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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

**REPORT ON:
THE CONSIDERATION OF PARLIAMENTARY PENSIONS (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 5 OF 2023)**

**THE NATIONAL ASSEMBLY
PAPERS LAID**

DATE: 26 SEP 2024 **26 SEP 2024**
Thursday

TABLED BY:	<i>Hon. Joseph Mathai Member</i>
CLERK-AT THE-TABLE:	<i>Achiboko</i>

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LIST OF ABBREVIATIONS AND ACRONYMS

CRA	-	Commission on Revenue Allocation
MP	-	Member of Parliament
ODM	-	Orange Democratic Movement
SRC	-	Salaries and Remuneration Commission
UDA	-	United Democratic Alliance

ANNEXURES

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 of 2023)

Annexure 4: Advertisement inviting the public to submit memoranda on the Bill

Annexure 5: Letter from the Clerk of the National Assembly inviting relevant stakeholders to attend the public participation forum

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CHAIRPERSON'S FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning on the consideration of the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 of 2023) sponsored by Hon. Makali Mulu, M.P., which was published on 12th May, 2023. It was read for a first time on 5th July, 2023 and was then committed to the Committee for consideration and tabling of report.

The principal object of the Bill is to amend the Parliamentary Pensions Act, Cap. 196, to bring it into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring the Parliamentary Pensions Act into conformity with the directions of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament. The Salaries and Remuneration Commission is established under Article 230 of the Constitution and is empowered under Article 230(4) to set and regularly review the remuneration and benefits of all State Officers.

In compliance with Article 118 (1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 7th July 2023, inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Committee held a public participation forum where several stakeholders submitted their views on the bill.

The Parliamentary Service Commission, the Salaries and Remuneration Commission, the National Treasury and the sponsor of the Bill appeared before the Committee and gave their views on the Bill which the Committee considered in the preparation of this report. They also submitted their memoranda except for the sponsor of the Bill.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my singular honour to present to this House the Report of the Committee on its consideration of the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 of 2023). The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to commend the Parliamentary Service Commission, the Salaries and Remuneration Commission, and the National Treasury for submitting their views on the Bill.

Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions to preparing and producing this report.

It is my pleasure to report that the Committee has considered the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 of 2023) and wish to report to this

August House with the recommendation that the House approves the Bill with amendments as proposed in the Schedule of Amendments.

Hon. CPA. Kuria Kimani, M.P.

Chairperson, Departmental Committee on Finance and National Planning

ACKNOWLEDGMENT

The Committee extends its sincere gratitude to the Office of the Speaker of the National Assembly and the Clerk of the National Assembly for their invaluable logistical and technical support throughout its sittings. Their assistance facilitated the Committee's deliberations and ensured the smooth progress of its work.

The Committee especially acknowledges and appreciates the participation of all stakeholders and members of the public who diligently submitted their comments on the Bill. Their insights and contributions have enriched the Committee's understanding of the various perspectives on the proposed measures.

Further, the Committee wishes to express its heartfelt appreciation to the Honourable Members of the Committee and the dedicated Committee Secretariat whose commitment, expertise and collaborative efforts were instrumental in preparing and producing this report. I particularly commend the Secretariat for their diligent work that enabled the Committee to fulfill its constitutional mandate by thoroughly analyzing the Bill to the Committee.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to Standing Order 199 (6), it is both a privilege and an honor to present to the House, the Report of the Departmental Committee on Finance and National Planning on its Consideration of Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 of 2023). This report represents the culmination of rigorous deliberations, careful consideration of diverse viewpoints, and a commitment to ensure the Office of Auditor General operates under sound accountability policies while preserving its independence. The Committee trusts that this report will serve as a valuable resource for informed debate and decision-making by the members of this House.

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216 (5)** whose mandate 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 program 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:

- i. The National Treasury;
- ii. State Department of Economic Planning;
- iii. Commission on Revenue Allocation; and
- iv. Office of the Controller of Budget;

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises of the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. (Amb). Benjamin Langat, CBS, MP
Ainamoi Constituency

UDA Party

Hon. (Dr). Adan Keynan, CBS, MP
Eldas Constituency

Jubilee Party

Hon. Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency

Wiper Party

Hon. CPA. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Joseph K. Makilap, MP
Baringo North Constituency

UDA Party

Hon. Umul Ker Kassim, MP
Mandera County

UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency

UDA Party

Hon.(Dr.) Shadrack Ithinji, MP
South Imenti Constituency

Jubilee Party

Hon. Paul K. Biego, MP
Chesumei Constituency

UDA Party

Hon. Joseph Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Dr. John Ariko Namoit, MP
Turkana South Constituency

ODM Party

Hon. Mohamed S. Machele, MP
Mvita Constituency

ODM Party

Hon. George Sunkuyia, MP
Kajiado West Constituency

UDA Party

1.4 COMMITTEE SECRETARIAT

5. The following staff facilitates the Committee:

Mr. Benjamin Magut

Principal Clerk Assistant II/Head of Secretariat

Ms. Jennifer Ndeto

D/Director, Legal Service

Mr. James M. Macharia

Media Relations Officer I

Ms. Winfred Kambua

Clerk Assistant III

Mr. Benson Kamande

Clerk Assistant III

Mr. Benson Muthuri

Serjeant-At-Arms

Mr. Mwangi Muchiri

Audio Officer III

Mr. Salem Lorot

Legal Counsel I

Ms. Peninnah Simiren

Legal Counsel II

Mr. George Ndenjeshe

Fiscal Analyst III

Ms. Nelly W.N Ondieki

Research Officer III

Ms. Joyce Wachera

Hansard Officer III

Mr. Allan Kimani Ngugi

Intern Audio Services

CHAPTER TWO

2.0 OVERVIEW OF THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 5 OF 2023)

2.1 BACKGROUND

6. The Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 of 2023), sponsored by Hon. Makali Mulu, M.P., was published on 12th May, 2023. It was read for a first time on 5th July, 2023 and was then committed to the Committee for consideration and tabling of report.

2.2 OVERVIEW OF THE BILL

7. According to the Bill's memorandum of objects and reasons, the principal object of the Bill is to amend the Parliamentary Pensions Act, Cap. 196, to bring it into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring the Parliamentary Pensions Act into conformity with the directions of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament. The Salaries and Remuneration Commission is established under Article 230 of the Constitution and is empowered under Article 230(4) to set and regularly review the remuneration and benefits of all State Officers.
8. The Parliamentary Pensions Act, Cap. 196, came into force on 1st July, 1984 and has been amended severally, the last time being in 2002. The Act has therefore not been amended since the promulgation of the Constitution. The long title of the Act provides that it is "*An Act of Parliament to make provision for granting pensions to persons who have been members of the National Assembly and their dependants*".

9. Clause 2 of the Bill seeks to amend section 2 of the Act to provide that the Parliamentary Pensions Act ("the principal Act") shall apply to any person who is a member of Parliament. This is to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate. Article 93(1) of the Constitution provides that "There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate".
10. Clause 3 of the Bill seeks to amend various definitions in section 3 of the principal Act in line with the Constitution that provides the definition of "child" which means a person under the age of eighteen years. It also seeks to provide for the definition of Member of Parliament to mean both members of the National Assembly and Senate.
11. Clause 3 of the Bill seeks to amend the definition of "child", "member of the National Assembly", "pensionable emoluments", "service" and inserting a new definition "Commission" as follows:

Definition	Changes made
"Child"	<ul style="list-style-type: none"> • The Act defines a child as one who is under 16 years of age. The amendment seeks to provide that a child is one who is under 18 years of age. Comment: Article 260 of the Constitution provides that a child is an individual who has not attained the age of eighteen years. • Paragraph (b) of the definition of "child" provides that "child" means any child of the deceased or of any wife or husband of the deceased who <i>"is under twenty-one years of age and is undergoing a course of full time education, and in the case of a female child is not married or is not cohabiting with any person."</i> The amendment seeks to delete the italicized text.

	<p>Comment: The amendment seeks to cure the discrimination of children based on their gender.</p>
“member of the National Assembly”	<ul style="list-style-type: none"> • The Bill seeks to replace the definition of “member of the National Assembly” with a new definition as follows— “member of Parliament” means a member of the National Assembly or of the Senate; • The existing definition in the principal Act is as follows— “member of the National Assembly”, for the purposes of this Act means an elected member, a nominated member or an ex officio member, but does not include the Attorney-General;
“pensionable emoluments”	<ul style="list-style-type: none"> • The Bill seeks to replace the definition of “pensionable emoluments” with a new definition as follows— “pensionable emoluments” for the purposes of this Act means basic salary; • The principal Act defines pensionable emoluments as follows— “pensionable emoluments” includes salary, responsibility allowance, constituency allowance, nominated member’s allowance, ex officio member’s allowance, house allowance, accommodation allowance and sitting allowance;
“service”	<ul style="list-style-type: none"> • The Bill seeks to amend the definition of “service” by deleting the words “the National Assembly” and substituting therefor the word “Parliament.”; • The principal Act defines “service” to mean “service as a member of the National Assembly”; therefore, the amendment

	seeks to expand the scope service from service as a member of the National Assembly to a member of Parliament.
New definition "Commission"	<ul style="list-style-type: none"> The Bill seeks to insert the following new definition— "Commission" has the meaning assigned to it under the Parliamentary Service Act;

12. Clause 4 of the Bill proposes to insert a new section 3A to the Act to enable members of Parliament to elect to either be paid a pension or gratuity at the end of their term of service. It provides as follows—

3A. A member of Parliament shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act.

13. Clause 5 of the Bill proposes to amend section 4 of the Act to subject deductions of pension contributions to only members who elect to paid pension at the end of their term of service. The Bill seeks to amend section 4 of the principal Act by deleting subsection (1) and substituting therefor the following new section—

*(1) Subject to the provisions of this section, **where a member of Parliament elects to be paid pension**, there shall be deducted from each payment of pensionable emoluments made to the member, a sum calculated at the rate of twelve and three-fifths per cent of the payment, and amounts so deducted shall be paid into the Consolidated Fund.*

14. Clause 6 of the Bill proposes to amend section 5 of the Act (*reckonable service*) to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate. The clause seeks to amend section 5 of the principal Act by deleting and replacing subsection (1) to replace "Member of the National Assembly" with "Member of Parliament" and to align cross-reference from "section 7(4)" to "section 7(6)" considering

subsequent amendment in the Bill to section 7 of the principal Act. Further, the clause seeks to amend section 5 of the principal Act in subsection (2) by deleting the words "the National Assembly" and substituting therefor the word "Parliament".

15. Clause 7 of the Bill proposes to amend section 6 of the Act (*pensionable emoluments*) by deleting the words "the National Assembly" and substituting therefor the word "Parliament". This is intended to conform to the Constitution that provides that Parliament consists of the National Assembly and the Senate.
16. Clause 8 of the Bill seeks to delete and replace section 7 of the principal Act (*Refund of contributions*) with a new section to provide for payment of gratuities to members of Parliament who serve for one term in line with the recommendation of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament.
17. Clause 9 of the Bill seeks to amend section 8 of the principal Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate.
18. Clause 10 of the Bill seeks to delete and replace section 9 of the principal Act with a new section to provide for payment of pension to members who retire because of ill health.
19. Clause 11 of the Bill seeks to amend section 11 of the principal Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate and further provide for payment of one full year's salary to legal representatives of members who die before they serve for a period of twelve months.
20. Clause 12 seeks to amend section 13 of the principal Act to provide for the payment of widows and widowers of Members of Parliament.

21. Clause 13 of the Bill seeks to amend section 16 of the principal Act to conform to the Constitution that provides that Parliament which consists of the National Assembly and the Senate.
22. Clause 13A of the Bill seeks to insert new sections 18A and 18B to provide for the administration of the Act by the Parliamentary Service Commission and establishment of post-retirement medical scheme for members of Parliament.
23. The proposed new section 18A provides that the Administration of this Act shall be by the Commission. Further, the payment of pension, gratuity, refund of contributions and other allowances payable shall be provided for in the estimates of the Commission pursuant to Article 127 of the Constitution.
24. The proposed new section 18B provides that the Commission may establish voluntary post-retirement medical scheme for Members of Parliament. Further, the Scheme shall make provision to allow Members of Parliament to make voluntary contributions in respect of funding a post-retirement medical Fund.
25. Clause 15 of the Bill seeks to amend section 20 of the principal Act by deleting subsection (2) and replacing it with a new subsection to provide for an Appeals Tribunal that is representative of both Houses of Parliament and further for the funds for the administration of the provisions of the Act to be sourced from the Parliamentary Service Commission and not out of the Consolidated Fund.
26. Clause 16 of the Bill seeks to amend section 21 of the principal Act (*Auditing of accounts*) in subsection (1) to correctly state the *Auditor-General* and not *Controller and Auditor-General* which obtained in the previous Constitution. A similar amendment in subsection (1) seeks to correctly state the *Controller of Budget* and not *Controller* as it was in the previous Constitution.
27. Clause 17 of the Bill seeks to amend section 22 of the principal Act in line with the Constitution that sets up the Parliamentary Service Commission which is mandated with overseeing the welfare of Members of Parliament and undertaking other services for the efficient running of Parliament.

28. Clause 18 of the Bill seeks to insert a new section 23 providing that the Parliamentary Service Commission may make regulations providing for the administration of pension, gratuity and other benefits to Members of Parliament; and the establishment, regulation and supervision of the management of a post-retirement medical fund scheme for Members of Parliament.

CHAPTER THREE

3.0 PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

29. Article 118 (1)(b) of the Constitution provides that:

"Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees."

30. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*"(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

*(a) **inviting submission of memoranda;***

*(b) **holding public hearings;***

(c) consulting relevant stakeholders in a sector; and

(d) consulting experts on technical subjects.

(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House."

3.2 MEMORANDA RECEIVED ON THE BILL

31. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 7th July, 2023 inviting the public to submit memoranda by way of written statements on the Bill.

32. In addition the Committee held public participation forum where several stakeholders that included, the Parliamentary Service Commission, the Salaries and Remuneration Commission, the National Treasury and the sponsor of the Bill appeared before the Committee and gave their views on the Bill which the Committee considered in the preparation of this report. They also submitted their memoranda except for the sponsor of the Bill.

33. The memoranda are annexed to this report as Annexure 6.

3.2.1 THE PARLIAMENTARY SERVICE COMMISSION

34. The Parliamentary Service Commission appeared before the Committee on 26th October, 2023, supported the Bill and made the following submissions:

35. Before the coming into force of Article 230 of the Constitution of Kenya, which established the Salaries and Remuneration Commission, the remuneration of Members of Parliament was governed primarily by two Acts of Parliament;

- (a) The National Assembly Remuneration Act, Cap 5 of the Laws of Kenya; and
- (b) The Parliamentary Pensions Act, Cap 196 of the Laws of Kenya.

36. The National Assembly Remuneration Act provided for the salaries and allowances of Members of Parliament. The Act further provided for:

- (a) Payment of gratuities to the Speaker and the Deputy Speaker, the Vice President and every other Minister and every Assistant Minister at the rate of 20% of their basic salary;
- (b) A winding-up allowance payable to all Members of Parliament at the end of their term of Parliament.

37. The Parliamentary Pensions Act provides for the payment of pension for all Members of Parliament who serve as Members for two terms of Parliament.

38. The Parliamentary Pensions Act further provides that members who serve for only one term shall receive a refund of twice their contribution accumulated with interest.

39. On 17th January 2013 the High Court, in Constitutional Petition No. 137 of 2011 **Rev. Dr. Timothy Njoya & 17 Others -Versus- The Hon. Attorney General, Speaker of the National Assembly, Minister for Finance, Speaker of the National Assembly, Head of the Public Service & Secretary to the 218 Members of Parliament** declared that the National Assembly and Remuneration Act is unconstitutional in so far as it is in conflict with Article 230 of the Constitution which provides for the Salaries and Remuneration Commission.

40. By a gazette notice dated 1st March 2013 the Salaries and Remuneration Commission gazetted a new remuneration structure for State Officers in Kenya. The gazette notice provided that Members of Parliament shall be entitled to retirement benefits in the form of a gratuity scheme at the rate of 31% of annual basic pay, payable at the end of the term and shall not be pensionable.

41. Following various correspondence and discussions between the Parliamentary Service Commission and the Salaries and Remuneration Commission, the Salaries and Remuneration Commission by a letter Ref: SRC/TS/HRCOH/3/25 dated 11th June 2013 clarified as follows:

"...The following benefits shall apply to Parliamentary State Officers:

*1. **Pension:** - The provisions of the National Assembly Pension Scheme to be applicable to Members of Parliament.*

*2. **Service Gratuity:** - Payment of Service Gratuity to be advised at a later date by the Salaries and Remuneration Commission..."*

42. Following further correspondence between the two Commissions, the Salaries and Remuneration Commission on 15th November 2013 by a letter Ref: SRC/TS/PASC/2/35/3 wrote to the Parliamentary Service Commission and stated as follows:

"G. SERVICE GRATUITY

*All State Officers in Parliament who will have served for a period qualifying for pension as provided in the relevant Act of Parliament will be paid pension. Any other State Officer who did not qualify for payment of pension as provided under the Act may be considered for service gratuity at the rate of 31% of the basic salary (as defined under E above). **Pension should, however, not be paid concurrently with service gratuity.**"*

43. Paragraph E referred to in the aforesaid letter dated 15th November 2013 provides as follows:

"The set remuneration package for all State Officers is consolidated pay. For purposes of pension management and computation, 60% of the set

remuneration to be considered as the basic salary while all other allowances unless specified are consolidated into the 40% of the total set remuneration."

