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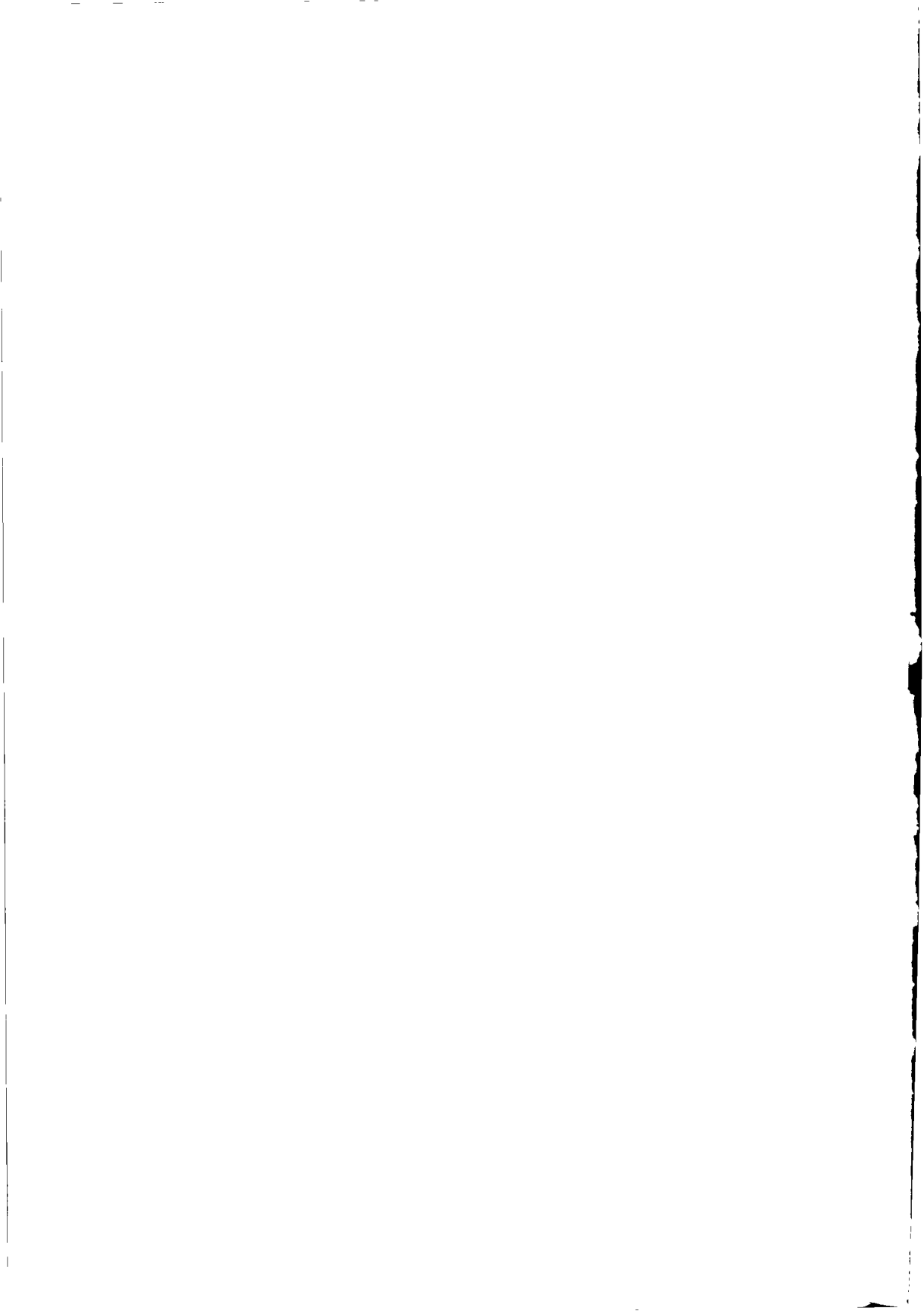
CONTENT

Act—	PAGE
The County Assemblies Powers and Privileges Act, 2017.....	63

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394



**THE COUNTY ASSEMBLIES POWERS AND
PRIVILEGES ACT**

No. 6 of 2017

Date of Assent: 8th March, 2017

Date of Commencement: 29th March, 2017

ARRANGEMENT OF CLAUSES

Section

PART I—PRELIMINARY

- 1—Short title
- 2—Interpretation

**PART II—THE PRECINCTS OF A COUNTY
ASSEMBLY**

- 3—Description of precincts of a county assembly.
- 4—Presence of an officer of the national security organ
in precincts of a county assembly.
- 5—Access to precincts of a county assembly.
- 6—Service of civil process.
- 7—Assembling, demonstrating and picketing.

