**FORMAL STATEMENT OF THE RT. HON. SPEAKER IN RESPECT OF PETITIONS LAID BY THE HON. MAHAMA AYARIGA ON MONDAY 22ND DAY OF MARCH 2021.**

**Introduction**

1. Hon. Members may recall, that on Monday 22nd of March 2021, I gave my ruling on the objections raised to the petitions that I had admitted and which were consequently laid on the Table by the Hon. Mahama Ayariga.
2. On the day of laying of the Petition on the Table, objections were raised as to the appropriateness of the procedure adopted by Mr. Speaker and the Hon. Member and also on the content of the petitions which were argued to be *sub judice.*
3. I have decided that in the light of the varied opinions that have been expressed on the matter, it is necessary for me to provide to the House my well-reasoned view on the issue.
4. Hon. Members in arriving at my conclusions and my ruling, I was guided by the following considerations:
   1. Whether the procedure adopted by Me in admitting and permitting the laying of the petitions were valid within the rules of the House.; and
   2. Whether Parliament may consider a petition which contains similar or same facts pending in a suit before a court of competent jurisdiction-*the Sub Judice rule.*

***ISSUE 1***

***Whether the procedure adopted by me in admitting and permitting the laying of the petitions were valid within the rules of the Standing Orders of Parliament?***

1. Hon. Members Order 76 of the Standing Orders of Parliament (2000) regulates the issue of petitions before the House. The provisions of the order are further elaborated in Appendix A of the Standing Orders.
2. It provides that an application for Parliament to consider a matter other than a Paper, shall be in the form of a petition which shall be presented by a Member of Parliament. That Member is under a duty to ensure compliance with the Order and Appendix A.
3. The provisions of the Order require the following prerequisites to be undertaken by the Member before the petition is laid before the House
   1. The Member must indicate his name at the beginning of it; and
   2. The Member must give notice of his intention to present the petition by entering his name on the notice paper reserved for that purpose.
4. With regards the Petition itself, the Orders provide a style in which the petition may be drawn and further provides guidance as to its form. Appendix A provides that:
   1. The petition be signed or thumb-printed by at least one person.
   2. The person signing a petition must write his address.
   3. The petition be written in the English Language.
   4. A petition must be signed by parties whose names are appended.
   5. The petition, if by a body corporate, be under its common seal
   6. The petition be without erasures or interlineations
   7. The language of the petition be respectful, decorous and temperate.
   8. The petition must contain a prayer at the end of it stating the general objective of the petitioner.
5. In presenting the petition, the Member in whose name the petition is presented to the House, is required to confine himself to
   1. A statement of the parties from whom the petition comes
   2. The numbers of signatures supporting the petition
   3. The requests being sought for in the petition
6. After the presentation of the petition, the Speaker shall order that the Member lays the petition on the Table without Question put. The Member, may however, also move a motion that the petition be read, printed or referred to a Committee. Such a motion has to be duly seconded before the question is put on that motion.
7. It follows that where a Member presents a petition, there are two possible routes to be taken by the Member. That is, where the petition is laid upon the Table without Question put and, where the Member moves a motion for the petition to be read, printed or referred to a Committee, which requires that the Question be put.
8. In the event that the Member opts for the laying of the petition on the Table, the Standing Orders do not make any provision for actions that may be taken by Parliament after.
9. In effect, while the Standing Orders provide for the form or procedure that a petition may take and subsequently be presented before the House, it does not provide for or regulate the actions that Parliament may take on the petition nor the powers that Parliament may exercise in that regards where a petition is laid on the Table.
10. In line with this, Hon. Members it is my opinion and Ruling that,
    1. To the extent that the Hon. Member complied with the provisions of Order 76 and Appendix A of the Standing Orders, the admission of the petition by me and the subsequent laying of the petition on the Table by the Hon. Member was within the Standing Orders.
    2. In the absence of clear provisions in the Orders regarding action to be taken after a petition is laid on the Table, I, may, pursuant to Order 6, provide for actions to be taken and the procedure to be adopted after the laying of the petition at the Table.

