

FACTSHEET

05



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

Rules Governing Conduct of Members

2nd Edition

Factsheet No. 5

RULES GOVERNING CONDUCT OF MEMBERS

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Purpose and Acknowledgment

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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Rules Governing Conduct of Members



1.0 Introduction

The conduct of Members of Parliament is regulated by various laws which seek to uphold the dignity of their office and to enable smooth execution of the House's mandate. This factsheet gives a general overview of relevant laws on conduct of Members. It outlines the rules governing their conduct in the discharge of their functions as Members whilst in the Chambers and also within and outside the precincts of Parliament. Further, it elucidates the overarching laws that govern Members generally as State officers.

2.0 Overarching Laws Governing the Conduct of Members

The Constitution of Kenya 2010 is the foundational and supreme law that regulates the conduct of Members of Parliament. In particular, Chapter 6 of the Constitution on leadership and integrity forms the basis upon which all other laws or regulations on the conduct of Members of Parliament are derived. The laws and rules that govern the conduct of Members are two pronged: those that govern the conduct of Members within the precincts of Parliament and those that govern the conduct of Members generally.

2.1 Laws governing the conduct of Members generally

2.1.1 The Constitution

As State officers, the good conduct of Members of Parliament both in public and private life is fundamental to the dignity of the office they hold in public trust for the electorate. The exercise of the authority of a Member's office must be in a manner that promotes public confidence. It is on this basis that the Constitution, as the grundnorm, sets out codes of leadership to be founded on ethics, national values, integrity and good governance.

Article 10 sets out the national values and principles of governance inclusive of patriotism, national unity, rule of law, democracy, public participation, human dignity, equity, social justice, good governance, integrity, transparency, and sustainable development while Chapter six prescribes comprehensive principles on leadership and integrity. The Blacks Law Dictionary defines integrity as “soundness of moral principle and character as shown by one person dealing with others in the making and performance of contracts and fidelity and honesty in the discharge of trusts; it is synonymous with probity, honesty and uprightness”.

Particularly, Article 75 goes further to prescribe the conduct of State officers, including Members of Parliament. It outlines that Members should behave, whether in public and private life, in a manner that avoids: conflict between personal interests and public official duties, compromising any public or official interest in favour of a personal interest and demeaning the office the Member holds.

Further, Article 232 sets out the values and principles of public service as—

- (a) high standards of professional ethics;
- (b) efficient, effective and economic use of resources;
- (c) responsiveness, prompt, effective, impartial and equitable provision of services;
- (d) involvement of the people in the process of policy making;
- (e) accountability for administrative acts; and
- (f) transparency and provision to the public of timely accurate information.

Article 236 provides for protection given to public officers in the legitimate exercise of their functions. These are two-fold: protection from victimization and discrimination in the course of discharge of the functions of the office; and fair administrative action before being dismissed, removed from office, demoted in rank or subjected to any disciplinary action.

A Member of Parliament who contravenes provisions of the Constitution may be disciplined and the disciplinary proceeding may consequently culminate in his or her removal from office.

Pursuant to Article 80, the Leadership and Integrity Act was enacted to implement Chapter six of the Constitution.

2.1.2 Leadership and Integrity Act

The primary purpose of the Act is to ensure that State officers¹ respect the values, principles and requirements of the Constitution. It governs the conduct of Members in all spheres of their lives, that is, both private and public life and automatically applies within and outside the precincts of Parliament.

¹ Article 260 of the Constitution defines a public officer as any State officer or any person, other than a State Officer, who holds a public office. As such, a Member of Parliament is both a public and a State officer.

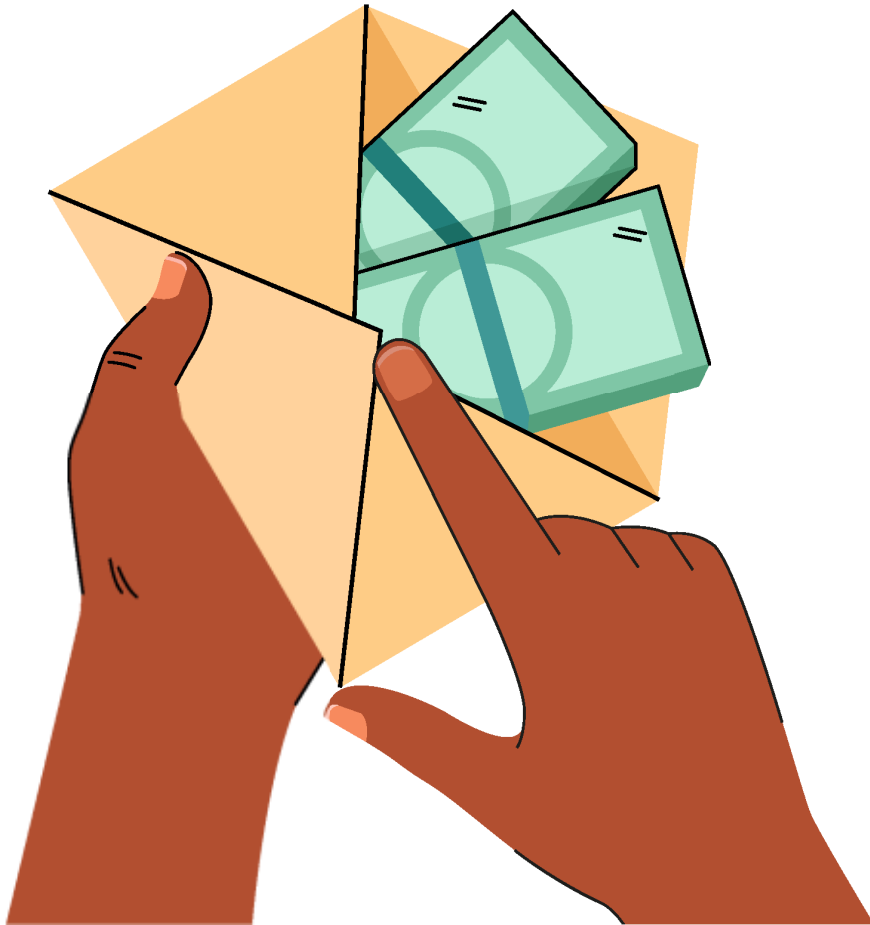
General Integrity Code for State and Public officers

