



REPUBLIC OF KENYA


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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 29 MAY 2025	DAY: <i>Thursday</i>
TABLED BY:	<i>Hon. George Mwangi Chair Person Justice & Legal Affairs</i>
REPORT ON:	<i>Harambee Ahmed</i>

**THE CONSIDERATION OF THE PRESIDENT'S
MEMORANDUM OF REFERRAL OF THE ANTI-MONEY
LAUNDERING AND COMBATING OF TERRORISM
FINANCING LAWS (AMENDMENT) BILL, 2025
(NATIONAL ASSEMBLY BILL NO. 5 OF 2025)**

NATIONAL ASSEMBLY
RECEIVED
29 MAY 2025
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

MAY 2025

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LIST OF ABBREVIATIONS AND ACRONYMS

FORD	-	Forum for the Restoration of Democracy
FRC	-	Financial Reporting Centre
MCCP	-	Maendeleo Chap Chap Party
MP	-	Member of Parliament
ODM	-	Orange Democratic Movement
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement

LIST OF ANNEXURES

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- Annexure 4: Speaker's Communication dated 28th July 2015 on Consideration and Scope of Presidential Reservations Pursuant to Article 115 of the Constitution – Referral of Bills to Parliament for Reconsideration

CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the President's Memorandum of Referral of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025.

The Bill was passed by the National Assembly on 16th April, 2025. The Rt. Hon. Speaker, thereafter, presented the Bill to H.E the President for assent pursuant to the provisions of Article 115 of the Constitution.

In compliance with Article 115(1)(b) of the Constitution the President, vide a memorandum dated 28th April 2025, referred the Bill back to the National Assembly for reconsideration noting reservations with Clauses 3.

Vide Message from the President (No. 3 of 2025) dated 30th April 2025, the Rt. Hon. Speaker notified the House of the President's Memorandum of Referral of the Bill and referred it to the Departmental Committee on Justice and Legal Affairs pursuant to Standing Order 42(3)(c) of the National Assembly Standing Orders. Consequently, the Committee proceeded to consider the President's Memorandum in its meeting held on Tuesday, 27th May 2025 and Thursday 29th May 2025.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its Consideration of the President's Memorandum of Referral of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the President's Memorandum on Referral of the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the President's Memorandum on the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025 and has the honour to report back to the National Assembly with the recommendation that the House **approves the amendment of the Bill in light of the President's reservations.**

Hon. Murugara George Gitonga, CBS, MP
Chairman, Departmental Committee on Justice and Legal Affairs



CHAPTER ONE

I PREFACE

I.1 Establishment of the Committee

- I. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

I.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider: -
 - a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and Anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties; and

- m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
- a) State Department of Correctional Services;
 - b) State Law Office and Department of Justice;
 - c) The Judiciary;
 - d) Judicial Service Commission;
 - e) Office of the Director of Public Prosecutions;
 - f) Ethics and Anti-Corruption Commission;
 - g) Independent Electoral and Boundaries Commission;
 - h) Commission on Administrative Justice;
 - i) Office of the Registrar of Political Parties;
 - j) Witness Protection Agency;
 - k) Kenya National Commission on Human Rights;
 - l) Kenya Law Reform Commission; and
 - m) Council of Legal Education.

1.3 Committee Membership

4. The Committee was reconstituted by the House on 5th March 2025 and comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency

UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency

MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency
UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency
WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency
UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency
ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency
ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, MP
Rarieda Constituency
ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency
UDA Party

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency
UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency
FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency
Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency
Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa County (CWR)
Jubilee Party

Hon. CPA Zuleka Hulbale Harun, MP
Nominated Member
UDM Party

I.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Ahmed Salim Abdalla
Clerk Assistant I / Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Mr. Abdikafar Abdi
Clerk Assistant III

Ms. Jael Ayiego
Clerk Assistant III

Mr. Isaac Nabiswa
Legal Counsel II

Mr. Omar Abdirahim
Fiscal Analyst I

Ms. Vivienne Ogega
Research Officer III

Mr. John Nduaci
Serjeant-At-Arms

Mr. Meldrick K. Sakani
Audio Officer III

Ms. Mary Kamande
Public Communications Officer III

Mr. Calvin Karung'o
Media Relations Officer III

Mr. Silas Oponga
Hansard Reporter III

CHAPTER TWO

2 CONSIDERATION OF THE PRESIDENT'S MEMORANDUM OF REFERRAL OF THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL, 2025

2.1 Background

6. The Bill was passed by the National Assembly on 16th April, 2025 and was thereafter presented to the President for assent in accordance with provision of Article 115 of the Constitution.
7. In accordance with Article 115(1)(b) of the Constitution, H.E the President, vide a memorandum dated 28th April, 2025 referred the Bill back to the National Assembly for reconsideration with reservations recommending amendment of Clause 3(2) of the Bill.
8. Consequently, and pursuant to Standing Order 42(3)(c) of the National Assembly Standing Orders, the Rt. Hon. Speaker referred the President's Memorandum of Referral of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025 to the Departmental Committee on Justice and Legal Affairs.
9. In accordance with Standing Order 154(2) of the National Assembly Standing Orders, the Rt. Hon. Speaker directed that the House ought to consider the President's reservations within twenty-one (21) days
10. To this end, the Committee held a meeting on Tuesday 27th May 2025 to deliberate the President's Reservations to the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025.

2.2 Consideration of the President's Memorandum of Referral

11. Article 115 of the Constitution provides as follows:

"Presidential assent and referral.

115. (1) Within fourteen days after receipt of a Bill, the President shall—

(a) assent to the Bill; or

(b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

(2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part—

(a) amend the Bill in light of the President's reservations; or

(b) pass the Bill a second time without amendment.