***ISSUE 2***

***Whether Parliament can consider a petition which contains similar or same facts pending in a suit before a court of competent jurisdiction- the Sub Judice rule***

1. Hon. Members, the term “*sub judice*” is a rule of court which literally interpreted means “*under judicial consideration*” or “*before the Court or Judge for determination*”.
2. At its most basic, the rule limits comment and disclosure relating to judicial proceedings in order not to prejudice the issue, influence a jury or affect the eventual determination of the matter before a judicial body so as to not render the eventual decision *brutum fulmen*. The breach of the rule, it often enforced by the Court through it power of contempt.
3. The rule does not appear to apply prior to the commencement of proceedings before a judicial body or after the proceedings are terminated. It may, however, apply when proceedings are imminent.
4. Hon. Members our Supreme Court has in the case of *Republic v Bank of Ghana & 5 Ors; Ex Parte Benjamin Duffour(unreported, 2018)* noted that a matter is *sub judice* when a person engages in an act or omission which tends to prejudice or interfere with fair adjudication of a case.
5. Historically, in Ghana, the rule has been applied to prevent lawyers, media persons and other parties from publicly commenting on matters in respect of which they are appearing before the Courts or matters which are pending in Courts. For the purposes of Lawyers, this has been codified under the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (L.I. 2423), which provides in its Regulation 38 that “a lawyer who is participating or has participated in the investigation or litigation of a matter that is still pending before a Court shall not make an out of Court statement or grant an interview to the media on the matter.” Also, Regulation 40 of the same L.I. provides that when a lawyer acts as a prosecutor, he or she shall refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused.
6. The rule has also been applied in a limited manner to protect the identity of minors in proceedings before the Courts. For instance, Article 39 of the Children’s Act, 1998 (Act 560) that ‘No person shall publish any information that may lead to the identification of a child in any matter before a Family Tribunal except with the permission of the Family Tribunal’.

