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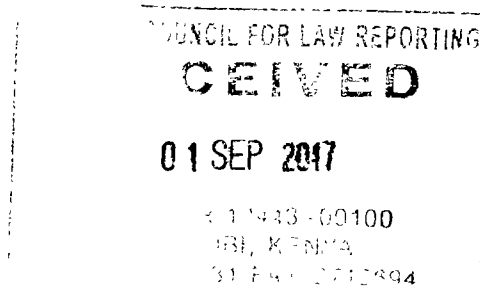
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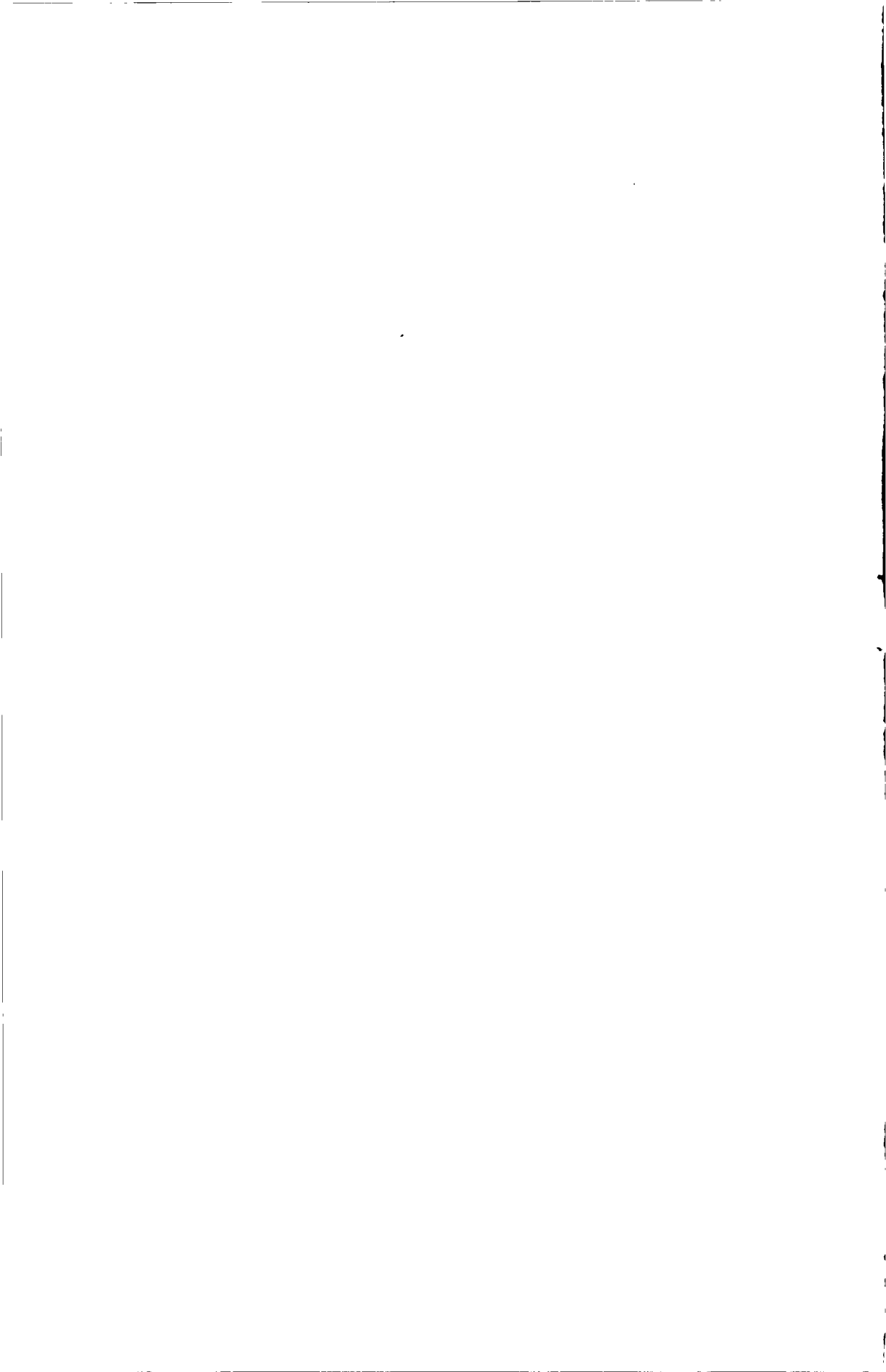
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**THE PARLIAMENTARY POWERS AND
PRIVILEGES ACT**

