

REPORT OF THE PRIVILEGES COMMITTEE ON THE ALLEGED BREACH OF ARTICLE 97(1) (C) OF THE 1992 CONSTITUTION AND ORDER 16 (1) OF THE STANDING ORDERS OF PARLIAMENT BY THREE HON MEMBERS OF PARLIAMENT DURING THE FIRST MEETING OF THE SECOND SESSION OF THE EIGHTH PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

1.0 INTRODUCTION

1.1 On Tuesday, 5th April, 2022, the Rt Hon Speaker of Parliament drew the attention of the House, to a potential breach of Article 97(1) (c) of the 1992 Constitution, and Order 16 (1) of the Standing Orders of Parliament by the following Hon Members during the First Meeting of the Second Session of the Eighth Parliament of the Fourth Republic of Ghana:

- i. Hon Sarah Adwoa Safo;
- ii. Hon Henry Quartey; and
- iii. Hon Kennedy Ohene Agyapong.

1.2 The Rt Hon Speaker consequently thereafter referred the matter to the Privileges Committee for consideration and report pursuant to the provisions of the aforementioned Statutes, as well as the Court of Appeal Rulings, in the case of *Professor Stephen Kwaku Asare v the Attorney General & 3 Ors* (Unreported, 2008) Suit No H1/65/07 (Court of Appeal) dated 11th December, 2008.

2.0 DELIBERATIONS

- 2.1 The Committee met on 25th and 26th May, 2022; 13th, 14th and 15th June, 2022; and 6th and 13th July, 2022 and considered the referral. In attendance at the meeting to answer relevant questions were Hon. Henry Quartey and Hon Kennedy Ohene Agyapong. The Committee also benefitted immensely from the expertise of Dr Dickson Adomako Kissi, a medical practitioner and Hon Member for Anyaa-Sowutuom Constituency, who was in attendance and offered some elucidation on the medical records of Hon Kennedy Ohene Agyapong.
- 2.2 The Committee is grateful to Hon Henry Quartey and Hon Kennedy Ohene Agyapong for their cooperation throughout the consideration process, and Dr. Dickson Adomako Kissi for his immense help.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana;
- ii. The Standing Orders of Parliament;
- iii. Court of Appeal Ruling, in a case of *Professor Stephen Kwaku Asare v the Attorney General & 3 Ors* (Unreported, 2008) Suit No H1/65/07) (Court of Appeal), dated 11th December, 2008;
- iv. Formal Statement of the Rt Hon Speaker on matters relating to the vacancy of the Seat of a Member of Parliament for reasons of absence from Parliament, dated 5th April, 2022; and
- v. Votes and Proceedings of Parliament during the First Meeting of the Second Session of the Eighth Parliament of the Fourth Republic of Ghana.

4.0 BACKGROUND

- 4.1 Parliaments, all over the world, have formal rules of attendance of Members of Parliament (MPs), both at Plenary Sittings and Committee meetings.
- 4.2 The broad principle and mandatory attendance of Members is usually provided for in the National Constitution and details provided for in subsidiary legislations.
- 4.3 In Ghana, Article 97(1) (c) of the 1992 Constitution and Orders 15 and 16(1) of the Standing Orders of Parliament place obligation on all Members of Parliament to attend the House, unless lawful permission is secured.
- 4.4 The punishment for non-attendance of the House for a threshold of fifteen Sittings or more in a Meeting of Parliament without permission from the Speaker, is that the Member shall vacate his Seat, pursuant to Article 97(1) (c) of the 1992 Constitution.
- 4.5 In furtherance of the said provisions, Article 112 (5) of the 1992 Constitution mandate the Clerk to Parliament to inform the Electoral Commission in writing within seven days after the vacancy occurred and a by-election shall be held within thirty days after the vacancy has occurred.
- 4.6 Order 34 (1) of the Standing Orders makes the Votes and Proceedings a reference point in verifying records of attendance of Members at the Sittings of the House.

- 4.7 Unlike the 1957 and 1969 Constitutions, the fifteen minimum threshold of non-attendance of Members to Parliament need not to be continuous under the 1992 Constitution. This was reinforced by the Court of Appeal in the case of *Professor Stephen Kwaku Asare v the Attorney General & 3 Ors (Unreported 2008) (Suit No H1/65/07 (Court of Appeal)* dated 11th December 2008.
- 4.8 In the *Professor Stephen Kwaku Asare v the Attorney General & 3 Ors case supra*, the Court of Appeal ruled that the permission granted by Mr. Speaker for a Member to be absent from the proceedings of the House, cannot exceed fifteen days at any point in time pursuant to Article 97(1) (c) of the 1992 Constitution.
- 4.9 The Court of appeal also noted in the above ruling, the lack of clarity as to the procedure for giving effect to Article 97(1) (c) by Parliament.
- 4.10 The judgement of the Court of appeal also suggests that once a Member is absent from Parliament for more than 15 Sittings without permission, that Member's Seat automatically becomes vacant by operation of law unless the Member is able to provide reasonable explanation to the Privileges Committee.
- 4.11 It is in deference to the above-mentioned statutory provisions and their attendant legal obligations that the Rt Hon Speaker referred to the Privileges Committee for consideration, the following Hon Members:
- a. Hon. Sarah Adwoa Safo;
 - b. Hon. Henry Quartey; and

c. Hon. Kennedy Ohene Agyapong.