(3) If Parliament amends the Bill fully accommodating the President's reservations, the appropriate Speaker shall re-submit it to the President for assent.

(4) Parliament, after considering the President's reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported—

(a) by two-thirds of members of the National Assembly; and

(b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

Report of the Departmental Committee on Justice and Legal Affairs on its consideration of the President's Memorandum of Referral of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 5 of 2025)

(5) If Parliament has passed a Bill under clause (4)—

- (a) the appropriate Speaker shall within seven days re-submit it to the President; and
- (b) the President shall within seven days assent to the Bill.

(6) If the President does not assent to a Bill or refer it back within the period prescribed in clause (1), or assent to it under clause (5)(b), the Bill shall be taken to have been assented to on the expiry of that period.”

12. As directed by the Rt. Hon. Speaker, the Committee was guided by Speaker's Communication dated 28th July 2015 on the Referral of Bills to Parliament for Reconsideration in deliberating the following Presidential reservations:

Clause 3

13. Clause 3(2) of the Bill proposes save the tenure of the Director-General of the FRC whose term of office was amended to a single non-renewable term of six years.
14. The President observed that the provision does not fully take cognizance of the constitutional framework governing independent office holders under Chapter Fifteen of the Constitution whose maximum term of services is capped at eight (8) years. The effect of the amendment is that the term of office of the Director-General would cumulatively extend to ten (10) years exceeding the constitutional threshold.

Committee Observation

15. The Committee observed that the office of the Director-General of the FRC is not an independent office established under Chapter Fifteen of the Constitution. Therefore, the term of office of the Director-General need not be aligned with the term of office of independent offices established under Chapter Fifteen of the Constitution.
16. In addition, the Committee observed that there is need to make a provision in the transition clause to ensure continuity in the office of the Director-General and avoid the existence of a vacuum between the expiry of the term of office of the current Director-General and the appointment of a successor.

CHAPTER THREE


3 COMMITTEE RECOMMENDATIONS

17. The Committee, having considered the President's Memorandum of Referral of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 5 of 2025) and pursuant to Article 115(2)(a) of the Constitution, recommends that the House **approves the following amendment to the Bill in light of the President's reservation—**:

CLAUSE 3

THAT, Clause 3 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause—

(Cap. 59A) "(2) Any existing office holder appointed under section 25 of the Proceeds of Crime and Anti-Money Laundering Act will complete their tenure under the provisions applicable at the time of their appointment and continue in office until the appointment of the next Director-General."

SIGNED  DATE 29.5.2025

HON. GEORGE GITONGA MURUGARA, CBS, MP
CHAIRMAN
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS





DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION OF THE PRESIDENT'S MEMORANDUM OF REFERRAL OF THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 5 OF 2025)

We, the Members of the Departmental Committee on Justice and Legal Affairs have, pursuant to Standing Order 199, adopted this Report of the Committee on the President's Memorandum of Referral of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025 (National Assembly Bill No. 5 of 2025) and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. Murugara George Gitonga, CBS, MP - Chairperson

2. Hon. Mutuse Eckomas Mwengi, OGW, MP - Vice Chair

3. Hon. Gladys Boss, MGH, MP

.....

4. Hon. Farah Maalim, EGH, MP

.....

5. Hon. Silvanus Osoro Onyiego, CBS, MP

.....

6. Hon. Tom Joseph Francis Kajwang', MP

.....

7. Hon. Muchangi Karemba, CBS, MP

.....

8. Hon. Timothy Wanyonyi Wetangula, CBS, MP

9. Hon. (Dr.) Otiende Amollo, SC, MP

.....

10. Hon. Michael Mwangi Muchira, MP

.....

11. Hon. Aden Daud, EBS, MP

12. Hon. John Okwisia Makali, MP

.....

13. Hon. Stephen M. Mogaka, MP

.....

14. Hon. Amina Udgoon Siyad, MP

15. Hon. CPA Zuleka Hulbale Harun, MP



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION-2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS COMMITTEE HELD IN COMMITTEE
ROOM 21, 5TH FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON
THURSDAY 29TH MAY 2025 AT 10:00 AM**

PRESENT

1. Hon. Murugara George Gitonga, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwangi, OGW, MP - *Vice Chairperson*
3. Hon. Muchangi Karemba, CBS, MP
4. Hon. Aden Daud, EBS, MP
5. Hon. Wetangula Timothy Wanyonyi, CBS, MP
6. Hon. (Dr.) Otiende Amollo, SC, MP
7. Hon. Makali John Okwisia, MP
8. Hon. CPA. Sulekha Hulbale Harun, MP

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Maalim Farah, EGH, MP
3. Hon. Onyiengo Silvanus Osoro, CBS, MP
4. Hon. Francis Kajwang' Tom Joseph, MP
5. Hon. Mogaka Stephen M, MP
6. Hon. Muchira Michael Mwangi, MP
7. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

- | | | |
|------------------------|---|-------------------------------|
| 1. Mr. Ahmed Salim | - | Clerk Assistant I |
| 2. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 3. Mr. Walala Ronald | - | Senior Legal Counsel |
| 4. Mr. Sydney Lugaga | - | Senior Legal Counsel |
| 5. Mr. Abdirahim Omar | - | Fiscal Analyst I |
| 6. Mr. Isaac Nabiswa | - | Legal Counsel II |
| 7. Ms. Vivienne Ogega | - | Research Officer II |
| 8. Mr. Meldrick Sakani | - | Audio Officer |
| 9. Ms. Mary Kamande | - | Public Communications Officer |
| 10. Mr. John Nduaci | - | Serjeant-at-Arms |
| 11. Mr. Shawn Ngoyo | - | Intern, JLAC |

