

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (*SECOND SESSION*)

REPORT OF

THE COMMITTEE OF POWERS AND PRIVILEGES

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

National Assembly,
Parliament Buildings,

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1.0 Preface

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

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

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

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

1.1. Acknowledgement

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their immense contribution to the inquiry that culminated in this Report. The Committee wishes to also thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the timely preparation of this Report.

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

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

2.0 ESTABLISHMENT AND MEMBERSHIP OF THE COMMITTEE

2.1. Establishment of the Committee of Powers and Privileges

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

2.2. Membership of the Committee of Powers and Privileges

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

Speaker/Chairperson

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

Members

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

Committee Secretariat

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

-

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

3.0 MANDATE OF THE COMMITTEE

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

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

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

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

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

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

² *Ibid*

- (d) willfully failing or refusing to obey any rule, order or resolution of Parliament;
- (e) contravening any provision of the Speaker's orders³; or
- (f) conducting himself or herself in a manner which, in the opinion of the Committee, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interests of Parliament or its Members.

The Committee may inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege either of its own motion (*suo moto*) or as a result of a complaint made by any person. Upon conclusion of the inquiry, the Committee may recommend any or all the sanctions under Section 17 of the Act. Where the relevant House finds that a Member has committed a breach of privilege, the relevant House may, in addition to any other penalty to which the Member may be liable under a specific law -

- (a) issue a formal warning;
- (b) reprimand the member;
- (c) order the member to apologize to the House or to a person in a manner to be recommended by the Committee of Powers and Privileges;
- (d) withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by Parliament;
- (e) removing or suspending the Member from any parliamentary position occupied by the Member for a specified period of time, impose such fine in terms of the Member's monthly salary and allowances as the House may determine;
- (f) suspend 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.

³ Section 37, Parliamentary Powers and Privileges Act, 2017

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

3.2. Enforcement of the Rules Governing the conduct of Members of Parliament

Chapter Six of the Constitution of Kenya prescribes standards of leadership and integrity for holders of public offices. Article 75 of the Constitution *assigns* the Committee the role to exercise penal authority over contravention of the Leadership and Integrity Code.

It states –

(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2) –

(a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

The Public Officer Ethics Act, 2003 also assigns to the Committee the function of investigating and enforcing compliance with the Code of Conduct. Section 3(5) provides that the public officer’s responsible Commission may investigate to determine whether the public officer has contravened the Code of Conduct and Ethics.

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

Section 37(3) of the Parliamentary Powers and Privileges Act provides for a Code of Conduct for Members of Parliament, provided in the Fourth Schedule to the Act. Rule 12 of the Code

specifically empowers the Committee of Powers and Privileges to enforce the Code and recommend penalties for its breach.

3.3. Procedure for considering the Report by the Committee

The manner of considering a Report of the Committee of Powers and Privileges is anchored in the Third Schedule to the Parliamentary Powers and Privileges Act. Section 1 of the Schedule provides that –

“every Report by the Committee concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a member of that Committee on the Table of the House.”

Section 2 of the Schedule contemplates that *“if the Report does not recommend any disciplinary action, there shall be no further proceedings whatsoever in respect of it, other than (where necessary) further inquiry and Report by the Committee may be needed.”*

Further, pursuant to section 3(1) of the Schedule, *“if the Report recommends disciplinary action, a member of the Committee must as soon as possible after the report has been laid, but after giving at least one day’s previous notice, move that the House adopts the Report.”*

Motion for adoption of a Report of the Committee of Powers and Privileges is debated in the usual manner and in the open; except that –

- (i) in exceptional circumstances to be determined by the Speaker, strangers may be ordered to withdraw throughout the debate; and
- (ii) no amendment may be moved, other than an amendment of the disciplinary action recommended by the Report or an amendment to the effect that the Report is referred back to the Committee for further inquiry.

Where the House adopts any recommendation of the Report for disciplinary action, with or without amendment, the Speaker is required to forthwith take action accordingly.

4.0 THE LAW PERTAINING TO CONDUCT

4.1. The Constitution of Kenya

Article 73(1)(a)(iii) of the Constitution bestows upon State Officers the responsibilities of leadership and requires authority assigned to a State officer to bring honour to the nation and dignity to the office. Further, Article 75(1)(c) of the Constitution provides that “*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 demeaning the office the officer holds.*” Further, Articles 75(2) and 103(1)(c) of the Constitution details sanction for contravention of Article 75(1) of the Constitution. However, it is important to note that the determination of any question whether the seat of a member has become vacant is the remit of the High Court⁴.

4.2. The Leadership and Integrity Act, 2012

This law was enacted pursuant to Article 80 of the Constitution to give effect to the provisions of Chapter Six of the Constitution on Leadership and Integrity. Section 11(b) of the Act requires a State Officer to “*treat members of the public and other public officers with courtesy and respect.*” Section 41(1) provides that, “*subject to subsection (2), a breach of the Code amounts to misconduct for which the State officer may be subjected to disciplinary proceedings. ... Where an allegation of breach of the Code has been made against a State officer in respect of whom the Constitution or any other law provides the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law.*’

4.3. The Public Officer Ethics Act, 2003

Most provisions of this Act replicate those of the Leadership and Integrity Act, 2012. Nonetheless, section 20 (1) provides that ‘*a public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office.*’

4.4. The Parliamentary Powers and Privileges Act, 2017

⁴ Article 105(1)(b) of the Constitution of Kenya.

Section 16(e) of the Parliamentary Powers and Privileges Act (PPPA) provides that *‘the Committee of Powers and Privileges may find a Member to be in breach of privilege if a Member conducts himself or herself in a manner which, in the opinion of the Committee of Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interests of Parliament or its Members’*.

4.5. The Code of Conduct for Members of Parliament pursuant to the PPPA

The Code of Conduct for Members of Parliament (Fourth Schedule to the Parliamentary Powers and Privileges Act) made pursuant to section 37(3) gives wide-ranging provisions and guidelines on the conduct of members and all members are bound by it when discharging their duties and responsibilities. The purpose of the Code is to create **public trust** and **confidence** in Members of Parliament and **to protect the integrity of Parliament**. The Code also sets out **General Principles of Conduct** members are bound by whenever any of them performs the roles of either House of Parliament set out under Articles 95 and 96 of the Constitution.

These principles include **selflessness, integrity, objectivity, accountability, openness, honesty, and leadership**. In short, Members take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends. Avoiding placing themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties is the ideal. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, Members are expected to make choices on merit. They must be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. Members should be as open as possible about all the decisions and actions that they take. They should also endeavor to give reasons for their decisions and restrict information only when the wider public interest clearly demands. They have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. They should also promote and support these principles by leadership and example.

Members are also bound to faithfully and conscientiously discharge their duties and obey, respect, uphold, preserve, protect and defend the Constitution and the rule of law. In the conduct of their parliamentary duties, members are expected to act in the public interest, and resolve any conflict between their personal interest and the public interest in favour of the public interest. Members of Parliament should not accept or agree to accept any financial inducement as an incentive or reward for the performance of their duties, seek to profit or profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services, or incur a financial or other obligation that unduly influences the Member in the performance of his or her duties.

