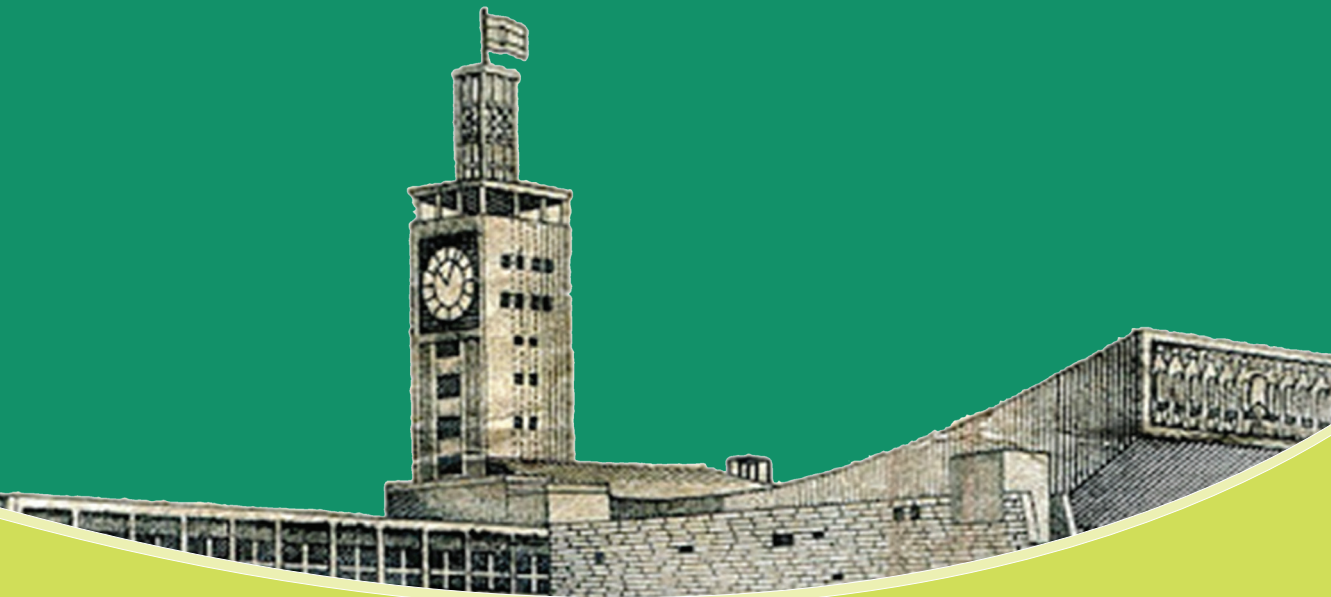




Parliament of Kenya

The National Assembly

Powers, Privileges and Immunities of Parliament



Fact Sheet
No. 9

Parliamentary Powers, Privileges and Immunities in Kenya

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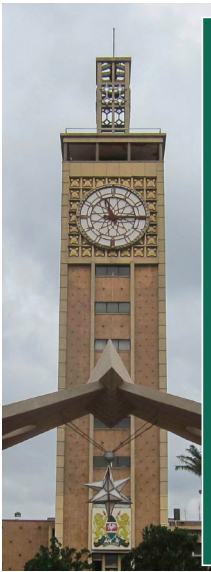
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This Factsheet on **Parliamentary Powers, Privileges and Immunities in Kenya** is part of the Kenya National Assembly Factsheets Series that are supposed to enhance public understanding, awareness and knowledge of the work of the Assembly and its operations. It is intended to serve as easy guide for ready reference by Members of Parliament, staff and the general 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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FactSheet

09

Parliamentary Powers, Privileges and Immunities in Kenya

What is Parliamentary Privilege?

- Parliamentary Privilege can be defined as the sum of the peculiar rights enjoyed by each House of Parliament collectively and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.
- Thus privilege, though part of the law of the land, is to a certain extent, an exemption from the general law.¹

What is the origin and scope of Parliamentary Privilege?

