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23/9/2020

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE
PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.
45 OF 2019)

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 Sep 2020	Day: Thursday MORN (2ND SITTING)
TABLED	Hon. Gladys Wanga Chairperson
CLERK AT THE TABLE:	A. Musandu

SEPTEMBER, 2020

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CHAIRPERSON'S FORWARD

This report contains the deliberations of the Departmental Committee on Finance and National Planning during its consideration of His Excellency the President's Reservation on the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019).

The Bill was passed by the National Assembly on **Wednesday, 5th August, 2020**. The Bill was seeking to amend the Parliamentary Pensions Act (Cap. 196) in order to raise the amount of pension due to former Members of Parliament who served between 1st July, 1984 and 1st January, 2001 to a minimum sum of Kenya Shillings one hundred thousand.

In line with the powers conferred by Article 115 of the Constitution, H.E. the President expressed his reservation to assent to the Parliamentary Pensions (Amendment) Bill, 2019. Consequently, the Memorandum was sent to the National Assembly on **7th September, 2020** detailing the reasons for his reservations. Thereafter, the Speaker vide his **Communication No. 07 of 2020** dated **10th September, 2020** conveyed the Message containing the President's Memorandum on the Bill. The Memorandum was subsequently referred to the Committee for consideration and reporting to the House pursuant to the provisions of Standing Order 154(2) which requires the House to consider the President's Reservation within twenty (21) days upon receipt of the Memorandum.

In line with the Speakers Communication, the Committee proceeded to consider the President's Memorandum in a meeting held on Tuesday, 22nd September, 2020. The deliberations formed the basis on which the committee made its decision.

The Committee thanks the Offices of the Speaker and the Clerk of the National Assembly for the technical support extended to it in the process of considering the President's reservations to the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 of 2019). In addition, I thank Members of the Committee and the secretariat for their sacrifice and commitment in considering the President's reservations to the Bill.

Hon. Speaker, the Committee having considered the President's Memorandum and recommendations therein **DOES NOT AGREE** with the President's Reservations to the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 of 2019).

Hon. Gladys Wanga, CBS, MP

Chairperson, Departmental Committee on Finance and National Planning

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - iii. **To study and review all the legislation referred to it;**
 - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
 - vii. To examine treaties, agreements and conventions;
 - viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - x. To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments;
 - a. National Treasury and Planning
 - b. Ministry of Devolution
 - c. Commission on Revenue Allocation
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was reconstituted by the House in on Wednesday, 15th July, 2020 and comprises of the following Members:-

Hon. Gladys Wanga, CBS, MP (**Chairperson**)
MP for Homabay County
ODM Party

Hon. Isaac W. Ndirangu (**Vice-Chairperson**)
MP for Roysambu Constituency
Jubilee Party

Hon. Jimmy O. Angwenyi, MGH, MP
MP for Kitutu Chache North Constituency
Jubilee Party

Hon. Joshua Chepyegon Kandie, MP
MP for Baringo Central Constituency
MCC Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency
ODM Party

Hon. Stanley Muiruri Muthama, MP
MP for Lamu West Constituency
Jubilee Party

Hon. Shakeel Shabbir Ahmed, CBS, MP
MP for Kisumu Town East Constituency
Independent Member

Hon. Edith Nyenze, MP
MP for Kitui West Constituency
WDM-K

Hon. Daniel Epuyo Nanok, MP
MP for Turkana West Constituency
Jubilee Party

Hon. Catherine Waruguru, MP
MP for Laikipia County
Jubilee Party

Hon. (Dr.) Christine Ombaka, MP
MP for Siaya County
ODM Party

Hon. James Gichuhi Mwangi, MP
MP for Tetu Constituency
Jubilee Party

Hon. Andrew Adipo Okuome, MP
MP for Karachuonyo Constituency
ODM Party

Hon. (Prof.) Mohamud S. Mohamed, MP
MP for wajir South Constituency
Jubilee Party

Hon. David Mwalika Mboni, MP
MP for Kitui Rural Constituency
CCU Party

Hon. Peter Lochakapong, MP
MP for Sigor Constituency
Jubilee Party

Hon. Francis Kuria Kimani, MP
MP for Molo Constituency
Jubilee Party

Hon. Qalicha Gufu Wario, MP
MP for Moyale Constituency
Jubilee Party

Hon. Joseph Maero Oyula, MP
MP Butula Constituency
ODM Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Secretariat:-

Ms. Leah W. Mwaura
Senior Clerk Assistant/Head of the Secretariat

Ms. Jennifer Ndeto
Principal Legal Counsel 1

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Joseph Okong'o
Senior Media Relations Officer

