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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: Thursday
TABLED BY:	Hon. George Muregani MP Chairperson of Committee on Justice and Legal Affairs
CLERK-AT THE-TABLE:	Halima Ahmed

REPORT ON:

THE CONSIDERATION OF THE PRESIDENT'S  
MEMORANDUM OF REFERRAL OF THE CONFLICT OF  
INTEREST BILL, 2023  
(NATIONAL ASSEMBLY BILL NO. 12 OF 2023)

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**

EACC	-	Ethics and Anti-Corruption Commission
FORD	-	Forum for the Restoration of Democracy
Hon.	-	Honourable
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**

- Annexure 1: Adoption Schedule
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## 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 Conflict of Interest Bill (National Assembly Bill No. 12 of 2023).

The Mediated Version of the Bill was passed by the National Assembly and the Senate on 5<sup>th</sup> December 2024 and 8<sup>th</sup> April 2025, respectively. The Rt. Hon. Speaker, thereafter, presented the Bill to H.E the President for assent pursuant to Standing Order 153 of the National Assembly Standing Orders.

In compliance with Article 155(1)(b) of the Constitution the President, vide a memorandum dated 28<sup>th</sup> April 2025, referred the Bill back to the National Assembly for reconsideration with reservations recommending reconsideration of clauses 2, 5, 6, 8, 12, 16, 17, 18, 20, 30, 31 and 35 aimed at strengthening conflict of interest restrictions.

Vide Message from the President (No. 3 of 2025) dated Wednesday 30<sup>th</sup> 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 Monday 26<sup>th</sup> May 2025, Tuesday 27<sup>th</sup> May 2025 and Thursday 29<sup>th</sup> 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 Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*).

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 and recommendations on the Conflict of Interest Bill (*National Assembly Bill No. 12 of 2023*) and has the honour to report back to the National Assembly with the recommendation that the House **does not concur with 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

1. 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 5<sup>th</sup> 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 Township (CWR)

#### **Jubilee Party**

Hon. CPA Zuleka Hulbale Harun, MP  
Nominated Member

#### **UDM Party**

#### 1.4 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 Opanga  
**Hansard Reporter III**

## CHAPTER TWO

### 2 CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2023)

#### 2.1 Background

6. The Mediated Version of the Bill was passed by the National Assembly and the Senate on 5<sup>th</sup> December 2025 and 8<sup>th</sup> April 2025, respectively 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 28<sup>th</sup> April, 2025 referred the Bill back to the National Assembly for reconsideration with reservations recommending amendment of clauses 2, 5, 6, 8, 12, 16, 17, 18, 20, 30, 31 and 35.
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 Conflict of Interest Bill (National Assembly Bill No. 12 of 2023) 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 27<sup>th</sup> May 2025 to deliberate the President's Reservations to the Conflict of Interest Bill, 2023.

#### 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.
- (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 28<sup>th</sup> July 2015 on the Referral of Bills to Parliament for Reconsideration in deliberating the following Presidential reservations:

**Clause 2**

13. Amendment of the clause to include new definitions of 'family', and 'relative' to prevent public officers from bypassing conflict of interest restrictions through family members and relatives as proxies. In his view, an absence of the definitions limits the scope of the Bill.

14. In addition, the President was of the view that there was need to include a new definition of 'undeclared asset' to empower the Ethics and Anti-Corruption Commission to institute forfeiture proceedings against public officers who fail to disclose assets.

**Clause 5**

15. Amendment of the clause to provide that only the EACC should be granted the exclusive mandate to administer the Act. The President was of the view that the provision introduces multiple administrative structures contrary to Article 79 of the Constitution that mandates the EACC with ensuring compliance with enforcement of Chapter Six of the Constitution on Leadership and Integrity. Hence, the proposal to delete 'a reporting authority and' appearing immediately after 'the Ethics'.