- The scope and application of parliamentary powers, privileges and immunities in most Commonwealth jurisdictions, including Kenya, largely mirror the Westminster model of the United Kingdom. Parliamentary Privileges can be traced to the monarchical United Kingdom.
- Then, state power and authority was heavily vested in the Monarchy and even though the institution of Parliament existed, it used to perform parliamentary functions in subservience to, if not under the influence of the Monarchy.
- In 1387, King Richard II sought approval to exercise absolute control over Parliament. The judges approved the claim, which became popularly known

1 *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament.*

as 'regimen Parliamenti.'²

- Consequently, the Monarchy enjoyed prerogative rights on practical business of Parliament, and would greatly leverage on or veto decisions of Parliament.³
- The need for Parliament to be granted powers and privileges was pursued so as to enable Parliament to effectively perform its functions without influence of the Monarchy. Parliamentary powers, immunities and privileges are granted to Parliament, collectively as an institution and to Members of Parliament in their individual capacity.
- It is important to note that, while parliamentary privilege gives Members of Parliament privileges and immunities, which exceed those possessed by other bodies or individuals, it is never intended to set them above the ordinary law. Members are subject to criminal law, except in relation to freedom of speech and debates in the context of parliamentary proceedings.

Sources of Parliamentary powers, privileges and immunities in Kenya

² www.historyofparliamentonline.org – UK Parliament

³ *ibid*



Former Chairman of the Public Accounts Committee Ababu Namwamba when he appeared before the Committee of Powers and privileges.

- The National Assembly derives its privileges, powers and immunities from –
 - i. The Constitution Kenya;
 - ii. The Parliamentary Powers and Privileges Act, 2017;
 - iii. The National Assembly Standing Orders;
 - iv. Precedents set by Speaker's rulings.

Conferment of parliamentary powers and privileges by the Constitution of Kenya

The powers, privileges and immunities granted by the Constitution are due to the House. They include the following –

- Article 94 of the Constitution provides that no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation. Article 94(6) allows a House of Parliament to delegate this power to regulation making bodies through an Act of Parliament.
- Article 117 of the Constitution provides that there shall be freedom of speech and debate in Parliament. The Members of the National Assembly have therefore the freedom of speech and debate in the National Assembly. The overarching essence of this provision is that the Members' freedom of speech and debates or proceedings in the National Assembly ought not be curtailed or questioned in any court.
- Article 118 gives Parliament power to exclude and remove strangers from the Chamber and its precincts to the extent that such presence of strangers is deemed to likely impede deliberations of the House or its Committees. This is applied in exceptional circumstances that are determined by the Speaker.
- Article 124 gives each House of Parliament the power to establish Committees and make Standing Orders for the orderly conduct of business and regulation of its own procedures, including in its Committees.
- Article 125 of the Constitution further gives the National Assembly the power of a High court, with all powers, privileges and immunities to act as such. This is fundamental in ensuring that the National Assembly executes the quasi-judicial functions assigned to it under the Constitution.

Conferment of Parliamentary powers and Privileges by the Parliamentary Powers and Privileges Act 2017

- The Parliamentary Powers and Privileges Act, 2017 seeks to give effect to Article 117 of the Constitution. These powers, privileges and immunities are granted to the House and to Members as follows -

Immunities and powers granted to Members

- The Act provides for the following immunities and privileges of the Members of the National Assembly-
 - i. 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.
- ii. No process issued by any court in Kenya in the exercise of its civil jurisdiction shall be served on a Member of the National Assembly within the precincts of Parliament while either one or both Houses are sitting.
 - iii. A Member of the National Assembly who 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 shall not be disqualified from being elected as a Member of Parliament until all possibility of appeal or review of the relevant decision or sentence has been exhausted.
 - iv. No civil or criminal proceedings shall be instituted against any Member of the National Assembly for words spoken before, or written in a report to Parliament or a Committee.
 - v. 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.
 - vi. No Member of the National Assembly 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.
 - vii. A Member of the National Assembly shall not be liable to civil or criminal proceedings in respect of the publication of a document that has been submitted to or is before Parliament or a committee.

