

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****SPECIAL SITTING**

*(Convened vide Gazette Notice  
No.13599 of 15<sup>th</sup> December, 2021)*

**Tuesday, 21<sup>st</sup> December 2021**

The House met at 10.00 a.m.

*[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]*

PRAYERS

QUORUM

**Hon. Deputy Speaker:** Hon. Members, clearly, we do not have the required numbers. I, therefore, order that the Quorum Bell be rung for 10 minutes.

*(The Quorum Bell was rung)*

Order, Hon. Members! Members coming in, please, take your seats. We now have a quorum. Therefore, we can transact our business.

**COMMUNICATIONS FROM THE CHAIR**

Hon. Members, please, take your seats. I have several Communications to make. I ask you to be very patient this morning. I will start with the Convocation of the Special Sitings.

**CONVOCATION OF SPECIAL SITTINGS**

Hon. Members, I take this opportunity to welcome you to the Special Sitings of the House, which have been convened pursuant to the provisions of Standing Order No.29 relating to the procedure for convening of Special Sitings of the House during recess.

Hon. Members, I wish to report to the House that on 15<sup>th</sup> December 2021, the Office of the Speaker of the National Assembly received a request from the Leader of the Majority Party to convene Special Sitings of the National Assembly to consider certain urgent business. Having taken cognisance of the urgency of the business so specified in the request by the Leader of the Majority Party, I acceded to the request to convene Special Sitings of the House today, Tuesday,

21<sup>st</sup> December 2021; and tomorrow, Wednesday, 22<sup>nd</sup> December 2021 commencing at 10.00 a.m. in the case of the Morning Sittings and at 2.30 p.m. for the Afternoon Sittings.

Consequently, and in keeping with the requirements of Standing Order No.29, I gazetted the said Special Sittings of the House vide Kenya Gazette Notice No.13599 of 15<sup>th</sup> December 2021. In this regard, the Special Sittings of the House today and tomorrow morning and afternoon are properly convened.

The business to be transacted by the House during the two days is as specified in the Gazette Notice I have referred to and as also notified to all Members of Parliament and the public by way of newspaper notifications published by the Clerk of the National Assembly on 17<sup>th</sup> December 2021.

#### UNUSUAL ABSENCE OF HON. SPEAKER DURING SPECIAL SITTINGS

Hon. Members, as you are all aware, it is unusual for the Speaker to fail to preside over the sittings of the House, including Special Sittings, except for Wednesday mornings when the Deputy Speaker presides. In fact, there has never been an occasion where the Speaker has been absent at a Special Sitting. However, just before the commencement of the long recess, the Speaker of the National Assembly, Hon. Justin Muturi, EGH, MP; had a minor accident in the Office while trying to pull a drawer where his chair slid off the tempered glass chair-mat and he ended up hurting his right shoulder and back.

He sought medical attention and was advised to recuperate at home. Unfortunately, the pain persisted. On the advice of the doctors, he had to undergo a minor surgery on the right shoulder to repair the fracture suffered then. I wish to assure Members and Kenyans that the Hon. Speaker is recuperating well and is in high spirits.

Hon. Members, he is very appreciative of the messages sent by Members and other members of the public wishing him a quick recovery. I wish to assure you that he is still available for consultations through telephone and online means. In fact, we have had consultations regarding this Communication and the Messages I will be conveying to the House this morning. This is, therefore, to notify you of the Speaker's absence and inform you that I will be presiding over the Special Sittings, assisted by the four Members of the Chairperson's Panel.

#### CONGRATULATORY MESSAGE TO MEMBERS CONFERRED WITH STATE HONOURS

Hon. Members, let me take this opportunity to, on behalf of the House and on my own behalf, congratulate the Members who have been conferred with state honours and awards by His Excellency the President. It was during the recent Jamhuri Day celebrations, in recognition of their distinguished and outstanding service rendered to the nation. Please join me, Hon. Members, in congratulating the following Members who were awarded the Chief of the Order of the Burning Spear (CBS):

- (i) The Chairperson of the Select Committee on National Government Constituencies Development Fund, who is the Member for Kanduyi, Hon. Athanas Wafula Wamunyinyi.
- (ii) The Chairperson of the Select Committee on Members' Services and Facilities, who is the Member for Nyaribari Masaba, Hon. Ezekiel Machogu Ombaki.
- (iii) The Chairperson of the Departmental Committee on Justice and Legal Affairs, who is the Member for Kangema, Hon. Clement Muturi Kigano.

(iv) The Chairperson of the Departmental Committee on Agriculture and Livestock, who is the Member of Moiben, Hon. Silas Kipkoech Tiren.

(v) The Vice-Chairperson of the Departmental Committee on Education and Research, who is the Member for Nyeri Town, Hon. Martin Deric Ngunjiri Wambugu.

(vi) Member of the Parliamentary Service Commission and Member for Borabu, Hon. Ben George Orori Momanyi.

(vii) The Member for Kesses, Hon. (Dr.) Swarup Ranjan Kiprof Mishra.

(viii) The Member for Likoni, Hon. Mishi Juma Khamisi Mboko.

Please, also join me, Hon. Members, in commending the two Deputy Clerks of the National Assembly, Mrs. Serah Kioko and Mr. Jeremiah Ndombi, who were also feted with state commendations under the Moran of the Order of the Burning Spear (MBS) for their distinguished service to the nation as part of our senior staff.

#### ADHERENCE TO COVID-19 PROTOCOLS

Hon. Members, the Special Sittings of the House today and tomorrow come at a time when the country is experiencing a surge in the number of COVID-19 infections. In this regard, I urge Hon. Members and staff to strictly adhere to the Ministry of Health's protocols issued for the prevention and control of the pandemic. Further, the various Speaker's Guidelines and related Communications on access to the House and sitting arrangements shall be adhered to during the Special Sittings. In particular, Hon. Members are advised to observe social distance while in the Chamber and in all other facilities, have face masks properly worn at all times, strictly sit only in the designated places in the Chamber, and avoid changing seats or having close physical interactions unless you come from the same house.

The House is accordingly guided.

Hon. Members, somewhere along the line, I left out Hon. Mwathi, who is the Chair of the Departmental Committee on Administration and National Security. He is here. Thank you very much.

I thank you, Hon. Members.

*(Applause)*

*(Several Members walked into the Chamber)*

Hon. Members, we have a few others. Please, take your seats.

*(Hon. Joshua Kutuny walked into the Chamber)*

Order, Hon. Members. Hon. Kutuny, take your seat.

#### MESSAGES

##### NOMINATION OF REPRESENTATIVE OF NPSC TO SRC

Hon. Members, pursuant to the provisions of Standing Order No.42, I wish to convey a Message from His Excellency the President relating to nomination of a representative of the National Police Service Commission to the Salaries and Remuneration Commission (SRC).

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

In the Message, His Excellency the President conveys that, in exercise of powers conferred on him by Article 230 (2) (b) (v) of the Constitution as read together with Article 250 (2) (b) of the Constitution, and in accordance with the procedure set out in Section 7 of the Salaries and Remuneration Commission Act of 2011 and Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act of 2011, he nominates Ms. Wangui Elizabeth Muchiri as a representative of the National Police Service Commission to the Salaries and Remuneration Commission. His Excellency the President now seeks the approval by this House of the nominee for appointment to the office of a member of the Salaries and Remuneration Commission.

Hon. Members, Standing Order No.45 provides that upon receipt of a notification of nomination for appointment, such a nomination shall stand committed to the relevant Departmental Committee for consideration. Pursuant to the provisions of the said Standing Order, therefore, and paragraph (3) of Standing Order No.42 (Messages from the President), I hereby refer the Message from His Excellency the President to the Departmental Committee on Finance and National Planning in order for the Committee to undertake the necessary approval hearings.

