

Approved for tabling.

Bat SNA
27/6/19

REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON
THE CONSIDERATION OF H.E. THE PRESIDENT'S RESERVATIONS ON
THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL
(NATIONAL ASSEMBLY BILL NO. 21 OF 2019)

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 JUN 2019	DAY: Thursday
BY: Hta. Peris Tobiko Member, Transport Committee	
CLERK AT THE TABLE: Lemuno Mosey	JUNE 2019

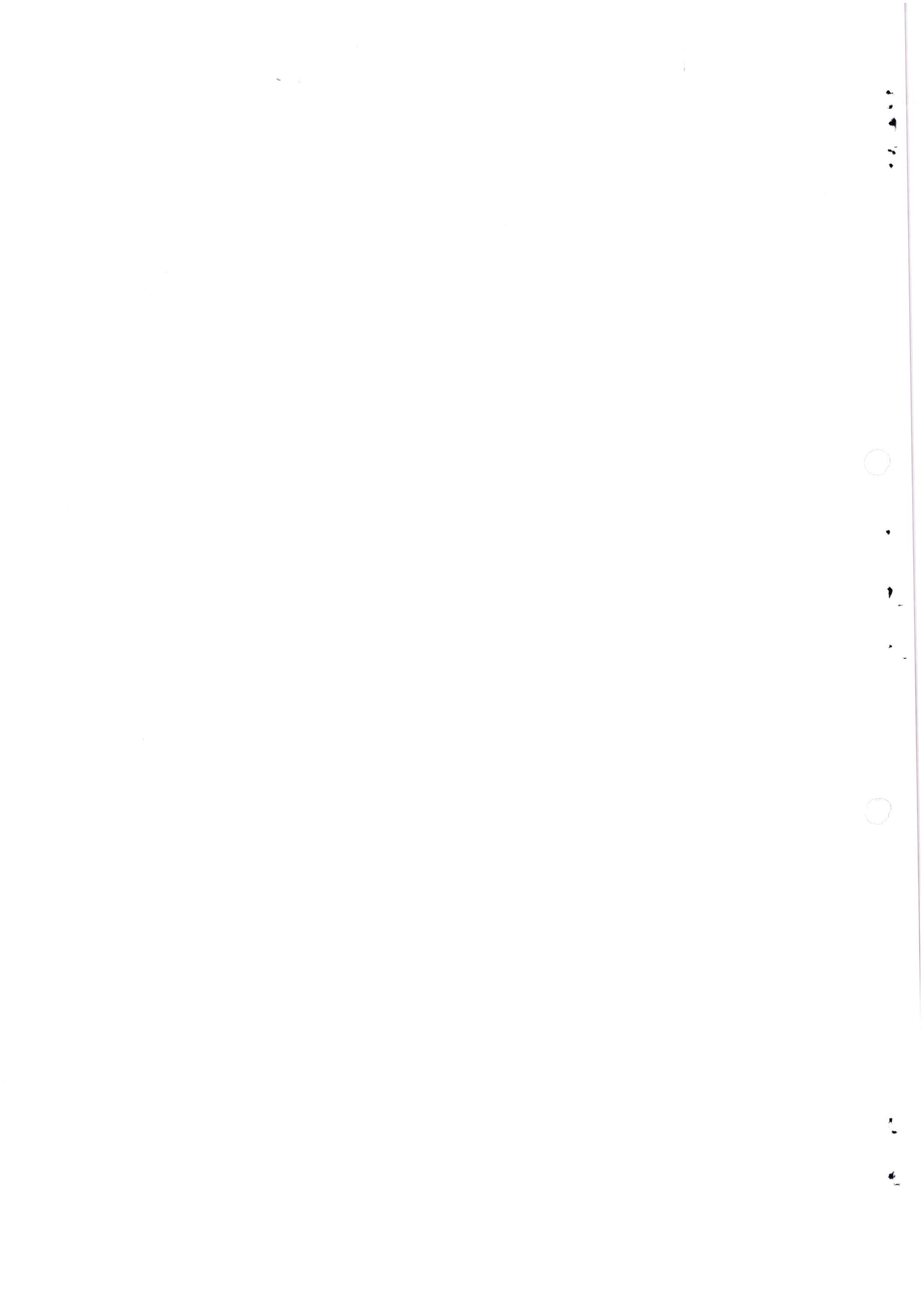


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CHAIRPERSON'S FOREWARD

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) was passed by the National Assembly on Thursday, 13th June 2019. Vide a Presidential Memorandum dated 18th June 2019 and in accordance with Article 115(1) (b), H.E the President referred the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) back to Parliament for reconsideration. The President's reservations were subsequently submitted to the Committee on 20th June 2019 for consideration in line with the provisions of the Constitution and the Standing Orders.

The Committee thanks the Office of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the process of considering the President's reservations to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019).

The Chairperson further thanks all the Members of the Committee and the secretariat for their sacrifice and commitment in considering the President's reservations to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019).

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

HON. DAVID PKOSING, CBS, MP

(CHAIRPERSON)

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Transport, Public Works and Housing is one of the fifteen Departmental Committees of the National Assembly established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is as follows:

- i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of 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 matters relating to the following subjects:-

- a) Transport;
- b) Roads;
- c) Public works;

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- d) Construction and maintenance of roads, rails and buildings;
 - e) Air and seaports; and
 - f) Housing.
3. In executing its mandate, the Committee oversees the following State departments;
- a) The State Department of Transport;
 - b) The State Department of Infrastructure;
 - c) The State Department of Housing and Urban Development;
 - d) The State Department of Public Works; and
 - e) The State Department of Shipping and Maritime Affairs.