IN ATTENDANCE

- | | | |
|--------------------------|---|--|
| 1. Ms. Mary Wendy Yeboah | - | Senior Legal Officer, Parliament of Ghana |
| 2. Mr. Edwin Tuffour | - | Legal Officer, Parliament of Ghana |
| 3. Ms. Doreen Asante | - | Assistant Administrator, Parliament of Ghana |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. Adoption of the Report on the President's memorandum on the Conflict-of Interest Bill, 2023
6. Adoption of the Report on the President's Memorandum on the Anti-Money Laundering and Combating Terrorism Financing Laws (Amendment) Bill 2025
7. Adoption of the Report on Election Offences (Amendment) (No. 2) Bill (Senate Bill No. 28 of 2024)
8. Adoption of the Report on Political Parties (Amendment) (No. 2) Bill (Senate Bill No. 26 of 2024)
9. Any Other Business
10. Adjournment / Date of the Next Meeting

MIN. NO. DDC/JLAC/181/2025: PRELIMINARIES

- a) The meeting was called to order at twenty-six minutes past ten o'clock by the Chairperson followed by a word of prayer and thereafter Members of the Committee introduced themselves. The agenda was adopted, having been proposed by Hon. Otiende Amollo, SC, MP and seconded by Hon. Aden Daud, MP.
- b) The Chairperson thereafter welcomed and introduced a delegation from the Parliament of Ghana, and briefly explained to the delegation about the general conduct of meetings, and in particular, the agenda before the Committee for the day; of which the delegation was to observe.

MIN.NO. DDC/JLAC/182/2025: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

The agenda was deferred.

MIN.NO. DDC/JLAC/183/2025: ADOPTION OF THE REPORT ON THE PRESIDENT'S MEMORANDUM ON THE CONFLICT-OF INTEREST BILL, 2023

- a) The Committee observed that the proposed amendments by the H.E. the President negated some of the provisions of the mediated version of the Bill that was approved by Parliament pursuant to Article 113 of the Constitution.
- b) Having considered the President's Memorandum of Referral of the Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*) and pursuant to Article 115(2)(a) of the Constitution, the Committee resolved to recommend that the House does not concur with the President's reservations.

Adoption of the Report

The Committee adopted the Report having being proposed by Hon. Otiende Amollo, SC, MP and seconded by Hon. Aden Daud, MP.

MIN.NO. DDC/JLAC/184/2025: ADOPTION OF THE REPORT ON THE PRESIDENT'S MEMORANDUM ON THE ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING LAWS (AMENDMENT) BILL 2025

The Committee, having considered the President's Memorandum of Referral of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National

to recommend that the House approves the following amendment to the Bill in light of the President's reservation:

- a) That Clause 3 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause—

"(2) Any existing office holder appointed under section 25 of the Proceeds of Crime and Anti-Money Laundering Act will complete their tenure under the provisions applicable at the time of their appointment and continue in office until the appointment of the next Director-General."

Adoption of the Report

The Committee adopted the Report having being proposed by Hon. Aden Daud, MP and seconded by Hon. Otiende Amollo, SC, MP.

MIN.NO. DDC/JLAC/185/2025:

ADOPTION OF THE REPORTS ON THE ELECTION OFFENCES (AMENDMENT) BILL, 2024

The Committee, having considered the Election Offences (Amendment) (No. 2) Bill (*Senate Bill No. 28 of 2024*) and the submissions from members of the public and stakeholders, resolved to recommend that the House approves the Bill with the amendments to Clause 2 and 4 of the Bill as contained in the Schedule of Amendments.

Adoption of the Report

The Committee adopted the Report having being proposed by Hon. John Makali, MP and seconded by Hon. CPA Zuleka Hulbale, MP.

MIN. NO. DDC/JLAC/186/2025:

ADOPTION OF THE REPORTS ON THE POLITICAL PARTIES (AMENDMENT) (NO. 2) BILL, 2024

The Committee, having considered the Political Parties (Amendment) (No. 2) Bill (*Senate Bill No. 26 of 2024*) and the submissions from members of the public and stakeholders, resolved to recommend that the House approves the Bill with the amendments contained in the Schedule of Amendments forming Chapter Six of the report.

Adoption of the Report

The Committee adopted the Report, having being proposed by Hon. Timothy Wanyonyi, CBS, MP and seconded by Hon. John Makali, MP.

MIN. NO. DDC/JLAC/187/2024:

ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past twelve noon. The next meeting will be held on notice.

SIGNED:



DATE:

29.5.2025

(CHAIRPERSON HON. MURUGARA GEORGE GITONGA, CBS, MP)



THE CONSTITUTION OF KENYA

REFERRAL

of

**THE ANTI-MONEY LAUNDERING AND
COMBATING OF TERRORISM FINANCING
LAWS (AMENDMENT) BILL, 2025**

PRESIDENTIAL MEMORANDUM OF REFERRAL

By **HIS EXCELLENCY, THE HONOURABLE
WILLIAM SAMOEI RUTO, Ph.D., C.G.H.**

President and Commander-in-Chief of the
Kenya Defence Forces.

Submitted to the **HON. SPEAKER OF THE
NATIONAL ASSEMBLY.**

WHEREAS a Bill titled "*An Act of Parliament to amend the laws relating to anti-money laundering and combating of terrorism financing and proliferation financing; and for connected purposes*" was passed by the National Assembly on the 16th of April, 2025;

AND WHEREAS in accordance with the provisions of the Constitution, the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025, was presented to me for assent on the 17th of April, 2025;



NOW THEREFORE, in exercise of the powers conferred upon me by Article 115 of the Constitution, I decline to assent to the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025, and refer the Bill for reconsideration by the National Assembly, for the reasons set out hereunder:

CLAUSE 3

Clause 3(2) of the Bill proposes transitioning the tenure of the Centre's principal office holder to a single non-renewable term of six years, thereby aligning it with the tenure applicable to Constitutional Commissions.