Hon. Members, whereas Section 7 (11) of the Salaries and Remuneration Commission Act of 2011 provides a lesser period within which the House is to consider the nominee, Section 8 of the Public Appointments (Parliamentary Approval) Act No.33 of 2011 requires the National Assembly to undertake the exercise within 28 days. In this regard, the Committee should undertake approval hearings and submit its Report within the 28 days provided for in the Public Appointments (Parliamentary Approval) Act of 2011, being the most recent amendment made by Parliament in respect of the general period of vetting of state nominees for appointment.

As you are all aware, the National Assembly, together with all its Committees, is already on recess until Tuesday, 25<sup>th</sup> January 2022 – the First Sitting Day of the Sixth Session of the 12<sup>th</sup> Parliament. The House has resumed for the current Special Sittings to only consider the business specified in Kenya Gazette Notice No.13599 of 17<sup>th</sup> December 2021. In this regard, the counting of the period specified under Section 8 of the Public Appointments (Parliamentary Approval) Act of 2011 will start upon resumption of the regular sittings of the House and its Committees on 25<sup>th</sup> January 2022. That being the case, the statutory timeline will lapse on Tuesday, 22<sup>nd</sup> February 2022.

Hon. Members, the Departmental Committee on Finance and National Planning is required to notify the public and the nominee in good time. Thereafter, upon resumption of its sittings, the Committee should undertake the necessary approval hearings and submit its report to the House before Tuesday, 15<sup>th</sup> February 2022 to enable the House to consider the proposed appointment within the statutory timelines.

I thank you.

By the way, Hon. Members, the second Message I have read was under Order No.3 and not under Standing Order No., Communications from the Chair. So, I will proceed with Messages.

PASSAGE OF THE NATIONAL HOSPITAL INSURANCE  
FUND (AMENDMENT) BILL BY THE SENATE

**Hon. Deputy Speaker:** Hon. Members, I have read the first Message. I am going to the next one. There is also a Communication that I will do at a later stage.

You may recall that on 10<sup>th</sup> February 2021 at the commencement of the Fifth Session, through a Procedural Motion, this House resolved that during the Short and Long Recesses of the Fifth Session, upon receipt of any Message from the Senate relating to a Bill originating in the

National Assembly, the Speaker shall forthwith refer the Message to the relevant Committee for consideration, pursuant to the provisions of Standing Order 145 (Senate Amendments to Bills originating in the National Assembly) and report such fact to the House on resumption.

In this regard, I wish to report that during the recess period, I received a Message from the Senate regarding its consideration of the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021). In the Message, the Speaker of the Senate also conveyed that the Senate approved the said Bill with amendments. He further forwarded the Schedule of the Senate Amendments to the National Assembly for concurrence. Pursuant to the Resolution of the House of 10<sup>th</sup> February 2021, I referred the Schedule of the Senate amendments to the Bill to the Departmental Committee on Health for consideration.

Hon. Members, as notified in Gazette Notice No.13599 relating to the Special Sittings of today, 21<sup>st</sup> December, 2021 and tomorrow, 22<sup>nd</sup> December, 2021; the Senate's Amendments to the Bill are scheduled for consideration by the House. Conscious of that notice, on 15<sup>th</sup> December, 2021; the Speaker did approve the circulation of the Report of the Departmental Committee on Health on the said Amendments so as to accord all Members an opportunity to note the recommendations of the Committee ahead of tabling of the Report today.

Additionally, Members will note that the Senate Amendments are also published in the Order Paper in preparation for consideration by the House during this Sitting, in accordance with the requirements of the Standing Orders.

I thank you. Next Order!

### PAPERS LAID

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

(1) Legal Notice No.235 of 2021 relating to the Designation of Basin Areas and the Explanatory Memorandum from the Water Resources Authority;

(2) Legal Notice No.250 of 2021 relating to the Physical and Land Use Planning (Liaison Committees) Regulations, 2021 and the Explanatory Memorandum from the Ministry of Lands and Physical Planning;

(3) Legal Notice No.251 of 2021 relating to the Physical and Land Use Planning (Development Control Enforcement) Regulations, 2021 and the Explanatory Memorandum from the Ministry of Lands and Physical Planning;

(4) Legal Notice No.252 of 2021 relating to the Physical and Land Use Planning (Outsourcing of Professional Services) Regulations, 2021 and the Explanatory Memorandum from the Ministry of Lands and Physical Planning;

(5) Legal Notice No.253 of 2021 relating to the Physical and Land Use Planning (Development Permission and Control) (General Regulations, 2021) and the Explanatory Memorandum from the Ministry of Lands and Physical Planning; and,

(6) Legal Notice No.254 of 2021 relating to the Controller of Budget Regulations, 2021 and the Explanatory Memorandum from the Office of the Controller of Budget.

Thank you.

**Hon. Deputy Speaker:** Very well. Next is the Vice-Chairperson of the Departmental Committee on Health, Hon Kutuny.

**Hon. Joshua Kutuny** (Cherengany, JP): Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Kutuny, kindly; have your mask on, especially as the Vice-Chair of the Departmental Committee on Health.

**Hon. Joshua Kutuny** (Cherengany, JP): I stand guided, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Health on its consideration of the Senate amendments to the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021).

Thank you.

**Hon. Deputy Speaker:** Very well. Next is the Chairperson of the Departmental Committee on Administration and National Security, Hon. Mwathi, CBS, MP.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Deputy Speaker for that correction. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Administration and National Security on its consideration of the vetting of a nominee for appointment to the position of the Chairperson of the Public Service Commission, namely Ambassador Antony Mwaniki Muchiri.

Thank you.

**Hon. Deputy Speaker:** Very well. Lastly on that Order is the Chairperson of the Departmental Committee on Labour and Social Welfare.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Labour and Social Welfare on its consideration of the vetting of the following nominees for appointment as members of the National Gender and Equality Commission (NGEC):

- (i) Ms. Caroline Naikena Lentupuru; and,
- (ii) Mr. Thomas Okoth Koyier.

Thank you.

**Hon. Deputy Speaker:** Next Order.

## NOTICES OF MOTIONS

### ADOPTION OF REPORT ON VETTING OF NOMINEE FOR APPOINTMENT AS PSC CHAIRPERSON

**Hon. Peter Mwathi** (Limuru, JP): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of a nominee for appointment as Chairperson of the Public Service Commission, laid on the Table of the House on Tuesday, 21<sup>st</sup> December, 2021 and, pursuant to the provisions of Article 250 (2) (b) of the Constitution, paragraph 3 (3) (d) of the First Schedule to the Public Service Commission Act No.10, 2017 and Section 8 (2) of the Public Appointments (Parliamentary Approval) Act No.33, 2011, approves the appointment of Amb. Anthony Mwaniki Muchiri as the Chairperson of the Public Service Commission.

Thank you.

**Hon. Deputy Speaker:** Next is the Chairperson of the Departmental Committee on Labour and Social Welfare.

ADOPTION OF REPORT ON VETTING OF NOMINEES  
FOR APPOINTMENT AS MEMBERS OF NGENC

**Hon. Josphat Kabinga** (Mwea, JP): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Labour and Social Welfare in its Report on the Vetting of the Nominees for appointment as members of the National Gender and Equality Commission, laid on the Table of the House on Tuesday, 21st December, 2021; and pursuant to the provisions of Article 250 (2) (b) of the Constitution and section 11 (7) of the National Gender and Equality Commission Act, 2011, this House approves the appointment of the following persons as Members of the National Gender and Equality Commission –

- (i) Ms. Caroline Naikena Lentupuru; and,
- (ii) Mr. Thomas Okoth Koyier.

Thank you.