**Clause 6**

16. Amendment of the clause to empower the EACC to institute forfeiture proceedings against public officers who fail to declare or explain assets. In his view, the provision omits this function which he considers key in strengthening conflict of interest restrictions.

**Clause 8**

17. Amendment of the clause to provide for perceived conflict of interest. It was his view that conflict of interest entails real, perceived and potential conflict and should be included to ensure the effectiveness of the compliance measures in the Bill.

**Clause 12**

18. Deletion of sub-clause (3) because the inclusion of a 'good faith' exception negates the prohibition against preferential treatment and gives room for a public officer to justify unlawful conduct through subjective claims.

19. Amendment of the clause to provide for the management of conflict of interest that may arise as a result of gifts or other benefits granted to family members and relatives who may be used as proxies to indirectly influence public officers.

**Clause 17**

20. Amendment of the clause to limit the information provided in a gift register to gifts received by a public officer and not by a reporting entity. This is because the clause excludes gifts granted by a reporting entity to persons who are not public officers. To prevent abuse of gifting by reporting entities, there is need for an accountability framework that covers gifts given to all persons.

**Clause 18**

21. Amendment of the clause to provide for the management of conflict of interest that may arise as a result of complimentary treatment received by family members and relatives who may be used as proxies to indirectly influence public officers.

**Clause 20**

22. Amendment of the clause to prohibit public officers from acquiring interest in any business that is a party to a contract with any reporting entity. This is because there is a perception that a public officer has the capacity to influence the award of contracts in reporting entities other than that which s/he is employed.

**Clause 30**

23. Noting that clause 11 adequately provides for the procedure through which a Member of Parliament or member of county assembly declares interest in any debate or proceeding and grants the Speaker or Committee Chairperson the discretion to evaluate any such declaration, the President proposed deletion of sub-clause (2).

**Clause 31**

24. Amendment of the clause to define 'material change' in relation to declaration of income assets and liabilities to prevent subjective interpretation and weakened enforcement and in turn enhance compliance with the requirements of the provision.

**Clause 35**

25. Amendment of sub-clause one to allow the EACC to assess declarations for completeness or accuracy to enhance its oversight capacity.

### CHAPTER THREE

#### 3 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

26. The Committee observed that the proposed amendments by H.E. the President negate some of the provisions of the mediated version of the Bill that was approved by Parliament pursuant to Article 113 of the Constitution.
27. 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 recommends that the House **does not concur with the President's reservations.**

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 CONFLICT OF INTEREST BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2023)

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 Conflict of Interest Bill (National Assembly Bill No. 12 of 2023) 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 40<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE  
ON JUSTICE AND LEGAL AFFAIRS COMMITTEE HELD IN COMMITTEE  
ROOM 21, 5<sup>TH</sup> FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS ON  
THURSDAY 29<sup>TH</sup> MAY 2025 AT 10:00 AM**

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**PRESENT**

1. Hon. Murugara George Gitonga, MP - *Chairperson*
2. Hon. Mutuse Eckomas Mwengi, 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**

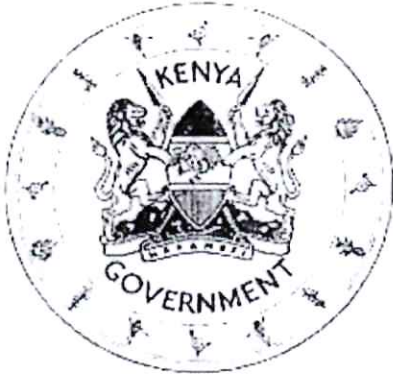
The Committee adopted the Report, having being proposed by Hon. Timothy Wanyonyi, CBS, MP and seconded by Hon. John Makali, MP.