However, the transitional provision does not adequately account for the established architecture of independent constitutional offices and their governance framework. In particular, the proposed framework does not fully take cognizance of the constitutional framework governing independent office holders under Chapter 15 of the Constitution, such as the Auditor-General, the Comptroller of Budget, and the Director of Public Prosecutions, whose maximum term of service is capped at eight years. Under the proposed arrangement, the tenure would cumulatively extend to ten years, exceeding the constitutional threshold.



RECOMMENDATION

For the foregoing reasons, I recommend the saving and transitional provision under Clause 3(2) be deleted and substituted therefor the following new transitional provision—

“Any existing office holder appointed under section 25 of the Proceeds of Crime and Anti-Money Laundering Act will complete their tenure under the provisions applicable at the time of their appointment.”

IN WITNESS THEREOF, I hereunto have set my Hand and caused the Public Seal of the Republic to be affixed on this 28th day of April, in the year of our **LORD TWO THOUSAND AND TWENTY-FIVE.**



A handwritten signature in black ink, appearing to read 'William Samoei Ruto'.

**WILLIAM SAMOEI RUTO,
PRESIDENT.**



*2/13/2025
Please forward
Amplified
30/4*

STATE HOUSE
P.O. Box 40530
NAIROBI, KENYA



EOP/CAB.26/4A/ VOL.VI/(70)

30th April, 2025

Hon. Moses F. M. Wetangula, EGH
Speaker
The National Assembly
Parliament of Kenya
Parliament Building
NAIROBI

*2/13/2025
30/4*

Dear *Hon Speaker,*

MEMORANDUM OF REFERRAL OF THE ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING LAWS (AMENDMENT) BILL, 2025

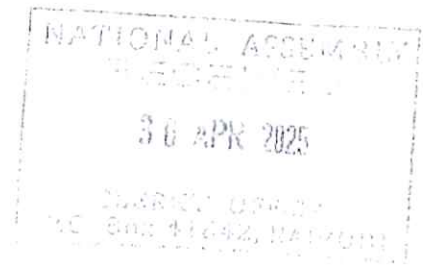
We acknowledge receipt of the transmittal of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025 on 17th April, 2025, in accordance with Article 115 of the Constitution for Presidential Assent or Referral.

In that regard, you are notified that **His Excellency the President** has considered the Bill and has in accordance with **Article 115(1)(b) of the Constitution**, referred it back to the National Assembly for reconsideration by the House.

Accordingly and by way of this letter, I transmit herewith the Presidential Memorandum of Referral of The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025 for reconsideration by Parliament.

Yours *Sincerely,*
[Signature]

DR. KATOO OLE METITO, EGH
STATE HOUSE COMPTROLLER



Copy to: **Hon. Dorcas A.O. Oduor, SC, EBS**
Attorney-General
State Law Office
NAIROBI

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Parliament Building
NAIROBI



Mr. Abenayo Wasike, HD
To place the President's
Memoranda before JIAC.
Dr 16/05/25

REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - (FOURTH SESSION)
THE NATIONAL ASSEMBLY

MESSAGES
MESSAGE FROM THE PRESIDENT

_____ (No. 003 of 2025) _____
ON
REFERRAL BY HIS EXCELLENCY THE PRESIDENT OF TWO (2)
NATIONAL ASSEMBLY BILLS

Honourable Members,

1. Pursuant to the provisions of Standing Order 42, I wish to report to the House that I have received two (2) Messages from His Excellency the President, regarding the referral of the following Bills to Parliament for reconsideration—
 - (i) **The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 5 of 2025); and**
 - (ii) **The Conflict of Interest Bill (National Assembly Bill No. 12 of 2023).**
2. **Honourable Members,** in the **First Message**, His Excellency the President conveys that pursuant to Article 115(1)(b) of the Constitution, he has considered the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill (National Assembly Bill No. 5 of 2025) and referred it back to the National Assembly for reconsideration, expressing Reservations concerning the Bill. In the Presidential Memorandum of Referral of the Bill back to the National Assembly, His Excellency the President has expressed Reservations on **Clause 3** of the Bill.

3. In the **Second Message**, His Excellency the President conveys that pursuant to Article 115(1)(b) of the Constitution, he has considered the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023) and referred it back to Parliament for reconsideration, expressing Reservations concerning the Bill. In the Presidential Memorandum of Referral of the Bill back to Parliament, His Excellency the President has expressed reservations on **Clauses 2, 5, 6, 8, 12, 16, 17, 18, 20, 30, 31, and 35** of the Bill.
4. Further, His Excellency the President has detailed the reasons for his Reservations to the said Clauses and made recommendations thereof for consideration by the Houses of Parliament.
5. **Honourable Members**, having made his Reservations on the two Bills, which are contained in his Memorandum to the House, His Excellency the President now requests Parliament to reconsider the Bills in accordance with the provisions of Article 115 of the Constitution.
6. **Honourable Members**, you may recall that this House passed the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment Bill) (National Assembly Bill No. 5 of 2025) on 16th April 2025, following which I presented the Bill to His Excellency the President for assent in accordance with the provisions of Article 113 the Constitution.
7. You may also recall that the National Assembly and the Senate **passed** the Mediated Version of the Conflict of Interest Bill (National Assembly Bill No. 12 of 2023) on 5th December, 2024 and 8th April 2025, respectively. Thereafter, I presented the Bill to His Excellency the President for assent in accordance with the provisions of Article 113 the Constitution.