No. 29 of 2017

Date of Assent: 21st July, 2017

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**THE PARLIAMENTARY POWERS AND
PRIVILEGES ACT, 2017**

AN ACT of Parliament to give effect to Article 117 of the Constitution; to 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; to make provision regulating admittance to and conduct within the precincts of Parliament; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Parliamentary Powers and Privileges Act, 2017.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Clerk” means the Clerk of the National Assembly or the Clerk of the Senate;

“committee” means a committee of the National Assembly, a committee of the Senate or a joint committee of the Houses of Parliament;

“Committee of Powers and Privileges” means a Committee established under section 15;

“Houses of Parliament” means the National Assembly and the Senate;

“journal” means the minutes and the official records of the Houses of Parliament whether audio, electronic or any other form including all papers and accounts howsoever presented to or belonging to the Houses of Parliament, or any other records of the proceedings of Parliament;

“Member” means a member of the National Assembly or of the Senate;

“member of staff” means an officer of the Parliamentary Service Commission, any person acting under the orders of the Speaker or any police officer on duty within the precincts of Parliament;

“national security organ” means a national security organ specified under Article 239(1) of the Constitution;

“Parliament” means the Parliament of Kenya established under Article 93 of the Constitution;

“Parliamentary Service Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“proceedings” means—

- (a) all things said, done or written by a Member or by any officer of either House of Parliament or by any person ordered or authorised to attend before such House or its committees, in or in the presence of such House or its committees and in the course of a sitting for the purpose of transacting the business of the House or its committees; and
- (b) all things said, done or written between Members or between Members and officers of either House of Parliament for the purpose of enabling any Member or any such officer to carry out his or her functions.

“Speaker” means the Speaker of the National Assembly or of the Senate, and includes the Deputy Speaker, or a member presiding at a sitting of a House of Parliament under Article 107(1)(c) of the Constitution; and

“Standing Orders” means the Standing Orders of a House of Parliament for the time being in force.

PART II—PRECINCTS OF PARLIAMENT

3. (1) The precincts of Parliament shall comprise the area of land and every building or part of a building under Parliament’s control including—

- (a) the chambers in which the proceedings of Parliament are conducted including the galleries and lobbies of the chambers;
- (b) all the parts of the buildings in which the chambers are situated including the entrances, forecourts, yards, gardens, enclosures or open spaces appurtenant thereto;
- (c) committee rooms and other meeting places provided or used for Parliament’s purposes;
- (d) the offices of Parliament including the places within such offices that are provided for the use of

Description of
precincts of
Parliament.

members, members of staff, members of the public and the press;

- (e) places provided for the use or accommodation of the members, members of the public and representatives of the press used in connection with the proceedings of Parliament or its committees;
- (f) all other buildings or parts of a building provided or used in connection with the proceedings of Parliament or its committees while so used by Parliament including such premises as may be leased by Parliament; and
- (g) such other areas as the Speaker may designate, in writing, for the purpose of parliamentary business.

(2) Where Parliament or a committee convenes outside the premises ordinarily used for its sittings, this Act shall apply as if the premises where Parliament or the committee is sitting were within the precincts of Parliament.

4. An officer of a national security organ may, with the permission and authority of the Speaker of the relevant House—

Presence of an officer of a national security organ in precincts of Parliament.