**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 CONFLICT OF INTEREST BILL, 2025

## PRESIDENTIAL MEMORANDUM OF REFERRAL

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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; &  
HON. SPEAKER OF THE SENATE.**

**WHEREAS** a Bill titled "*An Act of Parliament to provide for the management and regulation of conflict of interest and for connected purposes*" was passed by the **National Assembly on the 5<sup>th</sup> December, 2024** and the Senate on the **8<sup>th</sup> April, 2025;**

**AND WHEREAS** in accordance with the provisions of the Constitution the Conflict of Interest Bill, 2025 was presented to me for assent on the 17<sup>th</sup> April 2025;



**NOW THEREFORE**, in exercise of the powers conferred upon me by Article 115 of the Constitution, I decline to assent to the Conflict of Interest Bill, 2025, and refer the Bill for reconsideration by both houses of parliament, for the reasons set out hereunder:

## **CLAUSE 2**

Clause 2 of the Bill defines the terms used in the Bill.

The absence of definitions of the words "family" and "relative" limits the scope of the Bill. Public officers can bypass conflict of interest restrictions by using family members and relatives as proxies, thereby compromising the integrity of the conflict of interest framework.

Public officers may conceal assets acquired through conflict of interest by failing to declare such assets. It is therefore important to empower the Commission to institute forfeiture proceedings against public officers who fail to disclose assets and to define the term "undeclared asset".

## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 2 of the Bill be amended by inserting the following new definitions in the proper alphabetical order—

"family" means—



- (a) the spouse, dependent child or parent of a public officer;
- (b) a dependent child of the spouse of a public officer;  
or
- (c) a parent of the spouse of a public officer;

“relative” means a person who is related to a public officer by birth, marriage, adoption or affinity; and

“undeclared asset” means any asset that is not disclosed in the prescribed manner in any declaration year.

## **CLAUSE 5**

Clause 5 of the Bill provides as follows—

This Act shall be administered by a reporting authority and the Ethics and Anti-Corruption Commission.

The provision introduces multiple administrative structures by assigning the administration of the Act to reporting authorities and the Ethics and Anti-Corruption Commission. Granting an institution other than the Ethics and Anticorruption Commission the power to administer the Act would be inconsistent with article 79 of the Constitution which provides that the Ethics and Anti-Corruption Commission shall ensure compliance with and enforcement of Chapter Six of the Constitution. Accordingly, the Ethics and Anti-corruption Commission should be granted the exclusive mandate to administer the Act.



## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 5 of the Bill be amended by deleting the words "a reporting authority and" appearing immediately before the words "the Ethics".

## **CLAUSE 6**

Clause 6 of the Bill provides as follows—

The functions of the Commission under this Act shall be to—

- (a) oversee the management of conflict of interest for all public officers;
- (b) develop an effective system for reporting violation of this Act;
- (c) promote best practices and develop standards and guidelines for the management of conflict of interest;
- (d) receive and process requests related to the management of conflict of interest;
- (e) conduct inquiries on matters of conflict of interest and make recommendations to the relevant bodies;
- (f) provide advisory opinions on conflict of interest on its own volition or on request by any person;
- (g) conduct public awareness on the management of conflict of interest;



- (h) analyse, seek for clarification and verify conflict of interest disclosures; and
- (i) develop policies, standards, guidelines and promote best practices for the management of conflict of interest

The clause omits a key function of the Commission which is to institute forfeiture proceedings against public officers who fail to declare or explain assets. Public officers may conceal assets acquired through conflict of interest by failing to declare or explain such assets. It is therefore important to empower the Commission to institute forfeiture proceedings against public officers who fail to declare or explain assets.

### **RECOMMENDATION**

In view of the foregoing, I recommend that clause 6 of the Bill be amended by inserting the following new paragraph after paragraph (h)—

- (ha) institute proceedings for forfeiture of undeclared or unexplained assets.

### **CLAUSE 8**

Clause 8 of the Bill provides as follows—

A public officer is in conflict of interest if the public officer—



- (a) exercises an official power, duty or function to further his or her private interests or the private interests of another person; or
- (b) fails to declare and register a private interest that is in conflict with the public interest.