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Transport, Public Works and Housing was constituted by the House in December, 2017 and comprises of the following Members:-

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Ol Kalou
13.	Hon. Johnson Many Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central

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| 18. | Hon. Savula Ayub Angatia | ANC | Lugari |
| 19. | Hon. Vincent Kemosi Mogaka | Ford K | West Mugirango |

1.4 COMMITTEE SECRETARIAT

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

- | | | |
|----|--------------------------|--------------------------------|
| 1. | Ms. Chelagat Tungo Aaron | Clerk Assistant I |
| 2. | Mr. Ahmed Salim Abdalla | Clerk Assistant III |
| 3. | Ms. Mercy Wanyonyi | Legal Counsel I |
| 4. | Mr. James Muguna | Research Officer III |
| 5. | Mr. Abdinasir Moge Yusuf | Fiscal Analyst I |
| 6. | Ms. Zainabu Wario | Sergeant at Arms |
| 7. | Ms. Noelle Chelangat | Media Relations Officer |
| 8. | Mr. Collins Mahamba | Audio Officer |

2 PRESIDENT’S RESERVATIONS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2019

6. The National Assembly passed the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) in June 13, 2019 and thereafter, the Bill was presented for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders.
7. However, in exercise of the powers under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum dated June 18, 2019, referred the said Bill back to the National Assembly for reconsideration.
8. Consequently, the Speaker vide a communication dated Thursday, 20th June, 2019 conveyed the President’s Memorandum on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019).
9. In his communication, the Hon. Speaker explained that whereas Standing Order 154 requires the National Assembly to consider the President’s reservations within 21 days, the Departmental Committee on Transport, Public Works and Housing to which the Bill was committed for consideration should prioritize the matter and table its report by Thursday, June 27, 2019, to enable the House conclude with the Bill in good time, ahead of the short July recess. The Speaker further encouraged Members of the National Assembly wishing to give their views and comments to appear before the Committee during the period of reconsideration by the Committee. In this regard, the Committee did not receive any views or comments from other Members of the National Assembly.
10. In his Memorandum, H.E. the President expressed reservations on the provisions relating to the Merchant Shipping Act, 2009 as passed by the House. In his reservations, the President is agreeable with the principle of the Committee and the House regarding limiting the powers of the Cabinet Secretary and specificity of the exemption hence the deletion of the new section 4A. However, the President had reservations on the amendment to section 16 with the limitation on “whole ownership”. The President was of the view that this restriction will disadvantage the Kenya National Shipping Line whose majority shareholding is held by the Government, through the Kenya Ports Authority.

11. H.E the President therefore proposed to delete the proposed new subsection 16(1A) as passed and to introduce a caveat that provisions of section 16(1) (providing for ship ownership) shall not apply to a shipping line owned or controlled by the Government of Kenya. He was of the view that, this in effect, will assist the Kenya National Shipping Line in collaborating with other partners, as is the international practice, to enhance its competitiveness in the regional and global shipping markets.

3 COMMITTEE CONSIDERATION OF THE PRESIDENT'S RESERVATIONS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL 2019

12. The Committee held meetings on 25th June 2019 and on 26th June 2019 to deliberate on the President's reservations to the Statute Law (Miscellaneous Amendments) Bill 2019. The Committee adopted this report in its sitting held on 26th June 2019.

13. The Committee considered the President's memorandum and reservations on the proposed amendment to the Merchant Shipping Act, 2009 as contained in the the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019). The Committee noted that the President's proposal as contained in his memorandum dated 18th June 2019 was, in principle, in line with what the Committee earlier proposed to the House in its report tabled on 6th June 2019.

14. The Committee noted that in its report dated 6th June,2019 it had proposed the following amendments to the Merchant Shipping Act, No.4 of 2009

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by—

(a) deleting the proposed new section 4A; and

(b) inserting the following new amendment in its proper numerical sequence—

s.16(1) Insert the following new subsection immediately after subsection (1)-

“(1A) The provisions of subsection (1) shall not apply to the Kenya National Shipping Line.”

15. The Committee further noted that on Wednesday, June 12th 2019, the National Assembly during the Committee of the Whole House passed the following amendments to the Merchant Shipping Act, No.4 of 2009 –

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by—

(a) deleting the proposed new section 4A; and

(b) inserting the following new amendment in its proper numerical sequence—

s.16(1) Insert the following new subsection immediately after subsection (1)-

“(1A) The provisions of subsection (1) shall not apply to a shipping line wholly owned by the government”

16. The Committee observed that the President in his memorandum had proposed the following amendment to the Merchant Shipping Act, No.4 of 2009, —

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by inserting the following new amendment in its proper numerical sequence—