- (a) enter upon or remain in the precincts of Parliament for the purpose of performing any functions of that national security organ; or
- (b) perform any other function within the precincts of Parliament.

5. (1) A member of the public may, subject to this Act, the Standing Orders and such orders and directions as may be issued by the Speaker, access such places within the precincts of Parliament as may be specified.

Access to precincts of Parliament.

(2) The right of access to Parliament under Article 118 shall be limited as specified under this section for the purposes of facilitating the orderly conduct of the business and the affairs of Parliament.

6. (1) A Member shall not be liable to arrest for any civil debt except a debt the contraction of which constitutes a criminal offence, whilst going to, attending at or returning from a sitting of a House of Parliament or any committee.

Freedom from arrest for civil debt during session.

(2) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

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

Service of civil process.

- (a) within the precincts of Parliament while either one or both Houses are sitting; or
- (b) through the Speaker or any officer of Parliament—
 - (i) unless it relates to a person employed within the precincts of Parliament or to the attachment of a member's salary; or
 - (ii) if the subject matter relates to a member or members exercising their personal duties.

(2) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of business and the affairs of Parliament.

8. (1) The Speaker may designate areas proximate to the precincts of Parliament where members of public may, pursuant to Article 37 of the Constitution, assemble, demonstrate, picket or present memoranda to Parliament.

Assembling, demonstrating and picketing.

(2) Any assembling, demonstration, picketing and presentation of memoranda to Parliament under subsection (1) shall be in accordance with such guidelines as the Speaker may issue.

(3) A person who assembles, demonstrates or pickets contrary to the provisions of this section may be removed from the precincts of Parliament on the direction of a Speaker, a duly authorized member of staff or a police officer.

(4) The right of assembly, demonstration, picketing and petition under Article 37 of the Constitution shall be limited as specified under this section for the purposes of facilitating the orderly conduct of business and affairs of Parliament.

PART III—PRIVILEGES AND IMMUNITIES OF MEMBERS

9. (1) There shall be freedom of speech and debate in Parliament as provided for in Article 117 of the Constitution.

Freedom of speech in Parliament.

(2) A member shall enjoy the same privileges and immunities in a joint sitting of the two Houses of Parliament as are applicable in each of the respective Houses.

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

- (a) for the purposes of facilitating the immunities of the Houses and the committees of Parliament in accordance with Article 117 of the Constitution;
- (b) for facilitating the freedom of speech and debate as set out in Article 117 of the Constitution.

10. Where any Member has been sentenced to an imprisonment for a period of at least six months, adjudged to be of unsound mind, adjudged bankrupt, or is found in accordance with any law to have misused or abused a State office or a public office or in any way to have contravened Chapter Six of the Constitution, the decision shall not have effect for the purposes of Article 103(1)(g) of the Constitution until all possibility of appeal or review of the relevant decision or sentence has been exhausted.

Postponement of disqualification to enable appeal.

11. No proceedings or decision of Parliament or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court.

Proceedings not to be questioned in courts.

12. (1) No civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to Parliament or a Committee, or by reason of any matter or thing brought by him or her therein by a report, petition, Bill, resolution, motion or other document written to Parliament.

Immunity from legal proceedings.

(2) No civil suit shall be commenced against the Speaker, the leader of majority party, the leader of minority party, chairpersons of committees and members for any act done or ordered by them in the discharge of the functions of their office.

(3) The Clerk or other members of staff shall not be liable to be sued in a civil court or joined in any civil proceedings for an act done or ordered by them in the discharge of their functions relating to proceedings of either House or committee of Parliament.

13. (1) No Member or member of staff, and no person employed to take minutes of evidence before Parliament or any committee, shall give evidence in any court, tribunal or elsewhere in respect of the contents of those minutes of evidence or of the contents of any document laid before Parliament or that committee or in respect of any proceedings or examination held before Parliament or that committee without special leave first obtained.

Giving evidence of proceedings.