5.0 PROCEDURE

- 5.1 Considering the fact that the referral was first of its kind under the Fourth Republican Constitution, the Committee decided to have extensive discussions prior to the commencement of the substantive hearings to establish some modalities.
- 5.2 The Committee was aware that some of the Respondents were outside the jurisdiction of Ghana as at the time the invitations were served. Consequently, it was agreed that opportunity should be provided for the Respondents who were abroad to participate in the hearing via zoom, subject to their pleasure.
- 5.3 The Committee also verified the records of attendance of the Respondents during the period under reference – that is the First Meeting of the Second Session of the Eighth Parliament of the Fourth Republic of Ghana through the Votes and Proceedings pursuant to Order 34 (1) of the Standing Orders of Parliament.
- 5.4 Additionally, the Committee took note of the fact that there was no complainant in the case under consideration. As a result, it was agreed that in the event of a possible challenge of the records of the attendance by any of the Respondents, the Table Office would be invited to appear before the Committee to substantiate the facts submitted to Mr. Speaker.

5.5 The Respondents were informed of the right to attend upon the Committee with a Counsel.

6.0 SCOPE OF THE COMMITTEE'S MANDATE IN RELATION TO THE REFERRAL

Pursuant to Article 97(1) (c) of the 1992 Constitution, and Order 16(1) of the Standing Orders of Parliament, upon which the referral was made, the Committee was tasked to determine the following:

- i. To confirm whether or not the Members concerned absented themselves for fifteen Sittings of Parliament, or more;
- ii. To ascertain whether or not the Members concerned sought permission in writing from Mr Speaker; and
- iii. To determine whether or not the explanations given by the Hon Members under inquiry are reasonable.

7.0 OBSERVATIONS

7.1 Preliminary Concerns

7.1.1 A concern was expressed as to whether Mr. Speaker could *suo moto* raise issues relating to absence of Members from the House on the floor of Parliament and referred same to the Privileges Committee for consideration. This concern came against the backdrop of the general rule of law that the burden of proof lies on the person who alleges, and the fact that Mr. Speaker could not be summoned to appear before the Committee to defend the claim. The Committee generally regarded the concern as germane and worthy of reflection in the ongoing review of the Standing Orders.

7.1.2 It was again observed that the procedure to carry out the provisions under Article 97 (1) (c) of the 1992 Constitution and Order 16 (1) of the Standing Orders was not clear. For instance, whether or not the Privileges Committee report to the Plenary should be subjected to a vote by the House or construed only as information to the House, similar to the report of the Committee on Finance on payments from the Contingency Fund pursuant to Article 177 (1) of the Constitution.

7.1.3 The Committee was also mindful of the need to set the right precedent to guard against possible abuse of the provision by future Speakers of Parliament.

7.2 Verification of Records of attendance during the period under consideration

7.2.1 Order 34 (1) of the Standing Orders provides as follows:

"The minutes of the proceedings of Parliament called Votes and Proceedings shall be a record of the attendance of Members at each sitting and all decisions of Parliament and shall be kept by the Clerk. The Votes and Proceedings shall be printed and shall be the Journals of the House."

7.2.2 Pursuant to the provisions of the above-mentioned Order, the official source for verifying Members' attendance to the House is the Votes and Proceedings. Accordingly, the Committee proceeded to verify the records of attendance of the House for the three Hon Members during the period under consideration. The detail records of the attendance

is attached as **appendix A**. The table below however presents the summary of the records of their attendance.

Table 1: Records of attendance for the under-listed Hon Members from

Tuesday, 25th January, 2022 to Tuesday, 5th April, 2022

NO.	NAME OF THE HON MEMBER	NUMBER OF DAYS ABSENT	NUMBER OF DAYS PRESENT	TOTAL NUMBER OF SITTINGS IN THE MEETING
1	Hon Kennedy Ohene Agyapong	Twenty (20)	Twenty-Two (22)	Forty-Two (42)
2	Hon Henry Quartey	Thirty (30)	Twelve (12)	Forty-Two (42)
3	Hon Sarah Adwoa Safo	Forty-Two (42)	NIL	Forty-Two (42)

7.3 Submissions by Hon Kennedy Ohene Agyapong

7.3.1 In explaining his absence from the House for more than the fifteen Sittings during the period under reference, Hon Kennedy Ohene Agyapong indicated that his absence for the periods were not deliberate. He explained that during the said periods, he experienced occasional and unanticipated excruciating pains predicated on an existing medical condition. The Hon Member informed the Committee that he had ignored the advice of his Medical Doctor to take a six (6) months rest, after a surgical operation. Instead, he decided to return

to Ghana, barely after three months of the surgery to perform his parliamentary duties.