Provision	Issue
Section 10	Public officers to carry out duties in an efficient and honest manner; transparency; accurate records and documentation; report truthfully on all matters
Section 11	Public officers to carry out their duties with utmost professionalism to build public confidence and to exercise courtesy, respect, non-discrimination and high standards of performance
Section 12	Prohibits public officers from enriching themselves or another person
Section 14	State officers to declare gifts of any value to the employer
Section 15	Public officers should not use their office wrongfully or unlawfully to influence the acquisition of property
Section 16	State officers to declare conflict of interest in the course of discharge of their duties
Section 23	Public officers to exercise political neutrality
Section 24	Public officers to exercise impartiality in the performance of duties
Section 26	Prohibits public state officers from engaging in any other gainful employment For State officers, see Article 77 of the Constitution
Section 32	Public officers to conduct their private affairs in a manner that maintains public confidence in the integrity of the office
Section 34	Forbids State officers from bullying any person

The Code obligates Members to—

- a) respect and abide by the Constitution and the law;
- b) exercise the responsibility and authority conferred upon them in the best interest of Kenyans;
- c) take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office he or she holds;
- d) carry out the duties of the office efficiently and honestly; in a transparent and accountable manner; keep accurate records and documents relating to the functions of the office; report truthfully on all matters of the organization which they represent;
- e) observe professionalism;
- f) not use their office to unlawfully or wrongfully enrich themselves or any other person or

- accept a personal loan or benefit which may compromise the State officer in carrying out his or her duties;
- g) observe and maintain the following ethical and moral requirements—
 - (i) demonstrate honesty in the conduct of public affairs subject to the Public Officer Ethics Act No. 4 of 2003
 - (ii) not to engage in activities that amount to abuse of office;
 - (iii) accurately and honestly represent information to the public;
 - (iv) not to engage in wrongful conduct in furtherance of personal benefit;
 - (v) not to misuse public resources;
 - (vi) not to discriminate against any person, except as expressly provided for under the law;
 - (vii) not to falsify any records;
 - (viii) not to engage in actions which would lead to the State officer's removal from the membership of a professional body in accordance with the law;
 - (ix) not to commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap. 63), the Sexual Offences Act (No. 3 of 2006), the Counter-Trafficking in Persons Act (No. 8 of 2010), and the Children Act (Cap. 141);
 - h) not to receive a gift which is given with the intention of compromising the integrity, objectivity or impartiality of the State officer and, other than in the circumstances



prescribed under the Act, treat all gifts to the officer as gifts to the State;

- i) not to use the office to wrongfully or unlawfully influence the acquisition of property;
- j) use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties;
- k) not to participate in a tender for the supply of goods or services to a public entity in which he or she is serving or is otherwise similarly associated;



- l) not to solicit for contributions from the public for a public purpose or participate in a public collection of funds in a way that reflects adversely on that State officer's integrity, impartiality or interferes with the performance of the official duties;
- m) not to open or continue to operate a bank account outside Kenya without the approval of EACC;
- n) not to be an agent of, or further the interests of a foreign government, organisation or individual in a manner that may be detrimental to the security interests of Kenya, except when acting in the course of official duty;
- o) take all reasonable steps to ensure that public property in the officer's custody, possession or control is taken care of and is in good repair and condition and refrain from using public property, funds or services that are acquired in the course of or as a result of the official duties, for activities that are not related to the official work of the State officer;
- p) not to directly or indirectly use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether financial or otherwise;
- q) carry out the duties of the office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and not to practice favouritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices;
- r) where required, give honest, accurate and impartial advice without fear or favour;
- s) not to participate in any other gainful employment where serving on a full time basis;
- t) not to allow himself or herself to be influenced in the performance of their duties by plans or expectations for or offers of future employment or benefits;
- u) not to be engaged by or act for a person or entity in a matter in which the officer was originally engaged in as a State officer, for at least two years after leaving the State office;
- v) not to knowingly give false or misleading information to any person;
- w) not to falsify any records or misrepresent information to the public;
- x) upon election or appointment to a State office, not to take office before officially

- renouncing any other citizenship in accordance with the provisions of the Kenya Citizenship and Immigration Act (No. 12 of 2011);
- y) conduct private affairs in a manner that maintains public confidence in the integrity of the office;
 - z) pay any taxes due from him or her within the prescribed period and attend to their financial or legal obligations;
 - aa) not to bully any person;
 - ab) not to cause anything to be done through another person that would constitute a contravention of the Code if done by the State officer; or allow or direct a person under their supervision or control to do anything that is in contravention of the Code; and
 - ac) report to EACC anything required of the officer that is in contravention of the Code or is otherwise improper or unethical.

