specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

Deletion of section 11 of No. 29 of 2017.

3. The principal Act is amended by deleting section 11.

Amendment of section 16 of No. 29 of 2017.

4. Section 16 of the principal Act is amended in paragraph (d) by deleting the expression “38” appearing immediately after the words “under section” and substituting therefor the expression “37”.

Insertion of new Part to No. 29 of 2017.

5. The principal Act is amended by inserting the following new Part immediately after Part VI—

PART VIA – REPORTS ON ACTION TAKEN ON PARLIAMENTARY RESOLUTIONS

Interpretation

23A. In this Part, “responsible officer” means –

- (a) a Cabinet Secretary;
- (b) a county governor;
- (c) the chairperson of a commission established under the Constitution;
- (d) the Auditor-General;
- (e) the Controller of Budget;
- (f) the chairperson and the accounting officer of a corporate body; and
- (g) a public officer to whom a resolution or report of a House or a Committee of Parliament is submitted in accordance with this Act.

Reports on Parliamentary Resolutions.

23B. (1) The Clerk of the relevant House shall, within seven days of a resolution of the House or of the tabling of a report of a Committee of the House, convey the resolution or a copy of the report, as the case may be, to the responsible officer under whose portfolio the implementation of the resolution or recommendation of the Committee falls.

(2) The responsible officer shall submit a

status report to the relevant Committee within sixty days from the date the resolution is conveyed or within such period as shall be specified by a resolution of the House.

(3) A report under subsection (2) shall contain information on—

- (a) the action taken to give effect to the resolution or recommendation of a report submitted under subsection (1); and
- (b) where no action has been taken on a resolution or recommendation of a report, the reason for such inaction.

(4) The relevant Committee may, upon the written request of the responsible officer, extend the period for submission of a report under subsection (2) by such days and on such conditions as the Committee may consider necessary.

Penalty for failure to report to Parliament.

23C. (1) A responsible officer who fails to comply with section 23B commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(2) A person liable for an offence under subsection (1) shall be personally liable for the fine and public funds shall not be used to pay such a fine.

Consolidated report.

23D. Where a response is sought on the implementation of more than one resolution of a House of Parliament, the relevant Speaker may direct that the responsible officer submits a single report on the status of implementation of all the resolutions.

Provision not to limit discretion of Parliament.

23E. This Part does not limit the power of Parliament to require information from any public officer in accordance with the Constitution or any other law.

Parliamentary Powers and Privileges (Amendment) Bill, 2022

I certify that this printed impression is a true copy of the Bill as passed by the Senate on 13th June, 2023.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 161 of the Senate Standing Orders.



Speaker of the Senate

ANNEXTURE 3:

ADVERTISEMENT INVITING THE PUBLIC TO SUBMIT
MEMORANDA ON THE BILL



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - SECOND SESSION

The standover
Monday July 3
2023

IN THE MATTER OF ARTICLE 118 (1)(B) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE
PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL
(SENATE BILL NO. 5 OF 2022)

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022) was read a First Time on **Tuesday, 27th June 2023**, thereafter referred to the National Assembly Committee on Powers and Privileges for consideration and reporting to the House;

IT IS NOTIFIED THAT:

The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022) introduced by Sen. Danson Mungatana, MP seeks to place a specific obligation on officials of the Executive, constitutional commissions and independent offices to comply with the requirement to give feedback to Parliament's resolutions. It provides a structured mechanism through which the Executive, constitutional commissions and independent offices are required to give greater consideration to the issues raised and the recommendations made by Parliament. The Bill further seeks to amend section 7 and delete section 11 of the Parliamentary Powers and Privileges Act in order to comply with the decision of the High Court in *Apollo Mboya v Attorney General & 2 others* [2018].