44. Subsequently in February 2017 the Salaries and Remuneration Commission was invited to discuss the proposed 2017/18 budget estimates for the Parliamentary Service Commission. By a letter ref: SRC/TS/NA/3/4 dated 14th February 2017 the Salaries and Remuneration Commission stated as follows:

"(i) Payment of Service Gratuity to Members of Parliament

The Commission is aware that the Parliamentary Service Commission operates a pension scheme in accordance with the provisions of the Parliamentary Pensions Act, 2012, which has elaborate provisions on exit packages and pension emoluments for Members who have served either one or more terms. In situations where two policy frameworks exist on remuneration matters, the better one carries the day. In the above case, therefore, you are guided to work with the provisions of the Parliamentary Pensions Act, 2012. Please note, however, that as guided in our earlier communication, no State Officer should benefit from pension and gratuity benefits from the same public service employer for a similar period."

Pension Vis-A-Vis Gratuity - Various Scenarios

45. The Parliamentary Service Commission considered the following scenarios with regard to Members of Parliament when it came to pension vis-à-vis gratuity for Members of Parliament who were to have served either one term or two terms as at the end of the 11th Parliament:

(a) Benefits under the Parliamentary Pensions Act — Members who were to have served for two terms:

Lumpsum - Kshs. 7,092,900.00

Annual pension-Ksh.1,418,580.00

(b) Benefits under the Parliamentary Pensions Act — Members who were to have served for one term only and not been re-elected

(i) A Member's contributions alone worked out to Kshs. 2,229,066.00 (Gross of Tax & nil interest)

- (ii) A Member's contributions plus Government contributions and interest at 15% worked out to Kshs. 5,967,063.15

Thus, the benefits for a Member of the 11th Parliament who only served one term under the Parliamentary Pensions Act worked out to Kshs. 5,967,063.15.

(c) Gratuity together with a refund of the Member's own contributions without government contribution nor interest.

- (i) A Member of the 11th Parliament's contributions alone were calculated at Kshs. 2,229,066.00 (Gross of Tax & nil interest)
- (ii) Gratuity (31% of basic pay) worked out to Kshs. 5,975,715.00 (Gross of tax). This was already slightly higher than the benefits payable under the Parliamentary Pensions Act. In addition to this the Member's contribution from salary worked out to a total sum of Kshs. 2,229,066/-
- (iii) Thus, if the Member of the 11th Parliament had received the gratuity and a refund of their contribution without interest, the Member would have been entitled to a total of **Kshs. 8,204,781.00** being Kshs. 5,975,715 + Kshs. 2,229,066.

46. The Parliamentary Service Commission arrived at the following conclusion:

- (a) The better remuneration policy framework for Members of Parliament in the 11th Parliament if they were to have served two or more terms of Parliament is the framework under the Parliamentary Pensions Act.
- (b) The better remuneration policy framework for Members of Parliament in the 11th Parliament if they were to have served only one term of Parliament is the framework under the Salaries and Remuneration's letter Ref: SRC/TS/PASC/2/35/3 dated 15th November 2013, namely, payment of 31% of the basic salary as well as a refund of their contributions without any interest or government contribution whatsoever.

47. It is noteworthy that the remuneration for Members of the 13th Parliament is Kshs. 741,003 per month in the financial year (2023/2024) and Kshs. 769,200 in FY 2024/2025 per month as set by the Salaries and Remuneration Commission

vide its Gazette Notice dated 9th August 2023. This is up from Kshs. 710,000/- per month in the 12th Parliament.

48. Assuming that the remuneration for Members of Parliament in the 13th Parliament remains the same in the last four (4) years of the term of this Parliament as SRC has not yet set new terms for the last three (3) years, the following scenarios arise with regard to Members of Parliament when it comes to pension vis-à-vis gratuity for Members of Parliament who shall have served either one term or two-terms as at the end of the 13th Parliament:

(a) Provisional Benefits under the Parliamentary Pensions Act - Members who will have served for two terms:

Lump sum- Kshs. 7,574,237.00

Annual pension-1,514,747.50

(b) Provisional Benefits under the Parliamentary Pensions Act -Members who will have served for one term only and not be re-elected

(i) A Member's contributions alone would total Kshs. 3,181,184.00 (Gross of tax & nil interest).

(ii) A Member's contributions plus Government contributions and interest at 15% totals to Kshs.7,316,723.

Thus, the benefits for a Member of the 13th Parliament who shall have only served one term under the Parliamentary Pensions Act shall be Kshs.7,316,723.

(c) Gratuity together with a refund of the Members own contributions without government contribution nor interest

(i) A Member's contributions alone shall be Kshs.3,181,184.00 (Gross of Tax & nil interest).

(ii) Gratuity (31% of basic pay) works out to Kshs. 8,521,329.60 (Gross of Tax). This is already slightly higher than the benefits payable under the Parliamentary Pensions Act. In addition to this, there shall be the Member's contribution from their salary which shall have already been deducted to the tune of Kshs. 3,181,184.00.

- (iii) Thus, if a Member in 2027 were to take the gratuity and a refund of their contribution, the Member shall be entitled to a total of Kshs. 11,702,513.60 being Kshs. 8,521,329.60 + Kshs. 3,181,184.00.

49. The provisions of the proposed Bill therefore offer a better gratuity proposition for Members of Parliament who shall have served for only one term. The Bill is further in accordance with the stipulations of the Salaries and Remuneration Commission as set out in their letters dated 15th November 2013 and 14th February 2017.

50. 25. The Parliamentary Service Commission further noted that section 19 of the Parliamentary Pensions Act vests management of the Act in a management committee as follows:

Management committee.

19. This Act shall be administered by a Management Committee comprising of the following—

- (a) the Speaker of the National Assembly who shall be the chairman;*
- (b) the Attorney-General or his representative;*
- (c) three members of the National Assembly to be appointed by the National Assembly;*
- (d) the Permanent Secretary to the Treasury or his representative;*
- (e) the Clerk of the National Assembly who shall be the secretary; and*
- (f) the Accounts Controller of the Treasury.*

51. At its 240th meeting held on 7th June 2017, the Parliamentary Service Commission resolved to refer the matter of the payment of pension vis-à-vis gratuity to the Pensions Management Committee with the recommendation that Members of the 11th Parliament and after be paid either pension or gratuity as follows:

- (i) Members of the Parliament who will have served two or more terms as at the end of their term of Parliament be paid pension in accordance with the provisions of the Parliamentary Pensions Act; and
- (ii) Members of Parliament who will have served only one term of Parliament be paid gratuity as set out in the Salaries and Remuneration's letter ref:

SRC/TS/PASC/2/35/3 dated 15th November 2013, namely, payment of 31% of the basic salary as well as a refund of their contributions without any interest or government contribution whatsoever.

52. The Parliamentary Pensions Management Committee considered the matter and requested one of its then members, Hon. Andrew Mwadime, to sponsor the Bill to give effect to the stipulations by the Salaries and Remuneration Commission as well as bring the Parliamentary Pensions Act in conformity with the Constitution of Kenya, 2010.

53. The Bill is therefore commended for the consideration of the National Assembly Departmental Committee on Finance and National Planning.

Committee Observation

The Committee noted the submissions by the Commission.

3.2.2 THE NATIONAL TREASURY

54. Mr. Michael Kigika, the Director of Pension, appeared before the Committee and submitted as follows:

Clauses 1, 2, 3, 6, 7, 10, 12, 13, 16 and 17

55. The National Treasury agrees with amendments to Clauses 1, 2, 3, 6, 7, 10, 12, 13, 16, and 17. These provisions have the effect of bringing the law into conformity with the Constitution.

Clause 4

56. The National Treasury noted that the provision allows Members of Parliament who serve one term to get a pension benefit from the scheme. Previously, such Members were entitled to a refund of contributions plus a return of 15% on the contributions. The new provision would be more costly to the Government since the Members receive a lifetime pension funded for a shorter contribution period of five years.

Committee Observation

The Committee agreed with the stakeholder. In addition to the high cost as cited by the stakeholder, the Committee also noted that having both pension and gratuity in one scheme it is not aligned to international best practice and would pose difficulties in implementation.

Clause 8

57. The introduction of a gratuity scheme for Members means that those who elect to be paid a gratuity at the end of the term will not contribute to the pension scheme and the government will therefore shoulder the entire burden of payment of their terminal benefits. This goes against the best practice of making pension schemes contributory to ease the burden on the exchequer and the taxpayer.
58. Retirement benefits best practice requires that an occupational retirement benefits scheme has a uniform structured design for its members. Therefore, introducing the option of a gratuity and pension at the same time with different eligibility criteria is not in tandem with this widely accepted best practice.
59. With the deletion of current section 7 of the Act and replacement with the proposed new section 7, the new provision does not cater to how a Member who left Parliament before this amendment and was paid a refund of his contribution should buy back that service as was earlier provided for in section 7(2) for them to be pensionable by aggregating the two terms. Were it not for the discrepancies in the identified section, the choice of gratuity or pension should only be applicable on the first term of a member.

Committee Observation

The Committee agreed with the stakeholder. In addition to the justifications given by the stakeholder, the Committee noted the difficulty of buy-back since it is very expensive. The Committee therefore recommended that the clause be deleted to retain the current provision in the Act.

3.2.3 THE SALARIES AND REMUNERATION COMMISSION

60. The Commission appeared before the Committee on Tuesday, 5th December, 2023 and submitted as follows:

Clause 4 of the Bill

61. Clause 4 of the Bill proposes to insert a new Section 3A that provides that a Member of Parliament shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act. The effect of this proposed amendment is that it enables Members of Parliament to elect, from the onset of their term in Parliament, either to be paid a pension or gratuity at the end of their term of service.
62. This proposed amendment runs contrary to another proposed amendment in Clause 8 of the Amendment Bill, which provides that a person shall be entitled to receive gratuity where the person ceases to be a Member of Parliament and has served an aggregate period of five years or less. The effect of the proposal in Clause 8 of the Amendment Bill is that only gratuity is payable to a person who ceases to be a Member of Parliament after serving for 5 years or less. Therefore, even if such a person would have, at the onset of their term in Parliament, elected to be paid a pension, such option would not be applicable to them.
63. Consequently, SRC is of the considered view that the provisions of Clause 4 of the Bill cannot exist together with the proposed amendment at Clause 8.
64. SRC recommends that the proposal in Clause 4 of the Bill be deleted as it would not only be redundant but also in conflict with the provisions of the proposed amendments in Clause 8 of the Bill.
65. In the alternative, SRC recommends that the proposed Section 3A be amended to read as follows:

3A. A Member of Parliament who has previously served for at least one term shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act.

Committee Observation

The Committee agreed with the stakeholders. In addition to the justifications given by the stakeholders, the Committee noted the difficulty of buy-back since it is very expensive. The Committee, therefore, recommended that the clause be deleted to retain the current provision in the Act.

Clause 8

66. The proposed amendment seeks to delete and replace section 7 of the Principal Act, with a new section to provide for payment of gratuity to Members of Parliament who serve for one term. A clear reading of the proposed Section 7(1)(b) creates the impression that only Members of Parliament that have served an aggregate period of 5 years or less are eligible for payment of gratuity. Therefore, persons who may have served for a period of more than 5 years, but less than 10 years, are eligible for payment of pension.
67. This proposal contradicts the provisions of Section 8(1)(b) of the Principal Act which provides that a person shall only be entitled to receive a pension if his or her aggregate period of reckonable service is two terms of Parliament. SRC is of the considered view that Section 8(1)(b) of the Principal Act should be amended to allow persons who may have served for an aggregate period of more than 5 years to be entitled to receive pension.
68. As contemplated in the advice issued on 13th March, 2019 by SRC, Members of Parliament who elect for payment of gratuity at the end of their term are also entitled to a refund of their contributions without interest. Therefore, a Member of Parliament who has served for more than one term of Parliament and elects to be paid a gratuity in lieu of a pension in line with the proposed Section 7(2) is equally entitled to a refund of their contribution.

69. The proposed Section 7(4) grants Members of Parliament, who may have been paid a gratuity in lieu of a pension, the option to pay contributions towards their pension after repayment of the gratuity. The proposed Section 7(5) on the other hand stipulates that gratuity repaid by the Member shall be treated for the purposes of section 7 as if it were a contribution made by the Member at the time when he or she makes that payment.
70. The proposed Section 7(5) which seeks to treat the gratuity repaid under the proposed section 7(4)(a), In addition to the contributions under 7(4)(b), as a Member's contribution is unjust and disadvantages Members of Parliament who only make contributions. The gratuity repaid under the proposed section 7(4)(a) should not be treated as contributions made by a Member who opts to receive pension after receiving gratuity. SRC, therefore, recommends that the proposed Section 7(5) be deleted from the Bill.
71. In the alternative, and without prejudice to the above recommendation, SRC recommends that:
- (a) The proposed Section 7(5) be amended to make a provision that only the Member's pension contribution paid in full shall be treated as if it were a contribution made by the Member and not the gratuity.
 - (b) Section 7(4) should also indicate that it shall only apply for continuous service not where there is a break in service.

Committee Observation

The Committee agreed with the stakeholder. In addition to the justifications given by the stakeholder, the Committee noted the difficulty of buy-back since it is very expensive. The Committee therefore recommended that the clause be deleted to retain the current provision in the Act.

Clause 11

72. Clause 11 (b) of the Bill proposes the amendment of section 11(a) of the principal Act to enhance the amount paid to legal representatives of deceased Members of Parliament whose aggregate period of reckonable service is less than twelve months to an amount equal to the deceased Member's annual salary.

73. In addition to this proposal not aligning to the Memorandum and Objects of the Bill, it is an added cost to the Scheme given that contributions by Members will not be enhanced to cater for the added cost. Further, the proposed amendment to Section 11(a) is already well catered for as Members of Parliament are entitled to Group Life Insurance Cover.

74. SRC recommends that clause 11 (b) of the Bill be deleted.

Committee Observation

The Committee noted that the Memorandum of Objects and Reasons provides for the amendment. The Committee had a different view that the clause sought to bring parity between paragraphs (a) and (b) of section 11 of the Act. Further, the Committee observed that the refund was a one-off payment to a legal personal representative of a deceased Member and it does not include payment to widows and orphans.

Clauses 13A and 18

75. The proposed new section 18B seeks to confer the Parliamentary Service Commission with authority to establish a voluntary post-retirement medical scheme for Members of Parliament.

76. This proposed section contravenes the provisions of Article 230 (4) (a) of the Constitution which vests SRC with the mandate to set and regularly review the remuneration and benefits for all State officers, including Members of Parliament. A post-retirement medical scheme is a benefit within the meaning of Article 230 (4) of the Constitution.

77. SRC recommends that the Bill be amended—

(a) in clause 13A by deleting the proposed new section 18B;

(b) in clause 18 in the proposed new section 23 by deleting subsection (2) (b).

78. The Parliamentary Service Commission should submit a proposal to SRC for consideration for the post-retirement medical fund scheme benefit.

Committee Observation

The Committee observed that the proposed voluntary post-retirement medical scheme for Members of Parliament was to be funded through Members' contributions only.

3.2.4 T HON. (DR.) MAKALI MULU, M.P, THE SPONSOR OF THE BILL

79. The sponsor of the Bill, Hon. Makali Mulu, M.P, appeared before the Committee on 26th October, 2023 and made the following submission:

80. The Bill seeks to amend the Parliamentary Pensions Act, Cap. 196, to bring it into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament.

81. The Bill further seeks to bring the Parliamentary Pensions Act into conformity with the directions of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament. The Salaries and Remuneration Commission is established under Article 230 of the Constitution and is empowered under Article 230(4) to set and regularly review the remuneration and benefits of all State Officers.

82. The sponsor therefore urged the Committee and the House to pass the Act.

CHAPTER FOUR

4.0 COMMITTEE OBSERVATIONS

83. Upon reviewing the Bill and the submissions received, the Committee made the following observations:

- (a) The Bill seeks to amend the Parliamentary Pensions Act, Cap. 196, to bring it into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament;
- (b) In the previous Parliament, there was a similar Bill—the Parliamentary Pensions (Amendment) (No. 3) Bill, 2019 (National Assembly Bills No. 57 of 2019)— sponsored by the then Member for Wundanyi, Hon. Andrew Mwadime, M.P., which lapsed;
- (c) In regard to clause 15 of the Bill on the amendment to section 20 of the principal Act dealing with the Appeals Tribunal:
 - (i) In ***Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)***, the petitioner sought various reliefs from the court with respect to the constitution, composition and operations of tribunals established pursuant to article 169(1)(d) of the Constitution of Kenya, 2010. He explained that the tribunals should fall within the competence of the Judicial Service Commission and that the fact that some were under the Executive was a violation of the doctrine of separation of powers. The petitioner added that the members of the tribunals were appointed under varied terms of service with the tribunals having different rules of procedure.
 - (ii) Some of the issues that the petition sought to address were as follows:
 - (a) Whether the appointment and removal of members of the local tribunals under article 169(1)(d) of the Constitution by

the Executive violated the principle of separation of powers and violated the right to a fair hearing under article 50 of the Constitution.

(b) Whether the local tribunals established under article 169(1)(d) of the Constitution should be transited to the Judiciary from the Executive.

(iii) A.C. Mrima, J held as follows, amongst others:

(a) The local tribunals created under article 169(1)(d) of the Constitution are subordinate Courts in Kenya;

(b) The appointment and removal of members of the local tribunals created under article 169(1)(d) of the Constitution by the Executive violates the principle of separation of powers, contravenes the right to fair hearing under article 50 of the Constitution and infringes on the independence of the Judiciary;

(c) The local tribunals under article 169(1)(d) of the Constitution must be transited to the Judiciary and the appointment and removal of their members be undertaken by the Judicial Service Commission.

(d) A declaration hereby issues that any new appointment or removal of a member of any of the Tribunals under article 169(1)(d) of the Constitution must be undertaken by the Judicial Service Commission.