Immunities and powers granted to the House

- The Parliamentary Powers and Privileges Act, 2017 provides for the following immunities and privileges of the National Assembly-
 - i. The Parliamentary Powers and Privileges Act, 2017 provides that no proceedings or decisions of the National Assembly or the Committee of Powers and Privileges shall be questioned in any court.
 - ii. The Act also provides that the National Assembly 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, the National Assembly and its committees shall have the same powers as the High Court as specified under Article 125 of the Constitution.
 - iii. Where a witness summoned does not appear, or appears but fails to satisfy the House or any of its committee has power to impose upon the witness such fine, not exceeding five hundred thousand shillings.
 - iv. The Act also empowers the National Assembly to order the arrest of a person who fails to honor the summons of a Committee or the House.
 - v. The Act also empowers either House of Parliament to investigate breach of privilege by a Member of Parliament and prescribe appropriate punishment, including recommendation for prosecution by the Director

for Public Prosecution.

Committee of Powers and Privileges

- The Parliamentary Powers and Privileges Act, 2017 establishes the Committee of Powers and Privileges, which considers complaints made by any person against a Member of the National Assembly and inquires into the conduct of a Member whose conduct is alleged to constitute breach of privilege.
- The Act provides for punishment of a Member found to have breached the Act and upon being given an opportunity to be heard, the Committee may recommend imposition of any or more of the following penalties to such a Member –
 - i. a formal warning;
 - ii. a reprimand;
 - iii. an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges;
 - iv. 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;
 - v. the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member;
 - vi. such fine in terms of the Member's monthly salary and allowances as the House may determine;
 - vii. 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;
 - viii. vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.
 - ix. refer the matter to the Director of Public Prosecutions for prosecution in court.

Conferment of powers, immunities and privileges by National Assembly Standing Orders

- The National Assembly Standing Orders espouses the powers and privileges of Committees and provide that its Committees shall enjoy and exercise all the powers and privileges bestowed on the National Assembly by the Constitution and statute, including the power to—
 - a) summon any person to appear before it for the purposes of giving evidence or providing information;
 - b) enforce the attendance of witnesses and examine them under oath, affirmation or otherwise;
 - c) compel the production of documents;
 - d) request for and receive papers and documents from the Government and the public; and
 - e) issue a commission or request to examine witnesses abroad.
- The Standing Orders also encompasses what the Act already provides in terms of enforcing appearance of witnesses before the National Assembly

and its Committees by providing that where a witness summoned does not appear, or appears but fails to satisfy the House or committee, the House or Committee may impose upon the witness a fine not exceeding five hundred thousand shillings, having regard to the witness' condition in life and all the circumstances of the case.

- The Standing Orders further provide that the National Assembly or its committees may order the arrest of a witness who fails to honour a summons for the purpose of compelling his or her attendance.
- The Standing Orders also empower the Speaker/Presiding Officer and the House to punish Members for disorderly or grossly disorderly conduct.

Power to punish for disorderly and gross disorderly conduct

- The Standing Orders also describe what conduct amounts to disorderly conduct and gross disorderly conduct of Members and prescribe the penalty for a Member who conduct is gross disorderly for a minimum of five days and a maximum of twenty-eight days, including the day of suspension.
- If any Member is however suspended after being named, the suspension on the first occasion shall be for four days including the day of suspension; on the second occasion during the same session for eight days, including the day of suspension and on the third or any subsequent occasion during the same Session for twenty-eight days, including the day of suspension.

Refusal to withdraw from the Chamber

- If any Member refuses to withdraw from the Chamber when required to do so, the Speaker or the Chairperson of Committee as the case may be, having called the attention of the House or Committee to the fact that recourse to force is necessary in order to compel such Member to withdraw, shall order such Member to be removed and such Member shall thereupon without question put be suspended from the service of the House for a minimum of twenty-one days and a maximum of ninety days.