Mr. Josephat Motonu
Fiscal Analyst I

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Euridice Nzioka
Audio Officer

Mr. Vitalis Augo
Office Assistant

2 THE PRESIDENT'S RESERVATIONS TO THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2019)

6. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019) was passed by the National Assembly on **Wednesday, 5th August, 2020**. The Bill was seeking to amend the Parliamentary Pensions Act (Cap. 196) in order to raise the amount of pension due to former Members of Parliament who served between 1st July, 1984 and 1st January, 2001 to a minimum sum of Kenya Shillings one hundred thousand.
7. In line with the powers conferred by Article 115 of the Constitution, H.E. the President expressed his reservation to assent to the Parliamentary Pensions (Amendment) Bill, 2019. Consequently, the Memorandum was sent to the National Assembly on **7th September, 2020** detailing the reasons for his reservations. Thereafter, the Speaker vide a communication dated **10th September, 2020** conveyed the President's Memorandum on the Bill and subsequently referred it to the Departmental Committee on Finance and National Planning for consideration.

2.1 PRESIDENT'S RESERVATION

Through his Memorandum dated 7th September, 2020, His Excellency the President submitted that:-

8. In exercise of powers conferred to him under Article 115(1)(b) of the Constitution, he declined to assent to the Parliamentary Pensions (Amendment) Bill, 2019 because of clause 2 of the Bill. The Bill was seeking to amend section 8 of the Parliamentary Pensions Act (Cap. 196) to provide for an entitlement for former Members of Parliament who served between 1st July, 1984 and 1st January, 2001 to a monthly pension of one hundred thousand shillings.

2.2 REASONS FOR REFUSAL TO ASSENT

H.E. the President refused to assent to the Bill because of the following reasons:-

9. Members pensions under the Act are calculated according to the contributions paid into the Scheme during their parliamentary term. The proposed amendment fails to provide for such calculation and makes no reference to the Members' contributions;
10. The Bill overlooks the mandate of the Salaries and Remuneration Commission under the Constitution, which comprises, among other things, the setting and review of remuneration and benefits for all state officers who include Members of Parliament; and,
11. The proposed pension payment will result in an annual cost implication of about four hundred and forty-four (444) million shillings. Added to this, will be the almost certain demand for similar upward review of pension benefits by other retired state and public officers, which is within their rights to demand. The resultant ripple effect is unaffordable and fiscally unsustainable.
12. It is for the above reasons that H.E. the President recommended deletion of clause 2 of the Bill, which as a matter of fact, is the primary content of the Bill.

3 CONSIDERATION OF THE PRESIDENT’S MEMORANDUM ON THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 45 OF 2019)

13. The Committee held a meeting on **Tuesday, 22nd September, 2020** to deliberate on the President’s reservations to the Parliamentary Pensions (Amendment) Bill, 2019. In considering the Memorandum, the Committee noted that the President’s reasons for refusal to assent to the Bill were valid but do not take the following into consideration:-

- i. inflation and high cost of living in the country which makes it impossible for the former Members of Parliament to survive on the pensions that they are earning currently; and
- ii. difficulties that former Members of Parliament go through after their service in terms of employability unlike other government employees.

4 COMMITTEE RECOMMENDATION

14. The Committee having considered the President’s Reservations to the Parliamentary Pensions (Amendment) Bill, 2019 recommends that the House agrees with its decision to **REJECT** the President’s Memorandum and the recommendation to delete Clause 2 of the Bill.

SIGNED.......... DATE.....23/9/2020.....

HON. GLADYS WANGA, CBS, MP

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING

ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE
PRESIDENT'S MEMORANDUM ON THE PARLIAMENTARY PENSIONS (AMENDMENT)
BILL (N.A. BILL NO. 45 OF 2019)

DATE: 22ND SEPTEMBER, 2020

NAME	SIGNATURE
1. HON. GLADYS WANGA, CBS, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU, MP – VICE-CHAIRPERSON	
3. HON. JIMMY N. O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
6. HON. DANIEL E. NANOK, MP	
7. HON. (DR.) CHRISTINE OMBAKA, MP	
8. HON. ANDREW A. OKUOME, MP	
9. HON. DAVID M. MBONI, MP	
10. HON. FRANCIS KURIA KIMANI, MP	
11. HON. JOSEPH M. OYULA, MP	
12. HON. JOSHUA KANDIE, MP	
13. HON. STANLEY M. MUTHAMA, MP	
14. HON. EDITH NYENZE, MP	
15. HON. CATHERINE WARUGURU, MP	
16. HON. JAMES GICHUHI MWANGI, MP	
17. HON. (PROF.) MOHAMUD SHEIKH MOHAMED, MP	
18. HON. PETER LOCHAKAPONG, MP	
19. HON. QALICHA GUFU WARIO, MP	