**PART III—PRIVILEGES AND IMMUNITIES OF
MEMBERS**

- 8—Freedom of speech and debate.
- 9—Postponement of disqualification to enable appeal.
- 10—Proceedings not to be questioned in courts.
- 11—Immunity from legal proceedings.
- 12—Freedom from arrest for civil debt during session.
- 13—Giving evidence of proceedings.
- 14—Determination of a question arising in the county
assembly on right or power of the assembly.

PART IV—BREACH OF PRIVILEGES

- 15—Committee of Powers and Privileges.
- 16—Conduct constituting breach of privilege.
- 17—Determination of breach of privilege.

PART V—SUMMONING OF WITNESSES

- 18—Invitation and summoning of witnesses.
- 19—Examination of witnesses.
- 20—Privileges of witnesses.
- 21—Objection to answer question or to produce papers.
- 22—Duty of public officers to give evidence.

PART VI—PUBLICATIONS AND BROADCASTING

- 23—Protection in respect of publications.
- 24—Unauthorized publishing.
- 25—Broadcasting of proceedings.

PART VII—ENFORCEMENT

- 26—Prohibited acts in respect of a county assembly and its members.
- 27—Offences relating to witnesses.
- 28—Improper influence of members.
- 29—Duty of court Registrar.
- 30—Breach to constitute gross misconduct.
- 31—Offences relating to access to precincts of a county assembly.
- 32—Defamation against a county assembly.
- 33—General penalty.
- 34—Request to the Director of Public Prosecutions.
- 35—Members of staff to have powers of police officer.
- 36—Offences cognizable.

PART VIII—MISCELLANEOUS

- 37—Protection of members of public.
- 38—Speaker's orders.
- 39—Consequential amendments.

FIRST SCHEDULE—SUMMONS TO WITNESSES**SECOND SCHEDULE—AFFIDAVIT OF SERVICE
OF SUMMONS**

**THE COUNTY ASSEMBLIES POWERS AND
PRIVILEGES ACT, 2017**

AN ACT of Parliament to give effect to Article 196(3) of the Constitution; to provide for the powers, privileges and immunities of county assemblies, their committees and members; to make provision regulating admittance to and conduct within the precincts of county assemblies; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

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

Short title.

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

Interpretation.

“Clerk” means the Clerk of a County Assembly;

“committee” means a committee of a county assembly;

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

“county assembly” means a county assembly established under Article 176 of the Constitution;

“county assembly service board” means a county assembly service board established under section 12 of the County Governments Act, 2012;

“county public officer” has the meaning assigned to it under section 2 of the County Governments Act, 2012

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

No. 17 of 2012

“Member” means a member of a county assembly;

“member of staff” means an officer of the county assembly service board, any person acting under the orders of the Speaker or any police officer on duty within the precincts of a county assembly;

No. 17 of 2012

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

“Speaker” means the Speaker of a county assembly or a member presiding at a sitting of the county assembly under Article 178(2)(b) of the Constitution; and

“Standing Orders” means the Standing Orders of a county assembly for the time being in force.

PART II—PRECINCTS OF A COUNTY ASSEMBLY

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

Description of precincts of a county assembly.

- (a) the chambers in which the proceedings of a county assembly 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 the county assembly’s purposes;
- (d) the offices of a county assembly including the places within such offices that are provided for the use of 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 a county assembly or its committees; and
- (f) all other buildings or parts of a building provided or used in connection with the proceedings of a county assembly or its committees while so used by the county assembly including such premises as may be leased by a county assembly.

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

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

Presence of an officer of a national security organ in precincts of a county assembly.

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

5. 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 a county assembly as may be specified.

Access to precincts of a county assembly.

6. (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 a county assembly while the county assembly is sitting; or
- (b) through the Speaker or any officer of a county assembly unless it relates to a person employed within the precincts of a county assembly or to the attachment of a member's salary.

(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 the business and the affairs of a county assembly.