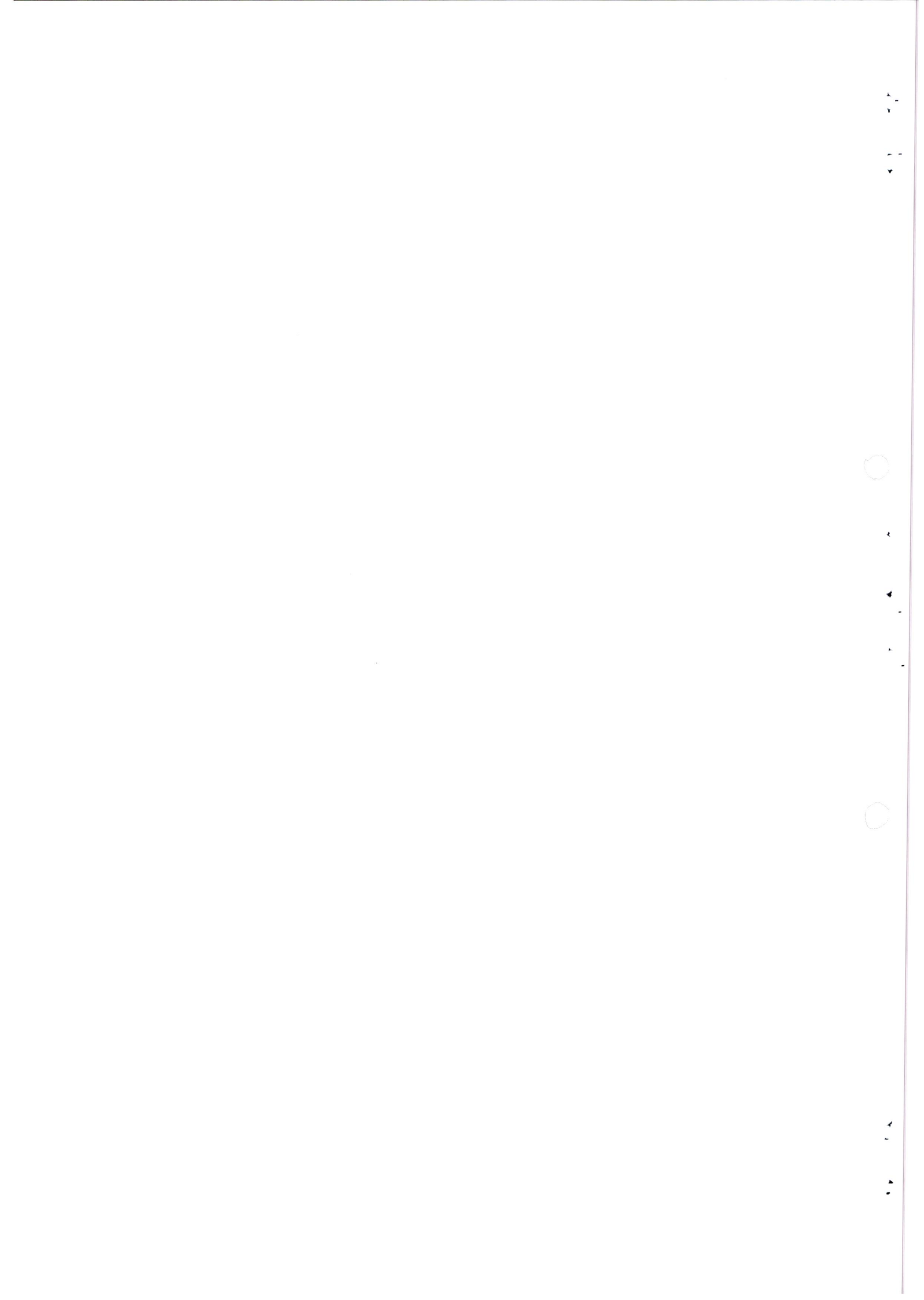
s.16(1) Insert the following new subsection immediately after subsection (1)-

“(1A) The provisions of subsection (1) shall not apply to a shipping line owned or controlled by the government”

17. In considering the proposed amendment by the President, the Committee was of the view that the proposed amendment was critical in ensuring that the Kenya National Shipping Line gets the benefits of exemption from the provisions of section 16 of Merchant Shipping Act, No.4 of 2009 that were sought to be conferred through the amendment. The Committee further, in agreeing with the President, noted that the practice of countries seeking to establish national shipping lines in partnership with other agencies is a global exercise which enables government agencies to

collaborate with partners who have already established, tried and tested shipping route networks and thereby enhance their competitiveness in the global and regional shipping markets.

18. The Committee sought to understand what the terms ‘owned’ or ‘controlled’ by the government meant, as used in the President’s proposal. The Committee was of the view that the terms as used seek to ensure that the government has a controlling interest in a shipping line. The Committee further noted that the current shareholding in the Kenya National Shipping Line by the government, through the Kenya Ports Authority is at 53% and therefore the Kenya National Shipping Line will qualify for the exemption sought.



4 COMMITTEE RECOMMENDATIONS

19. The Committee having considered the President’s reservations to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019) and pursuant to Article 115 of the Constitution, recommends as follows—

THAT the National Assembly fully agrees with President’s proposal to amend section 16(1) of the Merchant Shipping Act, No.4 of 2009 as follows—

SCHEDULE

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by inserting the following new amendment in its proper numerical sequence—

s.16(1) Insert the following new subsection immediately after subsection (1)-
“(1A) The provisions of subsection (1) shall not apply to a shipping line owned or controlled by the government”.

SIGNED.......... DATE.....27TH JUNE 2019.....

THE HON. MOSES KURIA, MP
VICE CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

Adoption of the Committee Report on the Consideration of the President's Reservations on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019)

We, the Members of the Departmental Committee on Transport, Public Works and Housing, have, pursuant to Standing Order 199, adopted this report and affixed our signatures to affirm our approval and confirm its accuracy, validity and authenticity:

1. Hon. David Pkosing, M.P. – **Chairperson**

2. Hon. Moses Kuria, M.P. – **Vice Chairperson**

3. Hon. Samuel Arama, M.P.

4. Hon. Johnson Many Naicca, M.P.

5. Hon. Peris Pesi Tobiko, M.P.

6. Hon. Savula Ayub Angatia, M.P.

7. Hon. Suleiman Dori Ramadhani, M.P.

8. Hon. Ahmed Abdisalan Ibrahim, M.P.

9. Hon. Ahmed Bashane Gaal, M.P.

10. Hon. David Njuguna Kiaraho, M.P.

11. Hon. Dominic Kipkoech Koskei, M.P.

12. Hon. Gideon Mutemi Mulyungi, M.P.

13. Hon. Kulow Maalim Hassan, M.P.

14. Hon. Mugambi M. Rindikiri, M.P.

15. Hon. Rehema Dida Jaldesa, M.P.

16. Hon. Rigathi Gachagua, M.P.

17. Hon. Shadrack John Mose, M.P.

18. Hon. Tom Mboya Odege, M.P.

19. Hon. Vincent Kemosi Mogaka, M.P.

ANNEXTURE 1

**MESSAGE FROM THE SPEAKER
ON H.E. THE PRESIDENT'S
RESERVATIONS**



REPUBLIC OF KENYA

**TWELFTH PARLIAMENT (THIRD SESSION)
THE NATIONAL ASSEMBLY**

MESSAGES

MESSAGE FROM THE PRESIDENT

(No. 9 of 2019)

**REFERRAL BY H.E. THE PRESIDENT OF THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2019**

Honourable Members,

You may recall that on June 13, 2019, this House passed the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019). 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 June 18, 2019, has referred the said Bill back to the National Assembly for reconsideration.