*Scope of Parliamentary Powers*

1. Hon. Members as noted, Order 76 of the Standing Orders, and its associated Appendix A regulate the issue of petitions before the House. However, while Order 76 and Appendix A regulate the form a petition should take, and the procedure through which the petition may be laid on the Table as well as when a Question on it may be put, the Orders are silent on the substantive issues or the scope of matters a petition may relate to.
2. It is worth noting, however, that under the 1992 Constitution, the legislative powers of Parliament are only subject to express limitations placed on it by the Constitution. As it concerns the subject of petitions that Parliament may receive, no such limitations exist in the Constitution. Similarly, Parliament has not passed any law restricting its own powers in this regard.
3. To the contrary, the Constitution contains several provisions, which when read together and in context, confirm that in order for the efficient performance of its functions, Parliament must have the authority to inquire into any matter of public interest and without substantive limitation. In particular,
   1. Under Article 103, Parliament has the power to “investigate and inquire into the activities and administration of ministries and departments as Parliament may determine; and such investigation and inquiries may extend to proposals for legislation”.
   2. Article 115, provides that “there shall be freedom of speech, debate and proceedings in Parliament and that freedom shall not be impeached or questioned in any court or place out of Parliament”; and
   3. Under Article 298 of the Constitution, Parliament is vested with all residual powers, to act on any on matter which is not expressly or by necessary implication provided for by the Constitution.
4. Hon. Members it follows that, in Ghana, the scope of issues that may be the subject of a petition is unlimited either in law or by parliamentary practice.
5. In fact, the necessity of maintaining the power of Parliament to inquire into any matter, without being bound by any undue restrictions, including in relation to the *sub judice* rule has long been judicially recognized by the common law courts. For instance, in the seminal case of Stockdale v. Hansard of 1837, the Court stated that the legislature was “**the grand inquest of the nation, and may inquire into all alleged abuses and misconduct in any quarter, of course in the Courts of Law, or any of the members of them**.” (emphasis provided).
6. Similarly, in the 1845 decision of Howard v Gossett, the Court emphasised, when discussing the scope of powers of the legislature that, members of legislature are “the **general inquisitors of the realm**”.
7. The Court further added that “*I fully admit, it would be difficult to define any limits by which the subject matter of their inquiry can be bounded: It is unnecessary to attempt to do so now: I would be content to state that they may inquire into everything which concerns the public … for them to know; and they themselves, I think are entrusted with the determination of what falls within that category*.”
8. This position finds echo in Ghana’s Supreme Court, which in the seminal case of *Tuffuor v Attorney-General [1980] GLR 637 @651, took the position that* “…*. The courts do not, and cannot, inquire into how Parliament [goes] about its business. These constitute the state of affairs, as between the legislature and the judiciary which have been crystallized in articles 96, 97, 98, 99, 103 and 104 of the Constitution. Of particular importance to us are the provisions of article 96 of the Constitution. They confer on Parliament freedom of speech, of debate and of proceedings in Parliament. The article also states categorically: “that freedom shall not be impeached or questioned in any Court or place out of Parliament.” The courts cannot therefore inquire into the legality or illegality of what happened in Parliament.*”
9. It is worth considering then whether, this view of the constitutional authority of Parliament violates the constitutional powers of the Judiciary. As noted, in Ghana, the substantive powers of Parliament are only limited by the Constitution. In the absence of express or necessarily implied limitations on its powers, Parliamentary authority cannot be said to be otherwise limited.