7. (1) The Speaker may designate areas within or outside the precincts of a county assembly where members of the public may, pursuant to Article 37 of the Constitution, assemble, demonstrate, picket or present petitions or memoranda to the county assembly.

Assembling, demonstrating and picketing.

(2) Any assembling, demonstration, picketing and presentation of petitions or memoranda to a county assembly 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 a county assembly 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 the business and affairs of a county assembly.

PART III—PRIVILEGES AND IMMUNITIES OF MEMBERS

8. No civil or criminal proceedings may be instituted in any court or tribunal against a member of a county assembly by reason of any matter said in any debate, petition, motion or other proceedings of a county assembly.

Freedom of speech and debate.

9. Where a Member is found to have contravened Article 193(2) of the Constitution, the decision shall not have effect for the purposes of Article 194(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.

10. No proceedings or decision of a county assembly 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.

11. (1) No civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to a county assembly 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 a county assembly.

Immunity from legal proceedings.

(2) No civil suit shall be commenced against the Speaker, the leader of the majority party, the leader of the minority party, a chairperson of a committees or any member 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 to be done in the discharge of their functions relating to proceedings of a county assembly or its committees.

12. A Member shall not be liable to arrest for a civil debt while the Member is going to, attending or returning from a sitting of a county assembly or a committee of a county assembly.

Freedom from arrest for civil debt during session.

13. (1) No Member or member of staff, and no person employed to take minutes of evidence before a county assembly or any committee, shall give evidence in any court, tribunal or elsewhere in respect of the contents of

Giving evidence of proceedings.

those minutes of evidence or of the contents of any document laid before a county assembly or that committee or in respect of any proceedings or examination held before a county assembly or that committee without special leave first obtained from the county assembly.

(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.

(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 in a county assembly or in a 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 a county assembly.

(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 in the county assembly as contemplated under Article 33 of the Constitution.

14. Where at any time any question arises in a county assembly or in a committee with regard to—

- (a) the right or power of a county assembly or a committee to hear, admit or receive oral evidence;
- (b) the right or power of a county assembly or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record or document before a county assembly or committee; or
- (c) the right or privilege of any person (including a member of the county assembly or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or

Determination of a question arising in the county assembly on right or power of the assembly.

document before a county assembly or committee, that question shall, where no express provision is made in this Act for the determination of that question, 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—BREACH OF PRIVILEGES

15. (1) There is established, for each county assembly, a committee known as the Committee of Powers and Privileges consisting of—

Committee of Powers and Privileges.

- (a) the Speaker, who shall be the chairperson of the Committee; and
- (b) such other members of the county assembly as may be provided in the Standing Orders of the county assembly.

(2) The quorum of the Committee shall be a third of the members of the Committee, including the Speaker.

(3) Subject to this Act and the Standing Orders of a county assembly, 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 a breach of privilege in terms of section 16; and
- (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 a breach of privilege in terms of section 16, within fourteen days of receipt of a complaint.

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

(7) Each county assembly shall, in accordance with its Standing Orders, consider the report and the recommendations thereon and may take such action against the Member concerned as may be appropriate.

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(1), 27 or 29;
- (b) commits an act mentioned in section 28(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 a county assembly;
- (d) contravenes any provision of the Speaker's orders issued under section 40 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 a county assembly, or of the Members or to be contrary to the best interests of a county assembly or its Members.

17. (1) A county assembly shall have all the powers necessary for inquiring into and pronouncing upon any act or matter constituting breach of privilege in terms of section 16.

Determination of breach of privilege.

(2) An inquiry by a county assembly into a matter shall not preclude criminal investigation or criminal proceedings against a Member in connection with the matter concerned.

(3) Where a county assembly finds that a Member has committed a breach of privilege, the county assembly 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 county assembly 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 a county assembly;

- (e) the removal or suspension for a specified period of time of the Member from any a county assembly 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 the county assembly or any of its committees is scheduled to meet during that period;
- (h) vacation of seat pursuant to Articles 75(2)(b) and 194(1)(c) of the Constitution.

4) Where a county assembly finds a member has committed a breach of privilege, the county assembly 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 the county assembly as shall be specified by the accounting officer of the county assembly;
- (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 the county assembly 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 a county assembly or a committee of a county assembly.