Members are also bound to register all financial and non-financial interests that may reasonably influence their parliamentary actions with the Speaker of the National Assembly. Before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants, they are bound to declare any relevant interest in the context of parliamentary debate or the matter under discussion and to observe any rules agreed of the House in respect of financial support for Members or the facilities of the House. A relevant interest is an interest that may be seen by a reasonable member of the public to influence the way in which a Member discharges his or her parliamentary duties. Members must ensure that registered interests are accurate and updated within one month of any change in particulars. A member of the House is expected to uphold the dignity and integrity of the House by promoting respect for the House and its institutions at all times and ensuring that the member's non-parliamentary activities do not interfere with or compromise the member's official duties or bring the House into disrepute. A member of the House is also expected to ensure that parliamentary duties of the member take precedence over the member's other activities.

It is important to note that Members undertake to abide by the Code of Conduct upon taking the oath of office and at the start of each Parliament.

4.6. Disciplinary process and sanctions for breach of the Code of Conduct

The Committee, established under Section 15 of the Parliamentary Powers and Privileges Act has jurisdiction to, among other functions, inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege in terms of Section 16 of the Act. This inquiry may commence either *suo motu* or upon a complaint being made to the Committee by any person. This does not however preclude any investigative or prosecutorial agency from preferring charging charges if the acts or omission amount to offences under common law or statute law.

5.0 BRIBERY ALLEGATIONS

5.1. Allegations of Bribery

On or around July 7th, 2018 there were media reports published in *The People Daily* Newspaper of bribery allegations against the Members of Parliament and Parliament as a “*house of bribes*”. Subsequently, allegations of bribery against certain Members of Parliament arose during the debate on the Report of the Joint Committee on Trade, Industry and Cooperatives and that on Agriculture and Livestock, hereinafter the ‘*Joint Committee*’ on the inquiry into importation of alleged illegal and contaminated sugar into the country. Consequently, the Speaker of the National Assembly referred the claims to the Committee of Powers and Privileges to investigate and report on the matters, which touch and relate not only to the integrity of the Members of the National Assembly but the dignity of the House as well.

As the Committee mandated to deal with matters relating to the integrity of the Members of the National Assembly and the House, the Committee resolved to investigate the adverse allegations on the conduct of certain Members of the National Assembly around the time of the debate on the report of the Joint Committee. The report of the Joint Committee on inquiry into importation of alleged illegal and contaminated sugar into the country, hereafter referred to as the ‘*Sugar Report*’, was tabled in the House on 1st August 2018 and adopted on 9th August 2018. The Committee resolved to analyse the media reports including newspapers articles and video clips with a view to determining the specific Members that made the allegations and the nature and veracity of those allegations.

5.2 The Law relating to Bribery of Members of Parliament

The Standards in Public Office for Members of Parliament are new in the Parliament of Kenya and are incorporated in the **General Principles of Conduct** in the Parliamentary Powers and Privileges Act, 2017. The common and statute law relating to bribery such as the Anti-Corruption and Economic Crimes Act (ACECA) which includes *the National Assembly and the Parliamentary Service* in the definition of a “**public body**” and definition of “**corruption**” to include *bribery, abuse of office, breach of trust, and dishonesty*, and the provisions of the Bribery Act,

2016 apply to every person, including legislators. Important too to note is that the office of a Member of Parliament constitutes a public office for the purposes of the common law offences of abuse of office. Corruption, bribery and attempted bribery of a Member of Parliament, acting in his or her Parliamentary capacity, is still within the ambit of the criminal law. Acts of bribery by, or of, a Member of Parliament, are also dealt with as a breach of privilege. It is for each House of Parliament to enforce its privileges.

Apart from relying on Parliamentary Privilege to deal with accusations of the bribery of Members of Parliament, members are clearly subject to the present corruption statutes in full and there is no distinction between conduct which should be dealt with by the criminal law and that which should be left to Parliament itself.

Offering bribes to Members to influence them in their conduct as a Member, or of any fee or reward in connection with the promotion of, or opposition to, any Bill, resolution, matter or thing submitted, or intended to be submitted to the House, or any committee is a breach of privilege. The acceptance by a Member of such a bribe in similar circumstances is also a breach of privilege. These also include conduct such as offering money to a Member to ask a Parliamentary Question, entering into any contract with an outside body which might control or limit the independence or freedom of action of a Member, or failing to disclose relevant pecuniary interests or benefits in debates or proceedings of the House.

While there is a case for saying that any alleged corrupt activity by a Member of Parliament *in relation to their Parliamentary duties*, could be a matter for Parliament alone and that the courts and criminal law should not intervene, the Constitution of Kenya now subjects all persons to the rule of law. The National Assembly Standing Orders also prescribe sanctions for offences of misconduct including suspension, and suspension with loss of salary and/or allowances. But nothing stops the investigative and prosecution agencies from preferring charges and the courts from convicting Members for offences penalized by statute. By the law subjecting Members of Parliament to the criminal law in a similar way to members of other public bodies, it means that the courts could take jurisdiction over corrupt acts committed by Members.

5.3 The role of the Ethics and Anti-Corruption Commission

It is common for the Ethics and Anti-Corruption Commission (EACC), on its own initiative or upon a complaint from any person, to send complaints pertaining to breaches of privileges or breach of the Code of Conduct by Members to the Committee of Powers and Privileges. In addition to the functions of the EACC under Article 252 and Chapter Six of the Constitution, the Commission, in relation to State officers is mandated to develop and promote standards and best practices in integrity and anti-corruption and to develop a code of ethics.

Apart from working with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption, the Commission is mandated to receive complaints on the breach of the code of ethics by public officers and to investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under Leadership and Integrity Act, 2012, the Anti-Corruption and Economic Crimes Act or any other law enacted pursuant to Chapter Six of the Constitution. It also recommends appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct, oversees the enforcement of codes of ethics prescribed for public officers, advises, on its own initiative, any person on any matter within its functions, raises public awareness on ethical issues and educates the public on the dangers of corruption and enlists and fosters public support in combating corruption. With due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003), as to confidentiality and subject to Article 31 of the Constitution, the Commission monitors the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices. The commission may institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures. The Commission is therefore an important partner of the Committee of Powers and Privileges in enforcement of ethics and integrity of Members of Parliament.