10. That said, there is no express or necessarily implied provision in the constitution that binds parliament from commenting on matters before the Courts. Similarly, the Constitution does not make the exercise of Parliamentary powers subject to the exercise of Judicial powers. It bears emphasising also that the principle of Separation of Powers which underpins the 1992 Constitution recognises that the Legislature and the Judiciary are distinct arms of government with distinct powers and spheres of the exercise of the powers.
11. That notwithstanding, the 1992 Constitution contemplates that in the exercise of constitutionally assigned powers, neither branch will go out of its way to frustrate or undermine the powers of the other. In this regard, it is open to either branch to accord the other some level of respect or deference that ensures that the exercise of constitutional powers is not undermined. In addition, the Constitution does not preclude Parliament from exercising its discretion to limit the scope of matters that may be the subject of petitions in order to ensure that exercise of judicial authority is not undermined.
12. In this regard, however, it is submitted that any decision by Parliament, either through its standing orders or through an Act of parliament to limit the scope of issues that may be brought to its attention or investigated by Parliament by way of a petition can only be through the exercise of its own discretion.
13. In this connection, it is worth pointing out that while Parliament has not limited the scope of issues that may form the object of a petition, it has exercised its powers under article 110 which allow it to regulate its own procedure, to provide that in speeches before the House, “***reference shall not be made to any matter on which judicial decision is pending in such a way as may, in the opinion of Mr. Speaker, prejudice the interest of parties to the action***.” (Order 93(1)).
14. While this Order guards against parliamentary interference in cases under consideration before the Courts, it also confirms that, there is no existing blanket rule that forbids all references to all matters which are *sub judice* as the order is subject to the opinion of the Speaker.
15. This is further confirmed by prior parliamentary practice in respect of this Order.
16. The Speaker of the 7th Parliament of the Fourth Republic, on 19th November 2019 had the opportunity to rule on the *sub judice* rule. In that instance, Mr. Speaker was invited to address the question of whether or not a Member may refer to a matter pending before a Court. Mr. Speaker in his ruling noted that a Member is entitled to refer to a matter pending before a Court of competent jurisdiction as long as in making reference to that matter the Member does not seek to pass judgment or influence the matter. (see as reported in the Official Report 19th November 2019 Vol. 108. No. 18)
17. In 2014, the Speaker of the 6th Parliament of the Fourth Republic, was invited to rule on the *sub judice rule* in relation to a motion that had been moved on the floor of the House. The Speaker, based on search at the Court Registry by the Clerks-at-Table, ruled that a Motion that the House investigates the acquisition of Merchant Bank by Fortiz Equity will prejudice the parties to various cases actively pending before the courts on similar or same facts. (see as reported in the Official Report 6th January, 2014 Vol. 86. No. 1).
18. The rulings of the Speakers reflect the efforts to balance the *sub judice* rule and Orders 2, 20, 21 and 93(1) of the Standing Orders, in a way that ensures that the hands of Parliament are not tied in such a way as would undermine its constitutional role as the “grand inquest of the nation”, or completely extinguish parliament’s constitutional right to discuss or inquire into any public matter.
19. Further Order 93(1) and the rulings confirm that even though the House is not legally bound by *sub judice* rules, it has sought to balance its constitutional right to discuss any matter with the need to maintain respect for the Courts.
20. It is submitted that it cannot be said that all references to matters *sub-judice* even when they do not affect or prejudice the interest of parties to the action are forbidden *ab initio.*