Honourable Members, This Bill is proposing to make various amendments to fourteen (14) statutes relating to various sectors. In his Memorandum, H.E. the President has expressed reservations on the provisions relating to **the Merchant Shipping Act, 2009** as passed by the House. In his reservations, he is agreeable with the principle of the Committee and the House regarding limiting the powers of the Cabinet Secretary and specificity of the exemption. However, he has reservation with the limitation on "**whole ownership**". He is of the view that this restriction will disadvantage the Kenya National Shipping Line whose majority shareholding is held by the Government, through the Kenya Ports Authority.

H.E The President is concerned that the revival of the national shipping line will be greatly hampered and opportunities to create employment lost, especially for youth near maritime resources.

Honourable Members, H.E The President is therefore proposing to delete the proposed new subsection 16(1A) as passed and to introduce a caveat that provisions of section 16(1) (*providing for ship ownership*) shall not apply to a shipping line owned or controlled by the Government of Kenya. He is of the view that, this in effect, will assist the Kenya National Shipping Line in collaborating with other partners, as is the international practice, to enhance its competitiveness in the regional and global shipping markets.

Honourable Members, H.E. the President having exercised his powers under Article 115(1)(b) of the Constitution now requests the National Assembly to reconsider the Bill, against his reservations and the recommendations proposed, and amend the Bill in light of his reservations.

Honourable Members, Standing Order 154 requires the National Assembly to consider the President's reservations within 21 days. In this regard, the Memorandum of H.E. the President now stands committed to the Departmental Committee on Transport, Public Works and Housing for consideration. The Committee should prioritize the matter and table its report by next week, Thursday, June 27, 2019, to enable the House conclude with the Bill in good time, ahead of the short July recess. I encourage any Member wishing to give their views and comments to appear before the Committee during that the period of reconsideration of that specific provision.

Honourable Members, may I, at this point, remind the House of the *Speaker's Communication* delivered on July 28, 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 has reservation will be considered. I now direct the Clerk to circulate the Memorandum from H.E. the President to all Members so that you familiarize yourselves with its contents.

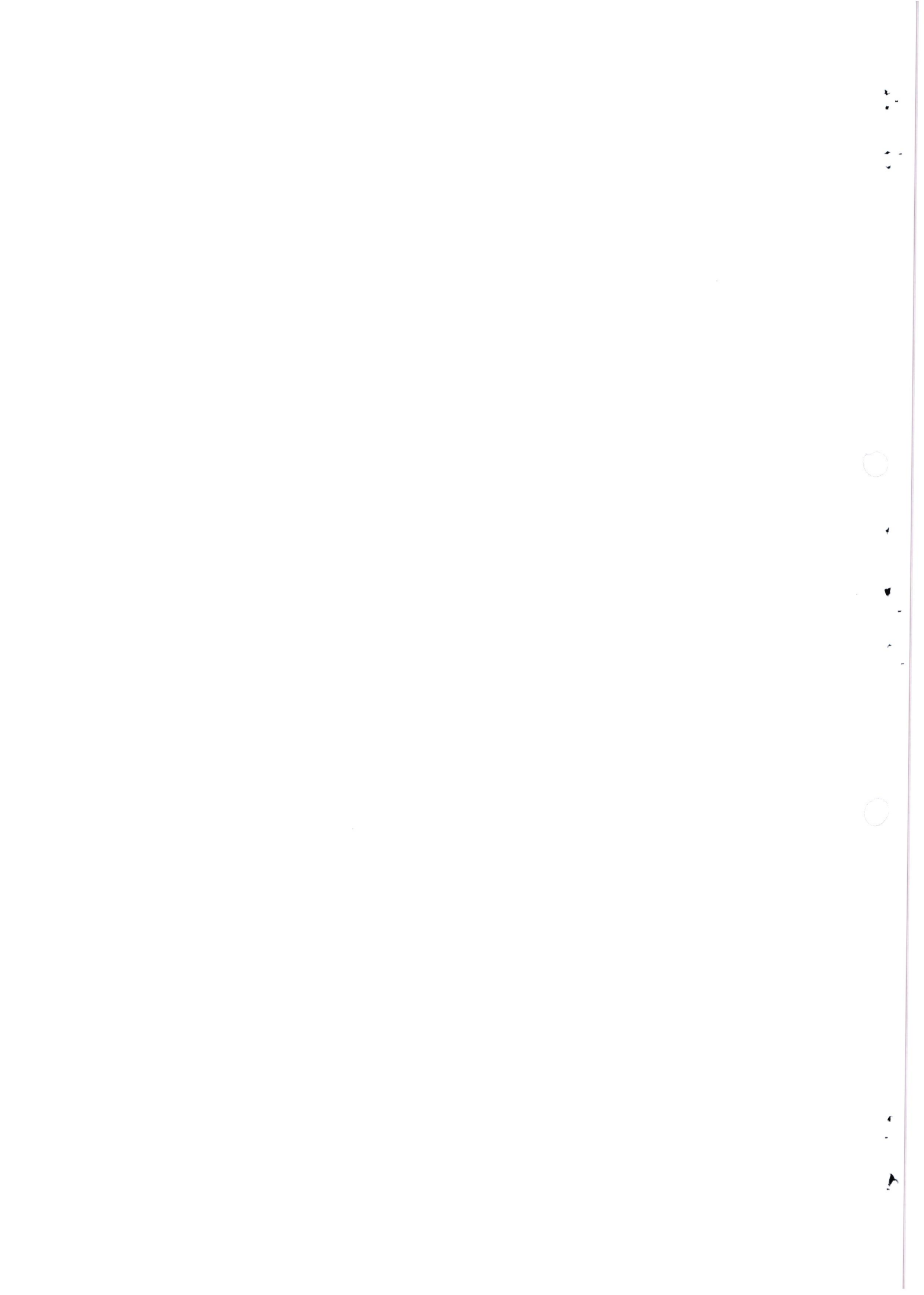
I thank you!