**Hon. Deputy Speaker:** Next Order.

**MOTION**

CONSIDERATION OF REPORT AND THIRD READING

THE KENYA INDUSTRIAL RESEARCH  
AND DEVELOPMENT INSTITUTE BILL

*(Consideration interrupted on 2.12.2021 – Afternoon Sitting)*

**Hon. Deputy Speaker:** Consideration of the report had been concluded, Hon. Members. What remained was putting the Question then we proceed to Third Reading.

*(Question put and agreed to)*

**Hon. Deputy Speaker:** I now call upon the Mover to move for Third Reading.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Deputy Speaker, I beg to move that the Kenya Industrial Research and Development Institute Bill (National Assembly Bill No. 44 of 2020) be now read a Third Time.

I really wish to thank all Members who participated in the processing of this Bill so far. I hope the House will give our industrialists and researchers the tools that they need to take this country to the next level of industrial revolution.

I wish to request Hon. Mwathi to second.

**Hon. Deputy Speaker:** Hon. Mwathi.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

**Hon. Peter Mwathi** (Limuru, JP): Hon. Deputy Speaker, I beg to second.

**Hon. Deputy Speaker:** Thank you very much.

*(Question proposed)*

**Hon. Members:** Put the Question.

**Hon. Deputy Speaker:** Having confirmed that we have the requisite numbers to make this decision, I put the Question.

*(Question put and agreed to)*

*(The Bill was accordingly read a Third Time and passed)*

**Hon. Deputy Speaker:** Let us go to the next order.

## **BILL**

### *Second Reading*

#### THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL

*(Hon. Amos Kimunya on 2.12.2021 – Afternoon Sitting)*

*(Debate concluded on 2.12.2021 – Afternoon Sitting)*

**Hon. Deputy Speaker:** Hon. Members, before we proceed to that particular order, I wish to issue a Communication to guide you in transacting the business that appears immediately after this.

## **COMMUNICATION FROM THE CHAIR**

#### CONSTITUTIONALITY OF THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING (AMENDMENT) BILL

You will recall that during the Afternoon Sitting on Thursday, December 02, 2021, before the order for Second Reading of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) was read out, the Member for Tharaka, Hon. George Gitonga Murugara, rose on a Point of Order seeking the Speaker's guidance on the constitutionality of certain clauses of the Bill. Hon. Murugara claimed that the Bill as published contains provisions that fail the test of constitutionality and, therefore, the House should not proceed with its consideration. He singled out clauses 2 and 9 of the Bill, whose import is to include advocates, notaries and other independent legal professionals as reporting institutions obligated to report

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*



reasonably suspicious financial transactions likely to fall within the meaning of money laundering to the Financial Reporting Centre. He stated that the two clauses, if passed, would be unconstitutional on the following grounds:

1. That singling out advocates and accountants among all other professions and designating them as reporting institutions violates Article 27(4) of the Constitution, which prohibits any form of discrimination.
2. That requiring advocates under the law to report financial dealings of their clients would erode the settled legal principle of advocate-client confidentiality.

Hon. Members, the Fourth Chairperson, who was presiding then, took cognisance of the weighty nature of the claims by Hon. Murugara and did permit several other Members to weigh in on the matter. The Members who spoke include Hon. (Dr.) Otiende Amollo, Hon. Aden Duale, Hon. Peter Kaluma, Hon. Peter Mwathi, Hon. Gladys Wanga, Hon. (Dr.) Patrick Musimba, Hon. Millie Odhiambo and Hon. (Dr.) Makali Mulu. In their submissions on the issues raised by Hon. Murugara, the overarching sentiments of most Members converged on the question of the constitutional propriety of the Bill.

For the record, I wish to inform the House that before raising the matter at hand on the Floor of the House, Hon. Murugara had written to the Speaker on 2nd December 2021, requesting that I give direction on certain issues regarding the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021 before its Second Reading. In my estimation, the matters raised by the Member were weighty and could not have been adequately responded to by way of mere correspondence. It was the view of the Speaker that the Floor of this Chamber has been and shall remain the most appropriate place for the House to address matters of such importance to the populace as to the constitutionality of a Bill. It will be recalled that, following the issues raised by Honourable Members, the Speaker directed that the debate for Second Reading of the Bill proceeds so as to accord Members an opportunity to debate the merits and demerits of the Bill and raise any other constitutional matters therein. He, however, ordered that the question for second reading shall not be put until a considered ruling on the issues raised by Members is rendered, which I hereby proceed to do.

Having reviewed the letter by Hon. Murugara and distilled the contributions made by other Members following the Point of Order raised in the House, I have isolated three questions as requiring my determination. These are:

1. Whether the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) is properly before the House.
2. Whether some proposals in the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) seek to limit fundamental rights and freedoms and therefore render the Bill unconstitutional.
3. Whether the inclusion of advocates as reporting institutions for suspicious financial transactions in the manner proposed in the Bill erodes the legal principle of advocate-client confidentiality.

Before I guide the House on the pertinent questions for determination, it is worth noting that Articles 3 and 10 of the Constitution oblige the Chair to respect, uphold and defend the Constitution. As you are aware, all business that comes before the House is approved by the Speaker and, among other considerations, the Speaker applies his mind as to the constitutionality

or otherwise of such business, as contemplated under Standing Order 47(3). Let me also hasten to add that notwithstanding the approval of any business by the Chair under the Standing Orders, it has now become an established parliamentary practice of this House that a question of the constitutionality or otherwise of any matter under consideration by the House may be raised at any stage of its consideration. Indeed, my predecessors and I have been invited on several occasions to guide the House on issues of constitutionality of various matters before the House. Indeed, my predecessors and I have been invited on several occasions to guide the House on issues of constitutionality of various matters before the House.

Hon. Members, permit me to highlight a few such cases for the benefit of this House and the general public. Members who have served in the 11<sup>th</sup> Parliament will recall that the Speaker was invited to rule on the constitutionality of several Bills. First, on 23<sup>rd</sup> July 2013, the Member for Suba South, Hon. John Mbadi, who is the current Leader of the Minority Party, sought the Speaker's guidance on whether it was constitutional for the House to consider the National Police Service (Amendment) Bill, 2013 and the National Police Service Commission (Amendment) Bill, 2013. In this case, it had been argued that the two Bills contradicted provisions of the Constitution. I am on record as having determined, then, that the Member failed to demonstrate a nexus or close connection between the specific clauses of the Bills and the specific provisions of the Constitution that those clauses offended. Additionally, I guided that where any nexus was drawn, the proposed amendments were indeed enhancing the functions and powers of the National Police Service Commission and not contradicting any provisions of the Constitution as claimed in the point of order that was raised then. As such, not having found any provisions that offended the Constitution, I directed that the two Bills proceed to the Second Reading.

Second, on 11<sup>th</sup> December 2014, during consideration of the Security Laws (Amendment) Bill, 2014, several Members rose on points of order and sought the Speaker's guidance on the general admissibility and constitutionality of the Bill. Two key issues stood out in the arguments advanced by Members who spoke then. The first issue was the adequacy of public participation in light of Article 118 of the Constitution and the absence of a report of the relevant Committee on the Bill. The second issue related to limitation of rights and fundamental freedoms contrary to Article 24 of the Constitution. In my communication to the House, I did guide as follows:

1. With respect to public participation, the Clerk had indeed published a notice in the daily newspapers inviting interested members of the public to give their views on the Bill; and that the precedent of the House has been that the absence of a report of a committee on a Bill does not prevent a Bill from proceeding to Second Reading.
2. With regard to limitation of rights and fundamental freedoms, I noted that Article 24(1) of the Constitution permits limitation of certain rights by law, which can only be done by Parliament as the sole law-making authority. Hence, it was my finding that it was only fair that I accord the House the opportunity to satisfy itself that the criteria set out in Article 24 was complied with or make an appropriate determination by way a decision at various stages of its consideration of the Bill.