Conflict of interest entails real, perceived and potential conflict. The current clause does not provide for perceived and potential conflict of interest which affects the effectiveness of the compliance measures in the Bill.

### **RECOMMENDATION**

In view of the foregoing, I recommend that the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

8. A public officer is in conflict of interest if—

- (a) the public officer exercises an official power, duty or function to further his or her private interests or the private interests of another person;
- (b) the private interests of the public officer can reasonably be perceived to impair or influence the public officer's ability to act objectively in the performance of an official duty; or



- (c) the public officer has private interests that could conflict with the duties of the public officer in future.

## **CLAUSE 12**

Clause 12 of the Bill provides as follows—

- (1) A public officer shall not, in the exercise of an official power or in the performance of a duty or function, grant a person, whether directly or indirectly, any special consideration, treatment or advantage beyond what is allowed by law or written policy.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) Despite subsection (1), no proceedings shall lie against a public officer who grants special consideration, treatment or advantage in good faith.

The inclusion of a "good faith" exception negates the preventive purpose of subclause (1) and gives room for a public officer to justify unlawful conduct through subjective claims.



## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 12 of the Bill be amended by deleting subclause (3).

## **CLAUSE 16**

Clause 16 provides as follows—

- (1) A public officer shall not accept or request a gift or favour from a person who—
  - (a) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;
  - (b) carries on regulated activities with respect to which the public officer's organization has a role; or
  - (c) has a contractual or similar relationship with the public officer's organization.
- (2) Notwithstanding subsection (1), a public officer may receive a gift given in an official capacity, provided that the gift—
  - (a) is received as a normal expression of courtesy or protocol;



- (b) is within the customary standards that normally accompany the public officer's position;
  - (c) is not monetary; or
  - (d) does not exceed such value as may be prescribed.
- (3) Subject to subsection (2), if a public officer accepts any gift or benefit, the public officer shall, within forty-eight hours of acceptance of such gift or benefit, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient details of the nature of the gift or other benefit accepted, the donor and the circumstances under which it was accepted.
- (4) A person who contravenes subsection (1) or subsection (3) commits an offence.

The clause does not provide for the management of conflict of interest that may arise as a result of gifts or other benefits granted to family members and relatives who may be used as proxies to indirectly influence public officers.

## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 16 of the Bill be amended by—

- (a) adding the following new subclause after subclause (3)

—



(3A) Where a public officer has knowledge that a family member or a relative has accepted a gift or favour under subsection (1), the public officer shall, within forty-eight hours of such knowledge, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of the acceptance, giving sufficient details of the nature of the gift or favour accepted, the donor and the circumstances under which it was accepted for purposes of assessment of potential conflict of interest.

(b) deleting subclause (4) and substituting therefor the following new sub clause—

(4). A person who contravenes this section commits an offence.

## **CLAUSE 17**

Clause 17 of the Bill provides as follows—

Every reporting authority shall maintain a register of—

- (a) gifts received by public officers serving in the reporting entity;
- (b) gifts given by the reporting entity to public officers; and



- (c) donations received by the reporting entity for a specific cause.

The clause excludes gifts granted by a reporting entity to persons who are not public officers. To prevent abuse of gifting by reporting entities, there is need to provide for an accountability framework that covers gifts given to all persons.

The Bill seeks to provide for the management of conflict of interest by a public officer. Therefore, the information that should be provided in a gift register should be limited to gifts received by a public officer and not by a reporting entity.

## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 17 of the Bill be amended—

- (a) in paragraph (a) and (b) by deleting the words “public officers” and substituting therefor the words “any person”; and
- (b) by deleting paragraph (c).