5.2. Committee Sitings

The Committee held twelve sittings to consider the matter. At its first sitting held on Wednesday, 1st September 2018, the Committee reviewed the matter of the article “*House of Bribes*” by *The People Daily* newspaper, that also made claims of bribery in the House and resolved to revisit and hear the journalists in a subsequent sitting to be held on Thursday, 2nd September 2018. At the sitting held on Wednesday, 5th September 2018, the Committee reviewed the terms of reference of the Communication made on 8th August 2018 by the Speaker referring the claims of bribery of Members to reject the Sugar Report and the newspaper articles attributed to various Members on the matter. The Committee identified the following Members as persons of interest to be invited to adduce evidence on the matter:

1. The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, Member for Kimilili Constituency
2. The Hon. James Onyango K’Oyoo, Member for Muhoroni Constituency
3. The Hon. Godfrey Osotsi, Nominated Member of Parliament
4. The Hon. Jayne Kihara, Member for Naivasha Constituency
5. The Hon. John Waluke, Member for Sirisia
6. The Hon. Geoffrey Odanga, Member for Matayos Constituency
7. The Hon. Simba Arati, Member for Dagoretti North Constituency
8. The Hon. Samuel Atandi, Member for Alego Usonga Constituency
9. The Hon. Makhokha Murunga, Member for Matungu Constituency
10. The Hon. Wamuchomba Gathoni, MP , Member for Kiambu County
11. The Hon. Angatia Savula Ayub, MP, Member for Lugari Constituency
12. The Hon. Rahab Wachira Mukami, MP., Member for Nyeri County

At the sittings held on Wednesday, 19th September 2018 in Committee Room 12, the Committee had preliminary deliberations on the matter and thereafter heard submissions from the following Members of Parliament-

1. The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, Member for Kimilili Constituency
2. The Hon. James Onyango K’Oyoo, Member of Parliament for Muhoroni Constituency
3. The Hon. Godfrey Osotsi, Nominated Member of Parliament

4. The Hon. Jayne Kihara, Member of Parliament for Naivasha Constituency
5. The Hon. John Waluke, Member of Parliament for Sirisia
6. The Hon. Geoffrey Odanga, Member of Parliament for Matayos Constituency
7. The Hon. Simba Arati, Member of Parliament for Dagoretti North Constituency
8. The Hon. Samuel Atandi, Member of Parliament for Alego Usonga Constituency
9. The Hon. Makhokha Murunga, Member of Parliament for Matungu Constituency

On Tuesday, 25th September 2018, the Committee held two sittings in Committee Room 12, and received oral submissions from the following witnesses-

1. The Hon. Wamuchomba Gathoni, MP, Member for Kiambu County
2. The Hon. Angatia Savula Ayub, MP, Member for Lugari Constituency
3. The Hon. Kipkosgei Tonui Joseph, MP, Member for Kuresoi South Constituency
4. The Hon. Fatuma Gedi, MP, Member for Wajir County
5. The Hon. David Gikaria, MP, Member for Nakuru Town East Constituency

The Committee held a further sitting on Wednesday 3rd October 2018 to receive submissions from the Member for Nyeri County, the Hon. Rahab Wachira Mukami, MP.

Subsequent to the oral submission by the Hon. Gathoni Wamuchomba, MP alluding to some facilities as probable sites where the bribery allegedly took place, the Committee conducted a site visit on Tuesday, 16th October 2018 to enable it make a determination of the matter under consideration.

Having gathered evidence from oral submissions and site visits, the Committee held two sittings in Mombasa on Friday 16th and Saturday 17th November 2018 to analyse the evidence and review the footage of National Assembly proceedings of Thursday, 9th August 2018 as recorded by the Parliamentary Broadcasting Unit to ascertain whether or not envelopes allegedly containing bribes were exchanged in the Chamber.

Thereafter, the Committee considered and adopted its Report on the matter in its Sitting held on 17th November 2018.

The relevant minutes of these sittings form part of the Report and are appended hereto in accordance with the Standing Orders at *Appendix 1*. Hansard record, both audio and written transcripts, are separately preserved by the Clerk of the National Assembly.

6.0 PROCEEDINGS OF THE COMMITTEE

6.1. Evidence

The Committee obtained and reviewed evidence carried in newspaper articles from *The Daily Nation*, *The Standard*, *The Star* and *The People Daily* newspapers, and video clips from *Citizen TV* and *K24 TV* stations. The Committee further invited Members of Parliament to whom certain statements relayed by the media and other statements in the public domain were attributed to as having knowledge of the allegations as to the conduct of certain Members around the time of consideration of the *Sugar Report*.

6.2. Proceedings

The Committee received oral submissions from the following Members, appearing as witnesses –

(i) Hon. Capt. (Rtd) Didmus Barasa, Member for Kimilili Constituency

The Hon. Capt. (Rtd) Didmus Barasa, MP appeared before the Committee on Wednesday 19th September 2018. Before giving his submissions, he requested for clarification on the nature of the invitation of by the Committee. He further stated that he had written to the Clerk of the National Assembly (*letter tabled before the Committee dated 18th September 2018*) in response to the invitation to appear before the Committee on 10th September 2018 addressing the subject matter of the hearing.

The Chairperson of the Committee advised that the proper way to address the letter should have been to direct it to the Clerk of the National Assembly since the letter dated 10th September 2018 inviting him to the Committee originated from the Clerk. The honorable Member further requested the Committee to make a distinction between whistleblowers and persons of interest and/or suspects appearing before it, noting that he had honoured the invitation and was appearing as a friend of the Committee, especially since he was also member of the Committee of Powers and Privileges.

The Chairperson of the Committee informed the witness that the hearings were quasi-judicial in nature and that he was not going to be treated as an accused person but as a witness. The

Chairperson further informed the witness that the purpose of the invitation was to provide information to the Committee that would enlighten it on the various allegations made against some Members of the National Assembly around the time of the consideration of the *Sugar Report*.

Hon. Capt. (Rtd.) Didmus Barasa was presented with the following evidence attributed to him-

- (1) A video clip from *K24 Television* station in which he stated that he saw a member of Parliament giving bribes of Ksh. 10,000; and
- (2) Newspaper articles in *The Daily Nation* newspaper of 15th August 2018 and *The People Daily* newspaper of 15th August 2018, which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. Capt. (Rtd) Didmus Barasa, MP submitted to the Committee under oath as follows-

- (1) That the person appearing in the clip was indeed him and that he spoke what was captured on the video clip;
- (2) That he saw a Member of Parliament giving out Ksh. 10,000 to influence Members to vote in a particular manner;
- (3) That the Member of Parliament who was giving out the money was Hon. Fatuma Gedi, Women Representative for Wajir County;
- (4) That the Hon. Fatuma Gedi offered him an envelope in the National Assembly Chamber during a plenary sitting but he could not take it because his conscience could not allow;
- (5) That the Hon. John Waluke witnessed the incident as he was sitting near him and in fact had conversations with him concerning the incident, as she also attempted to bribe Hon. Waluke;
- (6) That he established the amount to be Ksh.10,000 because in the process of establishing the contents of the envelope, Hon. Fatuma Gedi stated, "*Hii ni elfu kumi, tuangushe hii kitu*". He, however, did not check the contents of the envelope to ascertain whether indeed it was Ksh. 10,000 but had no reason to doubt the assertion by Hon. Gedi.