8. This House is therefore required to consider the President's Reservations to the specified clauses in respect of each Bill. Standing Order 154(2) requires the House to consider the President's Reservations **within twenty-one (21) days** upon receipt of the Memorandum.
9. **Honourable Members**, with respect to the President's Reservations to the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill, 2025, the Message from the His Excellency the President, together with the Presidential Memorandum of Referral, are hereby referred to the Departmental Committee on Justice and Legal Affairs.
10. With regard to the Conflict of Interest Bill, 2023, you may recall that its passage underwent the bicameral process under Article 113 of the Constitution. Given that the Bill was originated by this House, the consideration of the President's Reservations to the Bill will commence in the National Assembly.
11. In this regard, the President's Reservations to the Bill and Presidential Memorandum of referral stand committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee should prioritise the Bill and table its report soonest to allow this House to consider the President's Reservations within the said timelines.
12. Upon conclusion of consideration of the President's Reservations by this House, I will transmit the decision of the National Assembly to the Senate, seeking its concurrence on the said decision.
13. **Honourable Members**, I hasten to guide the House that the consideration of the President's Reservations to the Bills by the respective Committees and the House will be undertaken in accordance with the provisions of Article 115 of the Constitution.

Further, the guidance contained in the *Speaker's Communication* of July 28 2015 relating to the *Consideration of the President's Reservations to a Bill and amendments thereto* will apply, as shall be necessary.

14. Honourable Members, I now direct the Clerk to circulate the Memorandum of His Excellency the President to the two Bills to all Members so that they familiarize themselves with the contents therein.

15. The House is accordingly informed.

I thank you!


THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, 30th April 2025

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT- (THIRD SESSION)
THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

CONSIDERATION AND SCOPE OF PRESIDENTIAL
RESERVATIONS PURSUANT TO ARTICLE 115 OF THE
CONSTITUTION- REFERRAL OF BILLS TO PARLIAMENT FOR
RECONSIDERATION

Honourable Members, you may recall that, on Thursday, 25th June, 2015, the Member for Rarieda, The Hon. (Eng.) Nicholas Gumbo rose on a point of order and sought guidance from the Speaker on the following matters relating to Presidential referral of Bills to Parliament for reconsideration -

- (i) whether, in expressing his reservations and sending a Bill back to Parliament for reconsideration upon refusal to assent under Article 115 of the Constitution, the President can make specific proposals for amendment to the particular Bill;
- (ii) whether the specific proposals for amendment made by the President should go through the entire law-making process of consideration by the relevant committee, including pre-publication scrutiny, public hearings, and First, Second and Third Readings;
- (iii) whether accepting of the text proposed by the President and which has not been subjected to the ordinary law-making process as outlined in (b) above should require a two-thirds majority; and,
- (iv) whether, the House would be properly constituted if, at the time of putting the question on the President's reservations or

recommendations, there are less than two-thirds of all the Members present in the House.

Honourable Members, The main substance of the concerns raised by the Member for Rarieda was that , by making specific proposals for amendment to a Bill, the President was encroaching on the legislative mandate of the House and thereby contravening the principle of separation of powers. The matter was similarly canvassed by several other Members who rose on that point of order to make their contributions. I am indeed grateful to all those who spoke on that day and submitted your views on these very weighty matters. You are aware that, on a number of occasions during the term of this 11th Parliament, the President has referred back Bills to this House for reconsideration, with memoranda outlining his reservations on those Bills and giving his recommendations thereon. Whenever that happens, the recommendations contained in the memoranda are subjected to the Committee of the Whole House for consideration and concurrence. It is this procedure, among other issues, which is now being contested by the Hon. Gumbo and several other of his colleagues.

Honourable Members, I will address the matters raised by the Hon. Gumbo and canvassed by several other Members under the following four broad subjects: the First one is the ***Form of Presidential reservation to a Bill***, the second one is ***the Procedure for consideration of Presidential reservations***, the third subject is ***the Voting threshold in consideration of Presidential reservations*** and lastly, ***How Presidential reservations relate to the principle of separation of powers.*** Let me begin with the first subject, which is the Form of President's Reservations to a Bill. Honourable Members, in most jurisdictions, the legislative process provides for assent to Bills by the President as the head of the Executive arm of Government. Indeed, our own system, through the provisions of Article 115 of the Constitution requires that all legislations by Parliament should be presented to the President for assent.

Allow me to visit upon some relevant jurisdiction. In the Constitution of the United States of America, Article I requires every Bill passed by the Congress of the United States to be presented to the President of the United States for his approval. When the President is presented with the Bill, he can either sign it into law, return the Bill to the originating House with his **objections** to the Bill - *I put emphasis on the word **objections**.* Section 7 of the Article provides as follows-

"Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law"

Honourable Members, The United States experience is such that the veto power does not give the President the power to amend or alter the content of legislation but rather the ability to accept or reject a Bill passed by Congress. The President returns the unsigned Bill to the originating House of Congress within a ten day period usually with a memorandum of disapproval or a "veto message." In this case, the Congress can override a veto by passing the Bill by a two-thirds vote in both the House and the Senate . It is argued that this legislative override prevents the President from blocking a Bill when significant support for it exists. By practice, it can be observed that the two-third requirement is a high standard to meet and therefore broad support for Bill is needed to reach this threshold. Therefore, the President's veto power in the legislative process is significant since the Congress rarely overrides vetoes. Statistics show that as at May 2015, out of 2,566 vetoes by various Presidents of the USA, the Congress has only managed to override 110 of them.