## **CLAUSE 18**

Clause 18 of the Bill provides as follows—



- (1) A public officer shall not accept any complimentary treatment for any purpose unless the complimentary treatment offered is required in his or her official capacity or in exceptional circumstances.
- (2) Where a public officer accepts a complimentary treatment in the exceptional circumstances referred to in subsection (1), the public officer shall, within forty-eight hours of acceptance of the complimentary treatment, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of such acceptance, giving sufficient detail on—
  - (a) the nature of the complimentary treatment accepted;
  - (b) the donor; and
  - (c) the circumstances under which the complimentary treatment was accepted.
- (3) A public officer who contravenes subsection (1) or (2) commits an offence.

The clause does not provide for the management of conflict of interest that may arise as a result of complimentary treatment received by family members and relatives who may be used as proxies to indirectly influence public officers.

## **RECOMMENDATION**



In view of the foregoing, I recommend that clause 18 of the Bill be amended by—

- (a) inserting the following new subclause after subclause (2)—

(2A) Where a public officer has knowledge that a family member or a relative has accepted a complimentary treatment in the exceptional circumstances contemplated under subsection (1), the public officer shall, within forty-eight hours of such knowledge, or, if not on duty, within forty-eight hours of resumption of duty, make a declaration of the acceptance, giving sufficient details of the nature of the complimentary treatment accepted, the donor and the circumstances under which it was accepted for purposes of assessment of potential conflict of interest.

- (b) deleting subsection (3) and substituting therefor the following new sub clause—

(3) A person who contravenes this section commits an offence.

## **CLAUSE 20**

Clause 20 of the Bill provides as follows—

- (1) A public officer shall not acquire an interest in a partnership, private company or any other legal



entity that is a party to a contract with the reporting entity in which the public officer serves, under which the partnership, private company or legal entity receives a benefit.

- (2) Subsection (1) shall not apply to interests acquired through trading in the regulated financial markets provided that the public officer shall not acquire controlling shares in the entity.
- (3) A person who contravenes subsection (1) commits an offence.

A conflict of interest arises where a public officer either does business with the reporting entity in which he is employed or influences the award of a contract in that reporting entity. Additionally, a perception exists that a public officer has the capacity to influence the award of contracts in other reporting entities.

The clause only restricts a public officer from acquiring an interest in a business that is a party to a contract with his or her reporting entity. To ensure that there is no conflict of interest in government contracting, it is necessary to prohibit public officers from acquiring an interest in a business that is a party to a contract with any reporting entity.

## **RECOMMENDATION**



In view of the foregoing, I recommend that clause 20 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause—

- (1) A public officer shall not acquire an interest in a partnership, private company or any other legal entity that is a party to a contract with any reporting entity under which the partnership, private company or legal entity receives a benefit.

### **CLAUSE 30**

Clause 30 of the Bill provides as follows—

- (1) A public officer shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which the public officer would be in conflict of interest.
- (2) Subsection (1) shall not apply to a member of Parliament or a county assembly.

Clause 11 of the Bill outlines the procedure through which a Member of Parliament or a member of a county assembly declares any interest in any debate or proceeding. Additionally, the clause grants the relevant Speaker or committee chairperson the discretion to evaluate the declaration of the conflict of interest and determine the question of whether the member should participate in the debate or proceeding.

It is therefore necessary to delete clause 30 (2).



## **RECOMMENDATION**

In view of the foregoing, I recommend that clause 30 of the Bill be amended by deleting subsection (2).

## **CLAUSE 31**

Clause 31 of the Bill provides as follows—

- (1) Every public officer shall submit to their responsible Commission a declaration of his or her income, assets and liabilities and the income, assets and liabilities of his or her spouse and dependent children under the age of eighteen years.
- (2) The declaration referred to under sub section (1), shall be in Form set out in the First Schedule.
- (3) Notwithstanding the generality of subsection (1), a public officer shall in a periodical or final declaration provide information on any material change in, or changes affecting any of the categories of income, assets or liabilities in the schedule of mandatory declarations that have occurred within the two-year period prior to the declaration.