(iv) Therefore, the proposed amendments to section 20 of the principal Act need to be aligned to the High Court declarations made on **Petition 197 of 2018.**

(d) There was a need to amend clause 12 of the Bill to delete section 13(4) of the principal Act since the provision is discriminatory;

(e) There was a need to amend clause 6 of the Bill by amending section 5(4) of the principal Act to reduce the rate of interest chargeable on an amount payable by the member to five per cent per annum in order to address the

difficulties in making contributions for eligibility of a member's service to be treated as a reckonable service and to promote a savings culture;

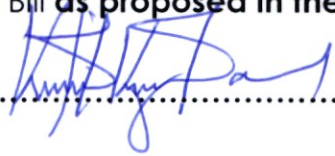
(f) There was a need to amend section 7(2) of the principal Act to increase the period of repayment to one year in order to encourage Members to buy-back service and to allow them adequate time to repay;

(g) There was a need to harmonize sections 13 and 14 of the principal Act. Section 13(2) of the Act provides for the annual amount of a widow's pension as one-half of the actual or prospective pension. Section 14(2) of the Act provides for apportionment of pension to children at different percentages of the actual or prospective pensions of the deceased. However, the percentages do not add up to 100%. For instance, whereas section 13(2), provides for one-half whereas section 14(2)(a) provides for a pension amount of 75% of the actual or prospective pension of the deceased.

CHAPTER FIVE

5.0 COMMITTEE RECOMMENDATION

84. The Committee, having considered the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 of 2023) and the submissions from members of the public and stakeholders, recommends that the House approves the Bill as proposed in the Schedule of Amendments.

SIGNED..........DATE.....*26th Sep 2024*.....

HON. CPA KURIA KIMANI, MP
CHAIRPERSON
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING



CHAPTER SIX

6.0 SCHEDULE OF PROPOSED AMENDMENTS

85. The Committee proposed the following amendments to be considered by the House in the Committee stage:

CLAUSE 4

THAT, clause 4 of the Bill be deleted.

Justification

The proposed amendment seeks to delete the clause due to high cost, non-alignment to international best practice and difficulties in implementation. The clause is also in conflict with clause 8 of the Bill.

CLAUSE 5

THAT, clause 5 of the Bill be deleted.

Justification

This is a consequential amendment due to deletion of clause 4 of the Bill.

CLAUSE 6

THAT, clause 6 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b)—

“(c) in subsection (4) by deleting the word “fifteen” appearing immediately after the words “commencement of this Act” and substituting therefor the word “five”.

Justification

The amendment seeks to address the difficulties in making contributions for eligibility of a member's service to be treated as a reckonable service and to promote a savings culture.

CLAUSE 8

THAT, clause 8 of the Bill be deleted and substituted therefor with the following new clause—

Amendment of section 7 of Cap. 196.

8. Section 7 of the principal Act is amended in subsection (2) by deleting the words “three months” appearing immediately after the words “within a period of” and substituting therefor the words “one year”

Justification

The amendments are two-fold. First, it seeks to delete clause 8 and to increase the period of repayment to one year in order to encourage Members to buy-back service and to allow them adequate time to repay. The justifications for the proposed deletion of the clause are as follows:

- (a) The introduction of a gratuity scheme for Members means that those who elect to be paid a gratuity at the end of the term will not contribute to the pension scheme and the government will therefore shoulder the entire burden of payment of their terminal benefits. This goes against the best practice of making pension schemes contributory to ease the burden on the exchequer and the taxpayer.
- (b) Retirement benefits best practice requires that an occupational retirement benefits scheme has a uniform structured design for its members. Therefore, introducing the option of a gratuity and pension at the same time with different eligibility criteria is not in tandem with this widely accepted best practice.
- (c) The new provision does not cater to how a Member who left Parliament before the amendment and was paid a refund of his or her contribution should buy back that service as was earlier provided for in section 7(2) of the Act for them to be pensionable by aggregating the two terms.
- (d) The proposed section 7(5) which seeks to treat the gratuity repaid under the proposed section 7(4)(a), in addition to the contributions under 7(4)(b), as a Member's contribution is unjust and disadvantages Members of Parliament who only make contributions.



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.
ADOPTION LIST

REPORT ON THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL
ASSEMBLY BILL NO. 5 OF 2023)

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, **Tuesday, 9th April 2024.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP - VICE CHAIRPERSON	
3.	HON. DR. ADAN KEYNAN WEHLIYE, MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. JOSEPH MAKILAP KIPKOROS, MP	
9.	HON. JOSEPH KAMAU MUNYORO, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

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MINUTES OF THE 78TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 19TH SEPTEMBER, 2024 IN COMMITTEE ROOM 20, 3RD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

1. **Hon. CPA Kuria Kimani, MP** - Chairperson
2. Hon. (Dr.) Adan Keynan Wehliye, MP
3. Hon. George Sunkuiya Risa, MP
4. Hon. CPA. Joseph Maero Oyula, MP
5. Hon. Andrew Adipo Okuome, MP
6. Hon. David Mwalika Mboni, MP
7. Hon. Joseph Makilap Kipkoros, MP
8. Hon. CPA Julius Kipletting Ruto, MP
9. Hon. Paul Kibichiy Biego, MP
10. Hon. (Dr.) John Ariko Namoit, MP

ABSENT WITH APOLOGY

1. **Hon. (Amb.) Benjamin Kipkirui Langat, MP** - Vice- Chairperson
2. Hon. (Dr.) Shadrack Mwiti Ithinji, MP
3. Hon. Mohamed Soud Machele, MP
4. Hon. Umul Ker Sheikh Kassim, MP
5. Hon. Joseph Kamau Munyoro, MP

IN ATTENDANCE

SECRETARIAT

- | | | |
|-----------------------|---|------------------------------|
| 1. Mr. Benjamin Magut | - | Principal Clerk Assistant II |
| 2. Mr. Benson Kamande | - | Clerk Assistant III |
| 3. Mr. Salem Lorot | - | Legal Counsel I |
| 4. Ms. Nelly Ondieki | - | Research Officer III |
| 5. Ms. Joyce Wachera | - | Hansard Officer |
| 6. Mr. Benson Muchiri | - | Audio officer III |
| 7. Mr. Benson Muthuri | - | Serjeant at Arms |
| 8. Mr. Ian Kinuthia | - | Intern |

AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Confirmation of Minutes/Matters Arising
Consideration and adoption of the report on Public Audit (Amendment) Bill (National Assembly Bill No. 3 of 2024), the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 48 Of 2023) and the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 Of 2023)
4. Any other Business
5. Adjournment/Date of the Next Sitting.

MIN No. NA/F & NP/2024/303: PRELIMINARIES

The meeting was called to order at 10.14 am followed by a word of prayer and introductions.

MIN No. NA/F & NP/2024/304: CONFIRMATION OF MINUTES

Confirmations of the minutes of the previous sittings was deferred to the next sitting.

MIN No. NA/F & NP/2024/305: Consideration and adoption of the report on Public Audit (Amendment) Bill (National Assembly Bill No. 3 of 2024), the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 48 Of 2023) and the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 Of 2023)

The Public Audit (Amendment) Bill (National Assembly Bill No. 3 of 2024).

The meeting deliberated at length and agreed on the observations and recommendations contained in Chapter three of the Report. The Committee Observations and recommendations made were as follows;

- a) The Committee agreed to delete the representation of the Chairperson of the Budget and Appropriation Committee of the National Assembly and two representatives from Parliament, one from the National Assembly and one from the Senate, from Committees in charge of public finance and audit as contained in Clause 17 of the Bill. The Committee further proposed to include a nominee from the Institute of Human Resource Management (IHRM) and the Institute of Internal Auditors of Kenya.
- b) The Committee further noted that clause 10(a) of the Bill provides for one Deputy Auditor-General hence taking the proposal of Institute of Certified Accountants of Kenya (ICPAK).
- c) The Committee noted that clause 20 of the Bill in the proposed section 31(2) provides for submission of audit report to the Accounting Officer in order to submit a response to the Auditor-General. The Committee was of the view that the fourteen days period was sufficient to respond to audit queries.
- d) The Committee noted was of the considered view that the proposed amendment in clause 27 was proper as read together with the intended meanings of the words as defined in clause 2 of the Bill.
- e) The Committee noted that clause 37 of the Bill seeks to repeal section 50 of the Public Audit Act since its subject matter is covered under section 39 of the Public Audit Act. Therefore, it was of the view that the clause was proper.

The Report was then adopted with amendments having been proposed by Hon. (Dr.) John Ariko, MP and seconded by Hon. CPA Joseph Oyula, MP.

The Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 48 Of 2023) and the Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bills No. 5 Of 2023)

The Committee noted that the two bills were identical and hence all the observations and Recommendations made to one bill would apply to the other. Upon reviewing the Bills and The submissions received; the Committee made the following observations:

- (a) The Bill seeks to amend the Parliamentary Pensions Act, Cap. 196, to bring it into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament;
- (b) In the previous Parliament, there was a similar Bill—the Parliamentary Pensions (Amendment) (No. 3) Bill, 2019 (National Assembly Bills No. 57 of 2019)—sponsored by the then Member for Wundanyi, Hon. Andrew Mwadime, M.P., which lapsed;
- (c) The proposed amendments to section 20 of the principal Act need to be aligned to the High Court declarations made on **Petition 197 of 2018**.
- (d) There was a need to amend clause 12 of the Bill to delete section 13(4) of the principal Act since the provision is discriminatory;
- (e) There was a need to amend clause 6 of the Bill by amending section 5(4) of the principal Act to reduce the rate of interest chargeable on an amount payable by the member to five per cent per annum in order to address the difficulties in making contributions for eligibility of a member's service to be treated as a reckonable service and to promote a savings culture;
- (f) There was a need to amend section 7(2) of the principal Act to increase the period of repayment to one year in order to encourage Members to buy-back service and to allow them adequate time to repay;
- (g) There was a need to harmonize sections 13 and 14 of the principal Act. Section 13(2) of the Act provides for the annual amount of a widow's pension as one-half of the actual or prospective pension. Section 14(2) of the Act provides for apportionment of pension to children at different percentages of the actual or prospective pensions of the deceased. However, the percentages do not add up to 100%. For instance, whereas section 13(2), provides for one-half whereas section 14(2)(a) provides for a pension amount of 75% of the actual or prospective pension of the deceased.

11. The two Reports was then adopted with amendments having been proposed by Hon. George Sunkuiya Risa, MP and seconded by Hon. Paul Kibichiy Biego, MP

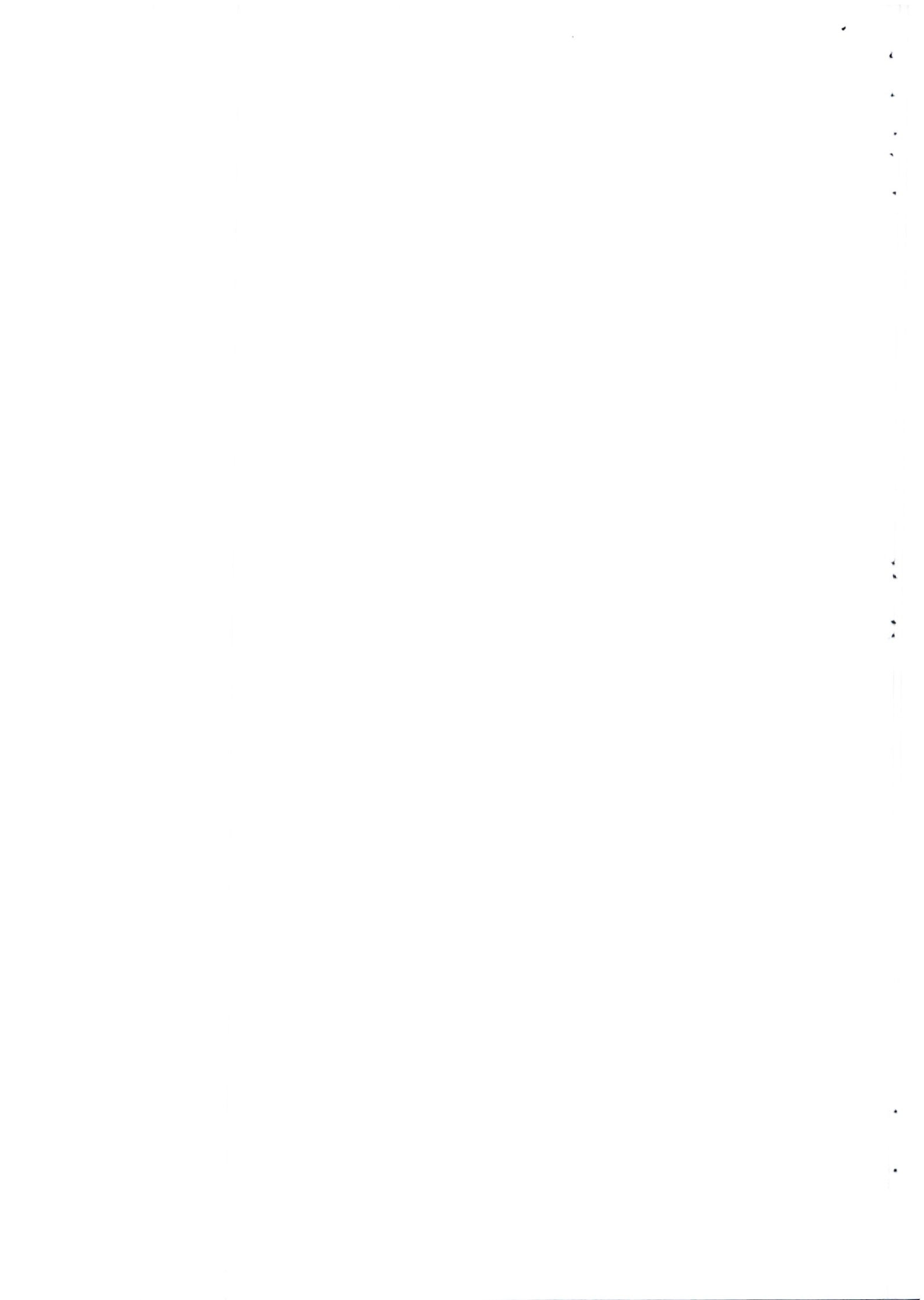
MIN No. NA/F & NP/2024/306:

ADJOURNMENT

There being no other business, the meeting was adjourned at 1:23 p.m. The next meeting will be held on notice.

SIGNED: DATE: 25/9/2024

**HON. CPA. KURIA KIMANI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING**



SPECIAL ISSUE

Kenya Gazette Supplement No. 23 (National Assembly Bills No. 5)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

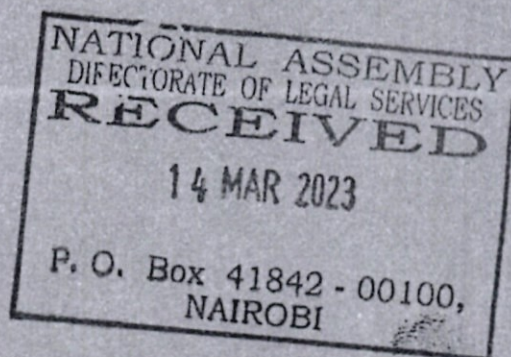
NAIROBI, 1st March, 2023

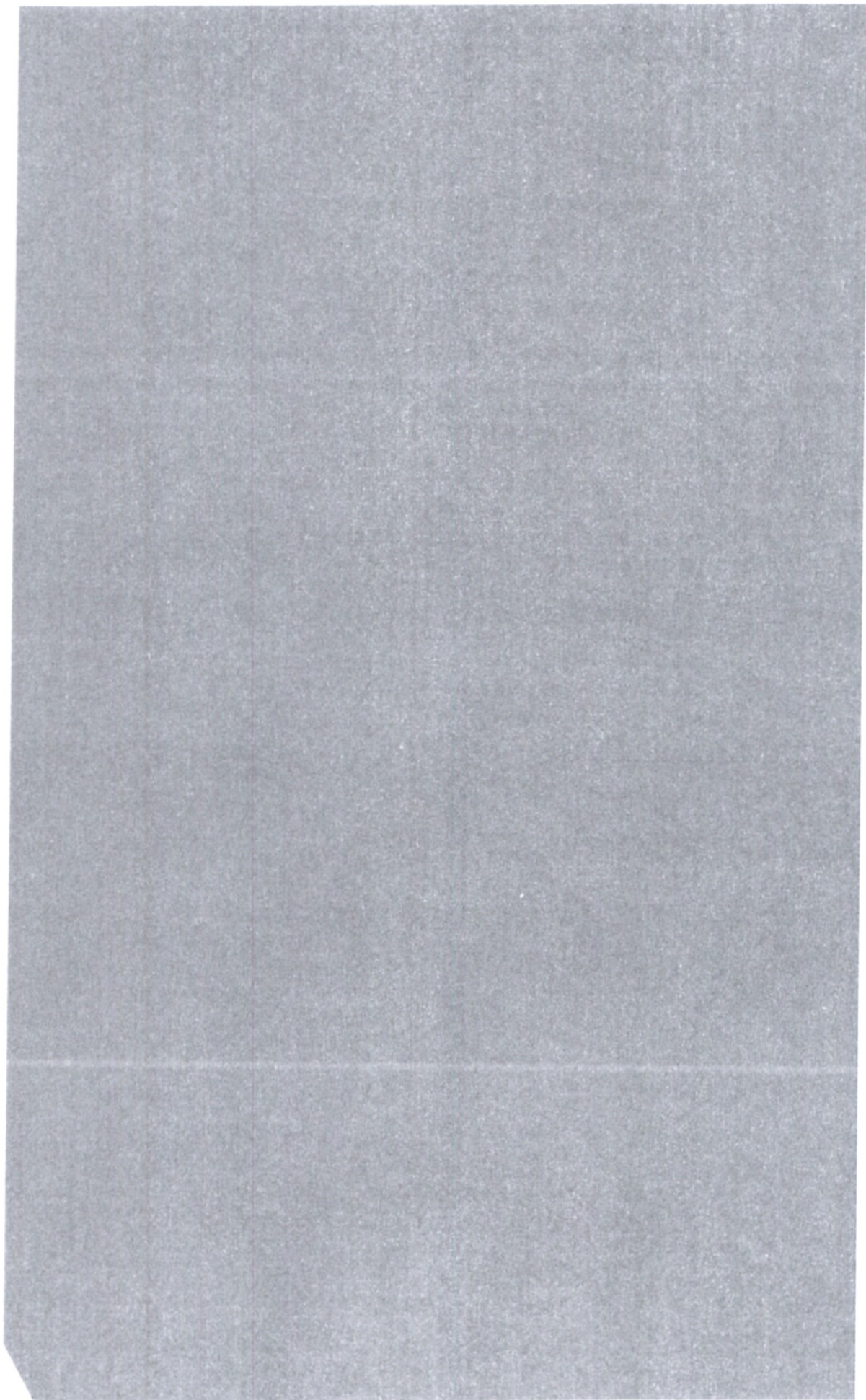
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**THE PARLIAMENTARY PENSIONS
(AMENDMENT) BILL, 2023**

A Bill for

**AN ACT of Parliament to amend the Parliamentary
Pensions Act, and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Parliamentary Pensions (Amendment) (No.3) Act, 2023. Short title.