- (7) That the statements attributed to him in the August 11th newspaper article about sugar barons were accurate;
- (8) That, however, the statements appearing in *The Daily Nation* newspaper dated 15th August 2018 attributed to him were not accurate, further clarifying that that his statement was to the effect that the Hon. Fatuma Gedi *attempted* to bribe him;
- (9) That he believed that the bribe/money offered to him was so that he would reject amendments to the Report as proposed by the Hon. Gladys Wanga, MP;
- (10) That he did not raise the matter in the House because he wasn't successful in catching the Speaker's eye when he sought to rise on a point of order so as to raise the matter on the floor. However, when the Speaker issued a communication that the Committee of Powers and Privileges would investigate the allegations, he decided to await to appear before the Committee;
- (11) That he has no ulterior motives against the person of the Hon. Fatuma Gedi;
- (12) That he believed the Member was acting for a third party and was likely protecting the Cabinet Secretary for Ministry of Industry, Trade and Co-operatives who had been adversely mentioned in the report. Further, that part of the amendments by Hon. Gladys Wanga were to include names and actions for those adversely mentioned in the report;
- (13) That, as a representative of sugarcane farmers, he was angered by the actions of the member;
- (14) That he remembers the Hon. Fatuma Gedi held a presser demanding an apology from him, though they had not interacted nor discussed the matter other than meeting on two occasions in the corridors of Parliament.

(ii) Hon. James Onyango K'Oyoo, Member for Muhoroni Constituency

Hon. James Onyango K'Oyoo, MP, appeared before the Committee on Wednesday 19th September 2018. He was presented with a newspaper article in *The Saturday Standard* dated 11th August 2018 which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. James Onyango K'Oyoo, MP submitted to the Committee under oath as follows -

- (1) That he confirmed the reporting in the newspaper attributed to him as having stated that the Speaker, “*gagged the report*”, to be an accurate reporting;
- (2) That the member stated that he did not get an opportunity to express his displeasure on the floor of the House and that he was frustrated because the matter concerning the sugar industry is of great concern to his constituents. He further stated that the emotional statements may have been in reaction to his having been unhappy because the report was not adopted and that he did not get a chance to express the feelings of the people he represents;
- (3) That on the material day when the report was being debated, many members were scheduled to speak as such he did not get an opportunity to express his views. He was of the opinion that rejecting the report was “*throwing the baby with the bathwater*” and he did not get the opportunity to remedy the issues raised against the report;
- (4) That he would like to apologize for statements he uttered that the Speaker, “*gagged the report*” as it does not reflect the true position, having made the remarks in anger;
- (5) That he did not have tangible evidence to table before the Committee on any bribery claims regarding the report and that he did not want to, “*peddle in rumours*”;
- (6) That, however, the statements carried in *The Saturday Standard* dated 11th August 2018 attributed to him to the effect that “*lobbying was done with no iota of respect*” was accurate. He explained that in his view, the lobbying done against the adoption of the report did not respect the interest of the farmers and the interest of the public and that in his own judgment it was reckless.

(iii) Hon. Godfrey Osotsi, Nominated Member of Parliament

Hon. Godfrey Osotsi appeared before the Committee on Wednesday 19th September 2018. He was presented with a newspaper article from *The Saturday Nation* dated 11th August 2018 which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. Godfrey Osotsi, MP submitted to the Committee under oath as follows -

- 1) That the report attributed to him and carried in *The Saturday Nation* dated 11th August 2018, that, “*Nominated MP Godfrey Osotsi said the rejection of the report was a victory for cartels and a big blow to thousands of farmers who eke out a living through cane farming ... The institution of Parliament that is supposed to protect the public has turned against them, said Osotsi*” was not accurate;
- 2) The member submitted to the Committee that the newspaper report may have emanated from a press conference held at the Media Centre. He stated that he spoke of millions of people who depend on cane farming rather than the reported “*thousands of farmers*” and specifically over 6 million people in the Western and Nyanza regions who depended on cane farming;
- 3) That he did not mention anything about bribery and only spoke of the amendments to the report that he had sponsored;
- 4) That he did not witness any member receive bribes;
- 5) That some of the statements made at the time may have been spoken out of emotion/frustration because he felt that he (and other members) had tried to save the report and it was instead rejected by the majority;
- 6) That he apologizes for the statements made that may have lowered the credibility of Parliament and regrets the second part of the statement that “*The institution of Parliament that is supposed to protect the public has turned against them*”;
- 7) That, pertaining to the question of “cartels” in the sugar industry, he recorded a statement with the Director of Criminal Investigations (DCI) in August 2016, and as a result preferred not to mention any names since the matter is currently alive and under investigation. He also informed the committee that that his life was in danger after receiving threats and also reported an attack at his gate the same weekend;

(iv) Hon. Jayne Kihara, Member for Naivasha Constituency

Hon. Jayne Kihara, MP appeared before the Committee on Wednesday 19th September 2018.

She was presented with a video clip from the *K24 Television* station, a newspaper article from *The Saturday Nation* dated 11th August 2018 and *The People Daily* dated 15th August 2018 which contained statements attributed to her.

With regard to the subject matter of the hearing, the Hon. Jayne Kihara, MP submitted to the Committee under oath as follows-

- (1) That indeed the person shown in the video clip aired on *K24 Television* station was her and that she made the statements contained in the clip. She, however, disputed the reporting by the reporter in the clip who stated that there would be, “*a reward in monetary terms*” if they voted against the report;
- (2) That regarding the report carried in *The People Daily* dated 15th August 2018, she stated that the report was untrue. She disputed the report that she was offered money to vote against the report;
- (3) That on the statement spoken in the video clip aired on the *K24 Television* station that, “*Ingawaje kwa kweli kuna wale walikula pesa....*”, the member submitted to the Committee that this was a result of hearsay based on what she had been told by Hon. Rahab Mukami, the Nyeri County Woman Representative.
- (4) That the Hon. Rahab Mukami told her “*that people had been bribed around here*”. She added it was said in passing that, “*that lady is distributing money*” while pointing at the said person and that she did not know the member being referred to other than “*she is Muslim owing to her mode of dressing*”.
- (5) That she would not be able to identify the Member of Parliament. She further submitted that she should have said instead said that, “*kwa kweli niliskia ama niliambwa*” which would have been a better reflection of what took place although she took the statement by the Member to be the truth;
- (6) That she did not see anyone being bribed nor was she offered money to vote against the report;

- (7) That with regard to a member mobilizing Nakuru members of Parliament to vote in a certain way as mentioned in the video clip aired on the *K24 Television* station, she stated that she was approached by Hon. David Gikaria, Member for Nakuru Town East who told her that he was mobilizing Nakuru members of Parliament to vote a certain way and said *“hii kitu tunaangusha”*;
- (8) That on further inquiring from Hon. Gikaria as to who had asked that they should not vote for the report, she said he (Gikaria) responded that it was the President at the instigation of the Leader of the Majority Party for the reason that the persons implicated in the report were Jubilee Party Ministers. She said she told the member that she was not voted in by the President but by the people of Naivasha;
- (9) That on the issue of the insinuation that the Head of State was behind the voting, the Committee noted that in the video clip aired on the K24 television station, she stated that the reason given not to vote for the report was, *“Because the people belong to Uhuru”* (said in Kiswahili). Hon. Kihara submitted that when she asked Hon. Gikaria why they should not vote the report, his response was that *“the Ministers belong to President Uhuru”*;