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

Thursday, June 20, 2019

ANNEXTURE 2

**PRESIDENTIAL MEMORANDUM
ON REFUSAL BY THE
PRESIDENT TO ASSENT TO
THE STATUTE LAW
(MISCELLANEOUS
AMENDMENTS) BILL, 2019**



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) 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 “A Bill for An Act of
Parliament to make various amendments to statute law”, the
short title of which is “the Statute Law (Miscellaneous
Amendments) Bill, 2019”, was passed by the National
Assembly on the 12th June, 2019;

AND WHEREAS the Statute Law (Miscellaneous
Amendments) Bill, 2019, was presented to me for assent, in
accordance with the provisions of the Constitution, on the
18th June, 2019;

NOW THEREFORE, in exercise of the powers conferred
on me by Article 115 of the Constitution, I refuse to assent
to the Statute Law (Miscellaneous Amendments) Bill, 2019
for the reasons set out hereunder:

**PROVISIONS RELATING TO THE
MERCHANT SHIPPING ACT, 2009.**

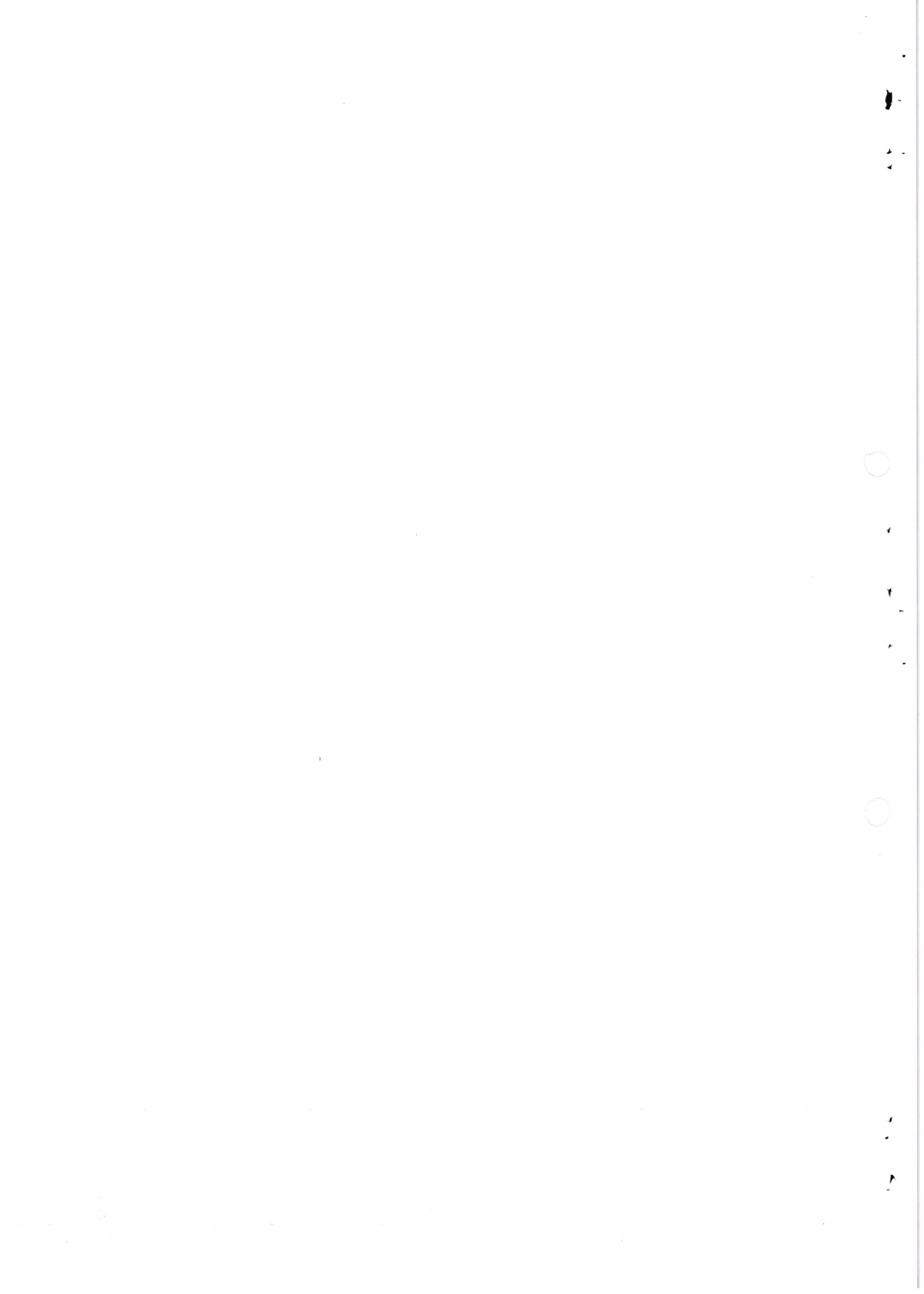
The amendment proposed to the Act initially read as follows-

4A. Notwithstanding any other provision of this Act, the Cabinet Secretary may on the recommendation of the Authority by notice in the Gazette and subject to such conditions as may be appropriate, exempt any Government entity from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.

The intention in proposing the amendments was to empower the Cabinet Secretary to exempt any Government entity or enterprise from the provisions of the Act, including the provisions of section 16(1).

There was also a proposed specific amendment to section 16 to exempt the Kenya National Shipping Line from the restrictions imposed under section 16(1).

Section 16(1) of the Act imposes a restriction on shipping lines from providing certain other services, including service as a crewing agency, pilotage, clearing and forwarding agency, port facility operator, shipping agent, terminal



operator, container freight station, quayside service provider, and other.