What happens in case of breach of the General Code of Conduct issued under the Leadership and Integrity Act?

1. As provided under section 41, breach of the Code amounts to misconduct for which the State officer may be subjected to disciplinary proceedings. As earlier mentioned, the disciplinary proceedings may culminate in removal from office.
2. Whereas every person has the responsibility of implementing the provisions of the Act, the EACC bears the ultimate responsibility for overseeing its implementation. The EACC may seek cooperation from State Organs and public entities to assist in implementing the Act.

1.1.3 Public Officer Ethics Act

The Public Officer Ethics Act is another extensive legislation governing the conduct of public officers. Particularly, it advances the ethics of public officers by providing a code of conduct and ethics for public officers. Under Section 2 of the Act, Members of Parliament are regarded as public officers for the purposes of the Act. Section 5 of the Act also requires each responsible body to establish a specific code of conduct and ethics for public officers in the entity that must include all the requirements in the general Code of Conduct and Ethics set out under part III of the Act.

For purposes of the National Assembly, Section 3 of the Act mandates the committee of the National Assembly that is responsible for the ethics of Members as the responsible body for implementation of the Act with respect to Members of the National Assembly. In the case of the National Assembly, this is the Committee of Powers and Privileges.

Summary of the General Code

Provision	Issue
Section 8	Honesty and efficiency in carrying out duties
Section 9	Prescribes professionalism including, carrying out duties in a manner that maintains public confidence, courtesy and respect, proper dressing, punctuality etc.

Section 10	Requires public officers to uphold the rule of law
Section 11	Prohibits improper enrichment and warns against acceptance receipt of gifts given in official capacity
Section 12	Requires public officers to avoid instances where personal interest may conflict with official duties
Section 13	Prohibits collections of funds and harambees
Section 14	Forbids public officers from acting in a manner detrimental to the interests of Kenya by acting as an agent of a foreign government or organization
Section 17	Requires public officers to take reasonable care of public property and avoid misuse
Section 18	Prohibits nepotism or favouritism
Section 20	Public officers are expected to conduct private affairs in a manner that maintains public confidence in the integrity of the office,; not to evade taxes or neglect financial responsibilities
Section 21	Prohibits sexual harassment
Section 23	Public officers are required to submit declarations of wealth
Section 24	A public officer is vicariously liable for omissions or acts done by or through another person, under their authority and which are in contravention of the code of conduct and ethics
Section 25	Requires a public officer to report improper or unethical conduct to the appropriate authority

Specific Code of Conduct and Ethics for Members of the National Assembly

The Code of Conduct and Ethics for Members of the National Assembly, dated the 1st August 2003, by the Committee of Powers and Privileges, made pursuant to section 5 of the Public Officers Ethics Act is intended to establish standards of ethical conduct and behaviour for Members of the National Assembly.

Specific Code

Rule	Issue
Rule 5	A Member of the National Assembly shall be true and faithful to the oaths or affirmations taken by the Members required under the Constitution or other laws
Rule 6	A Member of the National Assembly shall uphold the Constitution and the rule of law

Rule 7	A Member of the National Assembly shall uphold the dignity and integrity of the National Assembly and shall act in a manner that promotes respect for the National Assembly and its institutions
Rule 8	A Member of the National Assembly shall treat other Members with respect and shall strive to have cordial relations with all other Members
Rule 9	A Member of the National Assembly shall be open and transparent in all the member's actions
Rule 10	A Member of the National Assembly shall be accountable to the public for the actions and decisions of the Member and shall submit to open scrutiny, as necessary
Rule 11	While a Member of the National Assembly may have a special responsibility to the Members' constituency, the Member shall act in the interests of the entire country
Rule 12	A Member of the National Assembly shall promote unity among Kenyans, irrespective of race, tribe, clan, colour, creed or sex.;
Rule 13	A Member of the National Assembly shall ensure that the official duties of the Member take precedence over the Member's other activities.
Rule 14(1)	When voting, asking questions, or carrying out any other duties as a Member, a Member of the National Assembly shall act with integrity and objectivity
Rule 14(2)	A Member of the National Assembly shall not allow any personal benefit or interest, including benefits or interests of relatives or friends, to influence the carrying out of the Member's duties.
Rule 15	A Member of the National Assembly shall not incur a financial or other obligation that might result in the member being unduly influenced in the performance of the Member's duties.
Rule 16	A Member of the National Assembly shall ensure that the Member's non-parliamentary activities do not interfere with or compromise the Member's official duties or bring the National Assembly into disrepute.
Rule 17(1)	A Member of the National Assembly shall not make improper use of public property or resources, including payments or contributions made for public purposes.
Rule 17(2)	A Member of the National Assembly shall not make improper use of any allowance paid to the Member
Rule 18	A Member of the National Assembly shall treat all Kenyans equally and shall not discriminate against anyone on the basis of race, tribe, clan, colour, creed, sex or disability

What happens in case of breach of the Code of Conduct and Ethics for Members of the National Assembly under the Public Officer Ethics Act?