I, therefore, allowed the House to proceed with the Bill and make a decision whether or not to accept the Bill as proposed or make any necessary amendments to reflect the wishes and meet the obligation under Article 24 of the Constitution. Hon. Members who are standing there, can you please walk in because it might take a few more minutes.

*(Several Hon. Members walked into the Chamber)*

The third case of interest to the instant matter is that of the Military Veterans Bill, 2013. Other than the concern of being a ‘Money Bill’, it was argued that by proposing to establish a Government Department headed by a Director-General, an advisory council and a military veterans appeals board, the Bill offended Article 132(4)(b) of the Constitution by usurping the power of the President to establish offices in the public service. In my guidance to the House, I did direct the Departmental Committee on Defence and Foreign Relations to further engage the Attorney-General and the Cabinet Secretary for Defence to shed light on the issues of constitutionality of the Bill and table a report for the Speaker to guide the House on how to proceed. The Bill lapsed and so, the intended guidance never materialised.

Hon. Members, from the foregoing examples, you will notice that the Speaker has been hesitant to outrightly declare a Bill as unconstitutional. The Speaker has consistently refrained from curtailing the House from considering a Bill where adequate opportunity for the House to cure any alleged unconstitutionality exists. I have stated before and do reiterate that the role of the Speaker is facilitative and not obstructive. Where it is still within the power of this House to take action on a matter, which action is likely to remedy a question of doubt cast on the constitutionality of a matter before this House, I must trust that the House shall act in the best interest of the people which it represents, unless compelling reasons exist to the contrary.

Having shared that brief history, let me now turn to the first issue for determination, which is whether the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) is properly before the House. The Hon. Aden Duale is on record as having wondered why the allegedly unconstitutional amendments contained in the Bill have been re-introduced in the House at various times between 2015 and 2021. He claimed that “any Bill that fails the constitutional test cannot be cured even if one keeps on reintroducing that Bill and bringing the same amendments and sneaking them through various Bills, whether it is through amending the Statute Law or through the Finance Bill.” By alleging that the proposed amendments were being sneaked into the House through various Bills, the ranking Member was, in principle, casting aspersions on the propriety of the Bill being before the House.

Hon. Members, I have reviewed the records of the House and indeed do agree with the Hon. Duale but only on one fact – that this is not the first time that the impugned amendments proposed in the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021 have been introduced in this House. The first attempt to amend the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) was in 2015 when the then Leader of the Majority Party, Hon. Aden Duale, introduced the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2015. The principal object of the Bill, then, was to amend the Proceeds of Crime and Anti-Money Laundering Act Cap. 598 to enhance the powers of the Financial Reporting Centre; to impose civil penalties; and to take administrative action against non-compliance with the directives of the Centre. It is important to note that the Bill listed accountants as among the designated non-financial businesses or professions with the obligation to report suspicious financial transactions to the Financial Reporting Centre. This Bill was passed and assented to in 2017.

In 2016, the Hon. Aden Duale, then Leader of the Majority Party, introduced in the House the Statute Law (Miscellaneous Amendments) Bill, 2016 which sought to, *inter alia*, amend the Proceeds of Crime and Anti-Money Laundering Act to remove the position of Deputy Director of the Financial Reporting Centre for the smooth running of the Centre. The then Leader of the Majority Party formally withdrew the said proposed amendments and I did communicate the withdrawal to the House on 9<sup>th</sup> February 2017. It was in 2018 that the House got seized of

amendments of similar import to those contained in the Bill presently before the House through the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No. 12 of 2018). Among the statutes that the Bill proposed to amend was the POCAMLA, 2009. Of interest was the proposal to amend Section 2 of the Act as follows:

1. “By deleting paragraph (e) on the definition of the expression "designated nonfinancial businesses or professionals" and substituting therefor the following new paragraph-  
(e) accountants who are sole practitioners, partners or employees within professional firms;
2. By inserting the following new paragraphs immediately after paragraph (f)-  
(fa) advocates, notaries and other legal professionals who are sole practitioners partners, or employees within professional firms;  
(fb) trusts and company service providers.”

Hon. Members, you may recall that on, 28<sup>th</sup> August, 2018, the Member for Rarieda Constituency, the Hon. Dr. Otiende Amollo, raised a Point of Order challenging the constitutionality of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018) in its entirety. Among other arguments, the Hon. (Dr.) Otiende and other Members who spoke cited the above-mentioned amendments as being in violation of the Constitution and not deserving to have been contained in a miscellaneous amendment Bill. In respect of this matter, I did permit the House to proceed with Second Reading and subsequent stages of the Bill and take conscious decisions on the contested proposals in one way or the other.

The Hansard Report of the House on 15<sup>th</sup> November, 2018 when the House considered the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No. 12 of 2018) in the Committee of the Whole House records the then Chairperson of the Departmental Committee on Justice and Legal Affairs, Hon. William Cheptumo moving the House to delete the Clauses of the Bill that were proposing to include advocates and accountants as reporting institutions. In his justification, the Chairperson is on record stating as follows –

“... we are proposing a deletion to that section (2) because this is a very serious step. It requires wide consultations. We cannot deal with this under miscellaneous amendments. That is the basis and justification of that. That is the same case in section 48 which we will do later.”

*(Hon. Members stood at the gangways)*

Hon. Members who are standing can you please take your seats?

*(Hon. Members took their seats)*

The House did agree with the Committee and the two provisions were forthwith deleted from the Bill. It is however instructive to note that there was no mention of unconstitutionality of the said provisions as a ground for recommending their deletion. Instead, the Committee cited the need for such amendments to be contained in a separate Bill in order to allow wider public participation.

Hon. Members, the same amendments were re-introduced in the Finance Bill, 2019 under Clauses 50 and 51 relating to the Proceeds of Crime and Anti-Money Laundering Act. Their re-introduction elicited concern within the House and external stakeholders alike. At that time, two overarching arguments arose. First, it was claimed that a Finance Bill principally addresses issues

of taxation and revenue-raising measures and should, therefore, not be used to introduce proposals such as those amending the Proceeds of Crime and Anti-Money Laundering Act which are not incidental to taxation or revenue raising measures. Secondly, it was claimed that the amendments to Proceeds of Crime and Anti-Money Laundering Act proposed to limit to fundamental rights and freedoms without satisfying the criteria set out in Article 24 of the Constitution on the manner of limiting fundamental rights and freedoms in statute.

In my guidance to the House on 19<sup>th</sup> September, 2019, I observed that Article 24 of the Constitution permits limitation of certain rights and freedoms by law, hence the argument that Clauses 50 and 51 of the Finance Bill, 2019 ought to be excluded from consideration by the House on account of limiting constitutional rights seemed **NOT** to hold any water. With regard to compliance with the criteria set out in Article 24 of the Constitution, I observed that to the extent that the Finance Bill, 2019 had proposed to amend sections of the Act with a discernible link to the limitation of rights guaranteed under the Constitution, the said amendments ought to comply with the requirements of Article 24(2) of the Constitution.

Consequently, I determined that Clauses 50 and 51 of the Finance Bill, 2019 had not been accompanied by any additional provision stating the intention to limit the right to privacy and the nature and extent of the limitation in relation to the new categories of professionals it (sought) to designate as reporting institutions under the Proceeds of Crime and Anti-Money Laundering Act, 2009. I therefore found that the two proposed provisions failed to comply with the standard of disclosure set out by the Constitution and therefore were procedurally defective and, consequently, ordered the exclusion of those two provisions from consideration by the House during the Second Reading and subsequent stages of the Bill.

In so guiding, I was very clear that my determination related to the procedural defects in the manner in which the proposed amendments had been presented and not their constitutionality or otherwise.

