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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S
RESERVATIONS ON THE PARLIAMENTARY SERVICE BILL, 2018

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 18 SEP 2019	DAY: WEDNESDAY
TABLED BY:	LEADER OF MAJORITY PARTY
CLERK-AT THE-TABLE:	Anne Shubuko

Chair, Justice & Legal Affairs Committee.

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

SEPTEMBER, 2019

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CHAIRPERSON'S FOREWARD

The Parliamentary Service Bill, 2018 was passed by the National Assembly on 4th July 2019. The Bill had earlier on been considered by the Departmental Committee on Justice and Legal Affairs. The Committee had recommended that the House pass the Bill, with certain amendments. Most of the Committee amendments were carried but some were rejected.

The Bill was thereafter presented to H.E the President for assent in accordance with the provisions of the Constitution and the Standing Orders. The President, in exercise of the powers conferred to him under Article 115(1)(b) of the Constitution, referred the Bill back to the National Assembly for reconsideration.

In the memorandum to the National Assembly dated 16th August, 2019, H.E the President expressed reservations on two clauses out of the fifth eight clauses in the Bill. The President expressed reservation to;

- (i) Clause 20- (Facilitation of activities held outside the precincts of Parliament)
- (ii) Clause 43- (Remuneration of staff)

At its sitting held on Wednesday, 18th September, 2019 the President's reservations were considered and the Committee resolved to accept the President's proposed amendments and recommends that the House amends the Bill in a manner that fully accommodates the President's reservations.

May I take this opportunity to express gratitude to Committee Members for their resilience and devotion to duty which made the consideration of the Bill successful. May I also appreciate the Speaker and Clerk of National Assembly for always providing guidance and direction to Committees in the discharge of their mandate. Finally, I commend the secretariat for exemplary performance in providing technical and logistical support to the Committee.

Hon. Speaker, it is now my pleasant duty and privilege to present and commend this report of the Departmental Committee on Justice and Legal Affairs, for consideration and approval by the House pursuant to Article 115 of the Constitution.

Hon. William Cheptumo, M.P.
Chairperson, Departmental Committee on Justice and Legal Affairs

EXECUTIVE SUMMARY

The Parliamentary Service Bill, 2018 was passed by the National Assembly on **Thursday, 4th July, 2019**. The Bill was for an Act of Parliament to make further provisions as regards the Parliamentary Service Commission and the Parliamentary Service as re-established under the Constitution of Kenya 2010; to repeal and replace the Parliamentary Service Act, 2000; and for connected purposes.

In line with the powers conferred by Article 115 of the Constitution, His Excellency the President expressed his reservation to assent to the Parliamentary Service Bill, 2018. Consequently, the Memorandum was sent to the National Assembly detailing the reasons for his reservations. Thereafter, the Speaker vide a communication dated **Tuesday, 10th September, 2019** conveyed the President's Memorandum on the Bill to the House and subsequently referred it to the Departmental Committee on Justice and Legal Affairs for consideration.

H.E the President expressed his reservations to the following clauses in the Bill and forwarded with recommendations as follows: -

- 1) Deletion of Clause 20 of the Bill on facilitation of activities held outside the precincts of Parliament.
- 2) Amendment of Clause 43 of the Bill on remuneration of the employees of Parliament be amended as follows-
 - (a) in sub-clause (1) by inserting the words "on the advice of the Salaries and Remuneration Commission" immediately after the words "shall be determined"
 - (b) in sub-clause (2) by deleting the words "every three years or within such shorter period" and inserting the words "on advice of the Salaries and Remuneration Commission" immediately after the word "determine".

At its sitting held on Wednesday, 18th September, 2019, the Committee considered the President's Memorandum and the deliberations formed the basis on which the Committee made its decisions.

The Committee having considered the President's Memorandum and recommendations therein adopts the President's proposed amendments to the Parliamentary Service Bill, 2018, with amendments that fully accommodate the President's reservations.

PART 1

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
 - (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - (b) Study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
 - (c) Study and review all legislation referred to it;
 - (d) Study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (e) Investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - (f) Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
 - (g) Examine treaties, agreements and conventions;
 - (h) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (i) Consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
 - (j) Examine any questions raised by Members on a matter within its mandate.

2. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
 - a. Constitutional affairs;
 - b. The administration of law and Justice
 - c. The Judiciary;

- d. Public prosecutions;
- e. Elections;
- f. Ethics, integrity and anti-corruption; and
- g. Human rights.

1.2 Committee Membership

3. The Committee was constituted on Thursday, 14th December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P. (**Chairperson**)
Baringo North Constituency
Jubilee Party

Hon. Alice Muthoni Wahome, M.P. (**Vice Chairperson**)
Kandara Constituency
Jubilee Party

Hon. John Olago Aluoch, M.P.
Kisumu West Constituency
FORD-Kenya

Hon. George Peter Kaluma, M.P.
Homa Bay Town Constituency
ODM-Party

Hon. Roselinda Soipan Tuyu, M.P.
Narok County
Jubilee Party

Hon. Charles Gimose, M.P.
Hamisi Constituency
FORD-Kenya

Hon. Johana Ng'eno, M.P.
Emurua Dikirr Constituency
KANU-Party

Hon. W. Kamoti Mwamkale, M.P.
Rabai Constituency
ODM-Party

Hon. Ben Orori Momanyi, M.P.
Borabu Constituency
WIPER-Party

Hon. Zuleikha Hassan, M.P.
Kwale County
ODM-Party

Hon. Jennifer Shamalla, M.P.
Nominated MP
Jubilee Party

Hon. Beatrice Adagala, M.P.
Vihiga County
ANC-Party

Hon. Gladys Boss Shollei, CBS, M.P.
UasinGishu County
Jubilee-Party

Hon. John Munene Wambugu, M.P.
Kirinyaga Central
Jubilee –Party

Hon. George GitongaMurugara, M.P.
Tharaka Constituency
Jubilee-Party

Hon. Anthony Githiaka Kiai, M.P.
Mukurueni Constituency
Jubilee-Party

Hon. John Kiaria Waweru, M.P.
Dagoretti South Constituency
Jubilee-Party

Hon. Japheth Mutai, M.P.
Bureti Constituency
Jubilee-Party

Hon. Adan Haji Yussuf, M.P.
Mandera West Constituency
Economic Freedom Party

1.3 Committee Secretariat

4. The Committee secretariat comprises the following staff-

Mr. Abenayo Wasike	-	Senior Clerk Assistant
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Halima Hussein	-	Clerk Assistant II
Ms. Fiona Musili	-	Research Officer II
Mr. Omar Abdirahim	-	Fiscal Analyst III
Ms. Roselyne Ndegi	-	Serjeant-at-Arms I
Mr. Richard Sang	-	Assistant Serjeant-at-Arms
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. Hakeem Kimiti	-	Audio Officer

5. Minutes of sittings of the Committee on the consideration of the President's reservations on the Parliamentary Service Bill, 2018 are attached to this report as annexure 1.

PART 2

2.0 CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE PARLIAMENTARY SERVICE BILL, 2018

6. The President's reservations principally relate to the two provisions in the Bill that seek to empower the Parliamentary Service Commission (PSC) to determine the travel and accommodation facilitation for Members of Parliament and the remuneration of the employees of the parliamentary service without explicit reference to the role of the Salaries and Remuneration Commission (SRC) in the process.

Mandate of the Salaries and Remuneration Commission

7. The SRC is established under Article 230(1) of the Constitution. The powers and functions of the SRC are stipulated in Article 230(4) as follows-
- (i) Set and regularly review the remuneration and benefits of all State officers; and
 - (ii) Advise the national and county governments on the remuneration and benefits of all other public officers.