1. As provided under section 35, breach of the Code amounts to misconduct and the Committee of Powers and Privileges may commence proceedings to investigate and determine whether there has been a contravention of the Code and recommend proper disciplinary action.
2. The Committee may refer a matter to another appropriate body for investigation.
3. The Ethics and Anti-Corruption Commission also oversees the enforcement of codes of conduct, including the General Code of Conduct and Ethics under the Public Officer Ethics Act and may also take appropriate steps in the event of misconduct.

2.1.4 Ethics and Anti-Corruption Commission Act

Article 79 of the Constitution provides that Parliament shall enact a legislation to establish an independent ethics and anti-corruption commission with the status of independent commissions under Chapter 15 of the Constitution. All public institutions are required to develop and submit to the EACC their specific code of conduct for approval by the EACC. Further to the provisions of the Leadership and Integrity Act, the EACC Act mandates the EACC to oversee enforcement of codes of conduct of public entities.

With reference to State officers, the Commission is mandated by section 11 of the Act, to —

- (a) develop and promote standards and best practices in integrity and anti-corruption;
- (b) develop a code of ethics;
- (c) work with other State and public officers in development and promotion of standards and best practices in integrity and anti-corruption;
- (d) receive complaints for breach of code of ethics by public officers;
- (e) investigate and recommend to the Director of Public Prosecution crimes related to anti-corruption and economic crimes;



- (f) recommend appropriate action to be taken against State officers engaged in unethical conduct; and
- (g) oversee enforcement of codes of conduct.

2.1.5 Anti-Corruption and Economic Crimes Act

This Act provides for the prevention, investigation and punishment of corruption and economic crimes. It applies to public officers, who include Members of the National Assembly, and sets out various offences that relate to public office holders as well.

The Act enumerates offences that may be committed by a public officer, who is an agent of a public body. The public officer commits an offence if he or she:

- a) acquires private gain in a contract, agreement or investment connected with the public body;
- b) offers gain to another person or soliciting a benefit to give advice;
- c) takes part in bid rigging (that is giving, receiving or soliciting or agreeing to receive a benefit that is an inducement or reward; withdrawing or changing a tender, proposal or bid);
- d) fraudulently fails to pay taxes, fees or levies chargeable by a public body, fraudulently acquires public property;
- e) abuses office to improperly confer a benefit to himself or anyone else;



- f) deals with suspect property; and
- g) attempts, conspires or incites another to commit an offence involving corruption or economic crime.

What happens in case of breach of the provisions of the Anti-Corruption and Economic Crimes Act?

1. The EACC is the body mandated to implement the Anti-Corruption and Economic Crimes Act. Investigations are required to be conducted by the EACC under Part IV of the Act.
2. Notably, section 62 of the Act provides for the suspension from office with half pay of State officers or public officers who are charged with corruption or economic crimes.
3. Section 63 provides that on conviction of corruption or economic crime, the public officer may be suspended from office without pay pending outcome of any appeals.
4. Section 64 specifies that those convicted of corruption and economic crimes be disqualified from being elected or appointed as public officers for a period of ten years after the conviction.

2.1.6 Parliamentary Powers and Privileges Act, 2017

The Parliamentary Powers and Privileges Act, 2017 provides for specific Code of Conduct for Members of Parliament. Section 37 of the Act provides that:-

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

Section of the Code	Issue
1	This Section provides for the Application and Purpose of the Code, which is to provide a framework of reference for Members of Parliament when discharging their duties and responsibilities.
2(1)	Members are bound by the General Principles of Conduct whenever any of them performs the roles of either House of Parliament set out under Articles 95 and 96 of the Constitution.
2(2)	<p>The General Principles of Conduct include—</p> <ul style="list-style-type: none"> (a) selflessness; (b) integrity; (c) objectivity; (d) accountability; (e) openness; (f) honesty; and (g) leadership.

3	<p>The section obligates Members of the House to:</p> <p>(a) be faithful and bear true allegiance to the people and the Republic of Kenya;</p> <p>(b) faithfully and conscientiously discharge their duties and obey, respect, uphold, preserve, protect and defend the Constitution and the rule of law;</p> <p>(c) proceed in a judicious manner when dealing with all persons in accordance with the Constitution and the laws and conventions of Parliament; and</p> <p>(d) promote unity among Kenyans, irrespective of race, tribe, colour, creed or sex.</p>
4	<p>Members of the House shall, in the conduct of their parliamentary duties, act in the public interest, and resolve any conflict between their personal interest and the public interest in favour of the public interest.</p>
5	<p>The section prohibits Members from -</p> <p>(a) accepting or agreeing to accept any financial inducement as an incentive or reward for the performance of their duties;</p> <p>(b) seeking to profit or profiting 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</p> <p>(c) incurring a financial or other obligation that unduly influences the Member in the performance of his or her duties.</p>
6(1)	<p>Members are obligated to register their interests. The section provides that a Member shall—</p> <p>(a) register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions;</p> <p>(b) before contributing to debate in the House or its Committees, or communicating with State officers or other public servants, declare any relevant interest in the context of parliamentary debate or the matter under discussion; and</p> <p>(c) observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.</p>
6(2)	<p>The section defines a relevant interest as 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.</p>
6(3)	<p>Members shall ensure that registered interests are accurate and updated within one month of any change in particulars</p>