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3) the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill to the National Assembly Committee on Powers and Privileges

Copies of the Bill are available at the National Assembly Table Office, Main Building or on parliamentary website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cna@parliament.go.ke to be received on or before **Tuesday, 18th July 2023** at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

3rd July 2023

For the Welfare of Society and the just Government of the People

ANNEXTURE 4:

MEMORANDA FROM THE ETHICS AND ANTI-CORRUPTION
COMMISSION



MEMORANDUM BY THE ETHICS AND ANTI-CORRUPTION COMMISSION ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2022 (SENATE BILL NO. 5 OF 2022)

Section	Provision	Comment/Observation/Proposal
23A	Interpretation of the term "responsible officer"	<p>Parliament should be alive to the fact that an entity may have more than one public officer who fits the definition of "responsible officer".</p> <p>An example is in Constitutional Commissions, which have a Chairperson and a Secretary/CEO who is also the Accounting Officer. Both of them are within the definition, hence need for more clarity when a Resolution is addressed to such an entity.</p> <p>In section 23A(f), it is not clear whether the terms "chairperson" and the "accounting officer" of a corporate body are meant to be conjunctive or mutually exclusive. For better clarity, replace the word "and" with the word "or"</p>
23B.	Reports on Parliamentary Resolutions	<p>To enhance compliance particularly by investigative agencies, it is proposed that the resolutions of the Assembly or report of Committee conveyed to a responsible officer of an investigative body recommending investigations to be conducted to be accompanied by:</p> <ul style="list-style-type: none"> • Any documentary evidence collected by the Committee or Assembly; • Any witness statements recorded. <p>It is proposed that there should be a concurrent provision to allow a responsible officer to whom a resolution is submitted to seek any clarification that may be necessary, and in such cases the timeline of sixty days begins to run when the clarification sought is availed by the Committee or Assembly.</p>
23C.	Penalty for failure to report to Parliament	<p>This provision establishes criminal liability for failure to comply with the requirement to submit a status report to Parliament. This presupposes that there will be an investigation and arraignment of the concerned responsible officer. However, the Act is silent on the institutional arrangements to enforce the offence created.</p> <p>The laws that establish various public entities have immunity clauses, which protect the public officers from personal civil or criminal liability for actions or omissions done in good faith, in the exercise of their public duties.</p> <p>Section 23C(2) therefore conflicts and negates those provisions. Parliament should be alive to the fact that a responsible officer may fail to comply due to reasons that are beyond the officer's control.</p>

ANNEXTURE 5:

MEMORANDA FROM THE HONOURABLE ATTORNEY-
GENERAL

SUBMISSION BY THE OFFICE OF THE ATTORNEY GENERAL AND
DEPARTMENT OF JUSTICE ON THE PARLIAMETARY POWERS AND
PRIVILEGES (AMENDMENT) BILL, 2022,
LEGISLATIVE PROPOSAL BEFORE THE NATIONAL ASSEMBLY DEPARTMENTAL
COMMITTEE ON POWERS AND PRIVILEGES

We note that the Parliamentary Powers and Privileges (Amendment) Bill, 2022 before the National Assembly Departmental Committee on Powers and Privileges seeks to amend the Parliamentary Powers and Privileges Act, 2017 to provide a mechanism through which Parliament receives reports from public officer on the resolutions passed by Parliament.

We further note that The Parliamentary Powers and Privileges Act, 2017 provides 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; to make provision regulating admittance to and conduct within the precincts of Parliament.

We have reviewed the legislative proposal and wish to comment as follows:

1. Clause 2 of the bill seeks to amend section 7 of the Act relating to service of civil processes by replacing the words "*either one or both Houses*" with the reference to be "*A House of Parliament*".

This proposal is in order as it makes an editorial change to the provision by harmonising the reference to either House of parliament.

2. Clause 3 of the bill seeks to delete section 11 of the Act which provides that *No proceedings or decision of Parliament or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court.*

This proposal is in order as it upholds the judicial authority of the Courts enshrined in Article 159 the Constitution which vests judicial authority in the Courts.

3. Clause 4 of the bill seeks to amend section 16 (d) of the Act by replacing the reference to “section 38 (*Repeal of Cap. 6 and transition*)” with the reference to “section 37 (*Speaker’s orders*)”.

The proposal is in order as it seeks to correct a misquoted reference to the section of the Act in the provision.

4. Clause 5 of the bill proposes the insertion of a new Part into the Act to impose an obligation on responsible officers to report to Parliament on parliamentary decisions and specifies the procedure for submission of reports on action taken on parliamentary decisions.

Although the provision does not raise any significant constitutional issues, our concern is the criminalising an administrative inaction against a responsible officer. For that matter, we recommend that should the provision be retained, it should attract administrative sanctions such as suspension, reprimand or reporting to the appointing authority for administrative action.