2. The Parliamentary Pensions Act, (in this Act referred to as “the principal Act”), is amended by deleting section 2 and substituting therefor the following new section— Deletion of section 2 of Cap 196.

Application. 2. The provisions of this Act shall apply to any person who is a member of Parliament on or at any time after the commencement of this Act.

3. Section 3 of the Principal Act is amended in subsection (1)— Amendment of section 3 of Cap196.

(a) in the definition of “child” by—

(i) deleting the word “sixteen” appearing in paragraph (a) and substituting therefor the word “eighteen”;

(ii) deleting the words “and in the case of female child is not married or is not cohabiting with any person” appearing in paragraph (b);

(b) by deleting the definition of “member of the National Assembly” and substituting therefor with the following new definition—

“member of Parliament” means a member of the National Assembly or of the Senate; and

(c) by deleting the definition of “pensionable emoluments” and substituting therefor the following new definition—

“pensionable emoluments” for the purposes of this Act means basic salary;

- (d) in the definition of "service" by deleting the words "the National Assembly" and substituting therefor the word "Parliament.";
- (e) by inserting the following new definition in the proper alphabetical sequence—
"Commission" has the meaning assigned to it under the Parliamentary Service Act;

4. The principal Act is amended by inserting the following new section immediately after section 3—

Insertion of new section 3A into Cap 196.

Member to be paid gratuity or pension.

3A. A member of Parliament shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act.

5. Section 4 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new section—

Amendment of section 4 of Cap 196.

(1) Subject to the provisions of this section, where a member of Parliament elects to be paid pension, there shall be deducted from each payment of pensionable emoluments made to the member, a sum calculated at the rate of twelve and three-fifths per cent of the payment, and amounts so deducted shall be paid into the Consolidated Fund.

6. Section 5 of the principal Act is amended—

Amendment of section 5 of Cap 196.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) Subject to subsection (2) of this section and section 7(6), the total reckonable service of a member shall be the aggregate of all periods during which the person was or is a Member of Parliament, and in respect of which periods deduction of contributions has been made under section 4; and

(b) in subsection (2) by deleting the words "the National Assembly" and substituting therefor the word "Parliament".

7. Section 6 of the principal Act is amended by deleting the words “the National Assembly” and substituting therefor the word “Parliament”.

Amendment of section 6 of Cap 196.

8. The principal Act is amended by deleting section 7 and substituting therefor the following new section—

Deletion of section 7 of Cap 196.

Gratuities to former members.

7. (1) Subject to the provisions of this Act, a person shall be entitled to receive gratuity under this section where the person—

- (a) ceases to be a Member of Parliament; and
- (b) has served an aggregate period of five years or less.

(2) Notwithstanding subsection (1)(b) a Member of Parliament who has served more than one term of Parliament may elect to be paid a gratuity in lieu of a pension at the end of the term of Parliament which the Member is at the time serving.

(3) The amount of gratuity payable to a person under this section shall be a sum equal to thirty-one percent of their basic salary for the period served.

(4) If after receiving gratuity under subsection (2) the Member elects to pay pension contributions under section 4, the Member may if he so desires—

- (a) repay all the gratuity paid to the member plus, interest at the rate of three percent per month for a period of fifteen months, from the date he elects to be pensionable; and
- (b) pay the contributions under section 4 for the entire period of non-contribution to match up with existing contributors.

(5) Any amount paid by the member under subsection (4) shall be treated for the

purposes of this section as if it were a contribution made by the Member at the time when he or she makes that payment.

(6) For the purpose of calculating a person's aggregate period of reckonable service, no account shall be taken of any period in respect of which gratuity had been paid to that person under this section and not subsequently repaid by the person.

(7) For the purposes of this Act, a person who ceased to be a member of Parliament in consequence of its term ending shall be deemed to continue to be a member until such time when the Member fails to be re-elected whether by reason of failing to stand for election or otherwise to the National Assembly or Senate in the election to the new Parliament consequent on the end of that term of Parliament.

9. Section 8 of the principal Act is amended—

Amendment of
section 8 of Cap
196.

(a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) has ceased to be a member of Parliament at the end of a term of Parliament;

(b) in subsection (2) by deleting the words “but if section 8(1)(b)(ii) applies, the annual amount of pension payable shall be reduced by five per cent for each complete year or part of a year by which his aggregate period of reckonable service is less than ten years.”

10. The principal Act is amended by deleting section 9 and substituting therefor the following new section—

Repeal and
replacement of
section 9 of Cap
196.

Retirement on
medical grounds.

9. Where a member of Parliament retires on medical grounds and the Committee is satisfied on the basis of medical evidence supported by the report of a Medical Board appointed by the Director of Medical Services that there is no reasonable possibility of the person becoming fit to become a member of Parliament again, the Committee shall, grant a pension or gratuity calculated in accordance with sections 7 and 8, notwithstanding that the Member may not have attained the age of forty-five years.

11. Section 11 of the principal Act is amended by—

Amendment of
section 11 of Cap
196.

- (a) deleting the words “the National Assembly” appearing in the prefatory clause and substituting therefor the word “Parliament”;
- (b) deleting paragraph (a) and substituting therefor the following new paragraph—
 - (a) if his aggregate period of reckonable service is less than twelve months the Committee shall pay to his legal personal representative an amount equal to his annual salary.

12. Section 13 of the principal Act is amended—

Amendment of
section 13 of Cap
196.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) Subject to this section, the widow of a man who has died after the date of commencement of this Act shall be entitled to receive a pension under this section if her late husband, at the time of his death was entitled to receive a pension under section 8(1).

(b) by deleting subsection (6) and substituting therefor the following new subsection—

(6) Where a woman who is entitled to receive a pension under section 8(1) dies, her widower shall become entitled to a pension under this section.

13. Section 16 of the principal Act is amended in subsection (2) by deleting the words “the National Assembly” and substituting therefor the word “Parliament”.

Amendment of
section 16 of Cap
196.

13A. The principal Act is amended by inserting the following new sections immediately after section 18—

Insertion of new section 13A. in Cap. 196

Administration of the Act.

18A. (1) The Administration of this Act shall be by the Commission.

(2) The payment of pension, gratuity, refund of contributions and other allowances payable shall be provided for in the estimates of the Commission pursuant to Article 127 of the Constitution.

Post-retirement medical scheme

18B. (1) The Commission may establish voluntary post-retirement medical scheme for Members of Parliament.

(2) Without prejudice to the generality of sub-section (1), the Scheme shall make provision to allow Members of Parliament to make voluntary contributions in respect of funding a post-retirement medical Fund.

14. Section 19 of the principal Act is amended—

Amendment of section 19 of Cap 196.

(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) This Act shall be administered by a Management Committee which shall consist of—

- (a) the Speaker of the National Assembly who shall be the chairperson;
- (b) the Speaker of the Senate;
- (c) four members of the National Assembly who shall be appointed by the National Assembly;
- (d) two members of the Senate who shall be appointed by the Senate;
- (e) the Clerk of the Senate; and
- (f) the Clerk of the National Assembly who shall be the Secretary to the Committee.

(b) in subsection (2) by deleting the words “the National Assembly” and substituting therefor the word “Parliament”;

(c) by deleting subsection (3) and substituting therefor the following new subsection—

“(3) A quorum of the Committee shall be four members, including the Speaker of the National

Assembly and one member of Parliament from each House of Parliament”;

(d) by deleting subsection (4); and

(e) in sub-section (5) by –

(a) deleting the words “the National Assembly” and substituting therefor the word “Parliament”; and

(b) deleting the words “through the Treasury” appearing immediately after the words “by the Committee.

15. Section 20 of the principal Act is amended—

Amendment of section 20 of Cap 196.

(a) by deleting subsection (2) and substituting therefor the following new subsection—

“(2) The Tribunal shall consist of—

(a) the Chief Executive Officer to the Retirements Benefits Authority who shall be the chairperson;

(b) the Attorney General or his representative;

(c) two members to be appointed by the National Assembly during the first session of each new Parliament; and

(d) a member to be appointed by the Senate during the first session of each new Parliament.

(b) in subsection (6) by deleting the words “out of the Consolidated Fund” and substituting therefor the words “by the Parliamentary Service Commission.”

16. Section 21 of the principal Act is amended—

Amendment of section 21 of Cap 196.

(a) in subsection (1) by deleting the words “Controller and”; and

(b) in subsection (2) by deleting the words “and Auditor-General” and substituting therefor the words “of Budget”.

17. Section 22 of the principal Act is amended—

Amendment of section 22 of Cap 196.

(a) in subsection (1) by —

- (i) deleting the word "President" and substituting therefor the words "Parliamentary Service Commission";
 - (ii) deleting the word "his" and substituting therefor the word "its"; and
- (b) in subsection (2) by inserting the words "and the Senate" immediately after the words "National Assembly."

18. The principal Act is amended by inserting the following new section immediately after section 22-

Insertion of new section 23 in Cap. 196.

Regulations by the Commission.

23. (1) The Commission may make regulations for prescribing anything required by this Act to be prescribed and generally for the better carrying out of the purposes of this Act.

(2) Without prejudice to the generality of sub-section (1), regulations under this Act may provide for-

- (a) the administration of pension, gratuity and other benefits to Members of Parliament; and
- (b) the establishment, regulation and supervision of the management of a post-retirement medical fund scheme for Members of Parliament.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Parliamentary Pensions Act, Cap. 196 to bring it into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring Cap 196 into conformity with the directions of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament. The Salaries and Remuneration Commission is established under Article 230 of the Constitution and is empowered under Article 230(4) to set and regularly review the remuneration and benefits of all State Officers.

The structure of the Bill is as follows—

Clause 1 of the Bill is the short title.

Clause 2 of the Bill seeks to amend section 2 of the Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate.

Clause 3 of the Bill seeks to amend various definitions in section 3 of the principal Act in line with the Constitution that provides the definition of “child” which means a person under the age of eighteen years. It also seeks to provide for the definition of Member of Parliament to mean both members of the National Assembly and Senate.

Clause 4 of the Bill proposes to insert a new section 3A to the Act to enable members of Parliament to elect to either be paid a pension or gratuity at the end of their term of service.

Clause 5 of the Bill proposes to amend section 4 of the Act to subject deductions of pension contributions to only members who elect to paid pension at the end of their term of service.

Clause 6 of the Bill proposes to amend section 5 of the Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate.

Clause 7 of the Bill proposes to amend section 6 of the Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate.

Clause 8 of the Bill seeks to delete and replace section 7 of the principal Act with a new section to provide for payment of gratuities to members of Parliament who serve for one term in line with the recommendation of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament.

Clause 9 of the Bill seeks to amend section 8 of the principal Act of the Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate.

Clause 10 of the Bill seeks to delete and replace section 9 of the principal Act with a new section to provide for payment of pension to members who retire on the basis of ill health.

Clause 11 of the Bill seeks to amend section 11 of the principal Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate and further provide for payment of one full year's salary to legal representatives of members who die before they serve for a period of twelve months.

Clause 12 of the Bill seeks to amend section 13 of the principal Act to provide for payment of to widows and widowers of Members of Parliament.

Clause 13 of the Bill seeks to amend section 16 of the principal Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate.

Clause 14 of the Bill seeks to amend section 19 of the principal Act by deleting subsection (1) and replacing it with a new subsection to provide for the membership of the pensions Management Committee that is representative of both Houses of Parliament. The amendment further proposes to align other provisions of the section with the Constitution that provides for Parliament which consists of the National Assembly and the Senate.

Clause 15 of the Bill seeks to amend section 20 of the principal Act by deleting subsection (2) and replacing it with a new subsection to provide for a Tribunal that is representative of both Houses of Parliament and further for the funds for the administration of the provisions of the Act to be sourced from the Parliamentary Service Commission.

Clause 16 of the Bill seeks to amend section 21 of the principal Act in line with the Constitution that sets up the office of the Auditor General and the Controller of Budget.

Clause 17 of the Bill seeks to amend section 22 of the principal Act in line with the Constitution that sets up the Parliamentary Service Commission which is mandated with overseeing the welfare of members of Parliament and undertaking other services for the efficient running of Parliament.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not contain any provisions limiting any fundamental rights or freedom.

Statement on how the Bill concerns county governments

The Bill does not affect the functions of County governments as set out in the Fourth Schedule to the Constitution and is therefore not a Bill concerning counties.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 25th October, 2022.

MAKALI MULU,
Member of Parliament.

Section 2 of the Parliamentary Pensions Act which it is proposed to amend—

2. The provisions of this Act shall apply to any person who is a member of the National Assembly on or at any time after the commencement of this Act. Application.

Section 3 of the Parliamentary Pensions Act which it is proposed to amend—

“accumulated with interest” means accumulated with interest at the rate of fifteen percent per annum with yearly rests up to the relevant date; Interpretation.

“Appeals Tribunal” means the Appeals Tribunal established under section 20;

“approved actuary” means an actuary approved by the Committee on the recommendation of the Treasury;

“child” means any child of the deceased or of any wife or husband of the deceased who—

- (a) is under sixteen years of age; or
- (b) is under twenty-one years of age and is undergoing a course of full time education, and in the case of a female child is not married or is not cohabiting with any person; or
- (c) was at the time of the death of the deceased wholly or mainly dependent on the deceased and was at that time and has at all times since been either a person falling within paragraph (a) or (b) or is incapable, and likely to remain permanently incapable, by reason of bodily or mental infirmity, of earning his own living, and is not for the time being maintained out of moneys provided by the Government in a hospital or a similar institution;

“Committee” means the Management Committee set up under section 19;

“gratuity” includes a commuted pension under section 10;

“member of the National Assembly”, for the purposes of this Act means an elected member, a nominated member or an ex officio member, but does not include the Attorney-General;

“pensionable emoluments” includes salary, responsibility allowance, constituency allowance, nominated member’s allowance, ex officio member’s allowance, house allowance, accommodation allowance and sitting allowance;

“service” means service as a member of the National Assembly;

“wife” includes, in the case of a person under whose religion or custom polygamy is lawful, any person to whom the person is lawfully married in accordance with the tenets of that religion or tribal custom, and in any such case the amount of any pension, gratuity or other allowance for which a wife is eligible under this Act shall be divided equally among all such wives during the period in which there is more than one wife eligible therefor; and “widow” shall be construed accordingly.

(2) Reference to a widow shall, in the case of a female member, be interpreted as reference to a widower, and any provisions of this Act relating to a male member or his widow shall apply to a female member and her widower.

Section 5 of the Parliamentary Pensions Act which it is proposed to amend—

5. (1) Subject to subsection (2) of this section and to section 7(4), the total reckonable service of a member shall be the aggregate of all periods beginning on or after the commencement of this Act during which he was or is a member of the National Assembly, and in respect of which periods deduction of contributions has been made under section 4.

Reckonable
service.

(2) Any person to whom this Act applies who has, at any time before the commencement of this Act, but on or after 1st June, 1963, served as a member of the National Assembly shall, if he applies therefor and pays to the Consolidated Fund within a period of one year from such commencement or from such later date as is approved by the Committee all the contributions applicable to his pensionable emoluments in respect of that service accumulated with interest to the date of payment, be eligible to have that service treated as reckonable service under this section:

Provided that where a person is not able to pay the accumulated amount in a lump sum within that period, the Committee may permit him to pay the amount in instalments extending over a period of not more than four years, subject to the condition that interest accumulated in respect of each instalment is paid up to the date of its payment, and subject also to the condition that if, before the full amount is so paid, any pension, gratuity or other allowance becomes due to the person, his dependants or his legal personal representative, that pension, gratuity or other allowance shall, in so far as it relates to or is based on that past service, be reduced to such extent as an approved actuary may advise.

(3) For the purpose of this section, where there is more than one period falling under subsection (1) or (2) those periods shall be aggregated, and where those periods contain fractions of a year the total of those fractions shall be converted into years, months and days by taking a year to contain three hundred and sixty-five days and a month to contain thirty days.

(4) For the purposes of subsection (2), the rate of interest chargeable on an amount payable by the member shall, in respect of the period commencing six months after the commencement of this Act be fifteen percent per annum.

Section 6 of the Parliamentary Pensions Act which it is proposed to amend—

Pensions payable under this Act shall be based on the member's pensionable emoluments for the last twelve months (whether continuous or discontinuous) during which he was a member of the National Assembly.

Pensionable
emoluments.