(v) Hon. John Waluke, Member for Sirisia Constituency

Hon. John Waluke, MP, appeared before the Committee on Wednesday 19th September 2018. He was presented with a newspaper article from *The Saturday Nation* dated 11th August 2018 which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. John Waluke, MP submitted to the Committee under oath as follows -

- (1) That he denies the statements in the newspaper article carried in *The Saturday Nation* dated August 11th 2018. He stated that he *“ ... did not see anything and did not witness anything like money being exchanged in the House”*. He stated that contrary to what was reported, Hon. Capt. (Rtd) Didmus Barasa was sitting across the aisle of the Chamber and he could not have seen him being offered a blue envelope. He further stated that an hour before appearing before the Committee, he met the Member (Hon. Didmus

Barasa) and asked him if he was given money, and the Member said he was offered Ksh.10, 000 in a blue envelope;

- (2) That he did not know why the Committee had invited him. He stated that he is not aware of what took place and that he was not in the company of Hon. Capt. (Rtd) Didmus Barasa on that material day;
- (3) That when asked who offered the money, Hon. Waluke stated that "*Hon. Capt. (Rtd) Didmus Barasa said a member from Isiolo and that he was offered Ksh. 10,000 but he did not take it since it was little. Maybe if it were Ksh. 100,000 he would have considered*"; and
- (4) That he did not have the purported discussion as reported in the Newspaper article and did not discuss, "*anything anywhere*" before we entered the floor of the House.

(vi) Hon. Geoffrey Odanga, Member for Matayos Constituency

Hon. Geoffrey Odanga, MP appeared before the Committee on Wednesday, 19th September 2018.

He was presented with a Newspaper article from the Standard dated 10th August 2018 and *The Saturday Nation* dated 11th August 2018, which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. Geoffrey Odanga, MP submitted to the Committee under oath as follows -

- (1) That to a large extent, the reports attributed to him in the newspaper article were accurate;
- (2) That he was at the new restaurant taking lunch with two of his constituents and while he was taking lunch a member came up to him and informed him to go inside the Members' Lounge annexed to the new restaurant to take the money;
- (3) That the member who informed him was Hon. Joseph Kipkosgei Tonui, Member for Kuresoi South Constituency. He informed him that Ksh. 20,000 was being given to some Members of the National Assembly to reject the *Sugar Report*;

- (4) That the Hon. Joseph Mairo Oyula, Member for Butula Constituency joined him where he was seated and agreed that they would not take the money;
- (5) That as he was heading towards the chamber, he shouted the words that were attributed to him in *The Standard* and *The Daily Nation* newspapers;
- (6) That the words were said in anger at being told to pick Ksh. 20,000 to shoot down the report;
- (7) That the intention of the money being given out was to reject the report; and
- (8) That he did not report the matter because the Speaker had issued a Communication that the Committee of Powers and Privileges would investigate the issue.

(vii) Hon. Simba Arati, Member for Dagoretti North Constituency

Hon. Simba Arati, MP appeared before the Committee on Wednesday, 19th September 2018.

He was presented with a Newspaper article from *The People Daily* dated 10th August 2018 and *The Standard* dated 10th August 2018, which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. Simba Arati, MP submitted to the Committee under oath as follows-

- (1) That he denies the accuracy of what has been attributed to him in the newspapers;
- (2) That the document tabled on the floor of the house is not what was signed. As a member of the Joint Committee, they were advised that the report couldn't come with amendments from the Chairman so members asked Hon. Gladys Wanga to bring amendments to the floor of the House. However, the amendments did not pass;
- (3) That the CCTV cameras could provide clear evidence if indeed there was a possibility of open bribery;
- (4) That there are Members of Parliament who had confirmed that there was bribery but he (Hon. Arati) never took part in giving or receiving any bribe;

- (5) That the only contention he, with other members of the Joint Committee, had was that the Report that was tabled had been drastically altered from what had been initially adopted by the Committee; and
- (6) That he had not had the time to correct the statements attributed to him by the media

(viii) Hon. Samuel Atandi, Member for Alego Usonga Constituency

Hon. Samuel Atandi, MP appeared before the Committee on Wednesday 19th September 2018.

He was presented with a newspaper article from *The Saturday Nation* dated 11th August 2018 which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. Samuel Atandi, MP submitted to the Committee under oath as follows-

- (1) That the report carried in *The Saturday Nation* newspaper dated 11th August 2018 were not accurate and he did not make the statement;
- (2) That when he read the newspaper article he had travelled to his Constituency and he was approached by journalists for comment while he was attending a funeral;
- (3) That he tried to reach the media house which quoted him and raise the misquotation but they have not been forthcoming;
- (4) That if there were bribes given to members of the National Assembly they would have been captured on CCTV;
- (5) That he condemned the alleged bribery of Members at the time and he was part of the team that lobbied for amendments to be made to the Report; and
- (6) That he has no evidence that certain Members of Parliament were bribed.

(ix) Hon. Makhokha Murunga, Member for Matungu Constituency

Hon. Makhokha Murunga, MP appeared before the Committee on Wednesday 19th September 2018.

He was presented with several newspaper articles, which contained statements attributed to him.

With regard to the subject matter of the hearing, the Hon. Makhokha Murunga, MP submitted to the Committee under oath as follows -

- (1) That the truth of what happened on the material day would have been captured on CCTV cameras;
- (2) That the matters mentioned in the newspapers are captured in the CCTV;
- (3) That the matters reported in the newspaper articles are untrue;
- (4) That he did not take steps to address the misreporting by the media;
- (5) That he had not seen the newspaper articles before he appeared before the Committee;
- (6) That if there is a Member that claimed he (Hon. Murunga) was in their company when receiving a bribe, he is not aware and he did not see anything;
- (7) That on whether he has given an interview on the subject matter before, he responded that he has spoken on the sugar issue on several occasions;
- (8) That he heard and read about bribery allegations in the newspapers;
- (9) That he could not recollect meeting or discussing the report with Hon. Didmus Barasa and/or Hon. John Waluke as reported in the newspaper;
- (10) That he did not sign any press statement in relation to the matter; and
- (11) That the Members who attended the presser on the Report were well captured in the newspaper articles.

(x) Hon. Gathoni Wamuchomba, County Member for Kiambu County

Hon. Gathoni appeared before the committee on Tuesday 25th September 2018.