Conclusion and recommendation

We have reviewed the legislative proposal and note that it does not raise significant constitutional issues. However, PART VIA of the bill appears to criminalise an administrative inaction against a responsible officer. We therefore recommend that if the provision is retained, it should attract administrative sanctions such as suspension, reprimand or reporting to the appointing authority for administrative action.

Fred Mwachi
Deputy Chief Parliamentary Counsel
FOR: ATTORNEY GENERAL

16th July, 2023

ANNEXTURE 6:

MEMORANDA FROM THE LAW SOCIETY OF KENYA



LAW SOCIETY OF KENYA
Lavington, Opposite Valley Arcade
Gitanga Road
P.O. Box 72219-00200
NAIROBI
Tel. 387 4664
0720 904983

MEMORANDUM TO
PARLIAMENT
ON

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2022

AUGUST 2023

Eric Theuri, President Law Society of Kenya
Lavington, opp Valley Arcade,
Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya
Tel: +254 111 045 300
Email: [lskpresidenttheuri@gmail.com/](mailto:lskpresidenttheuri@gmail.com) president@lsk.or.ke
Website: www.lsk.or.ke

THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, 2022

Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- **President**, Eric Theuri
- **Vice President**, Faith Mony Odhiambo
- **General Membership Representatives**, Chrysostom Akhaabi, Kabata Mwaura, Tom K'opere
- **Nairobi Representatives**, Cohen Amanywa, Njoki Mboce, Ochieng Gor
- **Up-country Representatives**, Byron Menezes, Lindah Kiome, Michael Wabwile, Vincent Githaiga
- **Coast Representative**, Riziki Emukule
- **Secretary/CEO**, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes the following submissions on the Parliamentary Powers and Privileges (Amendment) Bill, 2022

**SPECIFIC COMMENTS ON THE PARLIAMENTARY POWERS AND PRIVILEGES
(AMENDMENT) BILL, 2022**

Provision of the bill	Issue	Proposal
<p>Clause 5 on insertion of a new Part immediately after Part VI</p>	<p>This part amends the Parliamentary Powers and Privileges Act by inserting "<i>PART VIA – REPORTS ON ACTION TAKEN ON PARLIAMENTARY RESOLUTIONS</i>"</p> <p>The numbering of this new part as "<i>PART VIA</i>" should be amended as this new part that is being inserted into the Bill is not related to Part VI of the 2017 Act which provides for the summoning of witnesses</p>	<p>We suggest that this part be amended to rename the new part as : "PART VII – REPORTS ON ACTION TAKEN ON PARLIAMENTARY RESOLUTIONS"</p>
<p>Clause 5 sub clause 23C</p>	<p>This part provides that; <i>"(1) A responsible officer who fails to comply with section 23B commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.</i> <i>(2) A person liable for an offence under subsection (1) shall be personally liable for the fine and public funds shall not be used to pay such a fine."</i></p> <p>We submit that providing a penalty of a fine to a responsible officer is not a sufficient form of penalty. This is because the responsible officer is likely to use public funds to pay the fine issued to them.</p> <p>In spite of sub clause 23C(2) providing that the responsible officer shall be personally liable for the fine and public funds shall not be used to pay such a fine, this sub clause does not provide for the mechanisms that will be used to distinguish between personal funds of the public. The public funds may be channeled in the guise of a per diem or salary bonus whereas the same is used to cover for the fine.</p>	<p>We propose that this clause be amended to provide; <i>"(1) A responsible officer who fails to comply with section 23B commits an offence and is liable, on conviction, to suspension without pay for a period of three months or to imprisonment for a term not exceeding six months or to both."</i></p>

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In conclusion, we humbly submit that our comments be considered before enacting the Bill.

Yours **faithfully**,



Eric Theuri
President Law Society of Kenya

ANNEXTURE 7:
COMMITTEE MINUTES

MINUTES OF THE SEVENTH MEETING OF THE NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES HELD ON FRIDAY 22ND NOVEMBER, 2024 IN SERENA RESORT AND SPA, MOMBASA COUNTY MAIN CHAMBER AT 10:00 AM.