7	A member of the House shall uphold the dignity and integrity of the House by— (a) promoting respect for the House and its institutions at all times; (b) ensuring that the Member's non-parliamentary activities do not interfere with or compromise the member's official duties or bring the House into disrepute.
8	A Member of the House shall treat other Members with respect and strive to have cordial relations with all other Members.
9	A Member of the House shall ensure that parliamentary duties of the Member take precedence over the Member's other activities
10	Members undertake to abide by the Code upon taking the oath of office and at the start of each Parliament
11	A Member of the House shall comply with the requirements imposed under the General Leadership and Integrity Code set out in Part II of the Leadership and Integrity Act, 2012 (No. 19 of 2012).
12	The Committee of Powers and Privileges shall enforce this Code and have power to recommend penalties for its breach similar to penalties for breach of parliamentary privilege.

2.2 Laws governing the conduct of members within the precincts of Parliament

In addition to the laws governing the conduct of Members generally, Members of the National Assembly are required to observe the provisions of the Parliamentary Powers and Privileges Act, 2017, the National Assembly (Powers and Privileges) Act, the National Assembly Standing Orders, the Speaker's Rules, among others. The House has prescribed punishments to a Member who breaches the Standing Orders and Statutes governing conduct of Members. These apply within the precincts of Parliament (including inside the Chamber).

The Practice in the House of Commons

The House of Commons metes various forms of punishments to its Members. These are reprimand or admonition, suspension, and expulsion.

The custom of reprimand or admonition traces its history to the Commons where an offender, if he or she is in attendance, is brought to the Bar of the House by the Serjeant-at-Arms, and whilst at the Bar, is reprimanded by the Speaker in the name and by the authority of the House.² If the offender is not in attendance, he or she may be ordered either to be taken into the custody of the Serjeant and brought to the Bar the following or some later day, there to be reprimanded and discharged, or to attend the House on a future day to be reprimanded.³

² Erskine May, p. 197.

³ Erskine May, p. 197.

Standing Order No. 44 of the House of Commons provides for the suspension of a Member of the House of Commons who has disregarded the authority of the Chair or abused the rules of the House. Suspension of a Member is mostly occasioned by reports by select committees, particularly the Committee on Standards and Privileges in respect of allegations made against the Member and for conduct falling below the standards of the House, among other things.¹

Also, a Member of the House of Commons may be expelled from the House and this has been treated as one of the methods of punishing a Member.²



House of Commons Speaker's Procession entering the Chamber led by The Serjeant at Arms (UK Parliament)

The Practice in the National Assembly

The National Assembly Standing Orders and specific legislations prescribe punishments for Members who breach the rules that govern their conduct. These include: the Code of Conduct and Ethics for Members of the Members of the National Assembly, dated the 1st August 2003, by the Powers and Privileges Committee, made pursuant to section 5 of the Public Officers Ethics Act as well as the Fourth Schedule of the Parliamentary Powers and Privileges Act; Public Officer Ethics Act.

Section 8 empowers the Speaker to issue orders necessary for the better carrying out of the Act. Further, section 9 empowers the Speaker to from time to time issue directions in the form of a code of conduct regulating the conduct of Members of the Assembly whilst within the precincts of the Assembly other than the Chamber.

Section 15 of the Parliamentary Powers and Privileges Act establishes the Committee of Privileges, consisting of the Speaker and ten other members of the Assembly under the

¹ Erskine May, p. 198.

² See Erskine May, Pps. 198-199. May cites expulsion of a Member as an “example of the House’s power to regulate its own constitution” while also acknowledging that it is one of the methods of punishment by the House.

chairmanship of the Speaker. The Committee inquires into any alleged breach by any Member of the Assembly of the Code of Conduct after receiving a complaint or by starting the process by itself. It may also inquire into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the Member, or to be contrary to the best interests of the Assembly or the Members.



2.2.1 The Speaker's Rules

1. The Speaker's Rules set out in brief form regulations for conduct of Members of the National Assembly under powers conferred upon the Speaker to do so under section 37 of the Parliamentary Powers and Privileges Act, 2017.
2. Chapter one contains the regulations for conduct of Members of the National Assembly within the precincts of Parliament including the office accommodation, car park, use of firearms, admittance of strangers and prescribes the acceptable dress code.
3. Chapter two contains the orders directed towards strangers, that is, persons who are neither a Member of Parliament nor an Officer nor other employee of the National Assembly.

2.2.2 The National Assembly Standing Orders

The National Assembly Standing Orders impose various types of punishment upon a Member for breach. The Standing Orders provide for the instances when a Member commits an act of disorderly conduct. These are when a Member creates actual disorder, knowingly raises a false point of order, unnecessarily interrupts proceedings or consults in a disruptive manner, fails to

record abstention in a division, fails to declare personal interest in a matter before the House or a Committee, deliberately gives false information to the House, makes allegations without, in the Speaker's opinion, adequate substantiation, threatens to use violence against a Member or other person in the House or Committee, votes more than once in breach of these Standing Orders, fails to record abstention in a division or commits any other breach of these Standing Orders, that in the opinion of the Speaker, constitutes disorderly conduct. When any of these happens, the Speaker may call the Member to order and **caution the Member** or order the Member to **withdraw from the precincts of the Assembly**.