There is need to define the term "material change" in relation to declaration of income assets and liabilities in order to enhance compliance with the requirements of the clause. Additionally, the lack of a definition leaves the term open to subjective interpretation and weakening enforcement.

## **RECOMMENDATION**



In view of the foregoing, I recommend that clause 31 of the Bill be amended by adding the following new subclause after subclause (3) —

- (4) For purposes of this section, **“material change”** means—
- (a) at least twenty five percent increase or decrease in the value of an income, asset or liability;
  - (b) the disposal or acquisition of an asset or liability;
  - (c) changes in marital status;
  - (d) appointment to or changes in directorships;
  - (e) changes in membership in companies or partnerships and other legal entities howsoever established; or
  - (f) changes in membership in social associations, societies, clubs, foundations or trusts.

### **CLAUSE 35**

Clause 35 (1) of the Bill provides as follows—

Upon receipt of the declaration made under section 31, a responsible Commission shall analyse the declaration to ascertain—



- (a) whether the declaration raises possible issues of conflict of interest; and
- (b) whether on the face of it, the declaration contains any discrepancy or inconsistency.

The provision does not explicitly allow a responsible commission to assess declarations for completeness or accuracy, which limits its oversight capacity.

### RECOMMENDATION

In view of the foregoing, I recommend that clause 35 of the Bill be amended in subclause (1) by adding the following new paragraph immediately after paragraph (b)—

- (c) its completeness and correctness.

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



**WILLIAM SAMOEI RUTO,**  
**PRESIDENT.**



STATE HOUSE  
P.O. Box 40530  
NAIROBI, KENYA

EOP/CAB.26/4A/ VOL.VI/(71)

30<sup>th</sup> April, 2025

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

**Hon. Amason Jeffah Kingi, EGH**  
Speaker  
The Senate  
Parliament of Kenya  
Parliament Building  
**NAIROBI**

Dear

*Hon Speakers,*

**TRANSMITTAL**

**MEMORANDUM OF REFERRAL OF THE CONFLICT OF INTEREST BILL, 2025**

We acknowledge receipt of the transmittal of the Conflict of Interest Bill on 17th April 2025, in accordance with Article 115 of the Constitution for Presidential Assent or Referral.

You are hereby notified that **His Excellency the President** has considered the Bill and, in accordance with Article 115(1)(b) of the Constitution, referred it back to Parliament for reconsideration, noting reservations concerning the Bill.

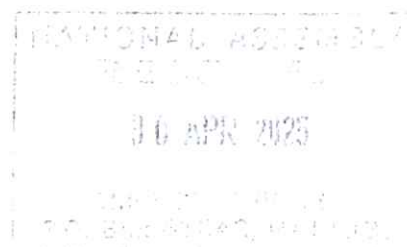
Accordingly, I transmit herewith the Presidential Memorandum of Referral of the Conflict of Interest Bill, 2025, for reconsideration by Parliament.

In recognition of the compelling public interest in the Bill, Parliament is urged to give due priority to its consideration.

Yours

*Sincerely,  
Dr. Katoo Ole Metito*

**DR. KATOO OLE METITO, EGH**  
**STATE HOUSE COMPTROLLER**



*DD/SCPS  
Please inform  
Amplifier  
copy*

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. Jeremiah M. Nyegenye, CBS**  
Clerk  
The Senate  
Parliament Building  
**NAIROBI**



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.

*Mr. Abernayo Wasike, HD*  
*To place the President's*  
*Memorandum before JIAC.*  
*Done 16/05/25*

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 16<sup>th</sup> 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 5<sup>th</sup> December, 2024 and 8<sup>th</sup> 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, 30<sup>th</sup> 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

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**Honourable Members**, you may recall that, on Thursday, 25<sup>th</sup> 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 11<sup>th</sup> 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 Philippines. 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 President's 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 27<sup>th</sup>, 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**

28<sup>th</sup> July, 2015