(7) The protection of the right to property under Article 40 of the Constitution 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 a county assembly or its committees conferred by this Act;

- (b) for facilitating the orderly conduct of the business and the affairs of a county assembly.

PART V—SUMMONING OF WITNESSES

18. (1) A county 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, a county assembly and its committees shall have the same powers as the High Court as specified under Article 195 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 relevant county assembly service board 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 a county assembly or a committee to attend a sitting of a county assembly or committee shall be paid such amount of money as shall be approved by the Clerk as reimbursement for the expenses incurred.

19. Where a county assembly or a committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the county assembly 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.

20. (1) Every person who is summoned to give evidence or to produce a document before a county

Privileges of witnesses.

assembly or a committee shall be entitled to the same rights and privileges that are applicable to a witness before a court of law.

(2) A person who is being examined under oath or affirmation in terms of section 19 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 a county assembly or a committee shall not be used against the person in a court or other place outside the county assembly 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) or (h).

(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.

21. (1) Where any person ordered to attend to give evidence or to produce any paper, book, record or document before a county assembly 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.

(2) Where any person ordered to attend or to give evidence or to produce any paper, book, record or document before any 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 chairperson of the committee may report the refusal to the Speaker with the reasons therefor; and the Speaker may thereupon excuse the answering of the question or the production of the paper, book, record or document, or may order the answering or production thereof.

22. (1) No public officer shall refuse to produce before a county assembly or a committee any paper, book, record or document.

Duty of public officers to give evidence.

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

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

PART VI—PUBLICATIONS AND BROADCASTING

23. (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 a county assembly or a committee.

Protection in respect of publications.

(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 a county assembly 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 a county assembly;
- (b) the attainment of freedom of expression in the county assembly.

24. (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 a county assembly;
- (b) any journal purporting that it has been published under the authority of a county assembly 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 a county assembly 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 A county assembly;
- (b) the attainment of freedom of expression in the county assembly.

25. (1) A person shall not broadcast, televise or otherwise transmit by electronic means the proceedings of a House or a committee of a county assembly or any part of those proceedings except by order or under the authority of relevant Speaker or chairperson of a committee of a county assembly and in accordance with the Standing Orders and the conditions and directions determined by the Speaker.

Broadcasting of proceedings.

(2) A person shall not be liable to civil or criminal proceedings in respect of the broadcasting, televising or electronic transmission of proceedings of a county assembly or a committee if it has been authorized under subsection (1) and complies with the conditions, if any, determined under that subsection.

(3) The right of access to information under Article 35 and freedom of the media under Article 34 of the Constitution shall be limited as specified under this section—

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

PART VII—ENFORCEMENT

26. (1) A person shall not—

- (a) assault, threaten, use abusive language, obstruct, molest or insult any member proceeding to, being within or leaving the precincts of a county assembly, 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 a county assembly or any committee;
- (b) assault, threaten, use abusive language, 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 a county assembly;
- (d) while a county assembly or a committee is sitting, create or take part in any unlawful disturbance which interrupts or is likely to interrupt the proceedings of a county assembly or any committee while a county assembly 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 a county assembly including a meeting within the precincts of a county assembly; or
 - (ii) the possession of any article, including a firearm, within the precincts.

Prohibited acts in respect of a county assembly and its members.

(2) A person, including 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—

Offences relating to witnesses.

- (i) attend at the time and place specified in the summons; or
 - (ii) remain in attendance until excused from further attendance by the person presiding at the inquiry;
- (b) when called upon under section 18, refuses to be sworn in or to make an affirmation as a witness; or
- (c) fails or disobeys without sufficient cause to-
- (i) answer fully and satisfactorily all questions lawfully put to the person under section 18;
 - (ii) produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce under section 18.
- (2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.
- (3) A person commits an offence where the person-
- (a) threatens, obstructs, assaults or insults a member of staff or police officer carrying out service of summons issued under this Act;
 - (b) uses abusive language directed at a member of a county assembly or its committees;
 - (c) threatens or obstructs another person in respect of evidence to be given before a county assembly or a committee;
 - (d) induces another person to-
 - (i) refrain from giving evidence to or to produce a document before a county assembly or a committee; or
 - (ii) give false evidence before a county assembly or a committee;
 - (e) assaults or penalizes or threatens another person or deprives that person of any benefit on account of the giving or proposed giving of evidence before a county assembly or a committee;