PRESENT

- 1) The Hon. Joseph Lekuton, CBS, MP -Vice Chairperson Designate –*Chairing*
- 2) The Hon. Farah Maalim, EGH, MP - Fourth Chairperson of Committees
- 3) The Hon. Samuel Gonzi Rai, MP
- 4) The Hon. Fabian Kyule Muli, MP
- 5) The Hon. John Philip Gichohi Kaguchia, MP
- 6) The Hon. John Okano Bwire, MP
- 7) The Hon. Mishi Mboko, MP
- 8) The Hon. Mwangi Kiunjuri, EGH, MP
- 9) The Hon. Samuel Moroto, MP
- 10) The Hon. Jessica Mbalu, CBS, MP
- 11) The Hon. Jayne Kihara, MP

APOLOGIES

- 1) The Rt. Hon. (Dr.) Moses M. Wetang'ula, EGH, MP –Speaker/ Chairperson
- 2) The Hon. K'Oyoo, M.P
- 3) The Hon. Wakili Edward Muriu, M.P
- 4) The Hon. Rose Museo Mumo, MP

IN ATTENDANCE

Mr. Kipkemoi arap Kirui Deputy Director, DLPS (Lead Clerk)

SECRETARIAT

1. Mr. Noah Too Principal Clerk Assistant (Lead Clerk)
2. Ms. Sophie Otieno Principal Legal Counsel
3. Ms. Emma Esendi Senior Legal Counsel
4. Mr. Moses Lomale Third Clerk Assistant
5. Mr. Haile Hussein Third Clerk Assistant
6. Ms. Catherine Mukunyi Senior Serjeant-at-Arms

MIN./NACOPP/028/2024: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 am and requested the **Hon. John Kaguchia, MP** to say a word of prayer.

MIN./NACOPP/029/2024: ADOPTION OF THE AGENDA

The proposed Agenda to constitute the business of the meeting was adopted having been proposed by the **Hon. Fabian Muli, MP**, and seconded by the **Hon. Mwangi Kiunjuri, EGH, MP**.

MIN./NACOPP/ 030/2024: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, (SENATE BILL NO. 5 OF 2022)

Upon invitation by the Chair, Ms. Emma Essendi, Senior Legal Counsel, presented the report on the *Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022)* to the meeting. The Committee had reviewed and agreed on *Clauses 2, 3, and 4* of the Bill.

However, with regard to *Clause 5*, the Committee noted that the Bill appears to criminalize an administrative inaction against a responsible officer. Further, the Committee observed that the laws that establish various public entities have immunity clauses which protect public officers from personal civil or criminal liability for actions or omissions done in good faith in exercise of their public duties.

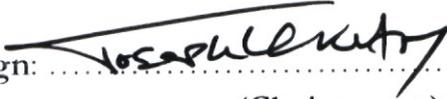
After deliberations, the Committee proposed the deletion of new Part VIA in its entirety noting that the National Assembly has established the Committee on Implementation under Standing Order 209. The implication of this is that the National Assembly already has a system of implementing or following up on its resolutions which has so far been effective without legislative intervention.

Further, the Committee proposed for the deletion of new Part VIA since Clause 23C was conflicting with the provision.

Thereafter, the Committee adopted the report on the *Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022)* with amendments.

MIN./NACOPP/031/2024: ADJOURNMENT AND DATE OF THE NEXT MEETING

The Chairperson adjourned the meeting at twenty-five Minutes to twelve O'clock. The next meeting will be held on Friday, 22nd November 2024 at 2.30 pm.

Sign: 
(Chairperson)

Date: 23-11-2024

MINUTES OF THE THIRD MEETING OF THE NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES HELD ON THURSDAY, 26TH SEPTEMBER 2024, IN THE NATIONAL ASSEMBLY MAIN CHAMBER AT 10:30 AM

PRESENT

- 1) The Hon. Joseph Lekuton, CBS, MP -Vice Chairperson –*Chairing*
- 2) The Hon. Samuel Gonzi Rai, MP
- 3) The Hon. Fabian Kyule Muli, MP
- 4) The Hon. John Philip Gichohi Kaguchia, MP
- 5) The Hon. James Onyango Oyoo, MP