(2) The special leave referred to in subsection (1) may be granted during a recess or adjournment by a Speaker, or in the absence or other incapacity of the Speaker, the Clerk of the relevant House.

(3) Subject to the provision of Article 35 of the Constitution and to any written law relating to data protection and freedom of information for the time being in force, the special leave referred to in subsection (1) may be declined where—

- (a) the request is unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage by Parliament or committee;
- (c) there is failure to pay such fee as may be reasonably required in the circumstances; or
- (d) the applicant fails to satisfy any confidentiality requirements by Parliament.

(4) The right of access to information under Article 35 of the Constitution shall be limited to the nature and extent specified under this section for purposes of facilitating freedom of speech and debate as contemplated under Article 117 of the Constitution.

14. Where at any time any question arises in a House or in a committee in regard to—

- (a) the right or power of Parliament or a committee to hear, admit or receive oral evidence;
- (b) the right or power of Parliament or a committee to peruse or examine any paper, book, record or

Determination of a question arising in the House on right or power of Parliament.

document or to summon, direct or call upon any person to produce any paper, book, record or document before Parliament or committee; or

- (c) the right or privilege of any person (including a member of the Parliament or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before Parliament or committee,

that question shall, subject to the preceding provisions of this Act, and except in so far as express provision is made in those provisions for the determination of that question, shall be determined in accordance with the usages, forms, precedence, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.

PART IV—COMMITTEE OF POWERS AND PRIVILEGES

15. (1) There is established, for each House of Parliament, a committee known as the Committee of Powers and Privileges consisting of-

Committee of Powers and Privileges.

- (a) in respect of the National Assembly-
- (i) the Speaker who shall be the chairperson of the Committee; and
 - (ii) fourteen other members of the House appointed in accordance with the Standing Orders of the Assembly;
- (b) in respect of the Senate—
- (i) the Speaker who shall be the chairperson of the Committee; and
 - (ii) six other members of the House appointed in accordance with the Standing Orders of the Senate;
- (2) The quorum of the Committee shall—
- (a) in the case of the National Assembly, be the Speaker and four other members; and
 - (b) in the case of the Senate, be the Speaker and two other members.

(3) Subject to this Act and the Standing Orders of the relevant House of Parliament, the Committee shall regulate its own procedure.

(4) The functions of the Committee of Powers and Privileges shall be to—

- (a) inquire into the conduct of a member whose conduct is alleged to constitute breach of privilege in terms of section 16;
- (b) perform such other functions as may be specified in this Act.

(5) The Committee of Powers and Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of section 16, within fourteen days of receipt of complaint.

(6) The Committee of Powers and Privileges shall, within fourteen days of the conclusion of an enquiry, table its findings in the relevant House of Parliament together with such recommendations as it considers appropriate.

(7) Each House of Parliament shall consider the report and recommendations by the Committee of Privileges in the manner set out in the Third Schedule.

PART V—BREACHES OF PRIVILEGES

16. The Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member-

Conduct constituting breach of privilege.

- (a) contravenes sections 25, 26 or 28;
- (b) commits an act mentioned in section 27(1)(a), (b) or (2) and (3)(d), (e), (f) or (g);
- (c) wilfully fails or refuses to obey any rule, order or resolution of Parliament;
- (d) contravenes any provision of the Speaker's orders issued under section 38 of this Act; or
- (e) conducts himself or herself in a manner which, in the opinion of the Committee on 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.

17. (1) The relevant House of Parliament shall have all the powers necessary for enquiring into and pronouncing upon any act or matter constituting breach of privilege in terms of section 16.

Determination of breach of privilege.

(2) An enquiry by the relevant House of Parliament into a matter shall not preclude criminal investigation or criminal proceedings against a Member in connection with the matter concerned.

(3) Where the relevant House of Parliament finds that a Member has committed a breach of privilege, the relevant House of Parliament may, in addition to any other penalty to which the Member may be liable under this Act or any other law, impose any or more of the following penalties-

- (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.