Mandate of the Parliamentary Service Commission

8. The Parliamentary Service Commission is established under Article 127(1) of the Constitution. The powers and functions of the Commission are stipulated in Article 127(6) as follows-
- (i) Providing services and facilities to ensure the efficient and effective functioning of Parliament;
 - (ii) Constituting offices in the parliamentary service, and appointing and supervising office holders;
 - (iii) Preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service;
 - (iv) Undertaking, singly or jointly with other relevant organizations, programs to promote the ideals of parliamentary democracy; and
 - (v) performing other functions necessary for the well-being of the members and staff of Parliament or prescribed by national legislation
9. The Committee held meetings on **Tuesday 17th September, 2019 and on Wednesday 18th September 2019** to deliberate on the President's reservations to the Parliamentary Service Bill, 2018, as follows:-

10. The Committee noted that Clause 20 of the Bill as passed by the National Assembly provides as follows-

Facilitation of activities held outside the precincts of Parliament

20 (1) The Commission shall prescribe the minimum standard for travel and accommodation for Members and Staff of Parliament to facilitate performance of official duties outside and the precincts of Parliament

(2) The Commission shall regularly review the domestic and international travel allowances applicable for Members and Staff of Parliament.

11. President's reservation on Clause 20 of the Bill

The President expressed his reservation to the Clause in the following terms-

“Clause 20 of the Bill provides for the facilitation of activities held outside the precincts of Parliament by members and staff of Parliament. Sub-clause (2) provides that the Commission shall regularly review the domestic and international travel allowances applicable to the members and staff of Parliament. However, Sub-clause (2) does not take into account or make reference to the role of the Salaries and Remuneration Commission under Article 230(4) of the Constitution with respect to setting and regularly reviewing the remuneration and benefits of all state officers; and advising the national and county governments on the remuneration and benefits of all other public officers”

12. President's recommendation on Clause 20 of the Bill

The President recommended that Clause 20 of the Bill be deleted.

13. Committee observations

The Committee observed that the true purpose of Clause 20 of the Bill was to reiterate the mandate of the Parliamentary Service Commission under Article 127(6) of the Constitution to provide services and facilities to ensure the efficient and effective functioning of Parliament.

The provision is also in line with Article 73 (1)(iii) of the Constitution which provides that the authority assigned to a State Officer (or public officer) is a public trust to be exercised in a manner that ‘brings honour to the nation and dignity to the office.’

The Committee noted that the President's reservation to Clause 20 of the Bill treats facilities and services related to travel and accommodation for Members and staff of

Parliament while on official duty outside the precincts of Parliament as benefits to be determined by the Salaries and Remuneration Commission, which is not the case.

14. Committee recommendation

The Committee recommends that the House amends the Bill in light of the President's reservation by deleting Clause 20 of the Bill as recommended by the President.

15. Justification

The Committee noted that whilst there is need to recognize the mandate of the Salaries and Remuneration Commission under Article 230(4) of the Constitution; the mandate of other constitutional Commissions including that of the Parliamentary Service Commission must also be upheld. The deletion of Clause 20 of the Bill does not take away the responsibilities of the Parliamentary Service Commission as set out in Article 127(6) of the Constitution.

16. The Committee noted that Clause 43 of the Bill as passed by the National Assembly provides as follows-

Remuneration of staff

43 (1) The employees of the Commission shall be paid such remuneration and allowances as shall be determined by the Commission.

(2) The terms and conditions of employees of the Commission shall be reviewed every three years or within such shorter period as the Commission may determine.

17. President's reservation on Clause 43 of the Bill

The President expressed his reservation to the Clause in the following terms-

“Clause 43 provides for the remuneration of employees of the Commission. Sub-clause (1) provides that the Commission shall determine the remuneration and allowances of its employees while sub-clause (2) provides the review cycle of the remuneration and benefits of the Commission's employees. However, clause 43 does not take into account the advisory role of the Salaries and Remuneration (Commission) as set out in Article 230 (4) (of the Constitution) with respect to the determination or review of the remuneration of all other public officers.”

18. President's recommendation on Clause 43 of the Bill

The President has recommended that Clause 43 be amended as follows;

- (i) in sub-clause (1) by inserting the words “on the advice of the Salaries and Remuneration Commission” immediately after the words “shall be determined “
- (ii) in sub-clause (2) by deleting the words “every three years or within such shorter period” and inserting the words “on advice of the Salaries and Remuneration Commission” immediately after the word “determine”.