Section 7 of the Parliamentary Pensions Act which it is proposed to amend—

7. (1) The Committee shall refund two times the contributions paid by a person accumulated with interest, on written application by that person, subject to the following conditions being fulfilled in respect of him, namely that he has ceased to be a member of the National Assembly and that his aggregate period of reckonable service is less than one term of Parliament:

Refund of
contributions.

Provided that where the refund is due to retirement of the member for reasons of ill-health and the conditions specified in paragraph (b) of section 9 are fulfilled, the amount refunded shall be as specified in that paragraph.

(2) If after the refund of the contributions to him under this section the contributor again becomes a person liable to pay contributions under section 4, he may, if he so desires, repay in one lump sum all the contributions paid to him, including interest paid thereon and accumulated interest thereon to the date of repayment, within a period of three months from the date he becomes so liable.

(3) Any amount (whether of principal or interest) paid by the contributor under subsection (2) shall be treated for the purposes of this section as if it were a contribution made by him at the time when he makes that payment.

(4) For the purpose of calculating a person's aggregate period of reckonable service, no account shall be taken of any period in respect of which contributions paid by that person have been refunded to him under this section and not subsequently repaid by him.

(5) For the purposes of this Act, a person who ceased to be a member of the National Assembly in consequence of its dissolution shall be deemed to continue to be a member until such time as he fails to be re-elected (whether by reason of failing to stand for election or otherwise) to the National Assembly in the election to the new Parliament consequent on that dissolution.

Section 8 of the Parliamentary Pensions Act which it is proposed to amend—

8. (1) Subject to the provisions of this Act, a person shall after the date of commencement thereof be entitled to receive a pension under this section as from the time when the following conditions are fulfilled in respect of him—

Pensions to former members.

- (a) he has ceased to be a member of the National Assembly by reason of the dissolution of Parliament; and
- (b) his aggregate period of reckonable service is two terms of Parliament; and
- (c) he has attained the age of forty-five years.

(2) The annual amount of pension payable to a person under this section shall be a sum equal to one three-hundredth of his pensionable emoluments for each completed month of his aggregate period of reckonable service: but if section 8(1)(b)(ii) applies, the annual amount of pension payable shall be reduced by five per cent for each complete year or part of a year by which his aggregate period of reckonable service is less than ten years.

Section 9 of the Parliamentary Pensions Act which it is proposed to amend—

9. Where a member of the National Assembly retires for reasons of ill-health and the Committee is satisfied on the basis of medical evidence supported by the report of a Medical Board appointed by the Director of Medical Services that there is no reasonable possibility of the person becoming fit to become again a member of the National Assembly, the Committee shall—

Retirement by
reason of ill-
health

- (a) where the member's aggregate period of reckonable service is not less than ten years, grant a pension calculated in accordance with section 8(2) and benefits in accordance with sections 13, and 14, notwithstanding the fact that he has not attained the age of forty-five years;
- (b) where the member's aggregate period of reckonable service is less than ten years, grant a refund of the members contributions together with those made by the Government on his behalf accumulated with interest.

Section 11 of the Parliamentary Pensions Act which it is proposed to amend—

11. Where a person dies after the commencement of this Act at a time when he was or had at any time previous to his death been a member of the National Assembly and he has not become eligible for a pension in accordance with section 8, then —

Death before
retirement.

- (a) if his aggregate period of reckonable service is less than twelve months Committee shall refund to his legal personal representatives his contributions accumulated with interest;

- (b) if his aggregate period of reckonable service is not less than twelve months, but less than ten years the Committee shall pay a gratuity to his legal personal representatives of an amount equal to five times his annual pensionable emoluments on the date of his death or on the last date on which he was a member, as the case may be; or
- (c) if his aggregate period of reckonable service is not less than ten years the Committee shall pay –
 - (i) a gratuity as under paragraph (b); and
 - (ii) if he leaves a widow, a pension to the widow under section 13; and
 - (iii) if he leaves any children, a pension to the children under section 14.

Section 13 of the Parliamentary Pensions Act which it is proposed to amend—

13. (1) Subject to this section, the widow of a man who has died after the date of commencement of this Act shall be entitled to receive a pension under this section if her late husband, at the time of his death—

Pensions to widows and widowers.

- (a) was entitled to receive a pension under section 3 (1); or
- (b) was not so entitled but whose aggregate period of reckonable service was not less than ten years.

(2) The annual amount of a widow's pension under this section shall be one-half of the actual or prospective pension of her late husband:

Provided that where the deceased leaves more than one wife the pension payable shall be shared equally among his wives.

(3) Subject to subsection (4), a pension payable under this section to a widow shall continue for her life or until her remarriage:

Provided that in the case of remarriage the Committee may, with the concurrence of the Attorney-General, at any time direct that the pension shall be restored if it is satisfied that the subsequent marriage has been terminated.

(4) No pension shall be payable under this section to a widow who at her husband's death was cohabiting with another person; and if a widow entitled to such a pension cohabits with another person the pension shall cease to be payable.

(5) Where a man dies in circumstances in which, apart from this subsection, a widow's pension would be payable to a woman married to him within the year ending with his death, then if—

- (a) there are no children of that marriage; and
- (b) it appears to the Committee that his death within the year was reasonably foreseeable by him at the date of his marriage,

the Committee, with the concurrence of the Attorney-General, may direct that no widow's pension shall be payable under this section.

(6) Where a woman who is entitled to receive a pension under section 8 (1), or who is not so entitled but whose aggregate period of reckonable service is not less than ten years, dies, her widower shall become entitled to a pension under this section.

(7) The provisions of subsections (4) and (5) shall apply mutatis mutandis for the purposes of subsection (6).

Section 16 of the Parliamentary Pensions Act which it is proposed to amend—

16. (1) Every pension granted under this Act shall, unless it has sooner ceased, cease upon the death of the person to whom it is granted.

Cessation of pension.

(2) No such pension shall be payable to a person in respect of any period during which he is a member of the National Assembly.

Section 19 of the Parliamentary Pensions Act which it is proposed to amend—

19. (1) This Act shall be administered by a Management Committee comprising of the following—

Management committee

- (a) the Speaker of the National Assembly who shall be the chairman;
- (b) the Attorney-General or his representative;
- (c) three members of the National Assembly to be appointed by the National Assembly;
- (d) the Permanent Secretary to the Treasury or his representative;
- (e) the Clerk of the National Assembly who shall be the secretary; and
- (f) the Accounts Controller of the Treasury.

(2) In the absence of the chairman one of the members who is a member of the National Assembly shall take the chair.

(3) A quorum of the Committee shall be four, including the Permanent Secretary to the Treasury or his representative, the Speaker and one other member of the National Assembly.

(4) If during the deliberations of the Committee any matter involving a question of law needs to be decided, the Committee shall obtain the advice of the Attorney-General thereon and shall act on his advice on that question of law.

(5) Pensions, gratuities, refund of contributions and other allowances payable under this Act may be granted by the Committee through the Treasury, to persons who have been members of the National Assembly or to their dependants, in accordance with the provisions of this Act.

(6) The Committee may, from time to time, make to the approved actuary such recommendations as it may deem necessary for the better carrying out of the objects of this Act.

Section 20 of the Parliamentary Pensions Act which it is proposed to amend—

20. (1) There shall be an Appeals Tribunal (hereinafter referred to as the Tribunal) whose functions shall be to hear and decide appeals made to it by any person who is aggrieved by a decision made by the Committee.

Appeals Tribunal.

(2) The Tribunal shall consist of the following members—

- (a) the Chief Justice who shall be the chairman;
- (b) the Controller and Auditor-General;
- (c) a member to be appointed by the National Assembly at the commencement of this Act and thereafter during the first session of each new Parliament.

(3) The Tribunal shall regulate its own procedure.

(4) No appeal shall lie to any court in respect of any matter on which an appeal lies to the Tribunal under this Act, and every decision of the Tribunal on the appeal shall be final.

(5) Any person who is aggrieved by a decision of the Committee under the provisions of this Act may appeal to the Tribunal within sixty days of the date on which the decision is notified to him or comes to his knowledge:

Provided that before hearing any appeal, the Tribunal may require security from the appellant, either in cash or in such other form as it may specify.

(6) All expenses incurred in the administration of any of the provisions of this Act shall be met out of the Consolidated Fund.

Section 21 of the Parliamentary Pensions Act which it is proposed to amend—

21. (1) All accounts kept under this Act shall be audited by the Controller and Auditor-General at least once in every calendar year.

Auditing of accounts.

(2) Before any payment is made to any person eligible for a pension, gratuity or other payment under this Act, or to his eligible widow or other dependants, the computation

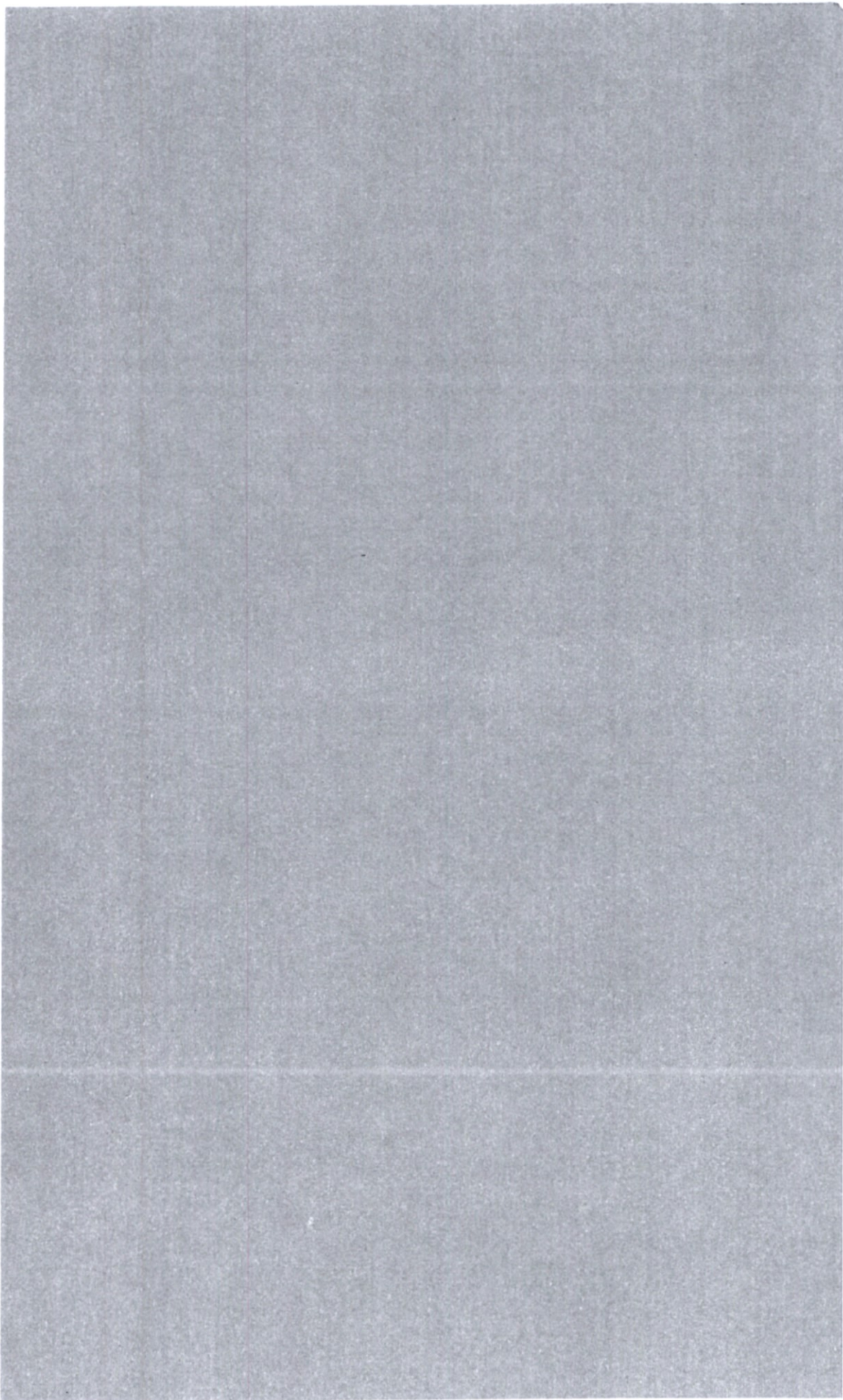
of that payment shall be verified and certified as correct by the Controller and Auditor-General.

Section 22 of the Parliamentary Pensions Act which it is proposed to amend—

22. (1) Once in every ten years, or at such other time as the President may direct, the relationship between contributions made and benefits paid out under this Act shall be reviewed by an approved actuary who shall examine whether the contributions made by the members are equivalent, according to his estimation, to one-third of the benefits paid thereunder and shall recommend any necessary change in the rate of contributions in order to achieve this.

Actuarial review.

(2) Any report or findings of an actuary made under subsection (1) shall be laid before the National Assembly without undue delay.





CAREER OPPORTUNITIES

Ukulima DT Sacco Society Limited is a licensed Deposit Taking Sacco in Kenya with its Headquarters in Nairobi and branches in Nairobi, Kisumu, Mombasa, Eldoret, Embu, Nakuru, Kisii & Kakamega. The Society aspires to be a world-class preferred financial partner and is committed to transforming lives through resource mobilization and the provision of innovative financial solutions. The Society invites interested persons to apply for the positions listed below:

1. LEGAL OFFICER UC 4 - 1 POSITION
2. SECRETARY II-UC 6 - 1 POSITION

Details of key requirements for these positions are available at our website: www.ukulimasacco.coop. Applications with a detailed CV indicating current position, qualifications, work experience, scanned copies of certificates, testimonials, and National Identity card with day telephone contacts and names and contacts of at least three (3) referees should be sent to recruitment@ukulimasacco.coop and hard copies sent to the following address and which must be received no later than 21st July 2023

The Chief Executive Officer
Ukulima Sacco Society Limited
P. O. Box 44071-00100 NAIROBI

Only shortlisted candidates shall be contacted

Ukulima Sacco is an Equal Opportunity Employer (EOE) and committed to diversity and gender equality. Please note that Ukulima DT Sacco does not charge any fee at any stage of the recruitment process. (Application, Interview meeting, Processing, or any other fees).



CHRISTIAN AID KENYA
P.O BOX 13864 - 00800
NAIROBI

Christian Aid Kenya invites interested and eligible suppliers to apply for pre-qualification indicating the category of goods and services as they wish to supply. Existing suppliers who wish to be retained must also re-apply and submit information requested in the prequalification document.

TENDER NAME: PREQUALIFICATION OF SUPPLIERS FOR SUPPLY OF GOODS & SERVICES FOR THE YEARS 2023 - 2028

ITEM NO	REFERENCE	ITEM DESCRIPTION
1	CA-1/2023	Provision for security, safety & First Aid training
2	CA-2/2023	Provision of Security Alarm System, Monitoring and Response Service for Premises in Nairobi
3	CA-3/2023	Supply and Delivery of General Office Stationeries
4	CA-4/2023	Provision of Air Ticketing & Other Travel Agency Services
5	CA-5/2023	Provision of hotel accommodation & Conference facilities in the following locations: - Nairobi, Nakuru, Kiambu, Turkana, Muranga, Machakos, Narok, Makeni, Meru, Kajiado, Nyeri, Kitui, Nyandarua, Kirinyaga, Embu, Baringo, Laikipia, Tharaka Nithi, Marsabit, Lodwar, Samburu, Kisumu, Kakamega & Bomet, Wajir, Kilifi, Garissa, Moyale
6	CA-6/2023	Provision of Catering Services in Nairobi
7	CA-7/2023	Provision of Office Cleaning Services in Nairobi
8	CA-8/2023	Provision of Transport - Car Hire/ Driver Hire
9	CA-9/2023	Provision of bulk photocopying and printing services in Nairobi
10	CA-10/2023	Provision of Service Maintenance for Local Area Network, Electrical Power, PBX System, Air Conditioner, Power Backup and Door Access Systems
11	CA-11/2023	Provision of Pest Control & Fumigation Services in Nairobi
12	CA-12/2023	Provision of Photography and/or Videography Services
13	CA-13/2023	Provision of Creative Design & Production of Materials such as branded stationery, folders, banners, general branding and printing services like printing of leaflets/brochures etc
14	CA-14/2023	Provision of Fire Equipment Maintenance Services
15	CA-15/2023	Provision of Courier Services Countrywide
16	CA-16/2023	Provision of Legal Services
17	CA-17/2023	Provision of Asset Tagging Services
18	CA-18/2023	Supply of IT Equipment and Accessories
19	CA-19/2023	Supply of First Aid Kits and pharmaceutical services
20	CA-20/2023	Provision of Project Audit Services
21	CA-21/2023	Vehicle Servicing/Garage Services in the following locations: Nairobi, Nakuru, Kiambu, Turkana, Muranga, Machakos, Narok, Makeni, Meru, Kajiado, Nyeri, Kitui, Nyandarua, Kirinyaga, Embu, Baringo, Laikipia, Tharaka Nithi, Marsabit, Lodwar, Samburu, Kisumu, Kakamega & Bomet, Wajir, Kilifi, Garissa, Moyale
22	CA-22/2023	Provision of Insurance Services: medical, personal accident, WIPA, Vehicle insurance, Business shield
23	CA-23/2023	Supply and Delivery of General Office Supplies
24	CA-24/2023	Provision of Catering Services
25	CA-25/2023	Provision of Janitorial Services
26	CA-26/2023	Provision of Pest Control System
27	CA-27/2023	Provision of Mineral Water Supply
28	CA-28/2023	Provision of Plant Maintenance (gardening services)
29	CA-29/2023	Provision of Team Building Services
30	CA-30/2023	Provision of Computer and Printer Repairs and Servicing
31	CA-31/2023	Supply of Furniture and Office Equipment
32	CA-32/2023	Annual Audit services
33	CA-33/2023	Provision of vehicle fuel in the following locations Nairobi, Nakuru, Kiambu, Turkana, Muranga, Machakos, Narok, Makeni, Meru, Kajiado, Nyeri, Kitui, Nyandarua, Kirinyaga, Embu, Baringo, Laikipia, Tharaka Nithi, Marsabit, Lodwar, Samburu, Kisumu, Kakamega & Bomet, Wajir, Kilifi, Garissa, Moyale
34	CA-34/2023	Provision of Architectural services/office partition
35	CA-35/2023	Provision of office repair services, plumbing, electrical related repairs
36	CA-36/2023	Provision of vehicle repair/mechanic services
37	CA-37/2023	Provision of vehicle accessories e.g. fire extinguishers, tires, first aid kits for vehicle, etc
38	CA-38/2023	Provision of Laotie repairs and Servicing (by an authorized dealer)

Interested candidates shall obtain pre-qualification documents from this link: <https://caid.org.uk/kenya-vendor>. Complete pre-qualification Documents should be sent before 21st July 2023 at 5:00pm to kenyastenders@christian-aid.org. The email subject must comprise of reference number and item description for every application. Only the short-listed suppliers will be contacted. Women, Youth & PWDs are encouraged to apply.