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING ON TUESDAY, 22ND SEPTEMBER, 2020 AT 10.00 AM

PRESENT

1. Hon. Gladys Wanga, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. (Dr.) Christine Ombaka, MP
8. Hon. David M. Mboni, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Edith Nyenze, MP
12. Hon. Catherine Waruguru, MP
13. Hon. James Gichuhi Mwangi, MP
14. Hon. Peter Lochakapong, MP

ABSENT WITH APOLOGY

1. Hon. Andrew A. Okuome, MP
2. Hon. Francis K. Kimani, MP
3. Hon. Stanley M. Muthama, MP
4. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
5. Hon. Qalicha Gufu Wario, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. John Njoro - Serjeant-At-Arms
5. Ms. Euridice Nzioka - Audio Officer
6. Mr. Vitalis Augo - Office Assistant

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Consideration the President's Memorandum on the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 of 2019)**
6. **Consideration of further amendments to the Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019)**
7. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/230: COMMUNICATION FROM CHAIRPERSON

The meeting was called to order at 10.23 a.m. and a prayer was said. The Chairperson then invited the Legal Counsel to brief the Committee about the President's Memorandum on the Parliamentary Pensions (Amendment) Bill, 2019.

MIN.NO.NA/F&NP/2020/231: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/232: CONSIDERATION OF THE PRESIDENT'S MEMORANDUM ON THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (N.A. BILL NO. 45 OF 2020)

The Committee was taken through H.E. the President's Reservations to the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 Of 2019). The Committee was informed that H.E the President had declined to assent to the Bill because of the following reasons:-

1. Members pensions under the Act are calculated according to the contributions paid into the Scheme during their parliamentary term. The proposed amendment fails to provide for such calculation and makes no reference to the Members' contributions;
2. The Bill overlooks the mandate of the Salaries and Remuneration Commission under the Constitution, which comprises, among other things, the setting and review of remuneration and benefits for all state officers who include Members of Parliament; and,
3. The proposed pension payment will result in an annual cost implication of about four hundred and forty-four (444) million shillings. Added to this, will be the almost certain demand for similar upward review of pension benefits by other retired state and public officers, which is within their rights to demand. The resultant ripple effect is unaffordable and fiscally unsustainable.

Members deliberated extensively on the Memorandum and resolved to agree with the President's Reservations because it failed to take into account of the following factors:-

1. inflation and high cost of living in the country which makes it impossible for the former Members of Parliament to survive on the pensions that they are earning currently; and
2. difficulties that former Members of Parliament experience after their service in terms of securing employment unlike other government employees.

The Committee adopted the report on the consideration of the President's Memorandum on the Parliamentary Pensions (Amendment) Bill (N.A. Bill No. 45 of 2019) having been proposed and seconded by Hon. Jimmy Angwenyi, MGH, MP and Hon. Edith Nyenze, MP respectively.

MIN.NO.NA/F&NP/2020/233: CONSIDERATION OF FURTHER AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL (SENATE BILL NO. 3 OF 2019)

The Chairperson informed the Committee that additional amendments to the Public Finance Management (Amendment) Bill (Senate Bill No. 3 of 2019) had been forwarded to the Committee for consideration. The amendments proposed that clause 2 of the Bill should be amended in order to provide for funding of functions transferred between the National and county governments.

The Committee deliberated on the Petition and directed the Committee Secretariat to draft the amendments as proposed in the Petition so that they are part of the Committee's amendments which will be considered in the Committee of the Whole House.

MIN.NO.NA/F&NP/2020/234: ANY OTHER BUSINESS

The Chairperson informed Members that they will be picked by Kenya Revenue Authority buses at 8.30 a.m. for the site visits at Kenya Revenue Authority (KRA) Offices, Times Tower; Jomo Kenyatta International Airport (JKIA); and Inland Container Depot (ICD) scheduled to take place the following day.

MIN.NO.NA/F&NP/2020/235: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 11.26 a.m. The next meeting will be held on Tuesday, 29th September, 2020 at 10.00 am.

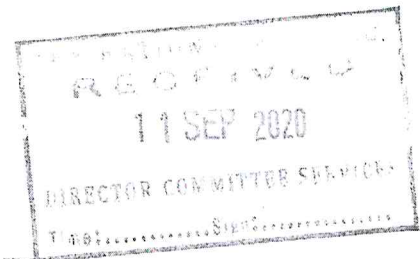
**HON. GLADYS WANGA, CBS, MP
(CHAIRPERSON)**

SIGNED.....