Honourable Members, a study of yet another comparable legislative jurisdiction, that is the Philippines, offers a similar scenario with regard to Presidential assent to Bills. Section 27 of Article VI of the 1987 Philippines Constitution provides as follows-

"Every Bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law.

Further, in Philippines, the President is empowered to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto does not affect the item or items to which he does not object.

Honourable Members, an important observation in the practices in the United States of America and Philippines is that the President only expresses reservations to a Bill and there is no constitutional requirement for the President to give specific recommendations on a Bill. Further, the power to veto the Legislature is expressed **in the same terms as it exists in Article 115 of our Constitution**. The Presidents participation in the law making process can therefore be said to be a constitutional dispensation both in the United States and in the Philipines. The Legislature however has the final say in both jurisdictions just as is the case in the Kenyan situation.

Honourable Members, the situation is however slightly different in India and South Africa where their Constitutions bear greater semblance to the Kenyan context. For instance, in India, assent to Bills is governed by Article 111 of their Constitution which provides as follows-

"When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom: Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom"

This provision of the Constitution of India bears great semblance to the provisions of section 46 of the Constitution of Kenya that was repealed by the Constitution of Kenya 2010. The said section provided as follows-

(3)The President shall, within twenty-one days after the Bill has been presented to him for assent, signify to the Speaker that he assents to the Bill or refuses to assent to the Bill.

(4) Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendation for amendments .

(5) In reconsidering a Bill referred to it by the President, the National Assembly was expected to take into account the comments of the President and either (a) approve the recommendations proposed by the President with or without

amendment and resubmit the Bill to the President for assent; or (b) refuse to accept the recommendations and approve the Bill in its original form by a resolution supported by a vote of not less than sixty-five per cent of all the Members of the National Assembly (excluding *ex officio* Members) in which case the President shall assent to the Bill within fourteen days of the passing of the resolution.

At this juncture **Honourable members**, it is important for me to observe that the practice of our successive Parliaments has for the past been largely informed by the provisions of section 46 of the repealed Constitution. The point of order raised by Hon Gumbo therefore gives this House an opportunity to examine its practice and see how this practice corresponds to the provisions of the new Constitution.

Honourable Members, the said section 46 of the previous Constitution was replaced by the current Article 115 of the Constitution which provides as follows—

- (1) Within fourteen days after receipt of a Bill, the President shall—
 - (a) assent to the Bill; or
 - (b) refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.
- (2) If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part—
 - (a) amend the Bill in light of the President's reservations; or
 - (b) pass the Bill a second time without amendment.
- (3) If Parliament amends the Bill fully accommodating the President's reservations, the appropriate Speaker shall re-submit it to the President for assent.
- (4) Parliament, after considering the President's reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President's reservations, by a vote supported—
 - (a) by two-thirds of members of the National Assembly; and
 - (b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.
- (5) If Parliament has passed a Bill under clause (4)—
 - (a) the appropriate Speaker shall within seven days re-submit it to the President; and

(b) the President shall within seven days assent to the Bill.
(6) If the President does not assent to a Bill or refer it back within the period prescribed in clause (1), or assent to it under (5) (b), the Bill shall be taken to have been assented to on the expiry of that period.”

A comparison of the two provisions reveals that, whereas section 46 of the repealed Constitution contained express provision empowering the President to return a Bill back to the National Assembly by submitting a memorandum to the Speaker indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly including his recommendation for amendments, Article 115 of the current Constitution omits this express requirement for submission of recommendations and empowers the President to refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

However, **Honourable Members**, despite the lack of an express provision in Article 115 requiring the President to submit his recommendations on a Bill, the Constitution does not prohibit this practice either. **Indeed, it is a cardinal principle of interpretation of law that whatever is not prohibited by the Constitution or any law is presumed to be allowed by the same.** A keen reading of Article 115 reveals that the President, in referring a Bill back to Parliament, is at a mandatory obligation to note his reservations but may choose to include or not to include specific recommendations on how to deal with the reservation.

Honourable Members, in light of this finding, the real issue for clarification is how to deal with a situation where the President expresses his reservations to a Bill and makes specific recommendations in that regard and the threshold of voting in such instances. To this extent, I must emphasize that where the President chooses to make specific recommendations to the House, the House is not bound to accept the specific recommendations in the form submitted by the President. That is why the Constitution at Article 115(2) contemplates Parliament to put into place **appropriate procedures** for this kind of scenario. However, in the absence of such procedures in our Standing Orders, I am convinced, pursuant to the discretion conferred upon me by Standing Order 1(2) that any committee or member of the House is free to propose alternative amendments to the Presidential recommendations so long as such amendments have the effect of **fully accommodating** the Presidents reservations- I put emphasis on the words *“fully accommodating”*. The voting threshold for the passage of such alternative

recommendations or proposals made by the President is a simple majority as contemplated by Article 121 of the Constitution. However, where a committee or member of the House proposes an alternative amendment that **does not** fully accommodate the reservations of the President, the provisions of Article 115(4) will apply and the amendments will only be passed if supported by two thirds of the Members of the House.

Honourable Members, an issue arising consequential to the foregoing finding is the question of who determines whether or not an alternative amendment proposed by a committee or a member has the effect of fully accommodating the Presidents reservations. The Kenyan Constitution is silent on this issue. In South Africa's legislative practice, this power is vested in the House in the first instance, in the Presidency in the second instance and finally in the Courts in the ultimate instance. It is also noteworthy that in South Africa, unlike in our case, the power of the President to express reservations to a Bill passed by Parliament is restricted only to the constitutionality of the Bill.