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - SECOND SESSION

IN THE MATTER OF ARTICLE 118(1)(b) OF THE CONSTITUTION

AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:

1. THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2023);
2. THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 5 OF 2023);
3. THE PUBLIC SERVICE COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 6 OF 2023); AND
4. THE CROPS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 8 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023); the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023); the Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023); and the Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023) were read a First Time on **Wednesday, 5th July 2023** and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that:

1. **The Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023)** is a Bill sponsored by the **Hon. Ruweida Mohamed Obo, MP** which seeks to amend the Wildlife Conservation and Management Act No. 47 of 2013 to include sharks, stone fish, whales and sting rays among the wildlife species in respect of which compensation as a result of death and injury may be paid. This will ensure that persons who live along water bodies are entitled to payment of compensation as a result of death and injury from the specified wildlife species.
2. **The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023)** is a Bill sponsored by the **Hon. Makali Mulu, MP** which seeks to amend the Parliamentary Pensions Act, Cap. 196 to bring it into conformity with the provisions of the Constitution of Kenya 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring Cap. 196 into conformity with the directions of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament.
3. **The Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023)** is a Bill sponsored by the **Hon. Benjamin G. Mwangi, MP** which seeks to amend the Public Service Commission Act, 2017 to prescribe the mandatory retirement age of sixty years in the Act. The amendments are meant to increase job vacancies to Kenyans below the age of sixty years. The Bill also seeks to address the issue of an officer acting in a position for more than six months.
4. **The Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023)** is a Bill sponsored by the **Hon. Tandaza Kassim Sawa, MP** which seeks to amend the First Schedule to the Crops Act No. 16 of 2013 to include **Achiote** as a scheduled crop.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bills to the respective Departmental Committees listed below:

BILL	COMMITTEE
1. The Wildlife Conservation and Management (Amendment) Bill (National Assembly Bill No. 3 of 2023)	Tourism and Wildlife
2. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 5 of 2023)	Finance and National Planning
3. The Public Service Commission (Amendment) Bill (National Assembly Bill No. 6 of 2023)	Labour
4. The Crops (Amendment) Bill (National Assembly Bill No. 8 of 2023)	Agriculture and Livestock

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to cna@parliament.go.ke to be received on or before **Friday, 21st July 2023 at 5.00 p.m.**

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

7th July 2023

"For the Welfare of Society and the just Government of the People"

REPUBLIC OF KENYA



Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694

E-mail: csenate@parliament.go.ke

Parliamentary Service Commission
Parliament Buildings
P. O. Box 41842 -00100
NAIROBI, Kenya

PARLIAMENT

CLERK OF THE SENATE/ SECRETARY TO THE PARLIAMENTARY SERVICE COMMISSION

OUR REF: DLC/ADM/1/52ATN

25th October, 2023

Mr. Samuel Njoroge,
Clerk of the National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.

Dear Clerk,

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
– STAKEHOLDER ENGAGEMENT ON THE PARLIAMENTARY PENSION
(AMENDMENT) BILLS (NATIONAL ASSEMBLY BILLS Nos. 5, 15 AND 48 OF
2023)**

Please refer to your letter Ref:NA/DDC/F&NP/2023/129 dated 17th October, 2023 inviting my office for a meeting with the National Assembly Departmental Committee on Finance and National Planning to deliberate on the three Parliamentary Pension (Amendment) Bills (National Assembly Bills Nos. 5, 15 And 48 of 2023).

Please find below the memorandum of the Parliamentary Service Commission:

PARLIAMENTARY PENSION (AMENDMENT) BILLS (NATIONAL ASSEMBLY BILLS NOS. 5 AND 48 OF 2023).

1. These two Bills are identical save that National Assembly Bills No. 5 is dated 25th October 2022 and sponsored by Hon. Makali Mulu while National Assembly Bills No. 48 is dated 26th October 2022 and sponsored by Hon. Abdul Rahim Dawood.

During the tenure of the 12th Parliament, the same Bill had been sponsored by Hon. Andrew Mwadime but the same lapsed with the 12th Parliament.

BACKGROUND

2. Prior to the coming into force of Article 230 of the Constitution of Kenya, which established the Salaries and Remuneration Commission, the remuneration of Members of Parliament was governed primarily by two Acts of Parliament;
 - (a) The National Assembly Remuneration Act, Cap 5 of the Laws of Kenya; and
 - (b) The Parliamentary Pensions Act, Cap 196 of the Laws of Kenya.
3. The National Assembly Remuneration Act provided for the salaries and allowances of Members of Parliament. The Act further provided for:
 - (a) Payment of gratuities to the Speaker and the Deputy Speaker, the Vice-President and every other Minister and every Assistant Minister at the rate of 20% of their basic salary;
 - (b) A winding up allowance payable to all Members of Parliament at the end of their term of Parliament.
4. The Parliamentary Pensions Act provides for payment of pension for all Members of Parliament who serve as Members for two terms of Parliament.
5. The Parliamentary Pensions Act further provides that members who serve for only one term shall receive a refund of twice their contribution accumulated with interest.

SALARIES AND REMUNERATION COMMISSION

6. On 17th January 2013 the High Court, in Constitutional Petition No. 137 of 2011 Rev. Dr. Timothy Njoya & 17 Others -Versus- The Hon. Attorney General, Speaker of the National Assembly, Minister for Finance, Speaker of the National Assembly, Head of the Public Service & Secretary to the Cabinet, 218 Members of Parliament, declared that the National Assembly and Remuneration Act is unconstitutional in so far as it is in conflict with Article

230 of the Constitution which provides for the Salaries and Remuneration Commission.

7. By a gazette notice dated 1st March 2013 the Salaries and Remuneration Commission gazetted a new remuneration structure for State Officers in Kenya.
8. The gazette notice dated 1st March 2013 provided that Members of Parliament shall be entitled to retirement benefits in the form of a gratuity scheme at the rate of 31% of annual basic pay, payable at the end of the term and **shall not** be pensionable.
9. Following various correspondence and discussion between the Parliamentary Service Commission and the Salaries and Remuneration Commission, the Salaries and Remuneration Commission by a letter ref:SRC/TS/HRCOH/3/25 dated 11th June 2013 clarified as follows:

“...The following benefits shall apply to Parliamentary State Officers:

1. **Pension**:- *The provisions of the National Assembly Pension Scheme to be applicable to Members of Parliament.*
2. **Service Gratuity**:- *Payment of Service Gratuity to be advised at a later date by the Salaries and Remuneration Commission...*”

10. Following further correspondence between the two Commissions, the Salaries and Remuneration Commission did on 15th November 2013 by a letter ref:SRC/TS/PASC/2/35/3 write to the Parliamentary Service Commission and state as follows:

“G. SERVICE GRATUITY

All State Officers in Parliament who will have served for a period qualifying for pension as provided in the relevant Act of Parliament will be paid pension. Any other State Officer who did not qualify for payment of pension as provided under the Act may be considered for service gratuity at the rate of 31% of the basic salary (as defined under E above). Pension should however, not be paid concurrently with service gratuity.”

11. Paragraph E referred to in the aforesaid letter dated 15th November 2013 provides as follows:

"The set remuneration package for all State Officers is consolidated pay. For purposes of pension management and computation, 60% of the set remuneration to be considered as the basic salary while all other allowances unless specified are consolidated into the 40% of the total set remuneration."

12. Subsequently in February 2017 the Salaries and Remuneration Commission was invited to discuss the proposed 2017/18 budget estimates for the Parliamentary Service Commission. By a letter ref:SRC/TS/NA/3/4 dated 14th February 2017 the Salaries and Remuneration Commission stated as follows:

"(ii) Payment of Service Gratuity to Members of Parliament

The Commission is aware that Parliamentary Service Commission operates a pension scheme in accordance with the provisions of the Parliamentary Pensions Act, 2012, which has elaborate provisions on exit packages and pension emoluments for Members who have served either one or more terms. In situations where two policy frameworks exist on remuneration matters, the better one, carries the day. In the above case therefore, you are guided to work with the provisions of the Parliamentary Pensions Act, 2012. Please note however that as guided in our earlier communication to you, no State Officer should benefit from pension and gratuity benefits from the same public service employer for a similar period."

PENSION VIS-À-VIS GRATUITY – VARIOUS SCENARIOS

13. The Parliamentary Service Commission considered the following scenarios with regard to Members of Parliament when it came to pension vis-à-vis gratuity for Members of Parliament who were to have served either one term or two-terms as at the end of the 11th Parliament:

(a) Benefits under the Parliamentary Pensions Act – Members who were to have served for two terms

Lumpsum	-	Kshs. 7,092,900.00
Annual pension	-	Kshs. 1,418,580.00

(b) Benefits under the Parliamentary Pensions Act – Members who were to have served for one term only and not been re-elected

- (i) A Member's contributions alone worked out to Kshs. 2,229,066.00 (Gross of Tax & nil interest)
- (ii) A Member's contributions plus Government contributions and interest at 15% worked out to Kshs. 5,967,063.15

Thus, the benefits for a Member of the 11th Parliament who only served one term under the Parliamentary Pensions Act worked out to **Kshs. 5,967,063.15**

(c) Gratuity together with a refund of the Members own contributions without government contribution nor interest

- (i) A Member of the 11th Parliament's contributions alone were calculated at Kshs. 2,229,066.00 (Gross of Tax & nil interest)
- (ii) Gratuity (31% of basic pay) worked out to Kshs. 5,975,715.00 (Gross of tax). This was already slightly higher than the benefits payable under the Parliamentary Pensions Act. In addition to this the Member's contribution from salary worked out to a total sum of Kshs. 2,229,066/-
- (iii) Thus, if the Member of the 11th Parliament had received the gratuity and a refund of their contribution without interest, the Member would have been entitled to a total of **Kshs. 8,204,781.00** being Kshs. 5,975,715 + Kshs. 2,229,066.

14. The Parliamentary Service Commission arrived at the following conclusion:

- (a) The better remuneration policy framework for Members of Parliament in the 11th Parliament if they were to have served two or more terms of Parliament is the framework under the Parliamentary Pensions Act.
- (b) The better remuneration policy framework for Members of Parliament in the 11th Parliament if they were to have served only one term of Parliament is the framework under the Salaries and Remuneration's letter ref:SRC/TS/PASC/2/35/3 dated 15th November 2013, namely, payment of 31% of the basic salary as well as a refund of their contributions without any interest or government contribution whatsoever.

15. It is noteworthy that the remuneration for Members of the 13th Parliament is Kshs. 741,003 per month in the next financial year (2023/2024) and Kshs.

769,200 in FY 2024/2025 per month as set by the Salaries and Remuneration Commission vide its Gazette Notice dated 9th August 2023. This is up from Kshs. 710,000/- per month in the 12th Parliament.

16. Assuming that the remuneration for Members of Parliament in the 13th Parliament remains the same in the last four (4) years of the term of this Parliament as SRC has not yet set new terms for the last three (3) years, the following scenarios arise with regard to Members of Parliament when it comes to pension vis-à-vis gratuity for Members of Parliament who shall have served either one term or two-terms as at the end of the 13th Parliament:

(a) Provisional Benefits under the Parliamentary Pensions Act – Members who will have served for two terms

Lumpsum	-	Kshs. 7,574,237.00
Annual pension	-	Kshs. 1,514,747.50

(b) Provisional Benefits under the Parliamentary Pensions Act – Members who will have served for one term only and not be re-elected

(iii) A Member's contributions alone would total Kshs. 3,181,184.00 (Gross of tax & nil interest)

(iv) A Member's contributions plus Government contributions and interest at 15% totals to Kshs. 7,316,723/-

Thus, the benefits for a Member of the 13th Parliament who shall have only served one term under the Parliamentary Pensions Act shall be **Kshs. 7,316,723**

(c) Gratuity together with a refund of the Members own contributions without government contribution nor interest

(iv) A Member's contributions alone shall be Kshs. 3,181,184.00 (Gross of Tax & nil interest)

(v) Gratuity (31% of basic pay) works out to Kshs. 8,521,329.60 (Gross of Tax). This is already slightly higher than the benefits payable under the Parliamentary Pensions Act. In addition to this there shall be the

Member's contribution from their salary which shall have already been deducted to the tune of Kshs. 3,181,184.00.

- (vi) Thus, if a Member in 2027 were to take the gratuity and a refund of their contribution, the Member shall be entitled to a total of Kshs. 11,702,513.60 being Kshs. 8,521,329.60 + Kshs. 3,181,184.00.

17. The provisions of the proposed two Bills therefore offer a better gratuity proposition for Members of Parliament who shall have served for only one term. The Bills are further in accordance with the stipulations of the Salaries and Remuneration Commission as set out in their letters dated 15th November 2013 and 14th February 2017.

18. The Parliamentary Service Commission further noted that section 19 of the Parliamentary Pensions Act vests management of the Act in a management committee as follows:

19. *Management committee*

- (1) *This Act shall be administered by a Management Committee comprising of the following—*
- (a) *the Speaker of the National Assembly who shall be the chairman;*
 - (b) *the Attorney-General or his representative;*
 - (c) *three members of the National Assembly to be appointed by the National Assembly;*
 - (d) *the Permanent Secretary to the Treasury or his representative;*
 - (e) *the Clerk of the National Assembly who shall be the secretary;*
and
 - (f) *the Accounts Controller of the Treasury.*

COMMISSION RESOLUTION

19. At its 240th meeting held on 7th June 2017, the Parliamentary Service Commission resolved to refer the matter of the payment of pension vis-à-vis gratuity to the Pensions Management Committee with the recommendation that Members of the 11th Parliament and after be paid either pension or gratuity as follows:

- (i) Members of the Parliament who will have served two or more terms as at the end of their term of Parliament be paid pension in accordance with the provisions of the Parliamentary Pensions Act; and
- (ii) Members of Parliament who will have served only one term of Parliament be paid gratuity as set out in the Salaries and Remuneration's letter ref:SRC/TS/PASC/2/35/3 dated 15th November 2013, namely, payment of 31% of the basic salary as well as a refund of their contributions without any interest or government contribution whatsoever.

PARLIAMENTARY PENSIONS MANAGEMENT COMMITTEE

20. The Parliamentary Pensions Management Committee considered the matter and requested one of its then members, Hon. Andrew Mwadime, to sponsor the Bill to give effect to the stipulations by the Salaries and Remuneration Commission as well as bring the Parliamentary Pensions Act in conformity with the Constitution of Kenya, 2010.

THE PROPOSED AMENDMENTS TO THE PARLIAMENTARY PENSIONS ACT, CAP. 196

21. The Bills propose the following amendments with the following justifications-
- (a) Amendment of sections 2, 5, 6, 8, 11, 16 of the Parliamentary Pensions Act to bring the Act into conformity with the Constitution that provides for Parliament which consists of the National Assembly and the Senate. The current provisions make reference only to the National Assembly.
 - (b) Amendment of section 3 of the Act to be in line with the Constitution that provides that a "child" means a person under the age of eighteen years. The current Act defines a child as being a person under sixteen years of age or who is under twenty-one years of age and is undergoing a full-time course of education. In the case of a female child who is under twenty-one years of age and is undergoing a full-time course of education, the child must not be married or cohabiting with any person to be entitled to benefits under the Act. This provision is contrary to the Constitution and is further discriminatory as it excludes female children who are married or cohabiting. The amendment further seeks to provide for the definition of Member of Parliament to mean both members of the National Assembly and Senate.
 - (c) Insertion of a new section 3A to the Act to enable Members of Parliament to elect to either be paid a pension or gratuity at the end of their term of service.