The Standing Orders provide for gross disorderly conduct. It occurs when a Member defies a ruling or direction of the Speaker or Chairperson of Committees, declines to explain or retract use of unparliamentary words or declines to offer apologies, despite having been ordered to do so by the Speaker, demonstrates or makes disruptive utterances against the suspension of a Member, attempts to or causes disorder of whatever nature during an address by a visiting dignitary, uses violence against a Member or other person in the House or Committee.

Other instances of gross disorderly conduct are when a Member attempts to or disrupts the Speaker's Procession when the Procession is entering or leaving the Chamber, attempts to or removes the mace from its place in the Chamber, acts in any other way to the serious detriment of the dignity or orderly procedure of the House or commits any other breach of these Standing Orders, that in the opinion of the Speaker, constitutes gross disorderly conduct. The phrase "unparliamentary language" means the use of words which, in the opinion of the person presiding, are deemed to be impolite, rude, abusive or inconsistent with parliamentary procedure or practice.



The Speakers Procession entering the Chamber

The Speaker may call a Member whose conduct is grossly disorderly to order, and shall order the Member to withdraw immediately from the precincts of the Assembly.

Any member may at any time on a point of order, invite the Speaker or the Chairperson of Committees to name another member for grossly disorderly conduct. However, the decision whether to do so shall remain with the Speaker or Chairperson.

Whenever a member shall have been named by the Speaker or the Chairperson, then if the breach has been committed by such member in the House, the Speaker shall order the Member to withdraw from the Chamber and the precincts of the Assembly.

A suspended Member is considered a stranger and in addition he or she is barred from entering the precincts of the Assembly without the written consent of a Speaker.

It is noteworthy that a Member who has been ordered to withdraw from the precincts of Assembly or has been suspended forfeits the right of access to the precincts of the Assembly except for instances when the suspended Member is to appear before a Committee of the House for the consideration of a Bill sponsored by the Member. Also, the Member forfeits his or her salary and allowances payable during the period.

The Standing Orders provide for the right of a Member to appeal in writing to the Committee of Privileges within three days of the suspension.

The general provisions on conduct of Members in the Standing Orders are as follows:-

2.2.2.1 Maintenance of order

1. The Speaker maintains order in the House whereas the Chairperson does so in the Committee of the whole House. However, if there is disorder in the Committee of the whole House, the House will censure the Member after receiving a report of the disorderly conduct.
2. In sittings of joint committees of Parliament, departmental committees, select committees or housekeeping committees of the House, the Chairperson of the committee or the acting chairperson maintains order during the sitting.

2.2.2.2 Responsibility for statement of fact

3. A Member is responsible for the accuracy of any facts which the Member alleges to be true and may be required to substantiate any such facts instantly or not later than the next sitting day. If the Member fails to do so, this will be considered disorderly unless the Member withdraws the allegations and gives a suitable apology, if the Speaker so requires.

2.2.2.3 Disorderly conduct

4. Conduct is considered grossly disorderly if the Member concerned-
 - (a) creates actual disorder;
 - (b) knowingly raises a false point of order;
 - (c) unnecessarily interrupts proceedings or consults in a disruptive manner;
 - (d) fails to record abstention in a division;
 - (e) fails to declare personal interest in a matter before the House or a Committee ;
 - (f) deliberately gives false information to the House;
 - (g) makes allegations without, in the Speaker's opinion, adequate substantiation;
 - (h) threatens to use violence against a Member or other person in the House or Committee;
 - (i) votes more than once in breach of the Standing Orders; or

- (j) commits any other breach of the Standing Orders, that in the opinion of the Speaker, constitutes disorderly conduct.
5. The Speaker may call a Member whose conduct is grossly disorderly to—
- (a) caution the Member; or
 - (b) order the Member to withdraw from the precincts of the Assembly for a maximum of four days.

Grossly Disorderly conduct

6. A Member commits an act of gross disorderly conduct if the Member—
- (a) defies a ruling or direction of the Speaker or Chairperson of Committees;
 - (b) declines to explain or retract use of unparliamentary words or declines to offer apologies, despite having been ordered to do so by the Speaker;
 - (c) demonstrates or makes disruptive utterances against the suspension of a Member;
 - (d) attempts to or causes disorder of whatever nature during an address by a visiting dignitary;
 - (e) uses violence against a Member or other person in the House or Committee;
 - (f) attempts to or disrupts the Speaker's Procession when the Procession is entering or leaving the Chamber;
 - (g) attempts to or removes the Mace from its place in the Chamber;
 - (h) acts in any other way to the serious detriment of the dignity or orderly procedure of the House; or commits any other breach of the Standing Orders, that in the opinion of the Speaker, constitutes gross disorderly conduct.
7. "Unparliamentary language" means the use of words which, in the opinion of the Presiding Officer, are deemed to be impolite, rude, abusive or inconsistent with parliamentary procedure or practice.
8. The Speaker may call a Member whose conduct is grossly disorderly to order, and order the Member to withdraw immediately from the precincts of the Assembly for a minimum of five days and a maximum of twenty eight days, including the day of suspension.

Member may be suspended after being named

9. Any Member may at any time on a point of order, invite the Speaker or the Chairperson of Committees to name another Member for grossly disorderly conduct. However, the decision whether to do so shall remain with the Speaker or Chairperson.
10. Whenever a Member is named by the Speaker or the Chairperson, then if the breach has been committed by such Member in the House, a Motion shall be made by any other Member that such Member be suspended from the service the House. The Speaker shall then put the question and shall not allow amendment, adjournment or debate.