APOLOGIES

- 1) The Rt. Hon. (Dr.) Moses M. Wetang'ula, EGH, MP –Speaker/ Chairperson
- 2) The Hon. Farah Maalim, EGH, MP - Fourth Chairperson of Committees
- 3) The Hon. Wakili Edward Muriu, M.P
- 4) The Hon. John Okano Bwire, MP
- 5) The Hon. Mishi Mboko, MP
- 6) The Hon. Mwangi Kiunjuri, EGH, MP
- 7) The Hon. Samuel Moroto, MP
- 8) The Hon. Jessica Mbalu, CBS, MP
- 9) The Hon. Jayne Kihara, MP
- 10) The Hon. Rose Museo Mumo, MP

SECRETARIAT

- | | |
|--------------------------|--|
| 1. Mr. Noah Too | Principal Clerk Assistant (Lead Clerk) |
| 2. Ms. Sophie Otieno | Principal Legal Counsel |
| 3. Ms. Emma Esendi | Senior Legal Counsel |
| 4. Mr. Kanda Tililei | Third Clerk Assistant |
| 5. Ms. Catherine Mukunyi | Senior Serjeant-at-Arms |

MIN./NACOPP/013/2024: PRELIMINARIES

The Chairperson called the meeting to order at 10:38 am and requested the Hon. **Fabian Kyule Muli, MP.** To say a word of prayer.

MIN./NACOPP/014/2024: ADOPTION OF THE AGENDA

The proposed Agenda to constitute the business of the meeting was adopted having been proposed by the **Hon. Fabian Muli, MP,** and seconded by the **Hon. James Gonzi Rai, MP.**

MIN./NACOPP/ 015 /2024: ADOPTION OF THE REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, (SENATE BILL NO. 5 OF 2022)

Upon invitation by the Chair, Ms. Emma Essendi, Senior Legal Counsel, presented the report on the *Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 5 of 2022)* to the meeting. The Committee reviewed and agreed on *Clauses 2, 3, and 4* of the Bill. However, with regard to *Clause 5*, the Committee raised concerns that the amendment criminalizes inaction by a responsible officer.

The Committee resolved to re-consider amending *Clause 5* with the aim of decriminalizing an administrative action and determination of enhancing penalties in regard to the matter.

MIN./NACOPP/ 016 /2024: CONSIDERATION OF THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, (SENATE BILL NO. 37 OF 2023).

The Committee deferred consideration of this Bill to the next meeting.

MIN./NACOPP/ 017 /2024: CONSIDERATION OF THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, (SENATE BILL NO. 36 OF 2022).

The Committee deferred consideration of this Bill to the next meeting.

MIN./NACOPP/ 018/2024: ANY OTHER BUSINESS

1. Request for information in a Wealth Declaration Form for a former Member.

The Committee was briefed on a request by the Spouse of a former Member of Parliament (deceased) in regard to information from a Wealth Declaration Form. After deliberations, the Committee agreed to make a decision during the next meeting.

2. Activities of the Committee.

The Committee discussed the need to enhance its activities, with a particular focus on increasing the number sittings per week and having a retreat to conclude the business before the Committee.

MIN./NACOPP/019/2024: ADJOURNMENT AND DATE OF THE NEXT MEETING

The Chairperson adjourned the meeting at twenty-five Minutes to twelve O'clock. The next meeting will be held on Thursday, 3rd October 2024.

Sign: 
(Chairperson)

Date: 23/11/24

MINUTES OF THE SECOND MEETING OF THE NATIONAL ASSEMBLY COMMITTEE OF POWERS AND PRIVILEGES HELD ON THURSDAY, MARCH 19, 2024 IN THE SPEAKER'S BOARDROOM AT 12:00 PM

PRESENT

- 1) The Hon. Joseph Lekuton, CBS, MP -Vice Chairperson (*Chairing*)
- 2) The Hon. Farah Maalim, EGH, MP -Fourth Chairperson of Committees
- 3) The Hon. Mwangi Kiunjuri, EGH, MP
- 4) The Hon. Samuel Gonzi Rai, MP
- 5) The Hon. James Onyango Oyoo, MP
- 6) The Hon. Rose Museo Mumo, MP
- 7) The Hon. Fabian Kyule Muli, MP