Hon. Members, it is instructive that the Departmental Committee on Finance and National Planning, after undertaking public participation on the Finance Bill, 2019, had also recommended that the amendments relating to POCAMLA be excluded from the Finance Bill. The Committee noted that the said amendments had serious ramifications and ought to have been proposed in a separate Bill instead of an omnibus Bill. The Committee made reference to the submissions by the Law Society of Kenya (LSK) that the amendments impacted several principles, practices and laws touching on the subject of legal profession privilege/advocate-client confidentiality cemented under the evidentiary rule of privilege under the law of evidence and the common law principle adopted under the Judicature Act.

In this regard, the Committee is on record as having taken cognizance of the weighty submissions by the LSK and recommended as follows at paragraph 192 of the Report on the Consideration of the Finance Bill, 2019 –

“The committee resolved to reject the proposed amendments in the Bill to allow introduction of the amendment Bill to POCAMLA and not through miscellaneous amendments. This will allow extensive public participation.”

Hon. Members, a plain reading of the Committee’s observation and recommendations indicates that there was nothing unconstitutional about the proposed amendments. What arose was the need to have the proposed amendments published in a separate substantive Bill in order to allow sufficient public participation. And now, therefore, out of this long and winding journey, a separate and substantive Bill to amend the Proceeds of Crime and Anti-Money Laundering Act, 2009 has been introduced and is now before the House for consideration.

Hon. Members, the foregoing recap of the meandering journey of attempts to amend the Proceeds of Crime and Anti-Money Laundering Act, since 2015 contradicts the view that a mischievous attempt has been made to ‘sneak’ undesirous and unconstitutional amendments into this House as claimed by the Hon. Aden Duale. It is also inaccurate for certain Members to have claimed that the amendments in question had been severally rejected on account of unconstitutionality. Clearly, the only reasons on record as having curtailed consideration of the said amendments by the House whenever they were introduced were structural and procedural errors with regard to the form of the amendments and the vehicle through which they were proposed for introduction in the House.

With regard to the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021), as currently before the House, I note that in introducing the Bill in the House, the Leader of the Majority party has satisfied the procedure prescribed in Standing Order 114 (*Introduction of Bills*). In addition, the procedural defects that sounded a death knell to the previous attempts that I have narrated seem fully addressed.

*(Hon. Members stood at the gangways)*

Those Hon. Members can you, please, take your seats? I have few more minutes to finish this.

*(Several Hon. Members walked into the Chamber)*

Hon. Members, you can now resume your seats. Those who are leaving can do so quickly.

Of particular interest is that unlike previously where the proposed amendments were contained in an omnibus Bill, they have now been published in a separate substantive Bill. I, therefore, find that the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) is properly before the House and nothing precludes the House from considering the Bill in the remaining stages. This settles the first issue regarding the propriety of the Bill before the House.

*(Applause)*

Hon. Members, let me now proceed to the second matter which is whether the proposals in the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) that seek to limit fundamental rights and freedoms render the Bill unconstitutional.

Hon. Members opposed to the highlighted amendments aver that the proposals contained in the Bill single out advocates specifically and impose obligations on them. This in turn, the Members further aver, unfairly discriminates against advocates as professionals and renders the proposed amendments unconstitutional. Before I delve into this question of constitutionality, it is worth noting that as the Member for Homa Bay Town, Hon. Peter Kaluma, alluded to in the debate arising from the Point of Order, no Member demonstrated with precision the nexus between any alleged violation of any one of the 264 Articles of the Constitution and the 16 Clauses contained in the Bill. I will, therefore, attempt to address the issues as discerned to be violations of the Constitution based on the arguments of Members.

Standing Order 47(3) places a specific obligation on the Speaker to exclude any Motion from being debated, or direct the amendment of a Motion in an appropriate format where the

Motion either offends the Constitution, an Act of Parliament or the Standing Orders. The Standing Order provides, and I quote:

“(3) If the Speaker is of the opinion that any proposed Motion –

- (a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;
- (b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;

The Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the Motion be referred to the relevant committee of the Assembly, pursuant to Article 114 (2) of the Constitution.”

Over the years, I have not shied away from invoking this provision as indeed will be recalled during the debate of this very matter in the past. However, the expected invocation calls for clear and discernible contraventions of the law to avoid misuse. For clarity, the impugned Clauses 2 and 9 of the Bill propose to make advocates, notaries, and other independent legal professionals who are the sole practitioners, partners or employees within professional firms as designated non-financial businesses or professions, required to report suspected money-laundering and related activities to the Financial Reporting Centre.

The concern of Hon. Murugara and the other Members challenging the constitutionality of the Bill is that the amendments run short of the age-old legal practice of advocate-client confidentiality; the right to privacy and the right of access to information as guaranteed in the Constitution. However, as Members are aware, the Constitution is very clear on the rights and freedoms that may not be limited under any circumstances.

For certainty, Article 25 of the Constitution provides as follows, and I quote:

“Despite any provision in this Constitution, the following rights and fundamental freedoms shall not be limited —

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and,
- (d) the right to an order of habeas corpus.”

A close reading of Article 25 of the Constitution, therefore, reveals that the Constitution allows this House to limit any other right or fundamental freedom subject only to the protections outlined by the Constitution. Up to that point, and without interrogating the merits of the proposals, the argument that Clauses 2 and 9 of the Bill, in so far as they allegedly limit the right to privacy and therefore ought to be excluded from consideration by this House, seems implausible, in my view.

In outlining for the limitation of rights and fundamental freedoms, the Constitution provides in Article 24 (1) & (2), and I quote:

“(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including —

- (a) the nature of the right or fundamental freedom;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;

- (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and,
  - (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (2) Despite Clause 1, a provision in legislation limiting a right or fundamental freedom:
- (a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;
  - (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and,
  - (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.”

Hon. Members, as observed in the Speaker’s Communication of 19<sup>th</sup> September 2019 when the same matters arose during the consideration of the Finance Bill, 2019, Article 24(2) of the Constitution requires any provision enacted or amended on or after 27<sup>th</sup> August 2010 to expressly stipulate the intention to limit a fundamental right or freedom and the nature and extent of the limitation for the provision to be valid.

Further, it has been the practice that this stipulation be contained in the substantive sections of the Bill and not just in the statement or memorandum of objects and reasons. As I guided then with regard to the Finance Bill, 2019, there was a requirement for “...an additional provision stating the intention to limit the right to privacy and the nature and extent of the limitation in relation to the new categories of professionals it seeks to designate as reporting institutions under the Proceeds of Crime and Anti-Money Laundering Act, 2009.”

The question that follows, therefore, is whether in seeking to limit the right to privacy, the Bill expressly provides for this in keeping with the constitutional dictate.

*(Several Hon. Members walked into the Chamber)*

These are Members who had just left and are now coming in. Take your seats. Hon. Okuome, take your seat.

*(Hon. David ole Sankok consulted loudly)*

Order, Nominee 001. That is being very uncourteous.

Hon. Members, the long and short of it is that unlike in the previous case regarding the Finance Bill, 2019, Clause 15 of the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill, 2021 expressly provides for the nature and extent of the limitation of rights. In my view, this constitutes sufficient disclosure in as far as the constitutional requirement in Article 24 of the Constitution is concerned.

It is instructive to note that this is not the first time that the House is being confronted with the need to consider a limitation of rights as provided for in the Constitution. When faced with a similar matter during the consideration of the Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill, 2020, the Departmental Committee on Administration and National Security approved the express limitations of the right to privacy by, among other things, allowing

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*



for the interception and retention of certain communications to aid in gathering evidence related to the commission of an offence under the principal Act. The inclusion of an express provision of the nature and extent of limitation of the rights affected by the Bill aligned it with the Constitution. The question as to whether the justification provided for the limitation proposed is adequate is one that only this House, in exercise of its exclusive legislative mandate, can consider and either agree with, enhance where a gap is noted, or disagree with entirely.