Member suspended to withdraw from precincts of Parliament

11. A Member who is ordered to withdraw or who is suspended from the service of the House shall withdraw from the Chamber and the precincts of Parliament.

Duration of suspension of a Member

12. If a Member is suspended, the suspension on the first occasion shall be for four days including the day of suspension; on the second occasion in the same session for eight days, and on the third or any subsequent occasion during the same session for twenty-eight days including the day of suspension.

Effect of suspension

13. A Member who is ordered to withdraw from the precincts of the Assembly following suspension after being named or following action to be taken on refusal to withdraw shall during the period of such withdrawal or suspension forfeit—
 - (a) the right of access to the precincts of the Assembly; and
 - (b) his or her salary and all allowances payable during the period.
14. Suspension from the service of the House does not bar the suspended Member from appearing before a Committee of the House for the consideration of a Bill sponsored by the Member.

Appeal against suspension

15. The suspension of a Member or the application is not to be subjected to debate except in accordance with the Standing Orders.
16. A Member suspended from the House may appeal in writing to the Committee of Powers and Privileges within three days of the suspension and the Committee may, with leave of the House, admit an appeal received after three days.
17. Upon receipt of the Member's appeal, the Committee shall within seven days notify the Member, in writing, of the day appointed for the hearing of the appeal and notify the Speaker, who shall thereafter admit the Member to the precincts of Parliament on the day or days appointed for the hearing of the appeal. The Committee shall consider the appeal and after according the Member the right to be heard, submit a report to the House either upholding the suspension, reducing the period of suspension or readmitting the Member to the House.
18. The decision of the Committee regarding the suspension shall be final and a Member designated by the Committee shall inform the House of the decision of the Committee regarding the suspension and the Speaker shall thereupon effect the decision.
19. The Presiding Officer or Member who presided in the House or Committee of the whole House during suspension of an appealing Member shall not participate in the proceedings of the Committee during the appeal.
20. The House may, in exceptional circumstances permitted by the Speaker, debate the report of the Committee without amendment or resolution.

Action to be taken on refusal to withdraw

21. If any Member refuses to withdraw when required to do so, the Speaker or the Chairperson of the Committee shall:
- a) Call the attention of the House or Committee to the fact that recourse to force is necessary in order to compel such Member to withdraw
 - b) Order the Member to be removed and the Member shall without question put be suspended from the service of the House during the remainder of the Session.
22. During the period of suspension, the Member shall forfeit the right of access to the precincts of Parliament and the Serjeant-at-Arms shall take necessary action to enforce the order.

Member adversely mentioned not to sit at a hearing

23. A Member who is adversely mentioned in a matter under deliberation by a Committee shall not be present at any meeting at which the Committee is deliberating on the matter. However, the Member may appear to adduce evidence as a witness before the committee.

Failure to attend meetings

24. A Member or Chairperson may be suspended from the membership of the committee if the Member fails to attend four (4) consecutive sittings of a Committee without the written permission of a Chairperson of the Committee (or the permission of the Speaker if the Member is the Chairperson).
25. The Chairperson or Speaker as the case may be shall notify the committee of the failure and the committee may resolve that the Member or Chairperson be suspended from the membership of the committee and that the matter be reported to the Committee on Selection.

Rules of Debate

Proceedings to be in Kiswahili, English or Kenyan Sign Language

26. The Standing Orders provide that the proceedings of the House shall be conducted in:
- a) English
 - b) Kiswahili or
 - c) Kenyan sign language
27. A Member who begins a speech in any of the languages provided should continue in the same language until the conclusion of the Member's speech.

Members to address the Speaker

28. The Standing Orders require every Member desiring to speak to address a request to the Speaker.

Speeches may not be read

29. A Member is prohibited from reading a speech but may read short extracts from written and printed papers in support of an argument and may refresh memory by reference to notes.

No member to speak after Question put.

30. A Member is prohibited from speaking to any question after the same has been put by the Speaker.

Speaking twice to a Question

31. A Member is barred from speaking more than once to a question. The exceptions are:

- a) In the committee of the whole House;
- b) To offer explanation of some material part of the member's speech which has been misunderstood;
- c) As a reply to a Member who has moved a substantive motion.

Points of Order

32. Any Member may raise a point of order at any time during the speech of another member stating that the Member rises on a point of order and indicating the Standing Order upon which the point of order is based.

33. When a Member raises a point of order during the speech of another, the Member who was speaking shall resume his or her seat and the Member raising a point of order shall do likewise when he or she has concluded his or her submission, but no other member may, except with the permission of the Speaker, speak on the point of order.

34. The Speaker shall either give a decision on the point of order immediately or announce that the decision is postponed for consideration. The Speaker or Chairperson, as the case may be, shall order any Member who unnecessarily and persistently interrupts proceedings or consults loudly and disruptively to withdraw from the Chamber for gross disorderly conduct.

Personal Statements

35. A Member may explain matters of a personal nature even without there being a question before the House. Such matter may however not be debated.

Proceedings of select committees not to be referred to

36. A Member is barred from referring to the substance of the proceedings of a select Committee before the Committee has made its report to the House.