19. Committee observations

The Committee noted that Clause 43 of the Bill sought to empower the Parliamentary Service Commission to determine the remuneration and allowances of its employees, just like any other employer in the public or private sector. The provision also sought to incorporate best human resources practices in the parliamentary service by requiring the Parliamentary Service Commission to regularly review the terms and conditions of service of the employees of the Commission.

The Committee noted the President’s reservation that clause 43 does not take into account the advisory role of the Salaries and Remuneration Commission as set out in Article 230(4) of the Constitution with respect to the determination or review of the remuneration of all public officers.

The Committee also noted that the President had recommended that Clause 43 of the Bill be amended to make explicit reference to the advisory role of the Salaries and Remuneration Commission in the determination and review of the terms and conditions of service of the employees of the Parliamentary Service Commission.

20. Committee recommendations

The Committee recommends that that the House amends the Bill in light of the President’s reservation by deleting Clause 43 of the Bill.

21. Justifications

The Committee noted that the mandate of the Salaries and Remuneration Commission with respect to advising the national and county governments on the remuneration and benefits of all public officers is clearly set out in Article 230(4)(b) of the Constitution. As such, there is no need for further recital of the same in the Bill.

The Committee further noted that although the President had recommended that Clause 43 of the Bill be amended to make reference to the role of the Salaries and Remuneration Commission, the Committee resolved to recommend that the House expunges the entire offending Clause 43 from the Bill. The Committee was of the view that the amendment fully accommodates the President’s reservation which is intended to protect the mandate of the Salaries and Remuneration Commission.

The amendment is also consistent with the President's recommendation that Clause 20 of the Bill be deleted for failing to take into account the role of the Salaries and Remuneration Commission in the determination of the remuneration and benefits of state officers and public officers.


PART 3

3.0 COMMITTEE RECOMMENDATIONS

22. The Committee having considered the President's reservations to the Parliamentary Service Bill, 2018 and pursuant to Article 115 of the Constitution recommends to the House **that the President's reservations be adopted, with an amendment to the President's recommendation on Clause 43 of the Bill.**

Sign..........Date.....18.09.19.....

Hon. William Cheptumo, M.P.
Chairperson, Departmental Committee on Justice and Legal Affairs

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 18 SEP 2019	
DAY: Wed	
TABLED BY:	Chair, Committee on Justice & Legal Affairs
CLERK OF THE TABLE:	Lemmy Moss

ANNEXURE 1

**Minutes of Committee sittings on the consideration of
H.E the President's reservations on PSC Bill, 2018**

MINUTES OF THE ONE HUNDRED AND SIXTY FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY 17TH SEPTEMBER, 2019 AT 10.00 A.M. IN BOARDROOM ON SECOND FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS

PRESENT-

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. John Olago Aluoch, M.P.
3. Hon. Peter Opondo Kaluma, M.P.
4. Hon. William K. Mwarakale, M.P.
5. Hon. Japheth Mutai, M.P.
6. Hon. George G. Murugara, M.P.
7. Hon. Anthony G. Kiai, M.P.
8. Hon. Jennifer Shamalla, M.P.
9. Hon. Beatrice Adagala, M.P.
10. Hon. John M. Wambugu, M.P.

ABSENT WITH APOLOGIES-

1. Hon. Alice Muthoni Wahome, M.P. - **Vice Chairperson**
2. Hon. Roselinda Soipan Tuya, M.P.
3. Hon. Ben Momanyi, M.P.
4. Hon. Charles Gimose, M.P.
5. Hon. Zuleikha Hassan, M.P.
6. Hon. Adan Haji Yussuf, M.P.
7. Hon. Gladys Boss Shollei, CBS, M.P.
8. Hon. Johana Ng'eno, M.P.
9. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. Denis Abisai - Principal Legal Counsel I
2. Ms. Halima Hussein - Second Clerk Assistant
3. Mr. Omar Abdirahim - Fiscal Analyst III
4. Ms. Roselyn Njuki - Serjeant-at-Arms
5. Mr. Simon Maina - Support staff

MIN No. 662/2019:-

PRELIMINARIES

The meeting commenced at 10.00 a.m. with a word of prayer from the chairperson.

MIN No. 663/2019:-

**CONFIRMATION OF MINUTES OF
PREVIOUS SITTINGS**

Confirmation of minutes of previous Sittings was deferred.