Interestingly, just recently on 15<sup>th</sup> November 2021 - which is just a month ago - the High Court of Kenya in Mombasa in Petition No.134 of 2019 held as follows with respect to limitation of certain rights and freedoms –

53. On the right to privacy, As O’Higgins C.J commented in *Norris vs. Attorney-General (1984) I.R 587*, a right to privacy can never be absolute. It has to be balanced against the State’s duty to protect and vindicate life. What needs to be done, as was recognised in *Campbell vs. MGN Ltd (2004) 2 AC 457*, is to subject the limitation and the purpose it is intended to serve to a balancing test whose aim is to determine whether the intrusion into an individual’s privacy is proportionate to the public interest to be served by the intrusion.

Hon. Members, in considering the proposal in the Bill against the claim of intrusion of privacy and other rights, the House is expected to weigh the claim against the public interest that the State seeks to secure through the proposed legislation. At face value, the limitations contemplated in Clauses 2 and 9 of the Bill seemingly seek to avail to the State the legal framework for enforcing integrity, transparency and accountability, being inviolable national values and principles of governance in accordance with Article 10 of the Constitution.

Therefore, to the extent that Article 24 of the Constitution permits limitation of certain rights and fundamental freedoms by law and the fact that the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No.39 of 2021) explicitly discloses the intended limitations as required in the Article, there exists no procedural defect in the Bill to preclude the House from considering it at this stage.

Hon. Members, with regard to the reasonability and justifiability of the nature and extent of the limitation of rights as contained in the Bill, as your Speaker I wish to state that the determination falls outside the remit of the Speaker. Therefore, I will not delve into the merits or otherwise of the matter, save to say that due process has thus far been followed in the processing of the Bill. In any case, there exist various levels for determination of such matters including by Parliament through the various legislative processes, by the Judiciary through interpretation and/or review of any legislation passed by Parliament, and by various enforcement bodies as provided in law. Article 165(3) of the Constitution provides for direct determination of such issues of infringement or violation of the Bill of Rights by the High Court whenever they arise.

The matter of alleged discrimination of advocates and accountants by the Bill also arises from questions raised on the constitutionality of the Bill. Article 27 of the Constitution provides for the equality and freedom from discrimination for all persons. Clause 4 provides:

“(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

The inclusion of advocates as professionals required to report any suspicious financial transactions law has been cited as discriminatory and prejudicial against legal practitioners. However, my reading of the principal Act which the Bill seeks to amend indicates that there are other professions already designated as reporting institutions. Section 48 of the principal Act

provides for, among other persons, accountants when preparing or carrying out transactions for their clients in specified transactions; trust or company service providers acting as formation agents of legal persons; a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons, providing a registered office, business address or accommodation, correspondence or administrative address for a company, acting as or arranging for another person to act as a nominee shareholder for any person.

You will agree with me that this incorporates other professionals in their various capacities when undertaking the specified actions. I am unaware of any proceedings that have been instituted to the effect that the inclusion of those professions is discriminatory. In any case, as I explained earlier and as the courts have also held, the Constitution permits certain levels of discrimination in law as long as such discrimination is proportionate to the public interest to be served. In fact, from my analysis of the contribution by the Member for Suba North, Hon. Millie Odhiambo-Mabona, from the proceedings on that subject, I could sense...

*(Loud consultations)*

Order, Hon. Members!

In fact, from my analysis of the contribution by the Member for Suba North, Hon. Millie Odhiambo, from the proceedings on that subject, I could sense that she noticed the high public interest that the proposed amendments seek to address. For the sake of the concerned Members, Hon. Millie had indicated her intention to propose amendments that would try to rectify the alleged discriminatory provisions, if indeed any exist. As I prior indicated, the determination of whether there will be any discrimination that will arise from the Bill can only be conclusively addressed by a court of law. The role of this House is to legislate. We cannot put the cart before the horse and debate concerns reserved for another arm of Government after the House dispenses with its role.

It is, therefore, only fair that we allow the Bill to proceed to the next level and let the competent authorities determine any subsequent matters that shall and may arise. At this stage of law making, it would be premature to conceive that the Bill is discriminatory. This settles the second question on constitutionality and propriety of the Bill.

Hon. Members, the final concern that was raised was whether the proposed amendments in Clauses 2 and 9 of the Bill erode the legal principle of advocate-client confidentiality. On this question, I wish to single out the following as explained by some of the Members who spoke on this matter:

*(Several Members stood along the gangways)*

The Members who are standing, please take your seats for the last lap. We only have, probably, another five minutes to dispense with this. So, for Members who may need to stretch, you can hold your horses briefly. Okay. Let us proceed and finalise it.

So, I will start again. The final concern raised was...

*(Hon. Samuel Atandi walked along the aisle)*

Order, Hon. Atandi! Take your seat quickly.

*(Hon. (Ms.) Faith Gitau stood in her place)*

The Member for Nyandarua, forget about logging in. You do not need to. We are not using that gadget too much now.

Hon. Members, the final concern raised was whether the proposed amendments in Clauses 2 and 9 of the Bill erode the legal principle of advocate-client confidentiality. On this question, I wish to single out the following as explained by some of the Members who spoke on this matter:

- (i) That, the said principle of advocate-client confidentiality is not founded in the Constitution of Kenya or any other statute thereof, rather, it is based on the legal practice.
- (ii) That, even if it were, it would ordinarily play second-fiddle to Article 10(2)(c) of the Constitution which elevates the principles and values of good governance, integrity, transparency and accountability to an inviolable status.

It is, therefore, inconceivable that legislating in the manner proposed in the Bill would cause the principle to be violated unduly. I do note that the Proceeds of Crime and Anti-Money Laundering Act, 2009, is an Act of Parliament passed by this House. In passing the Act, this House took cognizance of the advocate-client relationship and included it in Section 18 of the Act. For the avoidance of doubt, it provides as follows, and I quote:

The Clause's header reads: Client advocate relationship.

“(1) Notwithstanding the provisions of section 17, that is, secrecy obligations overridden, nothing in this Act shall affect or be deemed to affect the relationship between an advocate and his client with regard to communication of privileged information between the advocate and the client.

(2) The provisions of subsection (1) shall only apply in connection with the giving of advice to the client in the course and for purposes of the professional employment of the advocate or in connection and for the purpose of any legal proceedings on behalf of the client.

(3) Notwithstanding any other law, a Judge of the High Court may, on application being made to him in relation to an investigation under this Act, order an advocate to disclose information available to him in respect of any transaction or dealing relating to the matter under investigation.

(4) Nothing in subsection (3) shall require an advocate to comply with an order under that subsection to the extent that such compliance would be in breach of subsection (2).”

So, in my view, Hon. Members, this renders the concern moot. In the event that the aggrieved Members feel that the statutory entrenchment of the principle in the Act has been affected in any way by the amendments proposed in the Bill, they remain at liberty to propose amendments to further buttress it for the consideration of the House.

Indeed, pursuant to the Communication of the Special Sittings of the House and inviting the submission of any proposed amendments to the Bill, I can confirm that the Office of the Clerk is in receipt of amendments by the Leader of the Majority Party and the Chairperson of the Departmental Committee on Finance and National Planning. These, I believe, shall inform the debate on the Bill and allay the fears of the concerned Members.

I wish to reiterate that the Constitution grants this House exclusive law-making powers. Towards this end, a proposal has been brought to this House under the name of the Leader of the Majority Party. The proposal accords with several directives that this House has given with regard to the manner in which the proposal should be introduced and the form that it should be in. The

only thing that remains is, therefore, the question of whether the House agrees with the contents of the Bill either fully or partly after proposing the necessary amendments. Any Member is well within their right to support, oppose or propose amendments to the Bill.