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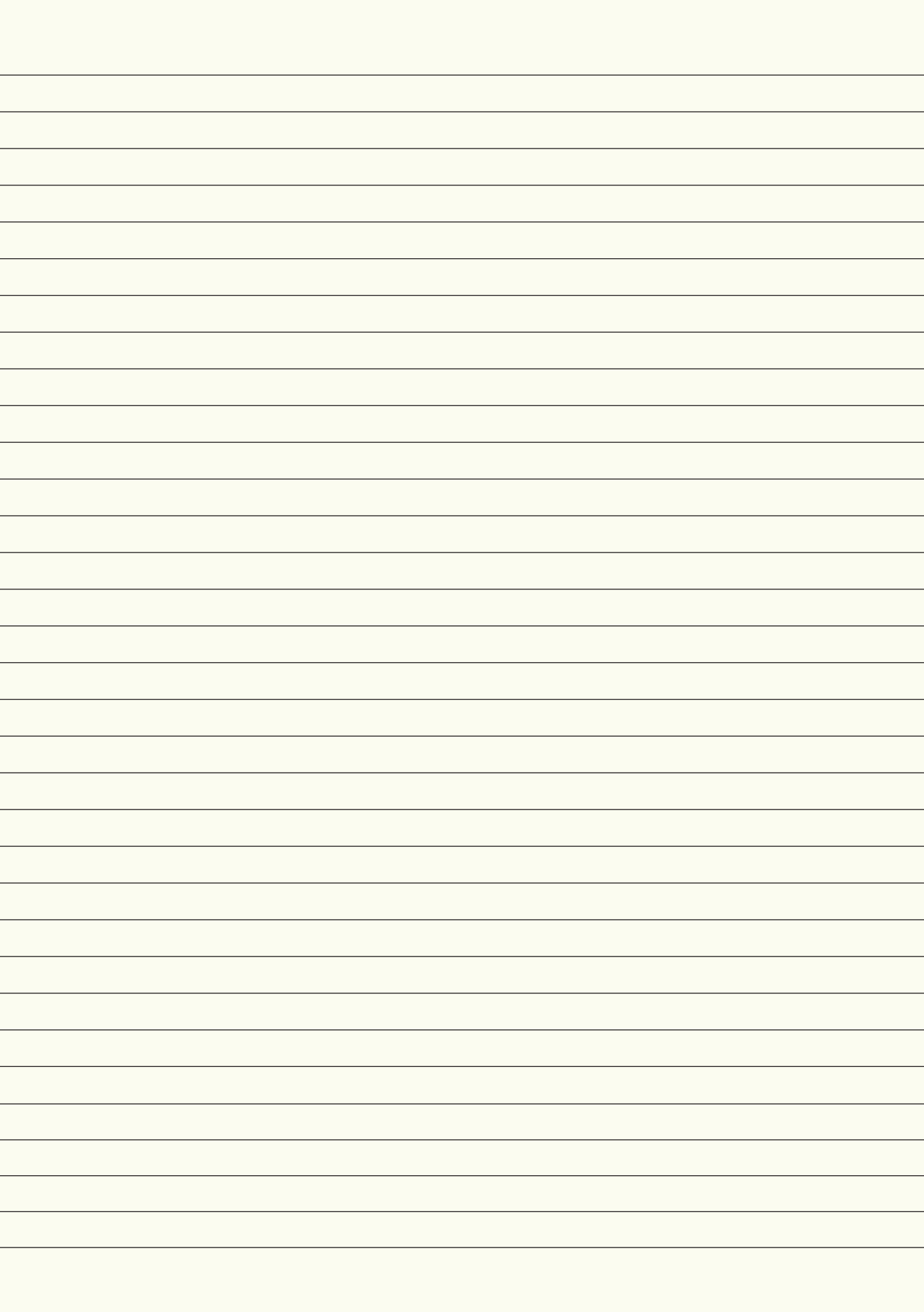
A Suspended Member to forfeit certain benefits