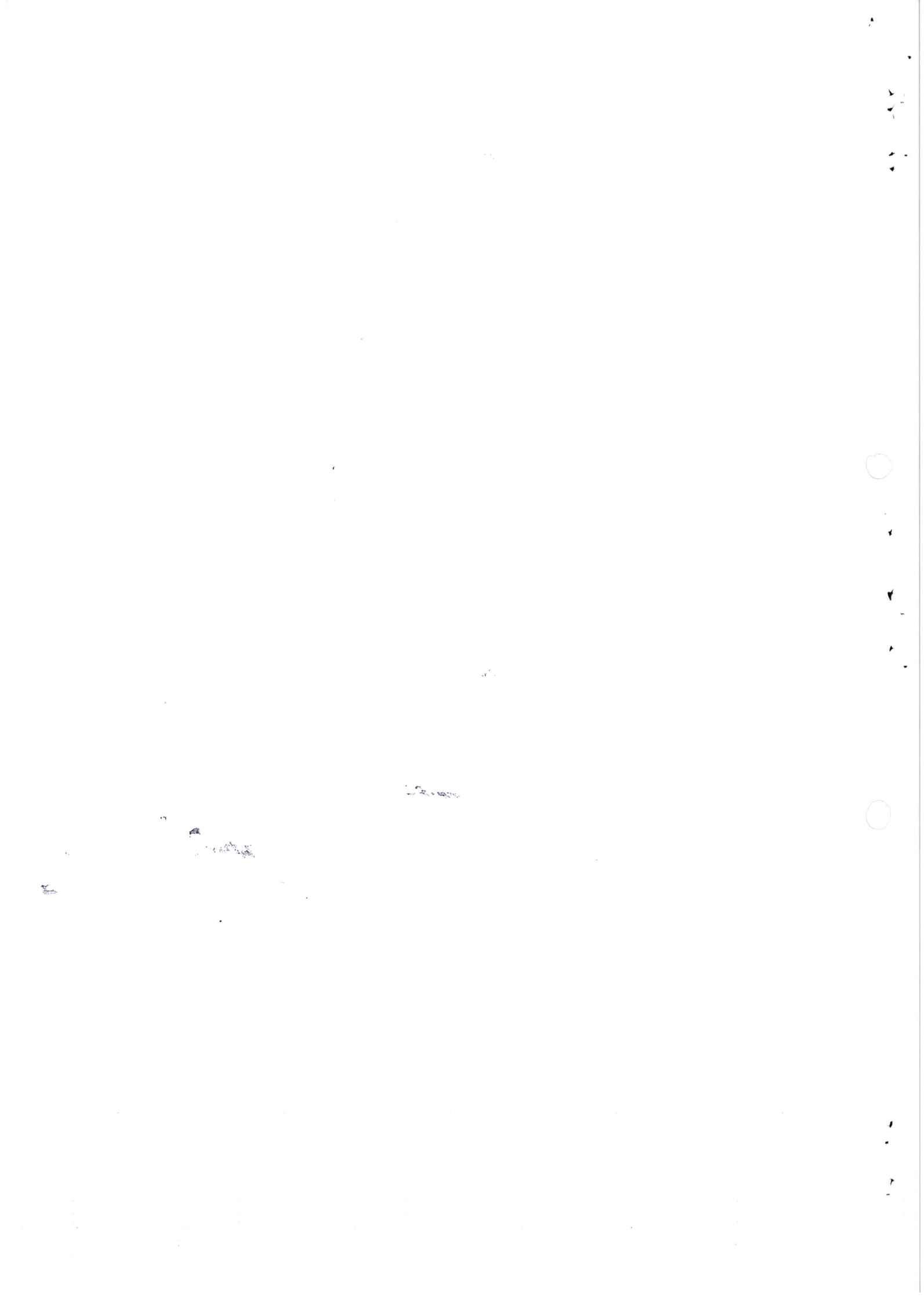
The proposed amendments were, however, rejected by the House and instead it introduced a new subsection 16(1A) as follows-

(1A) The provisions of subsection (1) shall not apply to a shipping line wholly owned by the Government.

This provision as enacted effectively excludes the Kenya National Shipping Line from the advantage sought to be conferred, due to the fact that it is not wholly-owned by the Government and would therefore not qualify for the exemption.

This hampers the Government's efforts to revitalise the Kenya National Shipping Line whose revival is part of the country's development agenda. It thereby also slows down the implementation of the Constitutional provisions on creation of employment opportunities for youth, especially in this case, those near the maritime resources.

The practice of countries seeking to establish national shipping lines in partnership with other agencies is a global



exercise which enables Government agencies to collaborate with partners who have already established tried and tested shipping route networks and thereby enhance their competitiveness in the global and regional shipping markets.

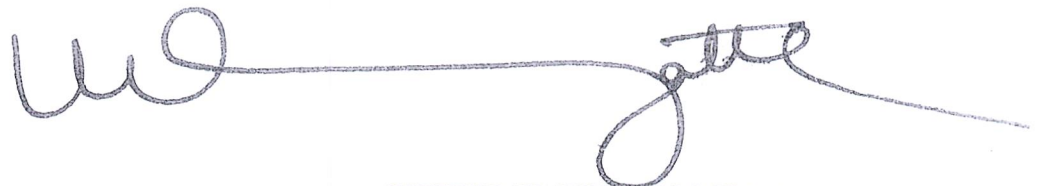
This is a factor in favour of the Kenya National Shipping Line.