Hon. Members, as you are well aware, I, as your Speaker, only preside and I do not debate or vote on any question proposed for determination in the House.

In summary, therefore, I wish to guide the House as follows:

- (i) THAT, the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) is properly before the House. In introducing the Bill in the House, the Leader of the Majority Party has satisfied the procedure prescribed in the Standing Orders and previous guidance issued by the Speaker.
- (ii) THAT, the proposals contained in the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) seeking to limit certain fundamental rights and freedoms safeguarded under the Constitution do not, in my view, render the Bill unconstitutional. The Bill explicitly discloses the intended limitations and the purpose and extent of the limitations as required by Article 24 of the Constitution.

*(Applause)*

- (iii) THAT, the inclusion of advocates as reporting institutions for suspicious financial transactions in the manner proposed in the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) does not, at face value, erode legal principle of advocate-client confidentiality. Section 18 of the Proceeds of Crime and Anti-Money Laundering Act, 2009, currently provides for the entrenchment of the principle. Any Member seeking to buttress the principle further in light of the amendments proposed by the Bill is at liberty to propose appropriate amendments for consideration.

In conclusion, Honourable Members, allow me to state that I have shared the above information for the guidance of the House in considering the Proceeds of Crime and Anti-Money Laundering (Amendment) Bill (National Assembly Bill No. 39 of 2021) and for your making a decision in the manner you may so wish as required by the Constitution. I wish to emphasize that the matters raised by the Member for Tharaka and, indeed, the contributions by other Members are very critical and contribute to the development of our parliamentary and legislative practice and procedure. Such instances enable us to self-reflect and to ensure that every step we take as a House is carefully considered before a decision is made.

The House is accordingly guided, and I will, therefore, proceed to put the Question when time comes for you to make a decision one way or the other.

So, take your seats for you to make the decision. I thank you.

*(Several Members stood along the gangways)*

Order, Members! Take your seats.

*(Hon. (Ms.) Jayne Kihara walked along the gangway)*

The Member for Naivasha, please take your seat. The rest of the Members may freeze where they are.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed  
to a Committee of the Whole House tomorrow)*

*First Reading*

THE HUDUMA BILL

*(Order for First Reading read - Read the First Time and  
ordered to be referred to the relevant Departmental Committee)*

### MOTION

#### CONSIDERATION OF SENATE AMENDMENTS TO THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL

**Hon. Deputy Speaker:** The Leader of Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Deputy Speaker. I beg to move:

THAT, the Senate Amendments to the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 21 of 2021) be now considered.

Hon. Deputy Speaker, Members will recall that this House unanimously passed the National Hospital Insurance Fund (Amendment) Bill, which was driven by the need to give Kenyans universal health coverage (UHC), and because this Bill involved health, which is a devolved function, it was necessary that the Bill be referred to the Senate for their consideration as well. The necessary Communication was made to the Senate and they considered the Bill.

In their deliberations, they have also enriched the Bill by making a number of amendments which are contained in our Order Paper from pages 1603 to 1609. The import of most the amendments is to enrich the debate on the National Hospital Insurance Fund (NHIF) to make it more user friendly and also to ensure that whatever we probably missed out on has been taken care of. They have also come up with a clear definition of an employer. They have worked out who does the accreditation, and also expanded the definition of a healthcare provider to include promotive care. The Senate also made a distinction between funds paid to the Fund and the contributions by employers.

Further, they have looked at the representation within the Board and substituted the Medical Professions Oversight Board that we had provided for, with a nominee of the Kenya Medical Association (KMA). This ensures that the medical profession is better represented. They have also gone ahead to recognise that health is devolved and thus expanded the number of people appointed by the Council of Governors (CoG) from one to two. Basically, as you go through the Senate amendments, you realise that they are all geared towards strengthening the Bill.

Hon. Deputy Speaker, I want to highlight Clause 19. We had provided unemployed persons as one of the categories that the Board was to determine their contribution rate, in noting that the Fund is compulsory. It is mandatory for everyone. No one has touched this mandatory clause. It is mandatory for everyone and we had provided for the Board to provide for a special contribution by the unemployed. The Senate has shifted that from Clause 19 to Clause 23 under the

contributions by the youth to contributions by all unemployed persons, age not being a factor, whether you are young or old, as long as you are unemployed.

Therefore, we have not lost on the mandatory contribution aspect. Everything is still mandatory. It is up to the Board to look at the different categories and how they contribute to the Fund. This is in noting that we still have the provision that the State will still provide for all the indigenes and all the people who cannot provide for themselves. We have not lost anything from that rearrangement. That was probably the only concern.

The other fundamental issue that they have changed is that we had provided for private employers to top up their contribution, so that it is at par with what the self-employed contributors contribute. The Senate has provided that the amount that will be earned from the top up, say from Kshs300 to Kshs500, may not be enough for the kind of money we need. If the county governments and the national Government are mandated by law to match the contributions, it will be discriminatory for the public sector to do so while the private sector does not do the same, yet both are employers. Therefore, for equity purposes, every employer should match up the contributions, with the proviso that where an employer has a medical insurance that is better than NHIF, then they will be exempted from the double contribution. I think that is a fair argument that the Committee has also agreed with.

Hon. Deputy Speaker, the rest of the amendments are in terms of rationalising the fines. Clause 20 rationalises the fine from Kshs1 million to Kshs500,000. Clause 21 looks at who bears the burden. Like I said, Clause 23 removes the youth and covers the broader picture of all the unemployed. One new innovation that has come in is in Clause 26, where the Senate has added the range of benefits of emergency treatments to cover some of the rare conditions such as primary angioplasty, thrombolysis, rescue angioplasty and such other treatment as the Board may determine. This broadens the scope of coverage for the Kenyan people.

The only other bit that one would want to highlight is that the Board will not just revoke a body that has been empanelled without notifying them of that intended revocation. Again, it is in line with our Constitution on fair treatment and the fair administration of justice, which we had not provided for. It creates a situation of how that revocation will be processed to its final conclusion. I believe most of these other amendments are minor, just to tidy up.

There is also a fundamentally new clause by the Senate in Clause 26, which is the provision that the Board shall not withdraw the benefits of a person who is undergoing treatment for a chronic illness because that would be so unfortunate; one is already in a chronic condition. If the Board was to withdraw the benefits immediately that sickness sets in, it would be a death sentence on the person.

I have, as the Mover of the Bill, looked through these amendments and I have had consultations with all the stakeholders. Various stakeholders also appeared before the Departmental Committee on Health. The Departmental Committee on Health will also be giving us their views. I have no reservations on what the Committee and the Senate have done. I recommend to this House that we agree with the amendments by the Senate, so that we can take this Bill to the next level of assent. Hopefully, at beginning of the year, we can start getting the benefits of universal health coverage to our people, who now have to sell their land and auction their property to pay simple medical bills, whereas we have the means to provide that cover to them. We have the means to insulate them from poverty and the indignity of having to suffer from sickness and being forever impoverished because a family member has become sick.

So, I plead with the House that we take this Bill to the next level. Let us agree with the Senate, then we can go to the Committee of the Whole House, which is the next Order, so that we

can process each of those amendments and by the end of this Session, we will have given Kenyans the Christmas they so much deserve.

With those words, I beg to move and ask the Hon. Chair of the Departmental Committee on Health, Hon. Sabina Chege, to second.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Deputy Speaker. I second.

**Hon. Deputy Speaker:** All right.

*(Question proposed)*

*(Question put and agreed to)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Deputy Speaker (Hon. Moses Cheboi) left the Chair]*

### IN THE COMMITTEE

*[The Temporary Deputy Speaker (Hon. Patrick Mariru) took the Chair]*

### THE NATIONAL HOSPITAL INSURANCE FUND (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Members! We are now in the Committee of the Whole House to consider the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021).

