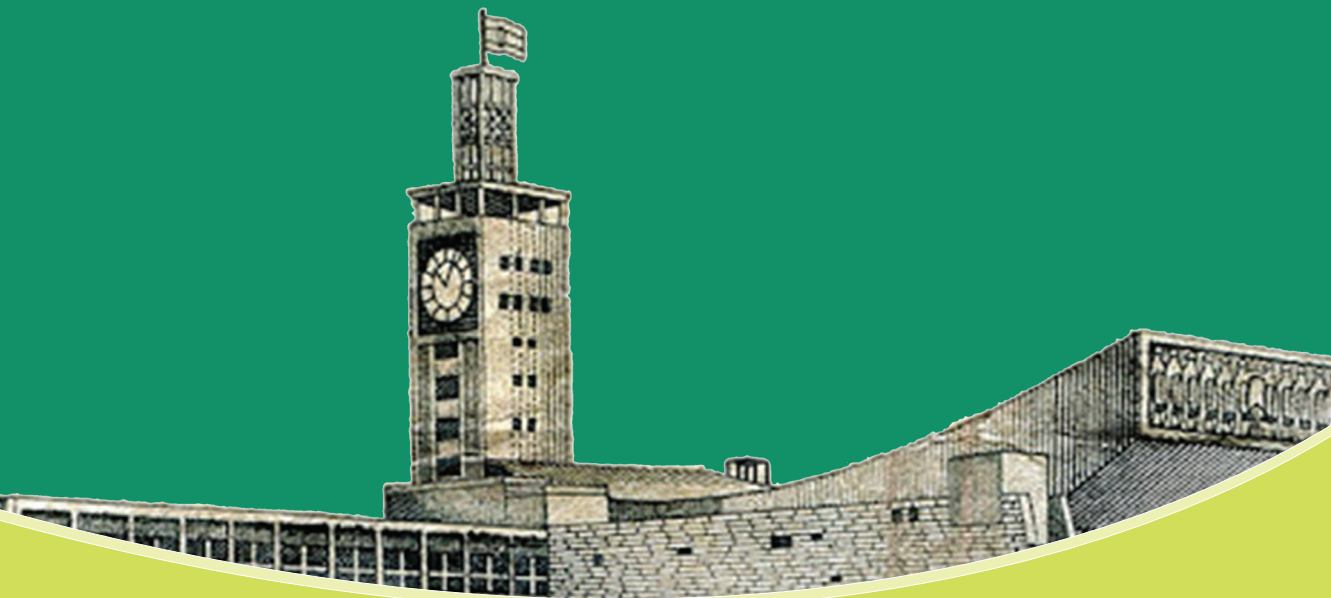




Parliament of Kenya

The National Assembly

# Rules Governing Conduct of Members



**Fact Sheet**  
No. 32



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*FactSheet No.32*

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*FactSheet 32: Rules Governing Conduct of Members*

### **Published by:**

The Clerk of the National Assembly  
Parliament Buildings  
Parliament Road  
P.O. Box 41842-00100  
Nairobi, Kenya

Tel: +254 20 221291, 2848000  
Email: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)  
[www.parliament.go.ke](http://www.parliament.go.ke)

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# FactSheet

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## Rules Governing Conduct of Members

### 1. 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. Overarching Laws Governing the Conduct of Members

The Constitution of Kenya 2010, is the foundational and Supreme Law that regulates the conducts 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, avoids compromising any public or official interest in favour of a personal interest and avoids 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 being protection from victimization and discrimination in the course of discharge of the functions of the office. It is a requirement to accord officers fair administrative action before being subjected to any disciplinary action.

Any contravention of the provisions of the Constitution by a Member of Parliament may attract disciplinary proceedings and such proceedings may consequently culminate in removal from office. In pursuance of Article 80, the Leadership and Integrity Act was enacted to implement Chapter six.

### **2.1.2 Leadership and Integrity Act**

The primary purpose of the Act is to ensure that State Officers 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.