MIN No. 664/2019

**CONSIDERATION OF THE PRESIDENTIAL
RESERVATIONS ON THE PARLIAMENTARY
SERVICE BILL, 2018**

Mr. Denis Abisai, Principal Legal Counsel I briefed the Committee as follows; THAT

- 1) The Parliamentary Service Bill, 2018 was passed by the National Assembly on 4th July 2019 and was thereafter presented to H.E the President for assent in accordance with the provisions of the Constitution and the Standing Orders. The President, in exercise of the powers conferred to him under Article 115(1) (b) of the Constitution, referred the Bill back to the National Assembly and expressed his reservations on the following two clauses out of the fifty eight clauses in the Bill.
 - (i) Clause 20- (Facilitation of activities held outside the precincts of Parliament)
 - (ii) Clause 43- (Remuneration of staff)
- 2) The President has expressed his reservation to the two clauses as they do not take into account or make reference to the role of the Salaries and Remuneration Commission under Article 230(4) of the Constitution with respect to setting and regularly reviewing the remuneration and benefits of all state officers; and advising the national and county governments on the remuneration and benefits of all other public officers”

The Committee observed as follows; THAT

- 1) The true purpose of Clause 20 of the Bill was to further clarify the mandate of the Parliamentary Service Commission under Article 127(6) of the Constitution to provide services and facilities to ensure the efficient and effective functioning of Parliament.
- 2) Clause 43 of the Bill sought to empower the Parliamentary Service Commission to determine the remuneration and allowances of its employees, just like other independent Commission and to incorporate best human resources practices in the Parliamentary Service by requiring the Parliamentary Service Commission to regularly review the terms and conditions of service of employees of the Commission.

The Committee recommended as follows; THAT

- 1) The House amends the Bill in light of the President’s reservation by deleting Clause 20 of the Bill.
- 2) The House amends the Bill in light of the President’s reservation by deleting Clause 43 of the Bill.

MIN No. 665/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at 11:40am until, Wednesday, 18th September, 2019 at ten o'clock in the morning at a venue to be advised.

Signed. 
Chairperson

Date. 18.09.19

MIN No. 667/2019:-

**CONFIRMATION OF MINUTES OF
PREVIOUS SITTINGS**

Confirmation of minutes of previous Sittings was deferred.

MIN No. 668/2019

**CONSIDERATION AND ADOPTION THE
DRAFT REPORT OF THE PRESIDENTIAL
RESERVATIONS ON THE
PARLIAMENTARY SERVICE BILL, 2018**

The Committee considered and unanimously adopted its draft report on Presidential reservation on the Parliamentary Service Bill, 2018. The adoption was proposed by Hon. Adan Haji Yussuf and seconded by Hon. George Murugara.

MIN No. 669/2019:-

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at 11:30am until, Thursday 19th September, 2019 at ten o'clock in the morning at a venue to be advised.

Signed.....



Chairperson

Date.....

18.09.19

MINUTES OF THE ONE HUNDRED AND SIXTY FIFTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY 18TH SEPTEMBER, 2019 AT 10.17 A.M. IN COMMITTEE ROOM 12, NEW WING, MAIN PARLIAMENT BUILDINGS

PRESENT-

1. Hon. William Cheptumo, M.P. - **Chairperson**
2. Hon. John Olago Aluoch, M.P.
3. Hon. Peter Opondo Kaluma, M.P.
4. Hon. William K. Mwamkale, M.P.
5. Hon. George G. Murugara, M.P.
6. Hon. Anthony G. Kiai, M.P.
7. Hon. Jennifer Shamalla, M.P.
8. Hon. Beatrice Adagala, M.P.
9. Hon. John M. Wambugu, M.P.
10. Hon. Adan Haji Yussuf, M.P.

