

Hon. Chairman,

Hon Delegates,

Distinguished Guests,

Ladies and Gentlemen:

May I first of all express my appreciation to the Organisers of this Conference, for the invitation to me, on behalf of the Parliament and people of Ghana to participate in this useful forum.

2. The topic on which I am to share some thoughts with you is "Parliamentary Powers, Privileges and Immunities: their use and abuse". I shall endeavour, in this paper, to attempt to briefly elucidate some of the known powers, privileges and immunities of Parliament and then go on to discuss the use and abuse of these special rights with particular emphasis on Ghana, in all cases.

POWERS OF PARLIAMENT

3. Within the doctrine of separation of powers, Parliament is entrusted with the law making function. Parliament has the sole power to make or unmake laws to govern the entire nation. Additionally, Parliament is empowered by the 1992 Constitution of the Republic of Ghana, to undertake some deliberative and investigative functions.

4. To enable Parliament to effectively discharge its duties as expected of it by the electorate, Parliament has the power to enact laws to regulate its own procedures. Thus Parliament can be said to be a master of its own procedures.

5. It must, however, be stated here, that due to the checks and balances principle inherent in the doctrine of separation of powers, the powers of

Parliament to regulate its own activities is not unlimited. The 1992 Constitution provides that a presidential assent is a sine qua non for an Act of Parliament to become a law. Thus although Parliament has the right to determine how it will conduct its activities, Executive approval is needed in some instances.

6. In the United Kingdom the authority of Parliament over all matters and persons within its jurisdiction was formerly held to be unlimited. A law might be unjust or contrary to sound principles of government; but Parliament was not controlled in its discretion. When it erred, its errors could only be corrected by itself. In the twentieth century, however, Parliament has accepted that its unlimited legislative power should be qualified at least in two ways:

- (i) Historically in a series of statutes of Westminster 1931, the United Kingdom Parliament formally recognised limitations on its power over the Dominions.
- (ii) In today's European context the passage of the European Community Act 1972 which gave power to the European institutions to adopt measures carrying the force of law in the United Kingdom has been accepted.

7. In Ghana as it is in many African countries, the Supreme Court as the final interpreter of the Constitution can be called in to determine the constitutionality or otherwise of a particular parliamentary practice or decision. Within the next few weeks political pundits will be privileged to add to their collections a ruling on the power of Parliament to, at all times, remain a master of its own rules, by the Supreme Court of Ghana in a case by the Minority Leader challenging the constitutionality of a parliamentary decision.

PRIVILEGES AND IMMUNITIES OF PARLIAMENT

8. Erskine May provides the classic definition of privileges in his book - Treatise on the Law, Privileges, Proceedings and usage of Parliament (both 20th and 21st Editions). In this book Erskine May defines privilege as:

“the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and which exceed those possessed by other bodies or individuals”.

9. The privileges of Parliament are rights which are absolutely necessary for the performance of duty of the individual Members and the House as a whole. Thus privilege has evolved to enable Parliament discharge the function for which it was chosen.

10. These privileges are finite in nature as the powers of Parliament. They can be divided into two main groups - those enjoyed by the House as a collectivity and those enjoyed by the individual Members. The Constitution of Ghana, under Articles 115 through to Article 121, sets out the privileges and Immunities of Parliament. They include:

- Freedom of Speech and of Proceedings
- Immunity from services of process and Arrest
- Immunity from witness and summons
- Immunity from service as juror
- Immunity from publication of proceedings
- Privilege of witness.

To cement these rights, Order 22 and Articles 117 of the Constitution states:

“No Civil or criminal process coming from any court or place out of Parliament shall be served on, or executed in relation to Mr. Speaker, or

a Member of the Clerk to Parliament **WHILE HE IS ON HIS WAY TO, ATTENDING AT OR RETURNING FROM** any proceedings of Parliament”.

11. These freedoms and Immunities are, however, limited to the House and individuals at particular points in time. For instance a Member of Parliament can enjoy these rights only whilst attending to parliamentary business. Thus parliamentary privilege holds Members responsible for acting in character with the function they fulfil as elected representatives. Disobedience to Orders of the House, and actions such as making threats, offering or taking bribes (in some countries), or intimidating persons are offences for which Members can be reprimanded or even expelled. Order 101 of the Standing Orders of the Ghanaian Parliament state:

“where a Member is found guilty of Contempt of Parliament under paragraph (3) of Order 100 he shall be deemed to be suspended forthwith from the service of the House, and, unless the House otherwise orders, his suspension shall continue on the first occasion in any Session for five sitting days, on the second occasion in any session for ten sitting days, and on the third or subsequent occasion in any session for fourteen sitting days.....”.