In addition to the provisions of Chapter six of the Constitution, the



Act sets out the general integrity Code for State and Public officers as highlighted below—

- 1) Section 8 provides that a public office is an office of public trust and shall be exercised in the best interests of the people of Kenya;
- 2) Section 10 requires public officers to carry out duties in an efficient and honest manner; transparency; accurate records and documentation; report truthfully on all matters;
- 3) Section 11 requires 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;
- 4) Section 12 provides for financial integrity: officers should not enrich themselves or another person;
- 5) Section 14 provides for the receipt of gifts or benefits; state officers are required to declare gifts of any value to the employer;
- 6) Section 15 provides that public officers should not use their office wrongfully or unlawfully to influence the acquisition of property;
- 7) Section 16 requires state officers to declare conflict of interest in the course of discharge of their duties;
- 8) Section 23 calls on public officers to exercise political neutrality;
- 9) Section 24 calls public officers to exercise impartiality in the performance of duties;
- 10) Section 26 requires public officers not to engage in any other gainful employment; Provided for in Article 77 of the Constitution in case of State officers;
- 11) Section 32 requires public officers to conduct their private affairs in a manner that maintains public confidence in the integrity of the office;
- 12) Section 34 forbids state officers from bullying any person.

***Code of conduct for Members of Parliament as prescribed under the Act***

Section 37 requires each public entity to prescribe a specific Leadership and Integrity Code for the state officers in that public entity. Notwithstanding that Parliament is yet to submit to the EACC a specific code of conduct for Members of Parliament as contemplated under section 37, the general code prescribed under the Act applies as though it were a specific Leadership and Integrity Code for Members of Parliament.

The code obligates Members to—

- a) respect and abide by the Constitution and the law;
- b) exercise the responsibility and authority conferred upon him/her 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 himself or herself or any other person or accept a personal loan or benefit which may compromise the State officer in carrying out his or her duties;
  - g) 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 engage in activities that amount to abuse of office;
    - (iii) accurately and honestly represent information to the public;
    - (iv) not engage in wrongful conduct in furtherance of personal benefit;
    - (v) not misuse public resources;
    - (vi) not discriminate against any person, except as expressly provided for under the law;
    - (vii) not falsify any records;
    - (viii) not engage in actions which would lead to the State officer's removal from the membership of a professional body in accordance with the law;
    - (ix) not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap. 63), the Sexual Offences Act (No. 3 of 2006), the Counter-Trafficking in Persons Act (No. 8 of 2010), and the Children Act (Cap. 141);
  - h) not 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 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 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 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 open or continue to operate a bank account outside Kenya without the approval of the Commission;
  - n) not 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 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 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 participate in any other gainful employment where serving on a full time basis;
- t) not allow himself or herself to be influenced in the performance of their duties by plans or expectations for or offers of future employment or benefits;
- u) not be engaged by or act for a person or entity in a matter in which the officer was originally engaged in as a State officer, for at least two years after leaving the State office.
- v) not knowingly give false or misleading information to any person;
- w) not falsify any records or misrepresent information to the public;
- x) upon election or appointment to a State office, not 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 bully any person;
  - ab) not 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 the Commission 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. It is worth noting that, whereas every person has the responsibility

of implementing the provisions of the Act, the Ethics and Anti-Corruption Commission (EACC) bears the ultimate responsibility for overseeing its implementation. The EACC is further empowered under its statute, the Ethics and Anti Corruption Commission Act. In that regard, the EACC may seek cooperation from State Organs and public entities to assist in implementing the Act.

### 2.1.3 Public Officer Ethics Act

The Public Officers Ethics Act is another extensive legislation governing the conduct of members, as public officers. Particularly, it advances the ethics of public officers by providing a code of conduct and ethics for public officers. It should be noted that under Section 2 of the Act, Members of the National Assembly are envisaged as public officers for the purposes of the Act.

For purposes of the National Assembly, 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 on privileges. Section 5 of the Act requires each responsible body to establish 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.

The general code in summary provides as follows-

- a) Section 8 espouses honesty and efficiency in carrying out duties;
- b) Section 9 prescribes professionalism including, carrying out duties in a manner that maintains public confidence, courtesy and respect, proper dressing, punctuality etc;
- c) Section 10 requires public officers to uphold the rule of law;
- d) Section 11 prohibits improper enrichment and warns against acceptance receipt of gifts given in official capacity;
- e) Section 12 requires public officers to avoid instances where personal interest may conflict with official duties;
- f) Section 13 prohibit collections and *harambees*;
- g) 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 organisation;
- h) Public officers are required to take reasonable care of public property and avoid misuse;
- i) Section 17 discourages nepotism;
- j) 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;
- k) Sexual harassment is prohibited under section 21;
- l) Public officers are required to submit declarations of wealth as required under section 23;
- m) 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; and
- n) 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 Members of the National Assembly, dated the 1<sup>st</sup> August 2003, by the Powers and Privileges Committee, 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. The Code provides -

- 1) 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.
- 2) Rule 6- A Member of the National Assembly shall uphold the Constitution and the rule of law.
- 3) 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.
- 4) 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.
- 5) Rule 9- A Member of the National Assembly shall be open and transparent in all the member's actions.
- 6) 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.
- 7) 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.
- 8) Rule 12- A Member of the National Assembly shall promote unity among Kenyans, irrespective of race, tribe, clan, colour, creed or sex.
- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) 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.