The relevant provisions of the South African Constitution is Article 79 which provide as follows-

(1) **The President must either assent to or sign a Bill passed in terms of this Chapter or, if the President has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.**

(2) **The joint rules and orders must provide for the procedure for the reconsideration of a Bill by the National Assembly and the participation of the National Council of Provinces in the process.**

(3) **The National Council of Provinces must participate in the reconsideration of a Bill that the President has referred back to the National Assembly if –**

(a) **the President's reservations about the constitutionality of the Bill relate to a procedural matter that involves the Council; or**

(b) **section 74(1), (2) or (3)(b) or 76 was applicable in the passing of the Bill.**

(4) **If, after reconsideration, a Bill fully accommodates the President's reservations, the President must assent to and sign the Bill; if not, the President must either –**

(a) **assent to and sign the Bill; or**

(b) **refer it to the Constitutional Court for a decision on its constitutionality.**

(5) **If the Constitutional Court decides that the Bill is constitutional, the President must assent to and sign it.**

Honourable Members, it follows therefore that in the absence of a similar provision in our Constitution as to the avenue for determination of whether an alternative amendment passed by the House fully accommodates the reservation of the President in the manner contemplated under Article 115(4) of our Constitution, it is incumbent upon the Speaker to make this determination in the first instance pursuant to Standing Order 1(2) and the President to make a similar determination upon return of the Bill to him for assent pursuant to Article 115(3). If the President feels that the alternative amendments made by the House do not fully accommodate his reservations, then he will refer the Bill back to the House and the provisions of Article 115(4) will apply where the House will require two thirds majority to resubmit the Bill back to the President for Assent, this time for a second round.

Honorable Members, having said that, you will recall that the House recently considered the President's reservations and recommendations on the Public Procurement and Disposal Bill, 2015 and the Public Audit Bill, 2015. To the extent that the House has made a decision on the President's Reservations to these two Bills, I do not intend to permit the House re-open debate or revisit those decisions. It is for this reason that the Membership of the National Assembly in the Joint Committee formed on request of the Senate is required to convey and uphold that decision. I also remind the Membership of the National Assembly in the Joint Committee that the Committee's period of consideration of the two items referred to it is not limitless, especially recalling that the two are laws that initially ought to have been passed by August 27th, 2014.

Honourable Members, I will now focus on the second subject, which is the ***Procedure for Consideration of Presidential Reservations***. In seeking to answer the question as to whether a reservation or recommendation by the President should be subjected to a process similar to that obtains in the consideration of a Bill, one needs to be alive to the express provisions of the Constitution: Firstly, the sequence of Part 4 of Chapter Eight of the Constitution of Kenya which sets out the procedures for enacting legislation is such that Article 115 of the Constitution appears after the sequence of events contemplated in Articles 109 (*Exercise of legislative powers*), Article 110 (*Bills concerning county government*), Article 111 (*Special Bills concerning county governments*), Article 112 (*Ordinary Bills concerning county governments*), Article 113. (*Mediation committees*), Article 114 (*Money Bills*). Indeed, that is why Article 115 on *Presidential assent and referral* is sequentially

arranged to come before Article 116. (*Coming into force of laws*).

Secondly, the provisions of Article 115 seem to be self contained as regards to the procedures to be adopted by Parliament in considering the Presidents reservations. To this extent, the provisions of Article 115(3) and (4) do not contemplate Parliament going back to the entire process of enactment but only contemplate Parliament passing the Bill a second time. This second passage does not in any way negate the fact that the Bill was passed by House a first time after going through the entire sequence that culminates in passage that is to say publication, First Reading, Second Reading and Third Reading. The resubmission of a Bill by the President under Article 115 does not in any way negate these stages unless if the President decided to submit a totally new Bill outside the scope of what the House has passed, which would be uncharacteristic of the conventional legislative limits.

Thirdly, **Honourable Members**, we must not lose sight of the fact that, in whatever form the President expresses a reservation, what the President is seeking is essentially an amendment to the Bill in question. The President is merely seeking to avail himself of an opportunity similar to that enjoyed by Members of this House, namely, to participate in the law making process as expressly contemplated by Article 115. You are all aware that when Members are proposing amendments during Committee Stage, those amendments are only considered during that stage and are not subjected to other processes that a Bill goes through prior to that stage. Reservations or recommendations by the President should therefore not be treated differently, and should only be considered at the Committee Stage. This is indeed the practice on many comparable legislative jurisdictions within and outside the commonwealth.

Honourable Members, having settled the second subject, let me now focus on the Third item, which is the question of ***Voting Threshold during Consideration of Presidential Reservations***. In doing so, I wish to draw the attention of Members to the provisions of Article 121 of the Constitution. This provisions clearly indicates that, for purposes of the National Assembly, the quorum required for transaction of any business in the House is fifty Members. Article 115(4)(a) on its part provides that for the House to override or amend reservations by the President, a vote to that effect must be supported by at least two-thirds of the Members. On the flipside, and in the absence of a similar provision giving a specific threshold, the House requires a simple majority to concur with those reservations or recommendations.

Honourable Members, a distinction need to be made between the threshold required in transacting business in the House and the one required in taking a decision on a particular matter or motion. For purposes of the former, the requisite quorum is the one prescribed by Article 121; for purposes of the latter, majority of the members present and voting will suffice save for instances when a particular threshold is prescribed, as in the case of Article 115(4)(a). Indeed, the requirement for specific thresholds to pass a certain decision is not unique to Article 115. For instance, there are three different thresholds essential in the deliberative process of removal of a Cabinet Secretary from Office under Article 152(6) to (10). Members are at liberty to choose to be absent when the question is being put if the intention is to cause the motion to be defeated. The presence of a minimum of fifty members in the House therefore suffices for purposes of considering a Presidential Memorandum, but when voting to override or vary the reservations, two-thirds majority of the Members must be present in the House so as to vote to override the reservation, or to vary the reservation in a manner that has the effect of not fully agreeing with the President. **The absence of at least two-thirds majority at the time of putting the question does not in any way imply that the House is improperly constituted.** However, should the number of those present when voting amount to at least two thirds, but after the results, the number of those voting to negate the president's recommendation result in a majority, which is however less than two-thirds, while those voting to agree with the President number less than a third of all the Members of the House, the Speaker is at liberty to direct that another vote be taken in another day pursuant to the provisions of Standing Order 62(2). The effect of that provision, which is seldom applied, is to give the House a second opportunity to attempt to raise the required constitutional threshold, but which should be applied very sparingly.