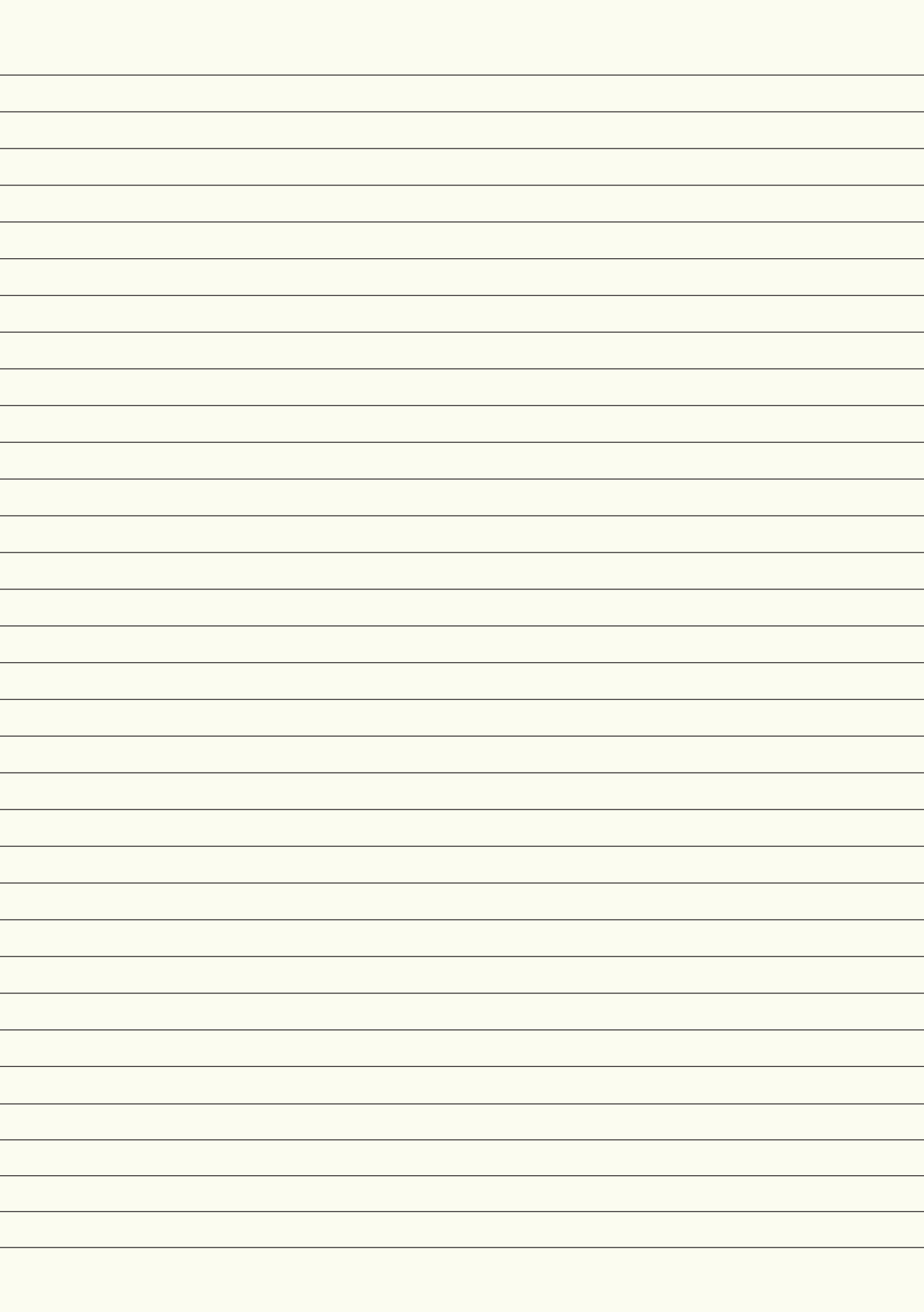
- It is important to note that a Member who has been suspended shall during the period of suspension be deemed to be a “stranger” and forfeit—
 - (a) the right of access to the precincts of the Assembly; and
 - (b) his or her salary and all allowances payable during the period.
- However, suspension from the service of the House shall not exempt the Member so suspended from appearing before a Committee of the House for the consideration of a Bill sponsored by the Member. Additionally, a Member suspended from the National Assembly may appeal in writing to the Committee of Privileges within three days of the suspension.

Powers, immunities and privileges derived from precedents set by Speaker's rulings

- The Office of the Speaker of the National Assembly is established under Article 106 of the Constitution. From time to time, the Speaker is called upon to rule on certain matters, including matters of privilege.
- The rulings and interpretations by the Speaker on such questions may form part of the sources of parliamentary powers, immunities and privileges. Indeed, Standing Order 1 of the National Assembly Standing Orders provides that-

1(a) "In all cases where matters are not expressly provided for by these Standing Orders or by other Orders of the House, any procedural question shall be decided by the Speaker."
- The provision gives the Speaker latitude to contribute to the body of privilege, albeit within the confines of the Constitution, statutes, usages, forms, customs, procedures, traditions and practices of Parliament of Kenya and to the extent that they are applicable to Kenya.







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