- 14) 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.
- 15) Rule 17(2)- A Member of the National Assembly shall not make improper use of any allowance paid to the Member.
- 16) 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.
- 17) Rule 19- A Member of the National Assembly shall not tolerate corruption in any form and shall fight against corruption both in the private and public sectors.

***What happens in case of breach of the codes of conduct and ethics for Members of the National Assembly under the Public Officers Ethics Act?***

1. As provided under section 35, breach of the Code amounts to misconduct and the committee on 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 Anticorruption Commission also oversees the enforcement of codes of conduct, including the general code of conduct and ethics under the Public Officers 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 the EACC their specific code of conduct for approval by the EACC. In reiteration of 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) receives 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.

#### **2.1.4 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.

These offences include where a public officer who is an agent of a public body—

- 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, withdrawal. Change or submission for 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 in pursuance of 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.

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

In addition to the laws governing the conduct of members generally, the following laws and rules apply within the precincts of Parliament (including inside the Chamber)-

#### **2.2.1 The Parliamentary Powers and Privileges Act, 2017**

- 1) The Parliamentary Powers and Privileges Act declares and defines

certain powers, privileges and immunities of Parliament and Members of both Houses of Parliament. It entrenches a Code of Conduct for Members of Parliament and prescribes penalties for breach of privilege and code of conduct. The Act also regulates admittance to and conduct within the precincts of Parliament, including sanctions for contravention.

- 2) Section 15 establishes the Committee of Powers and Privileges. The Committee is responsible for handling matters relating to Members' privilege, including breach of privilege, violation of the Code of Conduct for Members and sanctions thereto.
- 3) Section 16 empowers the Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member –
  - (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) willfully 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.
- 4) Section 17 provides sanctions that may be meted on Members of Parliament for breach of privilege under section 16 and empowers either House of Parliament to punish for breach of privilege. The sanctions provided for under section 17 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.
- 5) Section 28 prohibits a Member from engaging in rent-seeking conduct. It provides that a Member shall not solicit, receive or accept any fee, compensation, gift, reward, favour or benefit of any kind for the member or another person for in respect of voting,



promoting or opposing a matter or making a representation in parliament on any matter.

- 6) Section 37 empowers the Speaker to issue orders as may be necessary or expedient for the better carrying out of the purposes of this Act, including directions in the form of a Code of Conduct regulating the conduct of Members whilst within the precincts of Parliament other than the Chamber.
- 7) The section further provides for a Code of Conduct for regulating the conduct of Members of the respective House of Parliament as contained in the Fourth Schedule. 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 covers the following –
  - a) Section 2: General Principles of Conduct, which include;
    - i. selflessness;
    - ii. integrity;
    - iii. objectivity;
    - iv. accountability;
    - v. openness;
    - vi. honesty; and
    - vii. leadership.
  - b) Section 3 requires Members to be –
    - i. be faithful and bear true allegiance to the people and the Republic of Kenya;
    - ii. faithfully and conscientiously discharge their duties and obey, respect, uphold, preserve, protect and defend the Constitution and the rule of law;
    - iii. proceed in a judicious manner when dealing with all persons in accordance with the Constitution and the laws and conventions of Parliament;
    - iv. promote unity among Kenyans, irrespective of race, tribe, colour, creed or sex.
  - c) Section 4: Members are required to act in public interest and resolve conflict between private and public interest in favour of the public interest.
  - d) Section 5 prohibits Members not to –
    - i. accept or agree to accept any financial inducement as an incentive or reward for the performance of their duties.
    - ii. 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
    - iii. incur a financial or other obligation that unduly influences the Member in the performance of his or her duties.
  - e) Section 6 requires Members to register their personal registrable interests as follows –
    - i. register with the relevant Speaker all financial and non-financial interests that may reasonably influence their

- parliamentary actions
- ii. 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;
- iii. observe any rules agreed of the House in respect of financial support for Members or the facilities of the House

This section places on the individual Member the responsibility for the accuracy of the interest so registered.