*(Senate amendments to Clauses 7, 8, 9, 10, 14 and 15 agreed to)*

#### Clause 19

Hon. Members, it is good to note that we have some words inadvertently omitted from that clause - the words "if the person" should be included after the words "sub-section 1". It is for a proper grammatical flow. It is just a grammatical issue and the Clerks-at-the-Table take note of that. It is just a clean-up.

*(Senate amendment to Clause 19 agreed to)*

#### Clause 20

Still on that, I think there is a bit of clean-up on the Bill. There is a cross-referencing error. The correct reference should be to sub-section 2(a) and not to Section 6(c), as indicated in the amendment. The Clerks-at-the-Table will correct that. It is just a grammatical issue.

*(Senate amendment to Clause 20 agreed to)*

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

*Clause 21*

*(Question of the amendment proposed)*

*(Question that, the word to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Senate amendment to Clause 21 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Sorry Members. Allow me to go back to Clause 21. There is a grammatical error. In the proposed amendment, paragraph (b), the words should be after the words “incurred by the employee” to have a proper grammatical flow. The Clerk is hereby directed to correct that.

*Clause 23*

THAT, Clause 23 of the Bill be amended by deleting the words “by the youth” appearing immediately after the words “inserting the words” and substituting therefor the words “by unemployed persons”.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Senate Amendment to Clause 23 agreed to)*

*Clause 26*

THAT, Clause 26 of the Bill be amended in paragraph (c) by:

(a) deleting the proposed subsection (3) and substituting therefor the following new subsections—

(3) The Board shall, in consultation with the Cabinet Secretary, prescribe benefits payable from the Fund including benefits available with respect to emergency treatment for –

- (a) primary angioplasty;
- (b) thrombolysis;
- (c) thrombolysis and rescue angioplasty; or
- (d) such other treatment as the Board may determine.



(3A) The benefits payable from the Fund shall be subject to such limits, and conditions as the Board may prescribe in regulations.

(b) deleting the proposed new subsection (3B) and substituting therefor the following new subsections-

(3B) The Board shall, every two years, carry out a review of the applicable tariffs payable to the Fund under Section 15 and payable out of the Fund to empaneled contracted health care providers.

(3C) The Board shall use the approved risk spreading mechanism, approved claims administration services on benefits of outpatient, inpatient and on employees' benefits scheme as provided for under sections 3(iv) and (v), 15, 22 and 43.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Senate Amendment to Clause 26 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, on Clause 26, there is a grammatical issue. There is a referencing error in the proposed new Sub-Section 3C. The correct referencing should be "Sections 3(2)(a) and (v), 15, 22 and 43." That is a clean-up issue.

*Clause 27*

THAT, Clause 27 of the Bill be amended in the proposed new Section 23 by-

(a) renumbering the provision as subsection (1); and,

(b) inserting the following new subsection immediately after subsection

(1)-

(2) The Board shall make regulations for the better carrying out of the provisions of this section.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Senate amendment to Clause 27 agreed to)*

*Clause 33*

THAT, Clause 33 of the Bill be amended:

(a) paragraph (b) in the proposed new subsection (1) by deleting the words “accreditation bodies” and substituting therefor the words “regulatory bodies specified under Section 60 of the Health Act”.

(b) by deleting paragraph (d) and substituting therefor the following paragraph-

(c) deleting subsection (3) and substituting therefor the following new subsections-

(3) The Board may, at any time, revoke any empanelment under this section.

(3A) Where the Board intends to revoke the empanelment of a health provider under subsection (3), the Board shall notify the health care provider of the intended revocation, in writing, setting out the reasons for revocation of empanelment.

(3B) A health provider may, upon receiving a notification under subsection (3A) submit a written response to the notification within seven days.

(d) by deleting paragraph (e) and substituting therefor the following new paragraph:

(e) inserting the following new subsections immediately after subsections (3):

(4) A healthcare provider whose empanelment has been revoked under this section may apply to the Board for the review of the revocation in the first instance and, if dissatisfied by the decision of the Board upon review, appeal to the High Court against the revocation.

(5) The Board shall cause the name of every healthcare provider whose empanelment is revoked to be published in the Gazette and in at least three newspapers with nationwide circulation.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Senate amendment to Clause 33 agreed to)*

### Clause 35

THAT, Clause 35 of the Bill be amended in paragraph (c) by deleting the words “one million shillings or to imprisonment for a term not exceeding twenty-four months” appearing immediately after the words “therefor the words” and

substituting therefor the words “one hundred thousand shillings or to imprisonment for a term not exceeding six months”.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Senate amendment to Clause 35 agreed to)*

### Clause 36

THAT, Clause 36 of the Bill be amended by:

(a) by inserting the following new paragraph immediately before paragraph (a)-

(Aa) in paragraph (a) by inserting the words “on the advice of the Central Bank of Kenya” immediately after the words “a reputable bank”.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Senate amendment to Clause 36 agreed to)*

### Clause 39

THAT, the Bill be amended by deleting Clause 39 and substituting therefor the following new clause:

Amendment  
of section 38  
of No. 9 of  
1998.

39. The principal Act is amended by deleting section 38 and substituting therefor the following new section-

Annual  
reports.

38. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary a report of the operations of the Board for the immediately preceding year.

(2) The Cabinet Secretary shall, within three months of submission of the report under subsection (1), transmit the report to Parliament.

*(Question of the amendment proposed)*

*(Question, that the words to be left out*

*be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Senate amendment to Clause 39 agreed to)*

#### *Clause 44*

THAT, Clause 44 of the Bill be amended by deleting the proposed new Section 45A and substituting therefor the following new sections:

Application of Cap 487.	45A. The provisions of the Insurance Act shall apply to the Fund only in respect to risk spreading and claims administration services.
Application of No. 3 of 1997.	45B. The provisions of the Retirement Benefits Act shall apply to Fund only with respect to post-retirement medical contributions.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Senate amendment to Clause 44 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, on Clause 44, we know that in the proposed New Section 45B, there is need to include the words 3, 2(a)5 at the end of the sentence for coherence of that clause.

#### *New Clause 26*

THAT, the Bill be amended by inserting the following new clause immediately after Clause 26:

Insertion of new section 22A in No. 9 of 1998.	<b>26A.</b> The principal Act is amended by inserting the following new section immediately after section 22-
Non- withdrawal of benefits.	<b>22A.</b> (1) The Board shall not withdraw the benefits of a person undergoing treatment for a chronic illness.

(2) The Board shall, in making regulations for determining benefits under the Fund ensure that the Fund shall meet the costs of a contributor accessing inpatient services at any empaneled health care provider.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are done with the Senate amendments to the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 21 of 2021).

Let us have the Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairperson, I beg to move that the Committee doth report to the House its consideration of the Senate amendments to the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021) and its approval thereof without amendments.

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. Patrick Mariru) in the Chair]*

## REPORT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Chairperson, Hon. Sabina.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate amendments to the National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No.21 of 2021) and approved the same without amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Mover of the Bill.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Chairperson, I beg to move that this House does agree with the Committee in the said Report. I want to thank the Members for having agreed to the Senate amendments and participated in the process. For once, they will be on the right side of history as we give Kenyans universal health coverage. I request Hon. Kutuny to second the Motion for agreement with the Report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Kutuny.

**Hon. Joshua Kutuny** (Cherangany, JP): Hon. Temporary Deputy Speaker, I second.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Members!

*(Question proposed)*

*(Question put and agreed to)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, we are through with the Morning Sitting. The time being 11.57 a.m., this House stands adjourned until today, Tuesday, 21<sup>st</sup> December 2021 at 2.30 p.m.

The House rose at 11.57 a.m.