APOLOGIES

- 1) The Rt. Hon. Moses M. Wetang'ula, EGH, MP – Chairperson/SNA
- 2) The Hon. Mishi Mboko, MP
- 3) The Hon. John Okano Bwire, MP
- 4) The Hon. John Philip Gichohi Kaguchia, MP
- 5) The Hon. Jessica Mbalu, CBS, MP
- 6) The Hon. Jayne Kihara, MP
- 8) The Hon. Wakili Edward Muriu, MP
- 9) The Hon. Samuel Moroto, MP

SECRETARIAT

- | | |
|----------------------------|-------------------------------------|
| 1. Mr. Noah Too | Principal Clerk Assistant I/HoD-PRJ |
| 2. Ms. Sophie Otieno | Principal Legal Counsel |
| 3. Ms. Emma Esendi | Senior Legal Counsel |
| 4. Ms. Halima Suleiman | First Clerk Assistant |
| 5. Mr. Kanda Tililei | Third Clerk Assistant |
| 6. Mr. Albert Ndemo Atunga | Serjeant-at-Arms |

MIN./NACOPP/009/2024: PRELIMINARIES

The Chairperson called the meeting to order at 12:17 pm and requested the Hon. Samuel Gonzi Rai, MP to say a word of the prayer.

MIN./NACOPP/010/2024: ADOPTION OF THE AGENDA

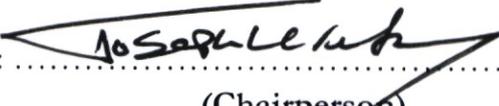
The proposed Agenda to constitute the business of the meeting was read by the Chairperson and thereafter was proposed by the Hon. Fabian Muli, MP, and seconded by the Hon. James Gonzi Rai, MP.

**MIN./NACOPP/ 011 /2024: ADOPTION OF THE REPORT ON THE
PARLIAMENTARY POWERS AND
PRIVILEGES (AMENDMENT) BILL,
(SENATE BILL NO. 5 OF 2022)**

The Committee deferred the adoption of the report to the next Meeting to allow for further consultations on the effects of the amendments to the Clauses of the Bill.

**MIN./NACOPP/012/2024: ADJOURNMENT AND DATE OF THE NEXT
MEETING**

The Chairperson adjourned the meeting at twenty-five Minutes to One O'clock. The next meeting will be held on Notice.

Sign: 
(Chairperson)

Date: 23-11-24

**MINUTES OF THE FIRST MEETING OF THE NATIONAL ASSEMBLY
COMMITTEE OF POWERS AND PRIVILEGES HELD ON THURSDAY,
MARCH 14, 2024 IN THE SPEAKER'S BOADROOM AT 11:00AM**

PRESENT

- 1) The Hon. Joseph Lekuton, CBS, MP -Vice Chairperson (*Chairing*)
- 2) The Hon. Farah Maalim, EGH, MP -Fourth Chairperson of Committees
- 3) The Hon. Mwangi Kiunjuri, EGH, MP
- 4) The Hon. Samuel Gonzi Rai, MP
- 5) The Hon. James Onyango Oyoo, MP
- 6) The Hon. Samuel Moroto, MP
- 7) The Hon. Rose Museo Mumo, MP
- 8) The Hon. Fabian Kyule Muli, MP

APOLOGIES

- 1) The Rt. Hon. Moses M. wetang'ula, EGH, MP – Chairperson/SNA
- 2) The Hon. Mishi Mboko, MP
- 3) The Hon. John Okano Bwire, MP
- 4) The Hon. John Philip Gichohi Kaguchia, MP
- 5) The Hon. Jessica Mbalu, CBS, MP
- 6) The Hon. Jayne Kihara, MP
- 7) The Hon. Wakili Edward Muriu, MP

SECRETARIAT

- | | |
|----------------------------|-------------------------------------|
| 1. Mr. Noah Too | Principal Clerk Assistant I/HoD-PRJ |
| 2. Ms. Sophie Otieno | Principal Legal Counsel |
| 3. Ms. Jemimah Waigwa | Senior Legal Counsel |
| 4. Ms. Emma Essendi | Senior Legal Counsel |
| 5. Mr. Albert Ndemo Atunga | Serjeant-at-Arms |
| 6. Ms. Halima Suleiman | First Clerk Assistant |
| 7. Mr. Kanda Tililei | Third Clerk Assistant |

MIN./NACOPP/001/2024: PRELIMINARIES

The Chairperson called the meeting to order at 11:15 am and requested the Hon. Samuel Gonzi Rai, MP to say a word of the prayer.