RECOMMENDATION:

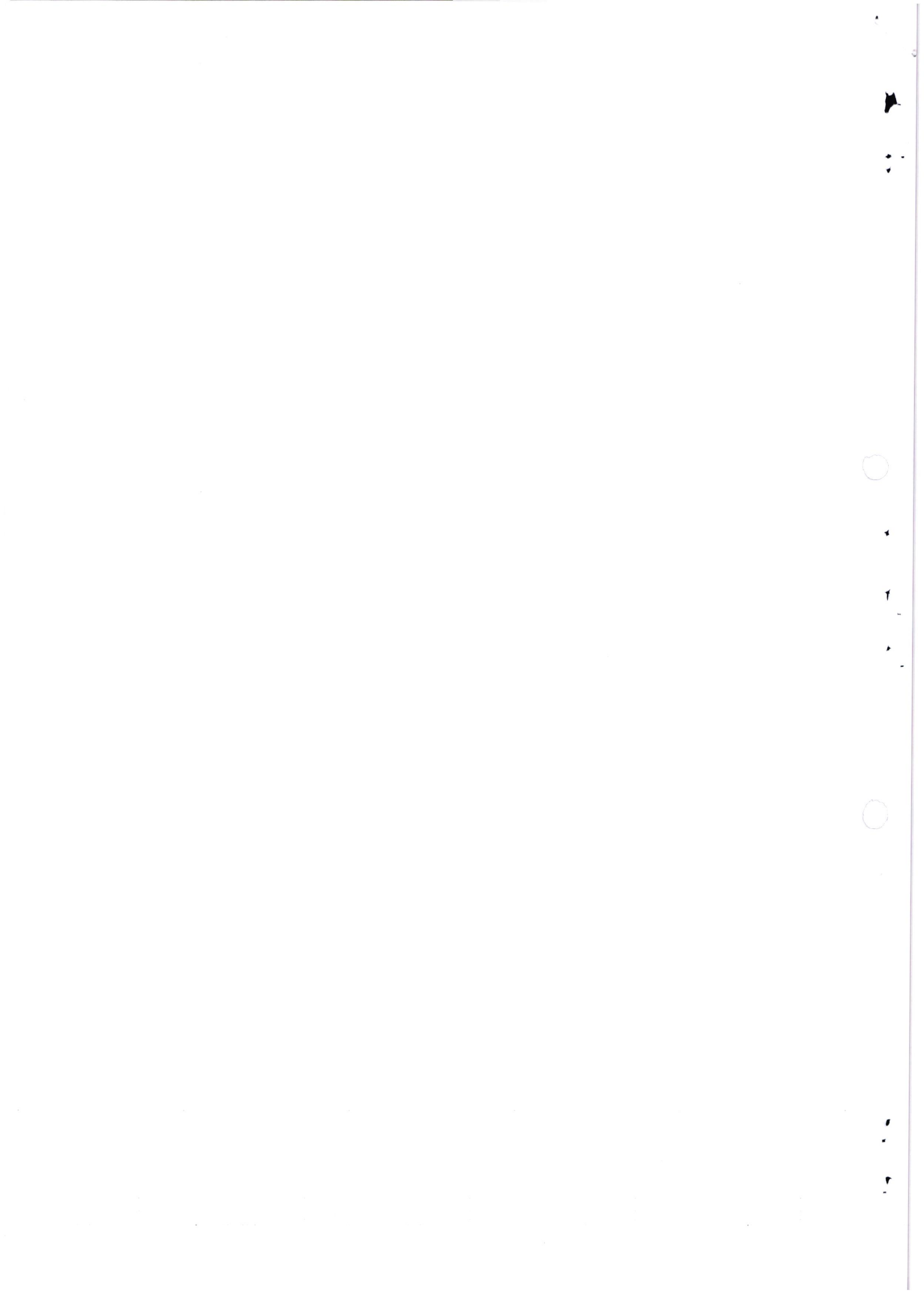
For the foregoing reasons, I recommend that the new subsection 16(1A) be deleted and substituted with the following new provision-

(1A) The provisions of subsection (1) shall not apply to a shipping line owned or controlled by the Government.

Dated the ..18th June....., 2019.



UHURU KENYATTA,
President.



ANNEXTURE 3

MINUTES OF THE COMMITTEE

MINUTES OF THE FIFTY FOURTH (54TH) SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON WEDNESDAY, 26TH JUNE 2019 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

MEMBERS PRESENT

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Suleiman Dori Ramadhani, M.P.
4. Hon. David Njuguna Kiaraho, M.P.
5. Hon. Peris Pesi Tobiko, M.P.
6. Hon. Ahmed Abdisalan Ibrahim, M.P.
7. Hon. Ahmed Bashane Gaal, M.P.
8. Hon. Dominic Kipkoech Koskei, M.P.
9. Hon. Gideon Mutemi Mulyungi, M.P.
10. Hon. Shadrack John Mose, M.P.
11. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Mugambi Murwithania Rindikiri, M.P.
3. Hon. Rigathi Gachagua, M.P.
4. Hon. Rehema Dida Jaldesa, M.P.
5. Hon. Tom Mboya Odege, M.P.
6. Hon. Savula Ayub Angatia, M.P.
7. Hon. Johnson Many Naicca, M.P.
8. Hon. Kulow Maalim Hassan, M.P.

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant III
2. Ms. Mercy Wanyonyi - Legal Counsel I
3. Mr. Abdinasir Moge - Fiscal Analyst I
4. Mr. Collins Mahamba - Audio Officer
5. Ms. Zainab Wario - Sergeant-at-arm
6. Ms. Noelle Chelagat - Media Relations Officer

MIN No. TPWH 259/2019: PRELIMINARIES

The meeting was called to order at twenty five minutes past ten o'clock, with a word of prayer from the Hon. Dominic Koskei, M.P. The agenda was confirmed as consideration of the President's Memorandum on his reservation to the Proposed Amendment to the Merchant Shipping Act, 2009 as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019). The meeting noted that this was a continuation of deliberations of the agenda considered on Tuesday, 25th June 2019.

MIN No. TPWH 260/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of minutes of the fifty third sitting held on 25th June 2019 was adopted, the proposer being Hon. Ahmed Bashane, M.P. and the seconder being Hon. Dominic Koskei, M.P.

MIN No. TPWH 261/2019: CONSIDERATION OF H.E. THE PRESIDENT'S MEMORANDUM ON HIS RESERVATIONS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 21 OF 2019)

The Committee sought to understand what the terms 'owned' or 'controlled' by the government meant, as used in the President's proposal in his memorandum on his reservations on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019). The Committee was of the view that the terms as used sought to ensure that the government had a controlling interest in a shipping line. The Committee further noted that the current shareholding in the Kenya National Shipping Line by the government, through the Kenya Ports Authority, is at 53% and therefore the Kenya National Shipping Line will qualify for the exemption sought if the Committee fully agrees with the President's proposal.