- f) Section 7 obligates Members to uphold the integrity of the House by –
  - i. promoting respect for the House and its institutions at all times.
  - ii. 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.
- g) Section 8 requires Members to treat other members with respect and strive to have cordial relations with all other members.
- h) Section 9 urges Members to ensure that parliamentary duties of the member take precedence over the member's other activities.
- i) Section 10 binds all Members to abide by this Code of Conduct upon taking the oath of office and at the start of each Parliament.
- j) Section 11 obligates Members to comply with the requirements imposed under the General Leadership and Integrity Code set out in Part II of the Leadership and Integrity Act, 2012.
- k) Section 12 empowers the Committee of Powers and Privileges to enforce the Code and prescribe penalties for breach of the Code.

### **2.2.2 The Speaker's Rules**

1. These are Rules and Orders published by the speaker pursuant to the provisions of Section 37 of the Parliamentary (Powers and Privileges) Act. Speaker's Rules set, out in brief form, regulations for conduct of Members of the National Assembly and admittance of visitors.
2. The following Speaker's Rules apply to conduct of Members –
  - a) Rule 4 places on Members the responsibility for the conduct of visitors that they admit and are required to assist in enforcing Orders on admittance of visitors. They are also responsible for the selection and for the good behaviour of all visitors whom they introduce to the precincts of Parliament.
  - b) Rule 7 prohibits Members from bringing firearms to the Chamber. They are required to deposit with the Serjeant-At-Arms at the time of entry.
  - c) Rule 8 prescribes the proper dress code for Members for Parliament whenever accessing the Chamber, Lounge, Dining Room or Committee Rooms.

### **2.2.3 The National Assembly Standing Orders**

The Standing Orders prescribe the acceptable conduct of Members whilst in the Chamber, during proceedings and during committee sittings.

### **General provisions**

#### **Maintenance of order**

1. The Speaker maintains order in the House whereas the Chairperson does so in the Committee of the Whole. However, if there is disorder in the Committee of the Whole, 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.

#### **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.

#### **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 in accordance with Standing Order 90;
  - (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 these Standing Orders;
  - (j) fails to record abstention in a division; or
  - (k) commits any other breach of these 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 Parliament 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 these 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 person presiding, 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 shall order the Member to withdraw immediately from the precincts of Parliament 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 shall have been 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.
11. If the breach is done in Committee of the Whole House, the Chairperson shall report the fact to the House, upon which the Speaker shall put the question on the Motion for the suspension of such Member in the same manner as for a breach committed in plenary.

### **Member suspended to withdraw from precincts of Parliament**

12. Whenever a Member has been named and suspended from the service of the House, the Speaker orders such Member to withdraw

from the chamber and the precincts of Parliament.

### **Duration of suspension of a member**

13. The duration of suspension of a Member is graduated on the basis of the number of times that Member has committed a breach resulting in suspension. The duration is graduated as follows –
- a) on the first occasion shall be for four days including the day of suspension;
  - b) on the second occasion in the same session for eight days; and
  - c) on the third or any subsequent occasion during the same session for twenty-eight days including the day of suspension.

It is important to note that a Member who is **forcibly removed** from the House is suspended for a minimum of twenty-one (21) days and maximum of ninety (90) days.

### **Effect of suspension**

14. A Member who is ordered to withdraw from the precincts of Parliament 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 Parliament; and
  - (b) his or her salary and all allowances payable during the period.
15. Suspension from the service of the House does not exempt the Member so suspended from appearing before a Committee of the House for the consideration of a Bill sponsored by the Member.

### **Appeal against suspension**

16. The Standing Orders provide an appeal and fair administrative action mechanism in line with Article 47 of the Constitution and the Fair Administrative Action Act.
17. Whereas the suspension of a Member or the application is not to be subjected to debate except in accordance with the standing orders, a Member suspended from the House may appeal in writing to the Committee of Powers and Privileges within three days of the suspension.
18. Notwithstanding the three-day window for lodging an appeal, the Committee may, with leave of the House, admit an appeal received after three days.

### **Consideration of appeals against suspension**

19. Within seven days of receipt of an appeal on suspension, the Committee of Powers and Privileges shall notify the Member, in writing, of the day appointed for the hearing of the appeal.
20. The Committee shall also notify the Speaker, who shall thereafter admit the Member to the precincts of Parliament on the day(s) appointed for the hearing of the appeal.
21. The 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.
22. The committee shall consider the appeal and accord according the

Member the right to be heard, submit a report to the House. The Committee may recommend to the House to –

- a) uphold the suspension,
- b) reduce the period of suspension or
- c) readmit the Member to the House.