With regard to the subject matter of the hearing, the Hon. Gathoni Wamuchomba, MP submitted to the Committee under oath as follows -

- (1) That the statements published in *The People Daily* of Wednesday 15th August 2018 is a true reflection of statements she made at a public gathering in Thika town around the time of consideration of the sugar report as an expression of her displeasure with the alleged bribery that led to the rejection of the report;
- (2) That on Thursday, 9th August 2018, she joined three other Members for lunch in the restaurant. As she waited to be served, she noticed unusual movements and excitement among several Members of the National Assembly in the lounges and lobbies before the sitting of the House in which the *Sugar Report* was considered. Of the three Members she shared a table with, she could only recall the Hon. Wachira Rahab Mukami, MP;
- (3) That she tried to establish the cause of the unusual movements and excitement by Members although she could not physically identify any of the Members from where she was seated. She, however, didn't get an opportunity to get to the room where Members were coming from as the Chamber bell was on and she had to rush to the Chamber, thus she never witnessed the activities in the said room. She overheard that some Members were being bribed to reject the *Sugar Report*;
- (4) That she passed by the ablution facilities on her way to the Chamber, and while inside she overheard some conversation of female Members colleagues in various cubicles discussing how some Members had been bribed with cash ranging from Ksh. 10,000 to Ksh. 20,000 to reject the *Sugar Report*;
- (5) That she also overheard one of them claiming that the County Woman Representative for Wajir County, the Hon. Ali Fatuma Gedi, MP was the one giving out bribes. She was unable to identify the Members by name or face since they remained inside the toilet cubicles for long after they heard her phone ring, which forced her to exit the toilets;
- (6) That while exiting from the Chamber later, she encountered crowds of Members in a heated debate concerning the alleged bribery. She expressed her dissent for corruption,

which prompted one of the Members in the crowd to retort that “*hii pesa si ya mama yako.*” She was able to only identify the Hon. Njiru Jane Wanjuki, MP, who had left the Chamber ahead of her and the Hon. Wachira Rahab Mukami, MP;

- (7) That she neither saw the Hon. Gedi giving bribes in person nor did she witness any Member receiving a bribe. She only picked the bribery claims from the conversations she heard among Members and the unusual behaviour she had observed;
- (8) That she didn’t make any formal steps to address the bribery allegations, however, she registered her displeasure within the Women MPs caucus and had a long telephone conversation with Hon. Wachira Rahab Mukami, MP regarding the matters, but she wasn’t on the mission of conducting investigations on the matter;
- (9) That she, however, approached a Clerk Assistant for advice on the available mechanisms that she could pursue to have the matter addressed and appropriate action that could be taken against Members who may have been involved in bribery. She was however advised to await an invitation to appear and give evidence to the National Assembly Committee of Powers and Privileges, following the Speaker’s communication to the House.

(xi) Hon. Angatia Ayub Savula, MP, Member for Lugari Constituency

Hon. Ayub Savula appeared before the committee on Tuesday 25th September 2018.

The Chairperson welcomed the witness to the meeting. He read out a caption attributed to him in *The Standard* newspaper of Saturday, August 11, 2018,

The witness submitted under oath, as follows –

- (i) That the statement read out to him as published in the quoted *The Standard* newspaper was correctly attributed to him;
- (ii) That he used the statement ‘rent seeking’ to describe the unbecoming behaviour by Members of the Joint Committee during the inquiry process, which in his view, was an expression of the potential to be influenced by witnesses through bribery;

- (iii) That he noted there was nothing wrong with Members shaking hand with witnesses but it is against the rules of natural justice for judges to exchange pleasantries with suspects. Furthermore, it is against the rules and procedures of the conduct of committees as provided for by the standing orders; and
- (iv) That the conduct of the Joint Committee cast doubt on its impartiality, thereby setting the grounds for the rejection of the *Sugar Report* by the House.

(xii) Hon. Kipkosgei Joseph Tonui, MP, Member for Kuresoi South Constituency

Hon. Joseph Tonui appeared before the committee on Tuesday 25th September 2018.

The Chairperson informed the witness that he had been invited following a claim by the Hon. Makokha Geoffrey Odanga, MP when he appeared before the Committee on September 19, 2018. The Hon. Odanga had claimed that the witness approached him to go to the Members' Lounge to receive his share of Ksh. 20,000.00 as a bribe to vote against the Sugar Report.

Submitting under oath, the witness informed the Committee as follows –

1. That the claims by Hon. Odanga were false;
2. That he did not know the Hon. Odanga in person and that they had not had prior interactions since they shared no common interests. He was shocked that the Member had mentioned him in his evidence;
3. That he had never had lunch with the Hon. Odanga and that he never requested Hon. Odanga to collect his bribe from the Members' Lounge as alleged;
4. That he had not discussed with any Member regarding the Sugar report around the time the report was tabled; and
5. That he voted against the Sugar Report as a matter of principle believing it was shoddy, and not on the basis of any external influence, as even the parties mentioned were not from his region as alleged.

(xiii) Hon. Ali Fatuma Gedi, MP, Member for Wajir County

Hon. Fatuma Gedi appeared before the committee on Tuesday 25th September 2018.

The Chairperson welcomed the witness to the Committee and informed her that she had been invited to clarify allegations made against her by the Hon. Capt. (Rtd.) Didmus Wekesa Barasa, MP. In his evidence to the Committee on Wednesday, September 19, 2018, the Hon. Barasa alleged that the Hon. Gedi attempted to bribe him with Ksh. 10,000 to reject the Sugar Report. He repulsed the advance, which was witnessed by the Hon. Maj. (Rtd.) John Waluke Koi, MP.

The witness submitted under oath as follows –

1. That she never bribed any Member of the House and it was unfortunate that the Hon. Barasa could imagine that a honourable Member of Parliament would be bribed with Ksh. 10,000. She stressed that her Islamic faith does not permit her to engage in bribery;
2. That she does not know Hon. Barasa personally and had never sat next to him or Hon. Waluke in the Chamber as alleged. It was also impractical for her to have singly bribed Members in the Chamber, including in the ablution facilities and lobbies at the same time as alleged;
3. That even though the immediate former Cabinet Secretary, Ministry of Industry, Trade and Cooperatives hails from her neighbouring County of Mandera, she had no personal interest to shield him from being implicated in the importation of alleged illegal and contaminated sugar;
4. That she voted against the Sugar Report because of two reasons. First, the recommendations seemed to sacrifice Cabinet Secretaries instead of placing the responsibility on the Kenya Bureau of Standards, which is responsible for enforcing quality and safety standards of goods imported into the country. Secondly, the Joint Committee failed to unearth the cartels involved in the alleged illegal importation of sugar or to ascertain if the sugar was safe for human consumption;
5. That while at the Members' Lounge and in the Chamber, she persuaded and lobbied several Members who agreed with her position to reject the Report but never used monetary inducements. Some Members agreed with her while others took a contrary

position. Hon. Barasa was not among those she attempted to persuade. She, however, doesn't regret in taking part in any persuasion;

6. That the claim by the Hon. Gathoni Wamuchomba, of having heard that she was the one bribing Members is untrue. They were founded on personal vendetta arising from her defeating Hon. Gathoni Wamuchomba for the position of Chairperson of *Caucus 47*;
7. That she has never had any interactions before with Hon. Barasa but came to know him through the media when he made the allegations against her;
8. That she had not taken any legal steps against Hon. Barasa for maligning her, but did a presser and had wanted to give a personal statement to the House but was held back by the Speaker's order which required the Committee of Powers and Privileges to handle the matter;
9. She requested anyone with evidence against her to submit to the Committee for its consideration;
10. She further averred that she expected that the proceedings would result in fair findings, out of which she would make a decision on whether to take further action on the allegations levelled against her.