- (d) Amendment to section 4 of the Act to subject deductions of pension contributions to only members who elect to be paid pension at the end of their term of service. This is a consequential amendment to the proposed new Section 3A, if a Member elects to be paid gratuity such a member should subsequently not be liable to pension deductions.
- (e) Deletion and replacement of section 7 of the principal Act with a new section to provide for payment of gratuities to members of Parliament who serve for one term in line with the recommendation of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament which is thirty one percent of their basic salary for the period served. Deletion and replacement of section 9 of the principal Act with a new section to provide for payment of pension to members who retire on the basis of ill health. Such a retirement shall be subject to medical evidence supported by a report of a Medical Board appointed by the Director of Medical Services.
- (f) Amendment of section 11 of the principal Act to provide for payment of one full year's salary to legal representatives of members who die before they serve for a period of twelve months.
- (g) Amendment of section 13 of the principal Act to provide for payment to widows and widowers of Members of Parliament.
- (h) Amendment of section 19 of the principal Act by deleting subsection (1) and replacing it with a new subsection to provide for the membership of the Pensions Management Committee that is representative of both Houses of Parliament. The amendment further proposes to align other provisions of the section with the Constitution that provides for Parliament which consists of the National Assembly and the Senate.
- (i) Amendment of section 20 of the principal Act by deleting subsection (2) and replacing it with a new subsection to provide for a Tribunal that is representative of both Houses of Parliament and further for the funds for the administration of the provisions of the Act to be sourced from the Parliamentary Service Commission.
- (j) Amendment of section 21 of the principal Act in line with the Constitution that sets up the office of the Auditor General and the Controller of Budget that perform the function of audit of accounts of the National and County Governments including Parliament and overseeing implementation of budgets respectively.
- (k) Amendment of section 22 of the principal Act to be in line with the Constitution that establishes the Parliamentary Service Commission which

is mandated with overseeing the welfare of members of Parliament and undertaking other services for the efficient running of Parliament. The current provisions give discretion to the President to once in every ten years, initiate the review of the relationship between contributions made and benefits paid out under this Act by an approved actuary. The proposed amendment shall bring this section into conformity with the Constitution that mandates the Parliamentary Service Commission with overseeing the welfare of members.

22. The Parliamentary Pension (Amendment) Bills (National Assembly Bills Nos. 5 and 48 of 2023) are therefore commended for the consideration of the National Assembly Committee on Finance and Planning.

PARLIAMENTARY PENSIONS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NOS. 15 of 2023).

23. This Bill seeks to amend the Parliamentary Pensions Act to provide that those former Members of Parliament who served in Parliament between 1st July 1984 and 1st January 2011 be entitled to a monthly pension amounting to not less than Kshs. 100,000/- per monthly.
24. This proposal was first contained in the report of the Akiwumi Tribunal which was published in 2010, when reviewing benefits for Members of Parliament. The Tribunal recommended a minimum living pension of Kshs. 100,000 for all former members of Parliament.
25. A Bill with similar proposals for a minimum living pension of Kshs. 100,000 was passed by the 12th Parliament but vetoed by His Excellency the President following opposition from the National Treasury and the Salaries and Remuneration Commission.
26. The proposal has received the support of the Parliamentary Service Commission which on 9th November 2021 resolved as follows-

The National Assembly be requested to consider re-initiating the legislative proposals for enhanced pensions for former Members of Parliament with appropriate consultations with the National Treasury and the Salaries and Remuneration Commission.

27. The Parliamentary Pensions (Amendment) Bill (National Assembly Bills Nos. 15 of 2023) is therefore similarly commended for the consideration of the National Assembly Committee on Finance and Planning with appropriate discussions with the National Treasury and the Salaries and Remuneration Commission.

Attached hereto are copies of the letters from the Salaries and Remuneration Commission dated 11th June 2013, 15th November 2013 and 14th February 2017 respectively.

The above matters are submitted for the consideration of the National Assembly Committee on Finance and National Planning.

Yours

EF
For: **J. M. NYEGENYE, CBS,**
CLERK OF THE SENATE/SECRETARY,
PARLIAMENTARY SERVICE COMMISSION.

Encl.

cc: **Rt. Hon. (Sen) Dr. Moses M. Wetang'ula, EGH, MP,**
Speaker of the National Assembly/Chairman,
Parliamentary Service Commission,
Parliament Buildings,
NAIROBI.



Salaries & Remuneration
Commission
Recording products

11th June, 2013

Ref. No: SRC/TS/HRCOH/3/25

Hon. Justine Muturi
Speaker to National Assembly and
Chairman, Parliamentary Service Commission
Parliament Buildings
NAIROBI

Dear

RE: REMUNERATION AND BENEFITS FOR STATE OFFICERS IN PARLIAMENT

Reference is made to Salaries and Remuneration Commission letter No. SRC/TS/HRCOH/3/25 dated 27th May, 2013 on the above subject.

In exercise of the powers conferred by Article 230 (4) (a) of the Constitution of Kenya 2010, the Salaries and Remuneration Commission confirms having set on 1st March, 2013 and further reviewed the Remuneration and Benefits of all State Officers serving in Parliament as follows:

A. REMUNERATION AND BENEFITS OF ALL STATE OFFICERS IN PARLIAMENT

State Officer	Total Gross Monthly Remuneration Package (Kshs.)
Speaker of the National Assembly	990,000 x 82,500 p.a. – 1,072,500 x 82,500 p.a. – 1,155,000 x 82,500 p.a. – 1,237,500 x 82,500 p.a. – 1,320,000
Speaker of the Senate	
Deputy Speaker of the National Assembly	792,000 x 66,000 p.a. – 858,000 x 66,000 p.a. – 924,000 x 66,000 p.a. – 990,000 x 66,000 p.a. – 1,056,000
Deputy Speaker of the Senate	
Leader of Majority	532,500 x 44,375 p.a. – 576,875 x 44,375 p.a. – 621,250 x 44,375 p.a. – 665,625 x 44,375 p.a. – 710,000
Leader of the Minority	
Chairpersons of committees	
Members of Speaker's Panel	
Chief Whips	
Minority Whips	
Member of the National Assembly	
Member of the senate	

Notes

1. Members of Parliament and all other Parliamentary State Officers shall join the remuneration structure at the minimum point and progress to the maximum over the term period.
2. All allowances have been consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration package. 60% of the set remuneration package is of the basic salary. (e.g., the Speakers total gross monthly remuneration is made up of 60% basic salary of Kshs.594,000 per month and 40% consolidated allowances of Kshs.396,000 per month totalling Kshs.990,000 per month).
3. All other allowances and benefits not specified in this letter cease to be payable.

B. Committee/Session Sitting Allowances

Members of Parliament shall be entitled to Sitting Allowance which should be paid in accordance with the standing orders or resolution of the Houses of Parliament at the following rates:

- (i) Chairperson: A Member of Parliament with additional responsibility as a Chairperson while chairing a meeting shall be entitled to Sitting Allowance of Kenya Shillings Fifteen Thousand (Kshs.15,000/=) per sitting;
- (ii) Vice Chairperson: A Member of Parliament with additional responsibility as Vice Chairperson while sitting in a meeting as Vice Chairperson be paid Kenya Shillings Twelve Thousand (Kshs.12,000/=) per sitting;
- (iii) Member: All Members of Parliament shall be entitled to Kenya Shillings Seven Thousand Five Hundred (Kshs.7,500) per sitting when sitting in a meeting/session as a Member.

C. Remuneration for Members of Parliamentary Service Commission:

Members of the Parliamentary Service Commission to be paid at the rates applicable in the former Parliamentary Service Commission, pending review by the SRC.

D. Special Parliamentary Duty Allowance

Parliament to provide structure of Parliamentary Leadership and subsequently, Salaries and Remuneration Commission to provide appropriate Responsibility Allowance.

E. Other Benefits

The following benefits shall apply to Parliamentary State Officers:

1. Pension:- The provisions of the National Assembly Pension Scheme to be applicable to Members of Parliament.

2. **Service Gratuity:-** Payment of Service Gratuity to be advised at a later date by the Salaries and Remuneration Commission.
3. **Accommodation and Subsistence Allowances (Per Diem):-** To be paid at existing rates pending review by the Salaries and Remuneration Commission.
4. **Security:-** To be provided as advised by the Inspector General, National Police Service.
5. **Car Grant:-** A State Officer serving in Parliament shall be entitled to a Car Grant of up to a maximum of Kenya shillings five million (Kshs.5 million) once in a parliamentary term.
6. **Mileage Allowance:-** The Mileage Allowance and Claim is to be calculated based on AA rates and the distance to the Members' home. The Allowance is payable in two components namely:
 - (i) **Car Maintenance Allowance:** To be paid at the rate of Kenya Shillings Three Hundred and Fifty Six Thousand and Five Hundred and Twenty Five (Kshs.356,525 pm) per month (capped at AA rate of $Kshs.109.8 \times 750 \text{ km} \times 52 \text{ weeks} \div 12$);
 - (ii) **Mileage Allowance:** This is a claimable allowance for State Officers who travel beyond the 750 kilometres stated above and shall be paid at applicable AA rates.
7. **Medical Scheme:** Annual Medical cover shall be provided per family for self, spouse and up to four children below twenty five years, who are fully dependent on the Members of Parliament and all other Parliamentary State Officers as follows:

Inpatient	Kshs. 10 million
Outpatient	Kshs. 300,000
Maternity	Kshs. 150,000
Dental	Kshs. 75,000
Optical	Kshs. 75,000

8. **Medical Ex-gratia:** Parliamentary Service Commission (PSC) to determine and approve ex-gratia requests and notify the Salaries and Remuneration Commission (SRC) on such payment.
9. **Airtime:** Airtime for Members of Parliament shall be provided as follows:
 - (i) The Speaker of National Assembly and the Speaker of Senate: Kshs.15,000 per month.
 - (ii) All other Members of Parliament:- Kshs.10,000 per month.
10. **Group Life Assurance:-** State Officers in Parliament shall be covered for a value equivalent to three times their annual basic salary.
11. **Group Personal Accident:-** Members of Parliament and other Parliamentary State officers shall be covered for a value equivalent to up to three times annual basic salary.

12. **Work Injury Benefit (WIBA):-** Work Injury Benefits Act shall apply.
13. **Home, Utilities and Attendants:-** Speakers of Senate and National Assembly shall be housed by the State and provided with all commensurate home utilities and attendants subject to review by the Salaries and Remuneration Commission from time to time.
14. **Car Loan:-** A State Officer in Parliament shall, subject to availability of funds, be entitled to a car loan of up to Kenya Shillings Seven Million (Kshs.7 million) repayable at an interest rate of three per cent (3%) per annum within five (5) years or before end of term whichever is earlier.
15. **House Mortgage:-** A State Officer in Parliament shall, subject to availability of funds, be entitled to a mortgage of up to Kenya Shillings Twenty Million (Kshs.20 Million) repayable at an interest rate of three per cent (3%) per annum within five (5) years or before end of term whichever is earlier.

The set Remuneration and Benefits for State Officers in Parliament take effect from the date of gazettelement of the State Officers. This letter cancels and supersedes Letter No. SRC/TS/HRCOH/3/25 dated 27th May, 2013 under reference.

Yours

Sarah J. C. Serem (Mrs.) EBS.,
CHAIRPERSON

CC **Mr. Henry Rotich**
Cabinet Secretary
National Treasury
NAIROBI

SCHEDULE FOR REMUNERATION AND BENEFITS FOR STATE OFFICERS IN
PARLIAMENT AND PARLIAMENTARY SERVICE COMMISSION

A. REMUNERATION FOR STATE OFFICERS SERVING IN PARLIAMENT

1. **Gross monthly remuneration package:** The remuneration for Members of Parliament to be retained as set and gazetted by SRC.
2. **Mileage Allowance:** To be retained as communicated vide letter SRC/TS/PASC/3/35/2 of 11th June, 2013.
3. **Special Parliamentary Responsibility Allowance:** The Special Parliamentary responsibility allowance to be retained as communicated vide letter SRC/TS/HRCOH/3/25 dated 18th April 2013.
4. **Pensions and Gratuity:** A public servant should not benefit from pension and gratuity from the same employer at the same time. Doing so amounts to double pension benefit which is against labour practice. Therefore retain the status as advised vide letter SRC/TS/PASC/3/35/3 of 15th November, 2013.
5. **Medical Ex-gratia:** To be considered by the Parliamentary Service Commission on a case by case basis provided SRC is notified on the actual payment.
6. **Accommodation and Subsistence Allowances:** Parliamentary Service Commission to retain the rate obtaining as per Gazette Notice of 1st March, 2013 awaiting review by SRC.
7. **Home Utilities and attendants:** Parliament should provide housing benefit, utilities and attendants to the Speakers of National Assembly and Senate in line SRC gazette Notice of 1st March, 2013. No payments in form of house allowance should be made to the State Officers.
8. **Ranking of Members of Parliament post Job Evaluation:** The current grading structure should be retained as the State Officers, including Members of Parliament (MPs), were ranked after a professional job evaluation which considered workload and a number of other job requirement related factors.

B. REMUNERATION FOR STATE OFFICERS SERVING IN THE PARLIAMENTARY SERVICE COMMISSION

1. **Special Responsibility Allowance/Retainer:** The rates for Special Responsibility Allowance to be retained as set out in SRC letter Ref. SRC/TS/PASC/2/35/4 dated 19th December, 2013. This has been harmonized for all commissions serving in part-time commissions.
2. **Sitting Allowance for Chairpersons of PSC Committees:** To be retained as communicated vide SRC/TS/PASC/3/35/2 of 19th December, 2013. This has been harmonized for all commissions serving in part-time commissions.

3. **Air Time:** Current rates be retained as provided vide SRC/TS/PASC/3/35/2 of 19th December, 2013. This has been harmonized for all constitutional commissions.
4. **Air Travel:** To retain the travel arrangements obtaining as at 4th March, 2013 awaiting review by SRC.
5. **Subsistence Allowance and Accommodation:** Parliamentary Service Commission to retain the rates obtaining as at 2013 awaiting review by SRC.
6. **Members of the PSC appointed under Article 127 (1)(d) of the Constitution:**
 - (a) **Salary and Allowances:** The salaries and allowances have been determined and harmonized with those of commissioners serving in other constitutional Commissions. The remuneration is therefore, in line with what obtains in all other part-time commissions.
 - (b) **Mortgage and car loan:** These benefits may be granted to the in line with Parliamentary Service Commission Regulations on Mortgage and Car Loan Schemes. The may however, benefit from mortgage and car loan within the stipulated period.
 - (c) **Car Grant and Mileage Allowance:** These benefits were only extended to serving Members of Parliament by virtue of their representative function. The Commissioners appointed under 127(1)(d) therefore are not eligible.
 - (d) **Official Chauffeur:** This benefit was only extended to the Speakers of National Assembly and Senate as per SRC gazette notice of 1st March 2014. The members appointed under 127(1)(d) should therefore be provided with Commuter Allowance as per SRC letter Ref. SRC/TS/PASC/2/35/4 of 19th December, 2013.

Agg

CSDC

see note and advice
the leadership of the
Nat. Assembly and the
PSC
John Bundi
15/2/17



Salaries & Remuneration
Commission
Rewarding productivity

② COS/Secretary,
PSC

For the attention of
the Commission.

Signature

14th February, 2017

20/2/17

Ref. No. SRC/TS/NA/3/4

Mr. Justin Bundi
Clerk of National Assembly
Parliament Buildings
NAIROBI

③ DLC
Please prepare
a PSC paper.
20/2/17
20 FEB 2017

Dear Mr. Bundi

INVITATION TO ATTEND A BUDGET AND APPROPRIATIONS COMMITTEE MEETING TO DISCUSS THE PROPOSED 2017/18 BUDGET ESTIMATES FOR PARLIAMENTARY SERVICE COMMISSION

Reference is made to the above matter where the Commission guides as follows:-

(i) Request to Pay Service Gratuity of 31% to Staff Employed by Members of 11th Parliament

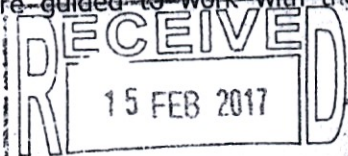
Article 230 of the Constitution of Kenya 2010, mandates the Commission to set and advice on remuneration and benefits of State and Public officers respectively. In respect to the above request, it is not clear where the above mentioned employees fall since the Commission's advice was not sought at the time of their engagement. It therefore becomes a challenge for the Commission to render its advice at the time of the expiry of their employment since it was not involved at the time of their employment. The Commission has no information whatsoever in its custody pertaining these employees.

In reviewing the above request, the Commission was constrained to render advice on the service gratuity payable as information available is inadequate. Consequently, you are requested to avail the following additional information:-

- a. The structure and designation of the jobs;
- b. Respective grades that the staff were engaged at; and
- c. The staff establishment and the number of staff impost.

(ii) Payment of Service Gratuity to Members of Parliament

The Commission is aware that Parliamentary Service Commission operates a pension scheme in accordance with the provisions of the Parliamentary Pensions Act, 2012, which has elaborate provisions on exit packages and pension emoluments for Members who have served for either one or more terms. In situations where two policy frameworks exist on remuneration matters, the better one, carries the day. In the above case therefore, you are guided to work with the



provisions of the Parliamentary Pensions Act, 2012. Please note however that as guided in our earlier communication to you, no State or Public Officer should benefit from pension and gratuity benefits from the same public service employer for a similar period.

(iii) Payment of severance pay equivalent to eight months' salary for the eight month period that Members of Parliament will forego given that the current Term of Parliament ends earlier due to constitutional provisions which require the General elections to be held in August.

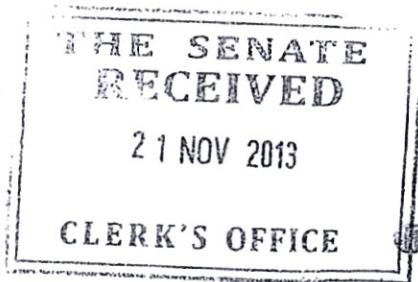
As you are aware, the above matter is in Court. The Commission is therefore constrained to consider or review it. However, you are at liberty to seek legal interpretation on the actual termination of the contract of the 11th Parliament.

The above notwithstanding, the Commission is in the process of reviewing remuneration and benefits for State Officers, which will also apply to the 12th Parliament.