7.3.2 When asked why he decided to prioritise his parliamentary duties at the peril of his life, the Respondent indicated that he did so because of patriotism. He emphasised that having cognizance of the nature of membership in this Eighth Parliament, he considered it very necessary to be in Parliament to facilitate government business.

7.3.3 In a related question as to why he did not take excuse duty as evidence in support of the six (6) months rest advice by his medical doctor, the Hon Member explained that he was under the impression that, with medication, he could still manage to attend and participate in the business of the House. Unfortunately, the intermittent and unexpected excruciating pains made it impossible for him to attend all the Sittings of Parliament during the said Meeting under reference.

7.3.4 When asked as to why he did not employ the services of his Personal Assistant to seek the permission on his behalf, the Hon Member explained that in the first place, he does not have a Personal Assistant; and secondly, the pains were so severe that he could not even answer calls or let alone make same.

7.3.5 He further explained that on a number of occasions, he actually came to Parliament, but Sittings delayed for so long, sometimes late in the afternoon. As a result, he could not wait, but had to return home to take his medication.

7.3.5 The Respondent tendered in his medical records as evidence in support of his submissions. The medical doctor who was in attendance to assist the Committee confirmed that the medical records tendered reflects the submissions made by the Respondent.

7.4 Submission by Hon Henry Quartey

7.4.1 In responding to whether or not the Respondent knew he had absented himself for more than the fifteen Sittings threshold, during the period under reference, Hon Henry Quartey answered in affirmative. He indicated that the absence was not deliberate, but was due to misconception on his part, regarding what constitute notice of leave of absence.

7.4.2 The Respondent explained that he had the permission of Mr Speaker to travel outside the country for a medical treatment during the days he was recorded in the Votes and Proceedings as having been absent from the House. The Respondent added that because Mr Speaker had approved his travel for the medical treatment outside the country, and also, Parliamentary Service was in the know, and in fact, paying for the medical bills, he felt the approval by the speaker, sufficed as a leave of absence.

7.4.3 The Hon Member further explained that because of the Covid-19 pandemic and its accompanying pressure on medical facilities and doctors all over the world, clearance for him to come for the treatments, were in most instances, on short notice. However, at all material times, Mr Speaker was in the known, because Mr Speaker was the one who gave approval for him to travel, therefore, did not see the need to apply for leave of absence again.

7.4.4 He intimated that his appearance before the Privileges Committee for breach of Article 97 (1) (c) of the 1992 Constitution and Order 16 (1) of the Standing Orders of Parliament could have been avoided if he had not misconstrued Mr Speaker's approval for his travels outside the country for medical treatments to mean concurrent permission of leave of absence.

7.4.5 The Hon Member showed sufficient remorse, apologised to the Committee, and by extension, Parliament, for the misconception and promised to learn lessons going forward. He however recommended to Parliament, to consider synchronising some of its administrative process to automatically activate other related process such as his case.

8.0 DETERMINATION OF THE REASONABILITY OF THE EXPLANATIONS

The Committee after carefully analysing the submissions by the Respondents makes the following conclusions regarding the reasonability of the explanations:

a) Hon Kennedy Ohene Agyapong

The explanation given by Hon Kennedy Ohene Agyapong for his absence from the House for more than the fifteen Sittings threshold during the period under consideration was found reasonable and convincing to the Committee. Although, the Minority Members expressed concerns about the failure of Hon Kennedy Ohene Agyapong to provide a written excuse-duty from his medical doctors, however, they were not in any doubt that the Hon Member was unwell at that time. The Committee's decision was fortified on the following grounds:

- i. First, the records of Votes and Proceedings show that, the days of absence of Hon Kennedy Ohene Agyapong were intermittent and not continuous. This lends credence to the Respondent's submission that his absenteeism was precipitated by an unforeseeable ill-health. Accordingly, the circumstances that led to his absenteeism during the period under reference could convincingly be described as unavoidable.
- ii. Secondly, the medical doctor in attendance confirmed that the Hon Member was ignorant of the likely complications of his condition. He explained that it was normal for the Respondent to suffer from excruciating pains that could prevent him from attending Parliament.

b) Hon Henry Quartey

The Committee also found Hon Henry Quartey's explanation reasonably on the following grounds:

- i. Although, the Hon Member did not request leave of absence through the usual procedure, it was Mr Speaker who granted permission for all the medical treatments he sought outside the country. Impliedly, Mr Speaker was in the know of all the days he had travelled outside the country for medical treatment but was unfortunately recorded absent.
- ii. Information available to the Committee also showed that the Clerk to Parliament and the Parliamentary Relations Department, facilitated all the travels of the treatment abroad after the approval from Mr. Speaker. Accordingly, it was reasonable for the Member to assume that the Journal Office and the Table Office would have taken note and recorded the Member as absent with permission in the Votes and Proceedings.
- iii. The Committee came to a determination that it was not deliberate for the Member to absent himself for more than the fifteen days threshold during the period under reference.

c) Hon Sarah Adwoa Safo

The Committee wishes to report to the House that all efforts to reach Hon Sarah Adwoa Safo in person, to serve her with the invitation to appear before the Committee to explain her absence from the House for more than the fifteen Sittings threshold during the period under consideration, were unsuccessful.

Accordingly, Hon Sarah Adwoa Safo did not appear before the Committee.

The following steps were taken by the Committee to serve her with the invitation letter:

- i. The Committee first wrote to her on three occasions through her Office in Parliament; Pigeonhole in Parliament; the Ministry of Gender and Social Protection where she currently superintend as the Sector Minister; her official email address; and WhatsApp number.
- ii. The Committee being unsuccessful with the above-mentioned means, employed the services of the Personal Assistant who facilitated her interview with Joy FM on Thursday, 26th May, 2022. The Personal Assistant acknowledged receipt of the invitation letter and promised to deliver same to the Hon Member. According to the Personal Assistant, he sent the invitation letter via internet and other online communication platforms which they normally use to communicate. Unfortunately, the Personal Assistant could not confirm to the Committee Secretariat, whether or not Hon Sarah Adwoa Safo received the invitation letter sent to her through her Personal Assistant.
- iii. The Committee took further steps to serve her with a summon by a publication in the Daily Graphic, Times, and Daily Guide

Newspapers dated 16th June, 2022 and her place of abode, on 20th June, 2022, pursuant to Order 205 of the Standing Orders of Parliament.

- iv. In all instances, opportunity was given for the Hon Sarah Adwoa Safo to avail herself of Zoom video conferencing facilities to appear before the Committee. However, the Hon Member neither appeared before the Committee nor gave any feedback as to receipt of any of the invitations or summons from the Committee.

9.0 CONCLUSION

9.1 The Committee, by a majority decision, concludes as follows:

- i. Hon Kennedy Ohene Agyapong and Hon Henry Quartey admitted having absented themselves for more than the fifteen Sittings threshold. However, the explanations given by Hon Kennedy Ohene Agyapong and Hon Henry Quartey for being absent were found reasonable.
- ii. With regards to Hon Sarah Adwoa Safo, in spite of all the efforts made to invite her to attend upon the Committee, the Hon Member did not appear before the Committee to provide the reasons for her absence from the House without written permission for more than the fifteen Sittings threshold.
- iii. By the provisions of Article 97 (1) (c) of the 1992 Constitution, the onus is on Hon Sarah Adwoa Safo to provide a reasonable explanation to the Privileges Committee why she shall not vacate her Seat, for

having absented herself for forty-two (42) Sittings, during the period under consideration.

9.2 The Minority Members on the Committee concede that reasonable efforts were made to get Hon Sarah Adwoa Safo to appear before the Committee, however, the Minority Members are of the view that, the lack of response of Hon Sarah Adwoa Safo to the numerous invitations of the Committee should be reported to the House without any conclusions.

9.3 The above notwithstanding, the Majority, was of the view that, Hon Sarah Adwoa Safo failed to take advantage of the numerous opportunities and facilities offered her to provide reasonable explanation to the Committee with regard to her absence without leave. Therefore, pursuant to Article 97 (1) (c) of the 1992 Constitution and the Court of Appeal decision in the case of *Professor Stephen Kwaku Asare v the Attorney General & 3 Ors*, the Dome-Kwabenya Seat is automatically vacant by operation of law.

10. RECOMMENDATIONS

10.1 The Committee recommends to the House to take advantage of the ongoing review of the Standing Orders to provide procedure for the operationalization of Article 97 (1) (c) of the Constitution.

10.2 The Committee, by majority decision, recommends to the House to adopt its Report, pursuant to Article 97 (1) (c) of the Constitution and Orders 16 (1) of the Standing Orders of Parliament.

Respectfully submitted.

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HON. JOSEPH OSEI OWUSU
(CHAIRMAN, COMMITTEE ON PRIVILEGES)

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AKUA DUROWAA OWUSU-AGYEKUM (MRS)
(HEAD, LEGAL COMMITTEES CLUSTER)

22nd July, 2022