(xiv) Hon. David Gikaria, MP, Member for Nakuru Town Constituency

Hon. David Gikaria appeared before the committee on Tuesday 25th September 2018.

The Chairperson informed the witness that, while giving evidence to the Committee on September 19, 2018, the Member for Naivasha Constituency, the Hon. Kihara Jayne Wanjiru, MP alleged that he had approached her with the intention of influencing her to vote in a certain manner against the Sugar Report. She added that the Hon. Gikaria was reportedly mobilizing Members of the National Assembly from Nakuru County to reject the Report. Hence, the Committee invited him as a witness to clarify the claims and provide any evidence in his possession on the matter.

The witness submitted under oath as follows –

1. That he was concerned that the image of the National Assembly was under attack due to the allegations of bribery to influence Members to vote in a particular manner and it was important to take action to protect the institution;
2. That his interest in the matter of importation of alleged illegal and contaminated sugar into the country was due to the fact that two of the stores allegedly suspected to have had contaminated sugar were in his constituency. He was therefore keen to be enjoined in the process of investigating the claims so as to save his constituents and the rest of the citizenry from possibly consuming contaminated sugar;
3. That Members of Parliament from Nakuru County have an official forum that acts as a platform for deliberating issues of concern to the county and lobbying one another to take a common position on any matter under consideration by the House, where necessary;
4. That the Forum had neither deliberated on the *Sugar Report* on the importation of alleged illegal and contaminated sugar into the country nor agreed on a common position on the matter when it came for consideration by the House;
5. That it is only the Forum's Chairperson that acts as the spokesperson. He was not the Chairperson, hence the allegation by the Hon. Jayne Kihara, MP that he was communicating the position of the forum and lobbying Members from the County to vote in a particular manner was untrue;
6. That he opposed the *Sugar Report* because he was not persuaded that its contents and recommendations had sufficiently addressed the concerns he had on the matter of contaminated sugar in the country. He did not act under the influence of anyone except in the best interest of his constituents;
7. That he found no reason why the Executive would have wished to influence rejection of the *Sugar Report* on account of recommending that implicated Cabinet Secretaries take personal responsibility, since H.E. the President had clearly stated that any member of the Cabinet would take personal responsibility for any ills they commit;

8. That the Jubilee Party had not convened any Parliamentary Group meeting to discuss and agree to vote in a particular manner on the *Sugar Report*. The claim by Hon. Jayne Kihara that he was acting on instructions by the Leader of the Majority Party to lobby Members to reject the Report was false; and
9. That he shared his objection to the adoption of the *Sugar Report* with the Members that he had an opportunity to discuss the matter with and attempted to obtain their support. He had no recollection that the Hon. Jayne Kihara, was among the Members with whom he discussed the matter;
10. That he doesn't have any differences with Hon. Jayne Kihara, other than occasional divergence of opinion over the conduct of affairs within Nakuru County.

(xv) Hon. Wachira Rahab Mukami, MP, Member for Nyeri County

The witness appeared before the Committee on Wednesday 3rd October 2018.

She was welcomed by the Chairperson and informed that she was neither an accused nor a suspect but a witness to assist the committee, in the matter under consideration.

With regard to the subject matter of the hearing, the Hon. Rahab Mukami, MP submitted to the Committee under oath as follows-

- (1) That the statements published in *The Standard* newspaper of Friday 10th August 2018 and Saturday 11th August 2018 were not entirely accurate but reflective of some events of that particular day;
- (2) That on the Thursday August 9th 2018 she was in the company of Hon. Simba Arati on the same table having lunch in the restaurant. The table is located at the far right foyer of the restaurant and therefore not inside the main restaurant;
- (3) That she did not share a table with Hon. Gathoni Wamuchomba, as she was sitting on another table;

- (4) That some media personalities approached their table and while addressing Hon Simba Arati, they were informed that Members of Parliament were receiving bribes;
- (5) That as she tried to establish the reason why some Members were being bribed to reject the report, she saw a group of Members making movements in and out of the restaurant, and it was at that point that she shouted at them condemning their actions;
- (6) That she gathered from the discussions from Members that they were bent on shooting down the Report because it was targeting two Cabinet Secretaries only and not their Juniors who were directly responsible, but as a Member of Departmental Committee on Trade, Industry and Co-operatives, which jointly investigated the matter with Departmental Committee on Agriculture and Livestock, she knew the correct position, which she endeavored to explain while she hoped the report would be adopted;
- (7) That she did not see anyone receiving money but she was shouting, as a deterrent to any Member who would have attempted to engage in bribery;
- (8) That while in the Chamber, sitting next to Hon. Jane Kihara, she saw the County Woman Representative for Wajir County, the Hon. Ali Fatuma Gedi, MP busy lobbying hard to shoot down the report but did not see her giving out bribes;
- (9) She was concerned about the health of Kenyans especially the cancer scare caused by contaminated sugar and the reason why she confronted Hon. Fatuma Gedi to find out why she was lobbying hard to shoot down the report, but she instead insulted her;
- (10) That she neither saw the Hon. Gedi giving bribes in person nor witnessed any Member receiving a bribe. She only picked the bribery claims from the conversations she heard among Members;
- (11) She was not near Hon Gathoni in the Chamber and exited the Chamber in the company of Hon. Cecily Mbarire;
- (12) She does not know Hon. Odanga in person and did not hear any statement about Ksh. 20,000, and thus she could not corroborate anything to that effect.

(xvi) SITE VISIT

On 16th October 2018 the Committee conducted a site visit of the lady Members’ ablution and restaurant to enable it corroborate the claims by Hon. Gathoni Wamuchomba when she appeared before the Committee on Tuesday, September 25, 2018 and make a determination of the matter under consideration. The witness led the Committee on a visit to the following sites, to gather more evidence on claims attributable to her –

1. Lady Members’ ablution facility next to the Chamber

The witness submitted that on the material day, she was at the Lady Members’ ablution facility where she heard members in the cubicles conversing about a purported bribery of Members to reject the *Sugar Report*. She attested that she did not however see who the Members in the cubicles were. The Chairperson requested four Members to occupy various cubicles of the facility for a mock-conversation to ascertain whether or not the occupants of various cubicles could hear the voices of colleagues in other cubicles and whether or not those in the facility’s lobby could hear the voices from the three cubicles.