(4) Where the relevant House of Parliament finds a member has committed a breach of privilege, the relevant House of Parliament may, where appropriate, instead of or in addition to the imposition of a penalty under subsection (3), refer the matter to the Director of Public Prosecutions.

(5) A fine imposed under subsection (3) shall-

- (a) be paid by the member into such bank account of Parliament as shall be specified by the accounting officer of Parliament;

- (b) be deducted from the Member's salary; or
- (c) where it is not recovered under paragraphs (a) or (b), be recovered by means of a civil action in court.
- (6) A member who has been suspended under subsection 3 (g) shall leave the precincts of Parliament and shall not, during the period of suspension, without the written permission of the Speaker—

- (a) enter the precincts for whatever purpose; or
- (b) participate in any activity of Parliament or a committee of Parliament.

(7) The protection of right to property under Article 40 and the right of access to justice under Article 48 of the Constitution shall be limited as specified under this Part—

- (a) for the purposes of protecting the privileges and immunities of the Houses and committees of Parliament conferred by this Act in accordance with Article 117 of the Constitution;
- (b) for facilitating the orderly conduct of business and affairs of Parliament.

PART VI—SUMMONING OF WITNESSES

18. (1) Parliament or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, Parliament and its committees shall have the same powers as the High Court as specified under Article 125 of the Constitution.

Invitation and
summoning of
witnesses.

(2) A summons issued under subsection (1) shall be issued by the Clerk on the direction of—

- (a) the Speaker; or
- (b) the chairperson of a committee acting in accordance with a resolution of the committee.
- (3) The general form of a summons shall be as set out in the First Schedule.

(4) The summons shall be served by a member of staff or a police officer who is duly authorized by the Clerk by delivering a copy of the summons—

- (a) to the person mentioned in the summons; or
- (b) at that person's usual or last known place of residence, employment or business or left with a person who is over the age of eighteen years and who resides or is employed at that place.

(5) Where the summons is to be served on a corporation, the summons may be served—

- (a) on the secretary, director or other officer authorised by the corporation; or
- (b) if the officer serving the summons is unable to find any of the officers of the corporation mentioned in paragraph (a)—
 - (i) by leaving it at the registered office of the corporation;
 - (ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation;
 - (iii) if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or
 - (iv) by sending it by registered post to the last known postal address of the corporation.

(6) The serving officer in all cases in which summons has been served under this section shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons.

(7) The affidavit of service shall be in the form set out in the Second Schedule with such variations as circumstances may require.

(8) Any person who knowingly swears a false affidavit of service commits the offence of perjury and may in addition be subject to such disciplinary action as the Parliamentary Service Commission may determine.

(9) A return by a person who serves a summons under this section shall be *prima facie* proof of the service of the summons.

(10) A person requested or summoned in terms of this section by Parliament or a committee to attend a sitting of Parliament or committee shall be paid such amount of money as shall be approved by the Clerk as reimbursement for the expenses incurred.

19. (1) Where a witness summoned does not appear, or appears but fails to satisfy the relevant House of Parliament or committee, the relevant House or Committee may impose upon the witness such fine, not exceeding five hundred thousand shillings, having regard to the witness' condition in life and all the circumstances of the case.

Procedure if witness fails to appear.

(2) A person may pay the fine under subsection (1) to the Clerk of the relevant House.

(3) Parliament or its committee may order the arrest of a person who fails to honour a summons.

20. Where Parliament or a committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, Parliament or the committee may—

Examination of witnesses.

(a) cause such witness to be examined on oath; and

(b) require the witness to produce any document, paper, book or record in the possession or under the control of the witness which may have a bearing on the subject of the inquiry.

21. (1) Every person who is summoned to give evidence or to produce a document before Parliament or a committee shall be entitled to the same rights and privileges that are applicable to a witness before a court of law.

Privileges of witnesses.