Thus the privileges bestowed on the House and Members of Parliaments need to be exercised with extreme care.

USE OF PARLIAMENTARY POWER, PRIVILEGES AND IMMUNITY

12. Under the authority of Mr. Speaker, Parliament exercises its legislative, deliberative and investigative functions without any fear of law suit in any court against a Member. The Constitution of Ghana grants Parliament the

power to punish contempt even though specific prescriptions for the punishment have not been stated in the Constitution, or in Statute.

13. Furthermore, with the view to ascertain the true picture of events, committees of the House as a matter of practice, invite individuals and groups to appear before them at Committee hearings. Ministers of State are also called to answer questions relating to their sector Ministries.

14. Relating to the use of its privileges, I note that the Committee on privileges of the first Parliament of the Second Republic went on a complete holiday throughout the four years. The Second Meeting of the first session of the Second Parliament has also began and after almost five months now, no questions of privilege has been put before the Committee.

15. It must be emphasised that the absence of activity by the privileges committee over the period is not indicative of lack of incidents that could be taken for contempt. It has rather, been the wish of the Speaker and the Leadership of the House to use compromise, co-operation and reconciliation as yardsticks for settling disputes both between Members and from without.

16. I must confess that the ability of the Speaker to settle disputes that could otherwise have been brought before the privileges Committee is due to the prestige accorded the Speaker's office. In the official order of precedence, the Speaker of Parliament in Ghana ranks third only to the President and Vice President and he assumes the presidential role in the absence of both. This situation notwithstanding, encroachment on the supremacy of Parliament emanating from the press should be guarded against, and both estates should consciously work for good and harmonious relations even in the midst of criticism and dissent. For Parliament needs the Press as much as the Press needs Parliament. In the past few years of the Parliaments of the Fourth Republic the practice of Parliament is to encourage and accept written apologies from offending journalists. In some other cases too a rejoinder from the Clerk's office is deemed sufficient.

ABUSE OF PARLIAMENTARY RIGHTS

17. Judging from the usage of parliamentary rights and powers as discussed above, it will appear that these rights cannot be abused. To abuse a parliamentary power, privilege or Immunity is to wrongly misapply them. However, either consciously or not, these rights are daily abused or attempts are made to abuse them. As earlier on explained, the right to free speech is accorded a Member only in the House. A Member who takes advantage of this privilege to talk "freely" to his constituents at the constituency will be abusing this right. In the same manner, comments made by a Member at a function as an elected representative but outside the forum of Parliament would not be covered by this special privilege, even if the Member were quoting from his or her own speech in the Hansard. Any attempt to justify this possible wrongful application of a parliamentary right is an abuse.

18. More often than not it is the practice that an officer of Parliament attending to an urgent assignment in the office will attempt to jump traffic on the grounds that he or she can not be arrested whilst on official duties. Also, there is always the tendency by some Members to disregard the convenience of Ministers of State to ask them to attend to urgent questions standing in the names of their Ministries. To exercise one's right without regard to the right of the other person is also a form of abuse.

19. It is then left to the discretion of the chair to decide on how to treat matters purporting to be contemptuous of Parliament which in actual fact may not.

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CONCLUSIONS/SUMMARY

20. Concluding, it can safely be said, therefore, that the powers of Parliament are enormous. Their use, however, should be within the confines of the Constitution in order to curb abuses which could have a boomerang effect of undermining the dignity and honour of Parliament.

21. Parliamentary privileges and Immunities on the other hand, have evolved to enable Parliament to discharge the functions for which it is chosen. These privileges are finite and can be divided into two categories: those extended to Members individually and those extended to the House as a whole. Whichever be the case, the reason for these privileges is to allow representatives basic exemptions from the law in order that the House may function independently and efficiently.

22. With the new wave of democracy sweeping across the continent, we as Speakers or Presiding Officers have a crucial role to play in the sustenance of enduring democracy. Our impartiality, firmness and dedication will protect the dignity of the office of Speaker and to facilitate the work of Parliament in the emancipation of our people from extreme poverty and deprivation. We need to judiciously apply the powers conferred on us by the people without abusing them.

Thank you for your attention.