Contents of speeches

37. Referral to the following persons adversely without a specific substantive motion given with a three days' notice is not allowed:

- a) The personal conduct of the President

- b) The conduct of the Speaker
- c) The conduct of any judge, nor the judicial conduct of any other person performing judicial functions,
- d) Any conduct of the Head of State or Government or the representative in Kenya of any friendly country
- e) The conduct of the holder of an office whose removal from such office is dependent upon a decision of the House

38. It is out of order to use offensive or insulting language whether in respect of members of the House or other persons. Further, no Member shall impute improper motive to any other Member or Senator except upon a specific substantive Motion of which at least three days' notice has been given, calling in question the conduct of the Member or Senator.

Retraction and Apologies

39. A Member who has used exceptional words and declines to explain and retract the words or to offer apologies for the use of the words to the satisfaction of the Speaker shall be deemed to be disorderly and shall be dealt with in accordance with the rules pertaining to disorderly conduct.

What happens in case of breach of the Code of Conduct or rules issued by the Speaker?

1. Section 15 of the Parliamentary Powers and Privileges Act provides for the establishment of the Committee of Powers and Privileges, which acts as a watchdog and investigates any alleged breach of privilege or misconduct by Members.
2. The Committee of Powers and Privileges inquires into the conduct of a Member whose conduct is alleged to constitute breach of privilege. The inquiry can commence either upon receipt of a complaint or by the Committee starting the process by itself.
3. The Committee may also inquire into any conduct of any Member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the Member, or to be contrary to the best interests of the Assembly or the Members.
4. After such inquiry, the Committee reports its findings to the Assembly together with such recommendations as it deems appropriate. The Assembly is mandated to consider the report and its recommendations and may take disciplinary actions against the Member concerned, including suspension of the Member from the service of the Assembly.
5. Section 17(3) of the Parliamentary Powers and Privileges Act provides for various forms of penalties that the House may impose on a Member for breach of privilege. These penalties include:
 - (a) a formal warning;
 - (b) a reprimand;
 - (c) an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges;
 - (d) 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;

- (e) the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member;
- (f) such fine in terms of the Member's monthly salary and allowances as the House may determine;
- (g) 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;
- (h) vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

In Parliamentary practice in comparative jurisdictions in the Commonwealth such as New Zealand and Canada, sanctions for breach of privilege and/or the code of conduct include—demand for an apology to be issued at the Bar;

- (a) censure or rebuke by the House;
- (b) suspension or expulsion from Committees;
- (c) suspension from the House;
- (d) expulsion from the House;
- (e) resolution for the prosecution at law of errant Members;
- (f) exclusion from the precincts of the House (mostly invoked on “strangers” or to members when the House and Committees are on recess);
- (g) order for recovery of expenses related to restoration of any damaged property of the House;
- (h) imposition of a fine; and
- (i) committal to imprisonment by order of the House.

It should be noted that some of the sanctions are carried out by the National Assembly in Kenya whereas the more severe ones are not. Some of the sanctions that have been meted out by the House are demand for an apology to be issued at the Bar, censure or rebuke by the House, suspension or expulsion from Committees and suspension from the House. The sanctions which are yet to be carried out by the House are order for recovery of expenses related to restoration of any damaged property of the House, imposition of a fine, expulsion from the House, resolution for the prosecution at law of errant Members, and committal to imprisonment by order of the House.

One should note that some of these sanctions are based on usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent of their applicability to Kenya. Therefore, the forms of sanctions are susceptible to change from time to time whereas some may not be chosen by the House. Also, some of the disciplinary measures are of ancient usage in other jurisdictions and caution should be exercised before applying them.

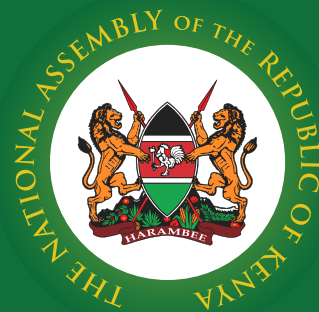
3.0 Conclusion

The duplication of various provisions and Statutes that seek to regulate conduct for Members of Parliament have had the unintended consequence of creating uncertainty as to which relevant law is applicable in a particular set of circumstances. For instance, there is an overlap between the provisions of the Parliamentary Powers and Privileges Act, the Public Officer Ethics Act and the Leadership and Integrity Act.

To illustrate this, on the one hand, section 37(3) of the Parliamentary Powers and Privileges Act provides for a Code of Conduct regulating the conduct of Members of the respective House of Parliament, which is set out in the Fourth Schedule. On the other hand, the Ethics and Anti-Corruption Commission Act envisages Parliament submitting its specific Code of Conduct for approval by the EACC whereas the Public Officer Ethics Act under Section 5 provides for each

Commission to establish a specific Code of Conduct and Ethics for the public officers under it. These overlapping provisions and mandates need to be re-examined.

Although Standing Order 1(2) gives the Speaker discretionary powers to rely on usages, forms, precedents, customs and procedures of the Parliament of Kenya and other jurisdictions in cases where there are no express provisions in the Standing Orders on an issue that has arisen, the challenge arises on the applicability of these customs and usages. There may will be need for the National Assembly to examine some of the disciplinary and penal powers that it exercises since they might have been borrowed but are of ancient usages in other jurisdictions.



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