23. The Committee's decision 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.

24. The Report of the Committee of Powers and Privileges on an appeal against suspension is not debated by the House, except in exceptional circumstances permitted by the Speaker, where the Report may be debated without amendment or resolution.

#### **Action to be taken on refusal to withdraw**

25. 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 such Member to be removed and the Member so removed shall, without question put be suspended from the service of the House.

26. A Member who is forcibly removed from the House is suspended for a minimum of twenty-one (21) days and maximum of ninety (90) days.

27. During the period of such suspension, the Member shall forfeit the right of access to the precincts of Parliament and Serjeant-at-Arms shall take necessary action to enforce the Speaker's order.

#### **Member adversely mentioned not to sit at a hearing**

28. 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**

29. 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).

30. 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**

31. The Standing Orders provide that the proceedings of the House shall be conducted in:
- a) English
  - b) Kiswahili or
  - c) Kenyan sign language
32. 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**

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

**Speeches may not be read**

34. 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.**

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

**Speaking twice to a Question**

36. 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**

37. 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.
38. 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.
39. 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**

40. 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**

41. 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**

42. Referral to the following persons adversely without a specific substantive motion given with a three days' notice is not allowed:
- The personal conduct of the President
  - The conduct of the Speaker
  - The conduct of any judge, nor the judicial conduct of any other person performing judicial functions,
  - Any conduct of the Head of State or Government or the representative in Kenya of any friendly country
  - The conduct of the holder of an office whose removal from such office is dependent upon a decision of the House
43. 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**

44. 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.

***Sanctions for breach of the Code of Conduct or rules issued by the Speaker***

- The National Assembly has penal powers to punish Members for breach of privilege or code of conduct.
- Where the breach occurs in the Chamber, the Speaker punishes such a Member or Members in accordance with the Standing Orders. Punishment under the Standing Orders include –
  - caution
  - suspension
  - naming
- Section 15(1) of the Parliamentary Powers and Privileges Act, 2017 establishes the Committee of Powers and Privileges. The Committee consists of –
  - the Speaker who shall be the chairperson of the Committee; and
  - fourteen other members of the House appointed in accordance with the Standing Orders of the Assembly.
- Section 15(4) provides that the Committee shall –
  - inquire into the conduct of a member whose conduct is alleged to constitute breach of privilege in terms of section 16; and
  - perform such other functions as may be specified in this Act.
- The Committee therefore acts as a watchdog on matters relating to breach of privileges and investigates any alleged breach of privilege or misconduct by



- Members under section 16 of the Act.
6. The inquiry into any breach of privilege or Code of Conduct may be initiated by the Committee on its own motion or upon referral of a matter by the Speaker or formal complaint made by any person.
  7. It may also inquire into any conduct of any member of the Assembly within the precincts of Parliament (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.
  8. Section 15(6) provides that, upon such inquiry, the Committee of Powers and Privileges reports its findings to the Assembly together with such recommendations as it deems appropriate.
  9. Pursuant to Section 17, the Committee may recommend punishment from among the following –
    - 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.
  10. Section 17(4) provides latitude to the Committee of Powers and Privileges to also recommend, instead of or in addition to, the referral of such matter to the Director of Public Prosecutions for prosecution.
  11. Notably, a Member who is suspended under the Standing Orders pursuant to Section 17(4) of the Act is deemed to be a "stranger" and cannot enter the precincts of Parliament without the written consent of the Speaker.

### **3. Conclusion**

Both the Constitution and the statutes enacted pursuant to it set the bar of integrity of legislators in both private and public life high. The new Parliamentary (Powers and Privileges) Act 2017 has also included in the Code of Conduct new general principles of conduct such as selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Nonetheless, the multiplicity and duplication of various provisions and Statutes that seek to regulate the conduct of 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 2017, the Public Officer Ethics Act and the Leadership and Integrity Act. There is therefore need to bring harmony by collapsing the various

regimes on leadership and integrity so as to eliminate the existing overlap.

To illustrate this, on the one hand, section 37(3) of the Parliamentary (Powers and Privileges) Act and the Third Schedule thereto, empowers the Speaker to from time to time issue directions in the form of a code of conduct regulating the conduct of members within the precincts of Parliament other than the Chamber. On the other hand, Section 39 of the Leadership and Integrity 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.





**Contacts Us:** National Assembly, Parliament Buildings  
Parliament Road, P.O. Box 41842-00100  
Nairobi, Kenya

**Website:** [www.parliament.go.ke](http://www.parliament.go.ke)



[clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)



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