Honourable Members, this now brings me to the Fourth and final subject which is **Consideration of Presidential Reservations as relates to the Principle of Separation of Powers.** Members are aware that in most jurisdictions, the legislative process provides for assent to Bills by the President as the head of the Executive arm of Government. Indeed, our own system, through the provisions of Article 115 of the Constitution requires that all legislations by Parliament should be presented to the President for assent.

Different reasons have been advanced on the need for a Presidential assent, given the principles of *separation of powers* between the arms of Government. They include

the need to prevent hasty and ill-considered legislation by the Parliament and to prevent legislation which may be unconstitutional.

Honourable Members, In its basic form, the concept of separation of powers divides the institutions of government into three branches, to wit, legislative, executive and judiciary: the legislature makes the law; the executive puts the law into operation; and the judiciary interprets the law. The powers and functions of each are separate and carried out by separate personnel. No single agency is able to exercise complete authority, each being interdependent on the other. The doctrine enables the three branches to act as checks and balances on each other. Each branch's interdependence helps keep the others from exceeding their power, thus ensuring the rule of law and protecting individual rights.

Honourable Members, the doctrine of separation of powers presupposes the following forms of separation-

- (a) a separation of institutions; and
- (b) a separation of functions, where each institution exercises the function for which it is designed.

In reality, however, these are not mutually exclusive options. Any system of separation of powers must involve at least a measure of both. In their book, *Constitutional and Administrative Law*, O. Hood Phillips and Paul Jackson state as follows:

"A complete separation of powers, in the sense of a distribution of the three functions of government among three independent sets of organs with no overlapping or co-ordination, would (even if theoretically possible) bring government to a standstill. What the doctrine must be taken to advocate is the prevention of tyranny by the conferment of too much power on any one person or body, and the check of one power by another."

Hon. Members, Separation of powers therefore seeks to achieve the following objectives-

- (a) Prevention of abuse of public power through concentration of power. In *Federalist No. 47*, James Madison stated as follows:

"The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny."

Power thus divided should prevent absolutism (as in monarchies or dictatorships where all branches are concentrated in a single authority) or corruption arising from the opportunities that unchecked power offers.

- (b) Enhancing efficiency of government. Separation of powers in this respect recognizes that each of the branches is peculiarly well equipped to exercise the particular functions assigned to it.

Honourable Members, in the Constitution of Kenya, 2010, the concept of separation of powers is given effect and is apparent in the way the various functions of Government have been apportioned among the three branches of Government. However, as indicated above, separation of powers does not connote complete independence of one branch from the other. There is no better way to illustrate instances where the powers of one branch overlap with the powers of the other than in the appointment of various state officers under the Constitution. Under Article 130 of the Constitution, the national executive consists of the President, the Deputy President and the Cabinet. Article 132(2) provides for the appointment of various state officers by the President, with the approval of the National Assembly. By taking part in the appointment process, the National Assembly, which is the legislative arm of government, is clearly taking part in what is clearly a function of the executive arm of the government.

Honourable Members, in view of the foregoing, it is apparent that, by sending a Bill back to Parliament with his reservations for reconsideration pursuant to Article 115 of the Constitution, the President cannot be deemed to contravene the doctrine of separation of powers, as no branch of government is completely independent of the other. He is merely exercising the limited legislative function conferred on his office under Article 115 of the Constitution.

As I conclude **Honourable Members**, I wish to observe that by making this considered Communication, I am conscious that my findings will have implication on the manner in which the National Assembly relates with the Presidency, the Office of the Attorney-General and indeed the Senate on the expected form and content of the President's Reservations on a Bill, and the procedure for considering those reservations under Article 115 of the Constitution. The summary of my Communication is therefore as follows-

- (i) **That**, in submitting his reservations on a Bill to the House, the President is not prohibited from including his preferred text of the particular clause, section, subsection or paragraph of the Bill;
- (ii) **That**, just like amendments to Bills, the text proposed by the President on a Bill need **NOT** be subjected to the other stages subjected to a Bill upon publication, - that is, publication, First Reading, Second Reading and Third Reading;
- (iii) **That**, any committee or member of the House is free to propose further amendments to the Presidential recommendations. So long as such amendments have the effect of **fully accommodating** the Presidents reservations, the voting threshold for the passage of such amendment or, indeed the proposals made by the President, is a simple majority as contemplated by Article 121 of the Constitution. Any other proposed amendment, that does not **fully accommodate** the reservations, or indeed a total override of the Presidents reservation, including his proposed text, would attract the two-third requirement;
- (iv) **That**, pursuant to the provisions of Standing Order 1(2), the determination of whether a proposed amendment by a Member or a Committee to the President's reservations would have the effect of "**fully accommodating**" those reservations shall be made by the Speaker on case by case basis; and,
- (v) **That**, the absence of at least two-thirds majority at the time of putting the question does not in any way imply that the House is improperly constituted.

The House is hereby accordingly guided.

I thank you.

HON. JUSTIN B. N. MUTURI, EGH, M.P.
SPEAKER OF THE NATIONAL ASSEMBLY

28th July, 2015