ABSENT WITH APOLOGIES-

1. Hon. Alice Muthoni Wahome, M.P. - **Vice Chairperson**
2. Hon. Roselinda Soipan Tuya, M.P.
3. Hon. Ben Momanyi, M.P.
4. Hon. Charles Gimose, M.P.
5. Hon. Zuleikha Hassan, M.P.
6. Hon. Gladys Boss Shollei, CBS, M.P.
7. Hon. Johana Ng'eno, M.P.
8. Hon. John Kiarie Waweru, M.P.
9. Hon. Japheth Mutai, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT-

1. Mr. Denis Abisai - Principal Legal Counsel I
2. Ms. Halima Hussein - Second Clerk Assistant
3. Ms. Fiona Musili - Research Officer II
4. Mr. Omar Abdirahim - Fiscal Analyst III
5. Mr. Simon Maina - Support staff

MIN No. 666/2019:-

PRELIMINARIES

The meeting commenced at 10.17 a.m. with a word of prayer from the chairperson

ANNEXURE 2


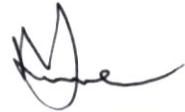


Adoption list


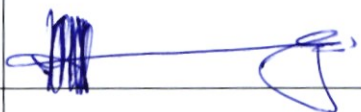




DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

**ADOPTION LIST FOR THE REPORT ON THE CONSIDERATION OF
THE PRESIDENT'S RESERVATIONS ON THE PARLIAMENTARY
SERVICE BILL, 2018**

DATE: WEDNESDAY 18TH SEPTEMBER, 2019

**VENUE: COMMITTEE ROOM 12, NEW WING, MAIN PARLIAMENT
BUILDINGS**

NO.	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. - Chairperson	
2.	Hon. Alice Wahome, MP. - Vice Chairperson	
3.	Hon. John Olago Aluoch, MP.	
4.	Hon. Roselinda Soipan Tuya, MP.	
5.	Hon. Ben Momanyi, MP.	
6.	Hon. William Kamoti, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Zuleikha Hassan, MP.	
9.	Hon. Johana Ngeno Kipyegon, MP.	

10.	Hon. Charles Gimose, MP.	
11.	Hon. John Kiarie Waweru, MP.	
12.	Hon. George Gitonga Murugara, MP.	
13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	
16.	Hon. Jennifer Shamalla, MP.	
17.	Hon. Beatrice Adagala, MP.	
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	

ANNEXURE 3

**Copy of the Presidential memorandum on PSC Bill,
2018**



REPUBLIC OF KENYA

TWELFTH PARLIAMENT (THIRD SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE PRESIDENT

_____ (No. 12 of 2019) _____

**REFERRAL BY H.E. THE PRESIDENT OF THE PARLIAMENTARY
SERVICE BILL, 2018**

Honourable Members, You may recall that on 4th July, 2019, the National Assembly passed the Parliamentary Service Bill (National Assembly Bill No. 06 of 2018). The Bill sought to make further provisions as regards the Parliamentary Service Commission and the Parliamentary Service as re-established under the Constitution of Kenya 2010 and to repeal the Parliamentary Service Act, 2000.

Thereafter, the Bill was presented for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, in exercise of the powers under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum dated 16th August, 2019 has since referred the Bill back to the National Assembly for reconsideration.

In his Memorandum, H.E. the President has expressed reservations on—

- a) Clause 20 of the Bill regarding the facilitation of activities held outside the precincts of Parliament by members and staff of Parliament; and
- b) Clause 43 of the Bill on the remuneration of employees of the Commission.

Consequently, the President recommends amendments to the said Clauses and the Bill.

Honourable Members, Standing Order 154(2) requires the House to consider the President's Reservations within twenty one (21) days upon receipt of the Memorandum. In this regard, the Reservations of the President, as contained in his Memorandum, now stand committed to the Departmental Committee on Justice and Legal Affairs for consideration, which should table its report soonest to allow the House to consider the President's Reservations within the said timeline.

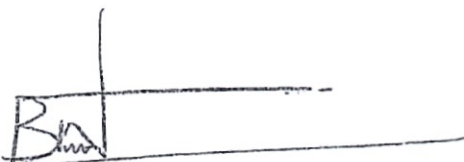
Honourable Members, May I, at this point, remind the House of the *Speaker's Communication* delivered on 28th July, 2015 concerning the consideration of President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of **fully accommodating** the President's reservations is a simple majority as contemplated under Article 122(1), as read together with Article 115(2)(a) of the Constitution.