MIN./NACOPP/002/2024: ADOPTION OF AGENDA

The proposed Agenda to constitute business of the meeting was read by the Chairperson and Thereafter was proposed by the Hon. Fabian Muli, MP and seconded by the Hon. James Gonzi Rai, MP.

MIN./NACOPP/003/2024: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

Minutes of the previous meetings of the National Assembly Committee of Powers and Privileges were confirmed as accurate representations of the deliberations. During the meeting;

- (i) Minutes of the 4th Meeting held on Thursday, July 6, 2023 in committee Room 5 were proposed by the Hon. Farah Maalim, EGH, MP and Seconded by the Hon. Fabian Kyule Muli, M.P.
- (ii) Minutes of the 5th Meeting held on Thursday, August 3 2023 in Main Chamber were proposed by the Hon. Farah Maalim, EGH, MP and Seconded by the Hon. James Onyango Oyoo, MP.
- (iii) Minutes of the 6th Meeting held on Thursday, August 17,2023 in Senate Committee Room 4 were proposed by the Hon. Farah Maalim, EGH, MP and Seconded by the Hon. Gonzi Rai, M.P.
- (iv) Minutes of the 7th Meeting held on Thursday, October 19, 2023 in Main Chamber were proposed by Hon. Mwangi Kiunjuri, MP and Seconded by the Hon. James Onyango Oyoo, MP.
- (v) Minutes of the 8th Meeting held on Thursday, November 16, 2023 in Speaker's Boardroom were proposed by the Hon. Fabian Muli, MP and Seconded by the Hon. Mwangi Kiunjuri, M.P.

MIN./NACOPP/ 004 /2024: CONSIDERATION OF SUBMISSIONS ON THE PARLIAMENTARY PWERS AND PRIVILEGES (AMENDMENT) BILL, (SENATE BILL NO. 5 OF 2022)

Upon invitation by the Chairperson, Ms. Jemimah Waigwa Senior Legal Counsel from the Directorate of Legal Services briefed the Meeting on the Committee Reports as follows:

In regard to Submission by Ethics and Anti-Corruption Commission;

1. That on 23rd August 2023, representatives of the Ethics and Anti-Corruption Commission appeared before the Committee to present the memorandum on the Bill.
2. That the EACC intended to amend Clouse 23A on the Interpretation of the term 'responsible officer', Clause 23A(f), Clause 23(B) on Reports on Parliamentary Resolution and Clause 23C on Penalty for failure to report to Parliament and its Recommendations.

In regard to the Submissions by the Attorney General;

3. That on August 17 2023 representatives of the Office of the Attorney General appeared before the Committee to present their Memorandum on the Bill on behalf of the Attorney General;
4. That the Office of the Attorney General Intent to amend the Clause 2, Clause 3 and Clause 5 of the Provisions of the Bill;
5. That the representatives of the Office of the Attorney General recommend that if the provision is retained, it should attract administrative sections such as suspension, reprimand or reporting to the appointing Authority for administrative action.

In regard to the Submissions by the Law Society of Kenya;

6. That representatives of the Law Society of Kenya were unable to physically avail themselves to present their memorandum on the Bill due to engagement with a different Committee of Parliament on the Day it had been scheduled to appear before the Committee and instead forwarded their submission as follows;
7. That the Law Society of Kenya intended to amend Clause 5 on the insertion of new part immediately after part VI and Clause 5 Sub Clause 23C with its recommendations.

MIN./NACOPP/ 005 /2024: CONSIDERATION AND ADOPTION OF A DRAFT REPORT ON THE PARLIAMENTARY POWERS AND PRIVILEGES (AMENDMENT) BILL, (SENATE BILL NO. 5 OF 2022).

The Committee considered and made the following Observations;

Having considered the Bill and submissions from the Attorney- General, the Law Society of Kenya and the Ethics and Anti-Corruption Commission, the Committee made the following observations—

Clause 2 of the Bill

1. The Bill seeks to safeguard the powers and privileges of Parliament and facilitate the Members of Parliament to perform their constitutional functions without interference.
2. The Bill recognizes the authority of Parliament by providing that no process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of Parliament while either House of Parliament is sitting; or through the Speaker or any member of staff unless it relates to the attachment of a member's salary; or if the subject matter relates to a member exercising their personal duty.