In buttressing her evidence adduced to the Committee on Tuesday, September 25, 2018, the witness explained that barely do lady Members close the doors to the cubicles fully, a practice that makes it practical for them to converse at ease from separate cubicles and this explains how she was able to hear the conversation regarding the bribery of the Members to reject the sugar report.

2. Members’ Restaurant

The witness took the Committee to the corner table that she occupied during the material day as she waited to be served lunch when she noticed peculiar movements in the restaurant. She also pointed at a table, opposite to hers, where the Hon. Rahab Mukami was seated in the company of other Members. She clarified that, when she talked to the Hon. Mukami, other Members who were in the latter’s company had left for the Chamber and that they spoke from their respective tables.

The witness also pointed at the lounge on the far end of the restaurant, where some Members were allegedly frequenting and heading back in animated discussions and excitement she considered extremely suspicious.

(xvii) Procedural Fairness

In the interest of fairness, the member accused of breach of the Code of Conduct and breach of privilege were given –

- (a) a prompt and clear statement of the precise allegations against them;
- (b) adequate opportunity to consider taking legal advice and have legal assistance throughout;
- (c) the opportunity to be heard in person;
- (d) the opportunity to call relevant witnesses at the appropriate time;
- (e) the opportunity to examine other witnesses;
- (f) the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence. In determining a Member's guilt or innocence, the criterion applied at all stages is that at least the allegation is proved on the balance of probabilities.

7.0 OBSERVATIONS, FINDINGS AND RECOMMENDATIONS

7.1 Observations and Findings

Having reviewed the newspaper articles and video clips attributed to various Members of Parliament who appeared before the Committee as witnesses; the oral evidence adduced by the witnesses; as well as a review and examination of the footage of the National Assembly proceedings of 9th August 2018 recorded by the Parliamentary Broadcasting Unit, the Committee observes that –

- (1) There might have been bribery of Members of the National Assembly to reject the Report on the importation of alleged illegal and contaminated sugar into the country;
- (2) The following contradictions and inconsistencies were noted in the sworn statements made by the witnesses that -
 - (a) whereas Hon. Didmus Barasa stated that the Hon. Fatuma Gedi offered him a bribe within the plenary chamber, the Hon. Fatuma Gedi denied by stating that she had never had any interactions before with Hon. Didmus Barasa and only knew him through the media when he made the allegations against her;
 - (b) whereas Hon. Didmus Barasa stated that Hon. John Waluke witnessed Hon. Fatuma Gedi attempting to bribe him, Hon. John Waluke denied the allegations by stating that he did not see any exchange of money in the House and that indeed they do not even sit on the same side of the aisle;
 - (c) whereas Hon. Geoffrey Odanga, stated that the Hon. Joseph Tonui had informed him that Kshs. 20,000 was being given out to Members, Hon. Joseph Tonui claimed that he did not know the Hon. Geoffrey Odanga in person and they had not had prior interactions since they shared no common interests;
 - (d) whereas Hon. Jayne Kihara stated that she was approached by Hon. David Gikaria who was mobilizing the Nakuru County Members to vote in a certain way, Hon. David Gikaria stated that he had no recollection that the Hon. Jayne Kihara was among members with whom he discussed the matter;

- (e) whereas Hon. Gathoni Wamuchomba stated that she was sharing a table with Hon. Rahab Mukami when she noticed unusual movements among Members in the lounges and lobbies before the sitting in which the sugar report was considered, the Hon. Rahab Mukami stated she did not share a table with Hon. Gathoni Wamuchomba;
- (f) whereas Hon. Gathoni Wamuchomba stated that she neither saw the Hon. Fatuma Gedi giving bribes and only picked the bribery claims from conversations among other Members, Hon. Fatuma Gedi stated that the claim by the Hon. Gathoni Wamuchomba that she was the one bribing Members was untrue and was founded on personal vendetta arising from her defeating Hon. Gathoni Wamuchomba for the position of Chairperson of *Caucus 47*;
- (3) The CCTV cameras did not cover the Members' dining lounges in the New Wing and the ablution facilities where the bribery was alleged to have taken place during the period when the House was considering the *Sugar Report*;
- (4) A review and examination of the footage of the National Assembly proceedings of 9th August 2018 by the Parliamentary Broadcasting Unit did not reveal anything untoward or any exchange of envelopes and/or money in the Chamber as claimed by the Hon. Didmus Barasa;
- (5) The witnesses denied having received any bribe or seen any Member being bribed save for some of the witnesses alluding to the fact that there were reports based on discussions among Members of alleged bribery during the consideration of the *Sugar Report*;
- (6) Some of the witnesses averred that it was either through discussion with other Members or from what they heard that a female Member, with some identifying her as Hon. Fatuma Gedi, who may have been involved in bribing the Members to reject the *Sugar Report*;
- (7) None of the witnesses tabled any evidence of having seen any Member receiving or the Hon. Fatuma Gedi or any other Member bribing Members to reject the *Sugar Report*;

- (8) A majority of the witnesses stated having heard from discussions among Members that the bribes were being offered in blue envelopes of Kshs 10,000 and Kshs. 20,000;
- (9) Some of the witnesses claimed that Members of the Joint Committee that investigated the importation of alleged illegal and contaminated sugar into the country engaged in improper conduct. However, none of them tabled any evidence on the alleged improper conduct;
- (10) The issue under consideration by the Committee of Powers and Privileges was the alleged bribery of Members during the consideration of the *Sugar Report* and not the proceedings of the Joint Committee investigating the alleged importation of illegal and contaminated sugar into the country;
- (11) Some of the witnesses from sugar producing areas had made their assertions to the media of the alleged bribery of Members to reject the *Sugar Report* based on unsubstantiated reports that some Members had been bribed;
- (12) From the Committee's visit of the ablution facility which the Hon. Gathoni Wamuchomba had mentioned in her testimony, the Committee established that it was not possible for a person to hear conversations among occupants of various cubicles when the doors are closed. However, the witness claimed that it was possible when doors were partially closed;
- (13) Based on the oral submissions by the witnesses, it is apparent that some Members may have been involved in some forms of impropriety; and
- (14) In light of paragraph (13) above, there was therefore a possible breach of privilege and breach of the Code of Conduct by some Members in terms of section 16 of the Parliamentary Powers and Privileges Act, 2017, and also within the ambit of the criminal law.

7.2 Recommendations

In view of the foregoing and pursuant to the provisions of section 17(2) of the Parliamentary Powers and Privileges Act, 2017, the Committee of Powers and Privileges recommends -

THAT the Directorate of Criminal Investigations and the Ethics and Anti-Corruption Commission do investigate the allegations of bribery of some Members of the National Assembly during the consideration by the National Assembly of the Report of the Joint Committee of the Departmental Committee on Trade, Industry and Cooperatives, and the Departmental Committee on Agriculture and Livestock on the importation of alleged illegal and contaminated sugar into the country within ninety days of adoption of this Report.

Part XIII: Appendices

- (1) Extracts from various newspapers;
- (2) Minutes of Sitzings of the Committee of Powers and Privileges held to consider the matter