On the other hand, an amendment that **does not fully accommodate** the President's reservations, or indeed one that has the effect of total override of the President's reservations, including negating his proposed text would require a **two-thirds voting** threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution.

I wish to further reiterate that only the specific section of the Bill that have reservations ought to be considered.

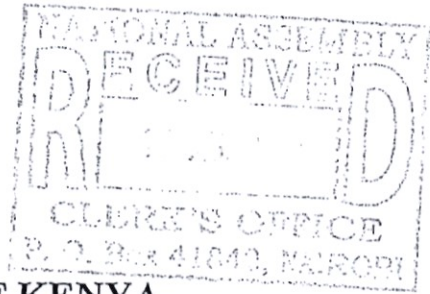
I direct the Clerk to now circulate the Memorandum from H.E. the President to all Members so that you familiarize yourselves with its contents.

I Thank you!

A handwritten signature in black ink, appearing to read 'Justin B.N. Muturi', is written over a horizontal line. A vertical line extends upwards from the start of the signature, and another vertical line extends downwards from the end of the signature, forming a partial frame.

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

Tuesday, 10th September, 2019



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE PARLIAMENTARY SERVICE BILL, 2019

MEMORANDUM

By His Excellency the Honourable Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces.

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled “An Act of Parliament to make further provisions as regards the Parliamentary Service Commission and the Parliamentary Service as re-established under the Constitution of Kenya 2010; to repeal the Parliamentary Service Act, 2000 and for connected purposes”, the short title of which is “The Parliamentary Service Bill, 2019” was passed by the National Assembly on the 4th July, 2019;

AND WHEREAS the Parliamentary Service Bill, 2019, was presented to me for assent in accordance

with the provisions of the Constitution, on the 13th August, 2019;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refuse to assent to the Parliamentary Service Bill, 2019, for the reasons set out hereunder:

CLAUSE 20

Clause 20 of the Bill provides for the facilitation of activities held outside the precincts of Parliament by members and staff of Parliament. Subclause (2) provides that the Commission shall regularly review the domestic and international travel allowances applicable to the members and staff of Parliament. However, subclause (2) does not take into account or make reference to the role of the Salaries and Remuneration Commission under Article 230 (4) of the Constitution with respect to setting and regularly reviewing the remuneration and benefits of all State officers; and advising the national and county governments on the remuneration and benefits of all other public officers.

RECOMMENDATION:

In view of the foregoing, I recommend that clause 20 of the Bill be deleted.

CLAUSE 43

Clause 43 provides for the remuneration of employees of the Commission. Subclause (1) provides that the Commission shall determine the remuneration and allowances of its employees while subclause (2) provides the review cycle of the remuneration and benefits of the Commission's employees. However, clause 43 does not take into account the advisory role of the Salaries and Remuneration as set out in Article 234 (4) with respect to the determination or review of the remuneration of all other public officers.

RECOMMENDATION

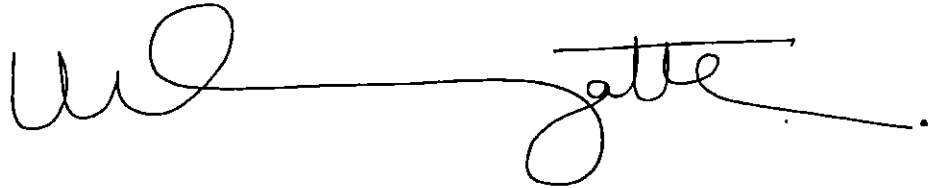
In view of the foregoing, I recommend that clause 43 be amended—

- (a) in subclause (1) by inserting the words “on the advice of the Salaries and Remuneration

Commission” immediately after the words “shall be determined”; and

- (b) in subclause (2) by deleting the words “every three years or within such shorter period” and inserting the words “on the advice of the Salaries and Remuneration Commission” immediately after the word “determine”.

Dated the16th August....., 2019.

A handwritten signature in black ink, appearing to read 'Uhuru Kenyatta', written in a cursive style. The signature is positioned above the printed name and title.

**UHURU KENYATTA,
President.**