.....DATE.....

23/9/2020



REPUBLIC OF KENYA

TWELFTH PARLIAMENT (FOURTH SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE PRESIDENT

(No. 07 of 2020)

**REFERRAL BY H.E. THE PRESIDENT OF THE PARLIAMENTARY
PENSIONS (AMENDMENT) BILL, 2019**

Honourable Members,

You may recall that on 5th August, 2020, the National Assembly passed the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019). The Bill was sponsored by the Leader of the Minority Party, the Hon. John Mbadi, MP. Following its passage, I did present the Bill 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 conferred under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum dated 7th September, 2020, has since referred the Bill back to the National Assembly for reconsideration.

Honourable Members, in his Memorandum, H.E. the President has expressed reservations on Clause 2 of the Bill which sought to amend section 8 of the Parliamentary Pensions Act (Cap. 196) to provide for an entitlement for former Members of Parliament who served between 1st July, 1984 and 1st January, 2001 to a monthly pension of one hundred thousand shillings.

Amongst the reasons for his reservations, H.E. the President notes the following-

- (i) Members' pensions under the Act are calculated according to the contributions paid into the Scheme during their parliamentary term. The proposed amendment fails to provide for such calculation, and makes no reference to the Members' contributions;
- (ii) The Bill overlooks the mandate of the Salaries and Remuneration Commission under the Constitution, which comprises, among other things, the setting and review of remuneration and benefits for all State officers, who include Members of Parliament; and,
- (iii) The proposed pension payment will result in an annual cost implication of about four hundred and forty-four million shillings. Added to this, will be the almost certain demand for similar upward review of pension benefits by other retired State and public officers, which is within their rights to demand. The resultant ripple effect is unaffordable and fiscally unsustainable.

Consequently, H.E. the President recommends deletion of the said Clause of the Bill, which as a matter of fact, is the primary content of the Bill.

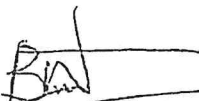
Honourable Members, Standing Order 154(2) requires the House to consider the President's Reservations **within twenty one (21) days** upon receipt of the Memorandum. In this regard, the Reservations of the President, as contained in his Memorandum, now stand committed to the Departmental Committee on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

Honourable Members, may I, at this point, remind the House of the *Speaker's Communication* of July 28, 2015 concerning the consideration of the 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) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that **does not fully accommodate** the President's reservations, or indeed one that has the effect of a 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.

Honourable Members, I therefore direct the Clerk to circulate the memorandum from H.E. the President to all Members so that they familiarize themselves with its contents.

I thank you!



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

Thursday, September 10, 2020



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL, 2020

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 "A Bill for An Act of
Parliament to amend the Parliamentary Pensions Act",
the short title of which is "The Parliamentary Pensions
(Amendment) Bill, 2020" was passed by the National
Assembly on the 5th August, 2020;

AND WHEREAS the Parliamentary Pensions
(Amendment) Bill, 2020, was presented to me for
assent in accordance with the provisions of the
Constitution, on the 4th September, 2020;



NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refer back the Parliamentary Pensions (Amendment) Bill, 2020, for reconsideration by the National Assembly for the reasons set out hereunder:

CLAUSE 2

Clause 2 of the Bill seeks to amend section 8 of the Act by inserting the following new subsection—

(3) Notwithstanding subsection (2), a former Member of Parliament who, having served in Parliament between 1st July, 1984 and 1st January, 2001 and is entitled to pension under this section and whose monthly pension amounts to less than one hundred thousand shillings shall be entitled to a monthly pension of one hundred thousand shillings.



Members' pensions under the Act are calculated according to the contributions paid into the Scheme during their parliamentary term. The proposed amendment does not provide for such calculation, and makes no reference to the Members' contributions. It is therefore, not clear as to the source of the additional monthly payment.

In addition, the Bill overlooks the mandate of the Salaries and Remuneration Commission under the Constitution, which comprises, among other things, the setting and review of remuneration and benefits for all State officers, who include Members of Parliament.

The proposed pension payment will result in an annual cost implication of four hundred and forty-four million shillings. Added to this will be the almost certain demand for similar upward review of pension benefits by other retired State and public officers, which is within their rights to demand. The resultant ripple effect is unaffordable and fiscally unsustainable.



RECOMMENDATION:

For the foregoing reasons, I recommend that clause 2 of the Bill be deleted.

Dated the 7th of September, 2020.

A handwritten signature in black ink, appearing to read 'Uhuru Kenyatta', written in a cursive style.

**UHURU KENYATTA,
President.**