The Committee further, in agreeing with the President, noted that the practice of countries seeking to establish national shipping lines in partnership with other agencies is a global exercise which enables government agencies to collaborate with partners who have already established, tried and tested shipping route networks and thereby enhance their competitiveness in the global and regional shipping markets.

The Committee resolved to agree with the President's proposal and recommend to the House to adopt the proposal as proposed by H.E. the President which read as follows:

THAT the Schedule to the Bill be amended in the provisions relating to the Merchant Shipping Act, No.4 of 2009, by inserting the following new amendment in its proper numerical sequence—

*s.16(1) Insert the following new subsection immediately after subsection (1)-
“(1A) The provisions of subsection (1) shall not apply to a shipping line owned or controlled by the government”.*

MIN No. TPWH 262/2019:


ADOPTION OF THE REPORT ON CONSIDERATION OF H.E. THE PRESIDENT’S MEMORANDUM ON HIS RESERVATIONS TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 21 OF 2019)

The Committee considered and adopted the report on consideration of the President’s reservations on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019). The adoption was proposed by Hon. Dominic Koskei and seconded by Hon. Samuel Arama.

MIN No. TPWH 263/2019:

ADJOURNMENT

There being no other business, the sitting was adjourned at fifty minutes past ten in the morning. The next meeting to be held on notice.

Signed.....


(Vice Chairperson)

Date.....
27TH JUNE 2019.

**MINUTES OF THE FIFTY THIRD (53RD) SITTING OF THE DEPARTMENTAL COMMITTEE
ON TRANSPORT, PUBLIC WORKS & HOUSING HELD ON TUESDAY, 25TH JUNE 2019 AT
9.30 A.M. IN BOARDROOM ON 4TH FLOOR, PROTECTION HOUSE, WITHIN PARLIAMENT
BUILDINGS**

MEMBERS PRESENT

1. Hon. Moses Kuria, M.P. - Vice Chairperson
2. Hon. Samuel Arama, M.P.
3. Hon. Suleiman Dori Ramadhani, M.P.
4. Hon. Ahmed Bashane Gaal, M.P.
5. Hon. Dominic Kipkoech Koskei, M.P.
6. Hon. Shadrack John Mose, M.P.
7. Hon. Vincent Kemosi Mogaka, M.P.

MEMBERS ABSENT WITH APOLOGY

1. Hon. David Pkosing, M.P. - Chairperson
2. Hon. Mugambi Murwithania Rindikiri, M.P.
3. Hon. Rigathi Gachagua, M.P.
4. Hon. Rehema Dida Jaldesa, M.P.
5. Hon. Tom Mboya Odege, M.P.
6. Hon. David Njuguna Kiaraho, M.P.
7. Hon. Savula Ayub Angatia, M.P.
8. Hon. Johnson Manya Naicca, M.P.
9. Hon. Kulow Maalim Hassan, M.P.
10. Hon. Peris Pesi Tobiko, M.P.
11. Hon. Gideon Mutemi Mulyungi, M.P.
12. Hon. Ahmed Abdisalan Ibrahim, M.P.

SECRETARIAT

1. Mr. Ahmed Salim - Clerk Assistant III
2. Ms. Mercy Wanyonyi - Legal Counsel I
3. Mr. Abdinasir Moge - Fiscal Analyst I
4. Mr. James Muguna - Research Officer III
5. Mr. Collins Mahamba - Audio Officer

6. Mr. Yeziel Jilo - Sergeant-at-arm
7. Ms. Noelle Chelagat - Media Relations Officer

MIN No. TPWH 255/2019: PRELIMINARIES

The meeting was called to order at thirty five minutes past nine o'clock, with a word of prayer from the Hon. Dominic Koskei, M.P. The agenda was confirmed as consideration of the President's Memorandum on his reservation to the Proposed Amendment to the Merchant Shipping Act, 2009 as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019).

MIN No. TPWH 256/2019: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of minutes of the fifty second sitting held on 20th June 2019 was adopted, the proposer being Hon. Kulow Hassan, M.P. and the seconder being Hon. Dominic Koskei, M.P.

MIN No. TPWH 257/2019: CONSIDERATION OF H.E. THE PRESIDENT'S MEMORANDUM ON HIS RESERVATIONS TO THE ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 21 OF 2019)

The Committee considered the President's memorandum on his reservations on the proposed amendment to the Merchant Shipping Act, 2009 as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 21 of 2019). The Committee noted that the President's proposal as contained in his memorandum dated 18th June 2019 was in line with what the Committee earlier proposed to the House in its report dated 6th June 2019, and that it was critical in ensuring that the Kenya National Shipping Line gets the benefits that will be realized as a result of the amendment.

In considering the President's proposal, the Committee sought to understand what the terms 'owned' or 'controlled' by the government constituted and whether they were defined in any statute. There was a concern that even a minority shareholder could be an owner and that even a non-owner can in certain circumstances exercise control over something.

The Committee further noted that whereas the current shareholding has the government through the Kenya Ports Authority as a majority shareholder at 53%, it was also possible for the shareholding to change in future. It was therefore noted that whereas the President's proposal was very good and welcome, it was important to word it in a manner that will remove any possible ambiguity.

The Committee resolved that the Legal Counsel comes up with a possible amendment which will fully accommodate the President's proposal and at the same secure the position that the government shareholding shall at all times not be less than 51% of the total shareholding of the national shipping line.

MIN No. TPWH 258/2019: ADJOURNMENT

The meeting noted that on a request from the Committee Chairperson to the Hon. Speaker vide a letter dated 20th June 2019, the Hon. Speaker has approved the Committee to sit in the morning of Wednesday, 26th June 2019. There being no other business, the sitting was adjourned at thirty minutes past eleven in the morning. The next meeting, therefore, to be held on Wednesday, 26th June 2019, at 10:00am.



Signed.....

(Vice Chairperson)

Date..... 27TH JUNE 2019.....