3. Further, in light of the provisions of Article 48 of the Constitution on access to justice, the Bill aligns the Parliamentary Powers and Privileges Act, 2017 with the provisions of Article 48 of the Constitution by providing that the proposed new section 7(1) shall not apply to service made to a Member of staff of Parliament authorized to receive service on behalf of either House of Parliament or the Parliamentary Service Commission.

Clause 3 of the Bill

4. The Bill aligns the Act with the provisions of Article 165(3)(d) of the Constitution on the jurisdiction of the High Court to hear any question respecting the interpretation of the Constitution including the determination of the question on whether any law or anything said or done under the authority of the Constitution is inconsistent with or in contravention of the Constitution.

Clause 4 of the Bill

5. Additionally, the Bill seeks to correct a typographical error in section 16 in terms of cross referencing by making reference to the correct section which is section 37 of the Act.

Clause 5 of the Bill

6. The Bill shall ensure the implementation of the resolutions of Parliament by providing mechanisms through which responsible officers shall report to Parliament on the status of implementation of resolutions made by Parliament through the relevant Committee.
7. There is however need to amend the new proposed section 23A to provide clarity on who the responsible officers are in respect of body corporates and constitutional commissions.
8. The resolutions of Parliament including reports have annexures containing documentary evidence relating to the subject matter of the issues for which a House of Parliament has made a resolution. In this regard, the resolutions of the House are self-executing and contain all information necessary to guide on implementation of resolutions.
9. Further, the proposed amendments for a responsible officer to seek clarification on the resolution sought may cause inordinate delay on the implementation of the resolutions of the House.
10. The new proposed section 23B requires a responsible officer to provide a status report on parliamentary resolutions within 60 days of a resolution which is ample time to enable a responsible officer to comply. The provision further provides for extension of the 60 days period upon the written request of a responsible officer. In this regard, the proposal seeks to guard against complete inaction by a

responsible officer to submit a status report and hence does not conflict with provisions on immunity for actions or omissions done in good faith.

11. The Act contains clear enforcement provisions relating to offences committed under the Act and hence there may be no need to provide for institutional arrangements for the offence under the new proposed section 23C.
12. Further, whereas the new proposed section 23C criminalizes the offence of failure by a responsible officer to provide reports on the extent of the implementation of the parliamentary resolutions which is punishable by a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding six months or to both, the penalty may not be sufficient to act as a deterrence for non-compliance. Consequently, there may be need to enhance the penalty.
13. Additionally, on the submissions that the new proposed section 23C criminalizes an administrative inaction and hence appropriate sanctions such as suspension, reprimand or reporting to the appointing authority should be provided, it is noteworthy that the sanctions can only be implemented by the appointing authority of the responsible officer which may not deter non-compliance with the requirements of reporting on parliamentary resolutions by responsible officers.
14. It is also notable that the sanction for suspension without pay may also be challenged in terms of the provisions of Article 41 of the Constitution on the right to fair labour practices.
15. The drafting format of the new Part cannot adopt Number PART VII as it is being inserted between existing provisions in the Act.
16. The Bill expressly provides that the responsible officer shall be personally liable for payment of the fine prescribed as penalty for non-compliance. The law already defines what public funds are and hence there exists no ambiguity that the responsible officer cannot use public funds to pay for the penalty.

MIN./NACOPP/006/2024: CONSIDERATION AND ADOPTION OF
THE REPORT BASED ON THE
RECOMMENDATIONS

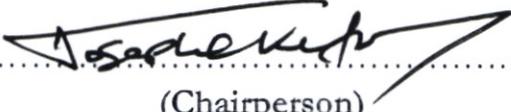
The Committee deferred the adoption of the report to the next Meeting.

MIN. / NACOPP/007/2024: ANY OTHER BUSINESS

The Committee requested a meeting with the Speaker of the National Assembly to engage in deliberations concerning the welfare of the Committee.

MIN./NACOPP/008/2024: ADJOURNMENT AND DATE OF THE NEXT
MEETING

The Chairperson adjourned the meeting at twenty minutes to One O'clock. The next meeting will be held on Tuesday 19, March 2024.

Sign: .....
(Chairperson)

Date:23/11/24.....