*Practice in other jurisdictions*

1. In the United Kingdom, the House of Commons has recognized that the privilege of freedom of speech in Parliament places a corresponding duty on every member to use the freedom responsibly. The duty is all the greater now that the debates of the two Houses may be broadcast live anywhere in the world. In light of this, both Houses of Parliament, by practice, prefer to abstain from discussing the merits of disputes being tried and or decided in the Courts. However, while this practice has typically been applied and is long established in criminal cases or court-martials, it has not been consistently followed or insisted upon in civil cases [For a historical account, see Patricia Leopold, `*The Changing Boundary between the Courts and Parliament', in Buckley (ed) Legal Structures (Wiley, 1998).]*
2. The UK Parliament has recognized that due to its particularly authoritative position, and the public interest generated by its proceedings, it is important that a debate, a committee hearing, or any other parliamentary proceeding should not prejudice a fair trial, especially a criminal trial. In light of this, the exercise of parliamentary discretion to limit debating matters which are *sub judice* are more tightly observed in criminal trials rather than civil trials.
3. However, because the observance of the rule proceeds from parliamentary discretion, rather than obligation, it is not treated as an absolute. In the House of Commons, the rule may be waived at the discretion of the Chair and, in the House of Lords, by the Leader of the House. (see Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament (24th Edition)
4. On 23 July 1963, the UK House of Commons formally adopted a non-binding resolution which sets out its resolve to observe the *sub judice* rule, subject always to the discretion of the Chair and to the right of the House to legislate on any matter. However, this Resolution was modified subsequently in 1972, to provide that “notwithstanding the Resolution of 23 July 1963 and subject to the discretion of the Chair reference may be made in Questions, Motions or debate to matters awaiting or under adjudication in all civil courts, including the National Industrial Relations Court, in so far as such matters relate to a Ministerial decision which cannot be challenged in court except on grounds of misdirection or bad faith, or concern issues of national importance such as the national economy, public order or the essentials of life”. The 1972 modification also added that “in exercising its discretion the Chair should not allow reference to such matters if it appears that there is a real and substantial danger of prejudice to the proceedings”.
5. The UK parliamentary practice reflects the substance of Order 93(1) which provides that in a debate on the floor of the House, reference shall not be made to any matter on which judicial decision is pending in such a way as may, in the opinion of Mr. Speaker, prejudice the interest of parties to the action.
6. The Parliament of India, which is largely shaped on the Westminster model of Parliament has also adopted the *sub judice* convention through its own rules of practice and procedure. Rule 352(i) of the Rules of Procedure and Conduct of Business in the Lok Sabha, prohibits Members of Parliament from addressing “any matter of fact on which a judicial decision is pending”. In this jurisdiction also, the rule is subject to the discretion of the Speaker, who may disallow motions, resolutions and questions which, in his learned opinion, breach the *sub judice* rule. He may also allow a discussion on a matter which is *sub judice* in the instance of overriding public interest, since, as referred to earlier*,* the rule is a self – imposed restriction.
7. In Beauchesne’s Parliamentary Rule and Forms of House of Commons of Canada (6th Edition), the learned editors indicated that in Canada, Members of Parliament are expected to refrain from discussing matters that are before the courts of record. According to the editors, the rule is a voluntary restraint imposed by the House upon itself in the interest of justice and fair play.
8. Hon. Member, the *sub judice* rule has been applied consistently to motions, questions and references in debates in the House, however, unlike in other jurisdictions where the practice has been codified either by the adoption of Standing Orders (as in India) or by way of resolution (as in the House of Commons in England) there has been no definitive guidance from the Supreme Court of Canada on the nature and scope of the convention. Nonetheless, the practice in Canada has evolved as its interpretation has been left largely to the discretion of the Speaker, who is guided by precedents and opinions of previous speakers.
9. The reason for the existence of the convention was elaborated, for instance by Speaker Fraser in his ruling as recorded in the Parliamentary Debates of March 8th 1990, in which he noted that the convention maintains “a separation and mutual respect between legislative and judicial branches of government”, thereby recognizing the constitutional independence of the judiciary. Nevertheless, other Speakers, such as Speaker Suavé have explained that the convention does not serve as a bar on the consideration of a prima facie matter of privilege vital to the public interest or to the effective operation of the House.
10. The House of Commons Procedure and Practice (2nd Edition) attributes Canada’s adoption of *sub judice* convention to the constitutional recognition of the courts, as opposed to the House, as the proper forum in which to decide the outcome of individual cases.
11. The purpose of the existence of the rule was further expounded on by Speaker Steve Peters before the Legislative Assembly of Ontario, reported in No. 80 Votes and Proceedings, on the 27th of October 2018. The learned Speaker, in his ruling that a motion which sought public inquiry on the release of an individual on bail was a breach of the convention, held “…Parliament needs to be especially careful: it is important constitutionally, and essential for public confidence, that the judiciary should be seen to be independent of political pressures. Thus, restrictions on Parliamentary debate should sometimes exceed those on media comment.”
12. In line with this, Hon. Members it is my opinion and ruling that,
    1. An order by me, that a Member lay a petition which may contain facts which relate to a matter pending before a Court on the Table without Question being put does not *ab initio* contravene the rule on *sub judice*.
    2. A blanket rule that any matter which is *sub judice* cannot be referenced during a motion, debate, question or petition, irrespective of how it is referenced, is likely to unduly restrain parliament’s constitutional right to discuss or inquire into any public matter this will be imposing restrictions which is clearly against the letter and spirit of Order 2 of the Standing Orders.
    3. Consistent with prior parliamentary practice, I may exercise my discretion to provide for occasions in the *sub judice* rule may be permitted in order to prevent a real and substantial danger of prejudice to a proceeding, and to ensure that a Member, in making reference to that matter does not seek to pass judgment on or prejudice the matter.

**Conclusion**

1. Consequently, Hon. Members, it is my ruling that admitting and laying of the petitions do not contravene the rule on *sub judice.*
2. That a Committee of parliament which I had ruled earlier to be a committee of 7 be a committee of 9 chaired by the Hon. 1st Deputy Speaker.
3. The Committee is directed to consider the petitions and duly report to the House at the commencement of the Second Meeting.
4. In consultation with Leadership, the Committee is composed as follows
   1. Hon. Joseph Osei-Wusu – Chairperson
   2. Hon. Alexander Afenyo- Markin
   3. Hon. Joe Ghartey
   4. Hon. Patrick Yaw Boamah
   5. Hon. Samuel Atta- Akyea
   6. Hon. James Klutse Avedzi
   7. Hon. Cassiel Ato Forson
   8. Hon. Isaac Adongo
   9. Hon. Elizabeth Ofosu-Adjare (Mrs.)