(2) A person who is being examined under oath or affirmation in terms of section 20 shall be required to answer any question put to the person in connection with the subject of the inquiry and to produce any document or information that the person is requested to produce under that section despite the fact that the answer or the document would incriminate or expose the person to criminal or civil proceedings in a court of law.

(3) Evidence given under oath or affirmation by a person before Parliament or a committee shall not be used against the person in a court or other place outside Parliament except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated under section 27(1)(c) or (3)(g).

(4) The right to fair hearing under Article 50 of the Constitution shall be limited as specified under this section for the purposes of advancing the freedom of speech and debate set out in Article 117 of the Constitution.

22. Where any person ordered to attend to give evidence or to produce any paper, book, record or document before Parliament or a committee refuses to answer any question or to produce the paper, book, record or document on the ground that it is of a private nature and does not affect the subject of inquiry, the Speaker may excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

Objection to answer question or to produce papers.

23. (1) No public officer shall refuse to—

- (a) produce before Parliament or a committee any paper, book, record or document, or
- (b) give evidence before Parliament or a committee, relating to the correspondence of any national security organs as set out under Article 239 of the Constitution, or any independent commission set out under Article 248 of the Constitution or any public office as defined under Article 260 of the Constitution.

Duty of public officers to give evidence.

(2) Any public officer who contravenes subsection (1) commits an offence.

(3) Where a House passes a resolution that a public officer has contravened subsection (1), the resolution of the House shall constitute a ground for removal from office of the public officer in accordance with the Constitution or any applicable law.

PART VII—PUBLICATIONS AND BROADCASTING

24. (1) A person shall not be liable to civil or criminal proceedings in respect of the publication of any journal by order or under the authority of Parliament or a committee.

Protection in respect of publications

No. 29

(2) A Member or a member of staff shall not be liable to civil or criminal proceedings in respect of-

- (a) the publication of a document that has been submitted to or is before Parliament or a committee;
- (b) any publication or information given out within the course duty as a Member or member of staff.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating—

- (a) the conduct of business and the affairs of Parliament;
- (b) the attainment of freedom of speech and debate in Parliament in accordance with Article 117 of the Constitution.

25. (1) A person shall not publish or tender in evidence—

Unauthorized
publishing.

- (a) any journal if the publication of that journal is prohibited by or in terms of the Standing Orders or an order or resolution of Parliament;
- (b) 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;
- (c) any journal purporting that it is a verbatim account of the proceedings of Parliament or a committee while it is not such account.

(2) In any civil or criminal proceedings instituted for publishing any extract from or abstract of any journal referred to in subsection (1), if the court is satisfied that the extract or abstract was published bona fide and without malice, judgment or verdict, as the case may be, shall be entered for the defendant or accused.

(3) The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating-

- (a) the conduct of business and the affairs of Parliament;

- (b) the attainment of freedom of speech and debate in Parliament in accordance with Article 117 of the Constitution.

PART VIII—ENFORCEMENT

26. (1) A person shall not—

- (a) assault, obstruct, molest or insult any member proceeding to, being within or leaving the precincts of Parliament, or endeavour to compel any member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before Parliament or any committee;
- (b) assault, interfere with, molest, resist or obstruct any member of staff while in the execution of his or her duty;
- (c) assault or threaten a member or unlawfully deprive a member of any benefit on account of the member's conduct in Parliament;
- (d) while Parliament or a committee is sitting, create or take part in any unlawful disturbance which interrupts or is likely to interrupt the proceedings of Parliament or any committee while Parliament or the committee is sitting; or
- (e) fail or refuse to comply with an instruction by a duly authorized member of staff or a police officer regarding—
- (i) the presence of the public in the precincts of Parliament including a meeting within the precincts of Parliament; or
- (ii) the possession of any article, including a firearm, within the precincts.

(2) A person or a member who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.

27. (1) A person commits an offence where the person—

- (a) having been duly summoned in terms of section 18 fails, without sufficient cause to—

Prohibited acts in respect of Parliament and its members.

Offences relating to witnesses