Yours



Anne R. Gitau, (Mrs)
COMMISSION SECRETARY



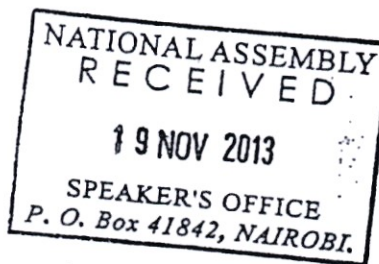
Salaries & Remuneration Commission
Rewarding productivity

Mr. Njoroge, DLC
We discussed. Please do a paper briefing the Commission on this and its implications on the last paper before the FSC on these matters.
[Signature]
21/11/13

Ref NO: SRC/TS/PASC/2/35/3

15th November, 2013

Hon Justin Muturi, M.P.
Speaker of the National Assembly/Chairman
Parliamentary Service Commission
NAIROBI



Dear Hon. Muturi,

REMUNERATION FOR STATE OFFICERS IN PARLIAMENT

Reference is made to your letter No. DLC/SRC/341/2012 dated 8th July, 2013 and subsequent communication between your office and this office.

The Commission during its 35th Special Meeting held on 14th November, 2013 deliberated on the issues raised in the letter under reference and made the decisions indicated in the attached schedule.

The purpose of this letter therefore, is to communicate the decision of the Salaries and Remuneration Commission on the issues raised in the letter under reference for your information and necessary action. The Commission is also available for the requested meeting between the Parliamentary Service Commission and Salaries and Remuneration Commission on a date and time mutually convenient to both Commissions.

The Commission appreciates your continued support as it undertakes its constitutional mandate.

Yours Sincerely,

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[Signature]
Sarah J. C. Serem (Mrs.) EBS.,
CHAIRPERSON

SCHEDULE OF REVIEWED REMUNERATION FOR STATE OFFICERS IN PARLIAMENT

A: SPECIAL PARLIAMENTARY DUTY ALLOWANCE 79

(i) The remuneration for designated holders of offices of the Leader of Majority and Leader of Minority in the National Assembly and Senate be paid based on the Salaries and Remuneration Commission grading and remuneration structure with effect from the date of assuming the designated responsibilities as follows:

Position	Monthly Remuneration Package Structure
Leader of Majority	792,000 x 66,000 p.a. - 858,000 x 66,000 p.a. - 924,000 x 66,000 p.a. - 990,000 x 66,000 p.a. - 1,056,000
Leader of Minority	765,502 x 63,792 p.a. - 829,294 x 63,792 p.a. - 893,086 x 63,792 p.a. - 956,878 x 63,792 p.a. - 1,020,670

(ii) The other offices of responsibility in Parliament as created by legislation and/or Standing Orders (as provided in the list) where necessary should be compensated through the Special Duty Responsibility Allowance as prorated by Parliamentary Service Commission subject to a maximum set and advised by the Salaries and Remuneration Commission of Kshs.150,000 per month.

B. REMUNERATION PACKAGE FOR MEMBERS OF PARLIAMENTARY SERVICE COMMISSION

The Salaries and Remuneration Commission will communicate the remuneration components and levels for Members of the Parliamentary Service Commission and all part time Commissioners in due course under a separate letter.

C. CAR MAINTENANCE ALLOWANCE

The Commission observes that the approved car maintenance allowance was based on an objective formula which was in tandem with the proposal made by Parliament vide letter Ref. KNA.2/4/(40) dated 22nd May 2013. Under the circumstances, the **Car Maintenance Allowance be maintained as earlier approved.**

D. MILEAGE ALLOWANCE

The existing rates be retained as the decision provided in the letter Ref SRC/TS/HRCOH/3/25 dated 11th June 2013, is that members whose areas of representation is beyond 375 km (750 Km return journey) claim reimbursement for the actual extra kilometers covered.

E: SALARY AND ALLOWANCE BREAKDOWN

The set remuneration package for all State Officers is consolidated pay. For purposes of pension management and computation, 60% of the set remuneration to be considered as the basic salary while all other allowances unless specified are consolidated into the 40% of the total set remuneration.

F. HOUSE ALLOWANCE FOR SPEAKERS

Salaries and Remuneration Commission (SRC) set housing benefit to the speakers as **provision of a house** by virtue of their position. Parliament, in collaboration with the Central Government organ in charge of housing should therefore, avail appropriate house for use by the Speakers of National Assembly and Senate.

G. SERVICE GRATUITY

All State Officers in Parliament who will have served for a period qualifying for pension as provided in the relevant Act of Parliament will be paid pension. Any other State Officer who do not qualify for payment of pension as provided under the Act may be considered for service gratuity at the rate of 31% of the basic salary (as defined under E above). **Pension should however, not be paid concurrently with service gratuity.**

Signed..... *[Signature]* Date..... *15th Nov. 2013*

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MEMORANDUM OF UNDERSTANDING ON ISSUES AGREED TO BETWEEN THE SALARIES
AND REMUNERATION COMMISSION AND PARLIAMENTARY SERVICE COMMISSION ON
10TH JUNE, 2013

1. REMUNERATION PACKAGE

To be paid at the rate of Kshs. 532, 500/- per month (taxable)

ADDITIONAL BENEFITS

2. SITTING ALLOWANCE

To be paid at the rate specified by SRC and in accordance with the Standing Orders or Resolutions of the Houses of Parliament.

3. CAR GRANT

To be paid at Kshs. 5 million per Member per parliamentary term.

4. PENSION

To remain as provided for under the Parliamentary Pensions Act.

5. GRATUITY

This is pending. SRC to review for further discussion with the PSC.

6. MEDICAL EX-GRATIA

PSC to determine and approve *ex-gratia* requests and notify the SRC on each such payment.

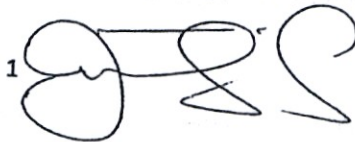
7. RANKING OF MEMBERS OF PARLIAMENT

Flagged for further discussion following benchmarking by SRC against Members in other jurisdictions.

8. PARLIAMENTARY SERVICE COMMISSION ALLOWANCES

PSC is a part time Commission and like other part time Commissions, this matter is still under consideration and will be advised by SRC at a later date. For now, the rates applicable in the 10th Parliament shall prevail until further advice from SRC.



1 



REPUBLIC OF KENYA

THE NATIONAL TREASURY

OBSERVATIONS AND RECOMMENDATIONS ON THE VARIOUS AMENDMENT CLAUSES

1. The Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bill No. 5 of 2023).

Clauses 1,2,4,5,6,7,10,12,13,16 and 17

Upon perusal, the National Treasury notes that the clauses above have the effect of bringing the law into conformity with the Constitution.

Clause 3

Insertion of a new section 3(A) into Cap 196. A Member of Parliament shall at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or a gratuity in accordance with the provisions of this Act

This provision allows members of Parliament who serve one term to get a pension benefit from the scheme, previously such members were entitled to a refund of contributions plus a return of 15% on the contributions. The new provision would be more costly to the Government since the members receive a lifetime pension funded for a shorter contribution period of 5 years. *approved.*

Clause 8

Delete and replace Section 7 of the Principal Act with a new section to provide for payment of gratuities to Members of Parliament who serve for one term in line with the recommendations of the Salaries and Remuneration Commission as regards the retirement benefits due to Members of Parliament.

- The introduction of a gratuity scheme for members means that those who elect to be paid a gratuity at the end of the term will not contribute to the pension scheme and the government will therefore shoulder the entire burden of payment of their terminal benefits. This goes against the best practice of making *approved.*

pension schemes contributory to ease the burden on the exchequer and the taxpayer.

- Retirement benefits best practice requires that an occupational retirement benefits scheme has a uniform structured design for its members. Therefore, introducing the option of a gratuity and pension at the same time with different eligibility criteria is not in tandem with this widely accepted best practice.
- With the deletion of current section 7 of the Act and replacement with the new section 7. The new provision does not cater for how a member who left Parliament before this amendment and was paid a refund of his contribution should buy back that service as was earlier provided for in section 7(2) for them to be pensionable by aggregating the two terms. Were it not for the discrepancies in the identified section, the choice of gratuity or pension should only be applicable on the first term of a member.
- New Section 7(2) – A member who is serving a second term is already pensionable. If he is allowed to elect to be paid a gratuity for his second term, what happens to his service for the first term if he had not claimed a refund for that other term? Secondly, it appears that this section goes beyond addressing the plight of those who serve one term and are not pensionable.

Clause 9

Amend Section 8 of the Principal Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate.

The new paragraph (a) which provides that "...has ceased to be a member of Parliament at the end of a term of Parliament" does not address the situation where a member ceases to be a member of Parliament by other reasons such as;

1. Annulment of their election by Court of Law through an election Petition" or
2. Resignation
3. Recall

We propose an amendment to include the 3 grounds stated above.

Clause 11

Amend Section 8 of the Principal Act to conform to the Constitution that provides for Parliament which consists of the National Assembly and the Senate and further provide for payment of a full year's salary to legal representatives of members who die before they serve for a period of twelve months.

Propose a new clause/amendment to section 11(c) to read

"If his aggregate period of reckonable service is **not less than two terms** the Committee shall pay"

- (i) A gratuity as under paragraph (b); and
- (ii) If he leaves a widow, a pension to the widow under section 13; and

(iii) If he leaves children, a pension to the children under section 14.

This provision is meant to accord families of pensionable members who pass on while serving a second term access to widows and children's pension. Currently families of members who die in service while serving a second term are not eligible for widows and children's pension owing to the requirement that the member's reckonable service should *not be less than ten years*.

To align with Clause 12 and especially provision under section 13 (6) in which the requirement for **an aggregate period of not less than ten years has been deleted**

Clause 14

Amend section 19 of the Principal Act and replace it with a new subsection to provide for the membership of the Pensions Management Committee that is representative of both Houses. The amendment further proposes to align other provisions of the section with the constitution that provides for parliament which consists of the National Assembly and the Senate.

The proposed amendment excludes the PS National Treasury from the composition of the Pensions Management Committee. Representation of the National Treasury in the Management Committee is paramount and plays a key role in Pensions Management, especially where the arrangement draws funding from the Consolidated Fund. The National Treasury is responsible for budgetary allocation and disbursing pension funds to members of parliament, managing pension funds, providing financial oversight to ensure that the pension scheme for members of Parliament remains financially sound, ensuring that the pension scheme for members of Parliament complies with relevant laws, regulations, and government policies, ensuring that the pension scheme adheres to legal requirements and financial guidelines, ensuring that the management of parliamentary pensions is transparent and accountable. Therefore, excluding the National Treasury representation will deny the Parliamentary Pension Scheme the stated benefits. Moreover, the representation provides information on financial matters such as the status of the exchequer thus, the absence of National Treasury representation may lead to inefficiencies in addressing variances in exchequer allocation.

Clause 15

Amend Section 20 of the Principal Act by deleting Subsection (2) and replacing it with a new subsection to provide for Tribunal that is representative of both Houses of Parliament and further for the funds for the administration of the provisions of the Act to be sourced from Parliamentary Service Commission.

The proposed amendment deviates from the provision that all expenses incurred in the administration be met out of the consolidated fund and seeks to substitute it with appropriation through the Parliamentary Service Commission. The scheme is a

contributory defined benefit scheme sponsored by the Government of Kenya and the pension funds are paid into the exchequer and benefits are paid out of the exchequer. The structure of the scheme is that the contributions by members are paid into the Consolidated Fund but the contribution by the Government of Kenya is notional. This is the reason why the National Treasury is part of the Management Committee as the administrator of the scheme to offer advice and guidance on the technical aspect of pension management in view of the broader government fiscal policies whose management is domiciled at the National Treasury.

Further, all retirement benefit schemes which are administered outside the National Treasury have a funding model which is not subject to the Consolidated Fund and are subject to regulation by the Retirement Benefits Authority. The proposed approach is a deviation from this practice.

2. The Parliamentary Pensions (Amendment) Bill, 2023 (National Assembly Bill No. 15 No. and No. 47 of 2023) of 2023

Amend Section 8 of the Principal Act by inserting the following new subsection immediately after subsection (2)- "(3) Notwithstanding Subsection (2) a former Member of Parliament who, having served in Parliament between 1st July, 1985 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".

The proposed amendment will embolden other categories of public servants who feel that their pension is inadequate to agitate for a similar treatment which would exponentially increase the pensions burden on the exchequer. This would work against efforts by Government to manage the public wage bill in a sustainable manner.

In the alternative, the National Treasury proposes an approach which adjusts the pension for the Members of Parliament by 5% per year to cushion the benefits from erosion by inflation

Honourable Chairman and Honourable Members, I submit.

Dr. Chris K. Kiptoo, CBS
PRINCIPAL SECRETARY/THE NATIONAL TREASURY

25/10/2023



Salaries & Remuneration
Commission

Rewarding productivity

Ref No: SRC/TS/8(80)

4th December, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
P.O. Box 41842-01000
Parliament Buildings
NAIROBI

Dear *Mr. Njoroge,*

STAKEHOLDER ENGAGEMENT ON THE PARLIAMENTARY PENSION (AMENDMENT) BILLS (NATIONAL ASSEMBLY BILLS NOS 5, 15 AND 48) OF 2022 BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

Reference is made to your letter Ref. No: NA/DDC/F&NP/2025/156 dated 24th November, 2023 on the above subject and your request to prepare a comprehensive submission on the three Bills.

The Salaries and Remuneration Commission (SRC) submits its memorandum as follows:

A. PARLIAMENTARY PENSIONS (AMENDMENT) BILL NOS. 5 & 48 OF 2023

SRC vide letter Ref. No: SRC/TS/5 (52) dated 19th October, 2023 (**copy attached**) submitted its Memorandum of views in regard to the Parliamentary Pensions (Amendment) Bill No. 48 of 2023. SRC notes that the contents of the Bill are similar to the contents of the Parliamentary Pensions (Amendment) Bill No. 5 of 2023 and consequently, SRC reiterates its submission on the two Bills as follows:

SRC has reviewed the Bills and notes that the Memorandum and Objects of the Bill is to bring the Act into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring CAP 196 into conformity with the directions of SRC as regards the retirement benefits due to Members of Parliament.

SRC vide letter Ref. No: SRC/TS/NA/3/4 (80) dated 13th March, 2019 (**copy attached**) set that Members of Parliament who serve one term in Parliament and are not re-elected shall be entitled to a service gratuity of 31% of their basic pay at the end of their term as well as a refund of their contributions without interest. SRC further set that no State Officer should benefit from pension and gratuity benefits from the same public service employer for a similar period.

Consequently, SRC has examined the proposed amendments to the Parliamentary Pensions Act as set out in the Parliamentary Pensions Amendment Bill No. 48 of 2022 and wishes to submit its memorandum as follows:



1. CLAUSE 4 OF THE BILL SEEKS TO AMEND THE PRINCIPAL ACT BY INSERTING THE FOLLOWING NEW SECTION IMMEDIATELY AFTER SECTION 3:

3A. A Member of Parliament shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act.

The effect of this proposed amendment is that it enables Members of Parliament to elect, from the onset of their term in Parliament, either to be paid a pension or gratuity at the end of their term of service.

This proposed amendment, runs contrary to another proposed amendment in Clause 8 of the Amendment Bill, which provides that a person shall be entitled to receive gratuity where the person ceases to be a Member of Parliament and has served an aggregate period of five years or less. The effect of the proposal in Clause 8 of the Amendment Bill is that only gratuity is payable to a person who ceases to be a Member of Parliament after serving for 5 years or less. Therefore, even if such a person would have, at the onset of their term in Parliament, elected to be paid a pension, such option would not be applicable to them.

Consequently, SRC is of the considered view that the provisions of Clause 4 of the Amendment Bill cannot subsist together with the proposed amendment at Clause 8.

SRC recommends that the proposal in Clause 4 of the Amendment Bill be deleted as it would not only be redundant but also in conflict with the provisions of the proposed amendments in Clause 8 of the Bill.

In the alternate, SRC recommends that the proposed Section 3A be amended to read as follows;

3A. A Member of Parliament who has previously served for at least one term shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act.

2. CLAUSE 8 OF THE AMENDMENT BILL SEEKS TO AMEND THE PRINCIPAL ACT BY DELETING SECTION 7 AND SUBSTITUTING THEREFOR THE FOLLOWING NEW SECTION:

7. (1) Subject to the provisions of this Act, a person shall be entitled to receive gratuity under this section where the person —

- (a) ceases to be a Member of Parliament; and**
- (b) has served an aggregate period of five years or less.**

(2) Notwithstanding subsection (1)(b), a Member of Parliament who has served for more than one term of Parliament may elect to be paid a gratuity in lieu of a pension at the end of the term of Parliament which the Member is at the time serving.

(3) ...

(4) If after receiving gratuity under subsection (2) the Member elects to pay pension contributions under Section 4, the Member may if he so desires-

- a) repay all the gratuity paid to the member plus, interest at the rate of three percent per month for a period of fifteen months, from the date he elects to be pensionable; and**
- b) pay the contributions under section 3 for the entire period of non-contribution to match up with existing contributors.**

(5) Any amount paid by the Member under subsection (4) shall be treated for the purposes of this section as if it were a contribution made by the Member at the time when he or she makes that payment.

(6) For the purpose of calculating a person's aggregate period of reckonable service, no account shall be taken of any period in respect of which gratuity had been paid to that person under this section and not subsequently repaid by the person.

(7) ...

(8) ...

The proposed amendment seeks to delete and replace section 7 of the Principal Act with a new section to provide for payment of gratuity to Members of Parliament who serve for one term. A clear reading of the proposed Section 7(1)(b) creates the impression that only Members of Parliament that have served an aggregate period of 5 years or less are eligible for payment of gratuity. Therefore, persons who may have served for a period of more than 5 years, but less than 10 years, are eligible for payment of pension.

This proposal contradicts the provisions of Section 8(1)(b) of the Principal Act which provides that a person shall only be entitled to receive a pension if his or her aggregate period of reckonable service is two terms of Parliament.

SRC is of the considered view that Section 8(1)(b) of the Principal Act should be amended to allow persons who may have served for an aggregate period of more than 5 years to be entitled to receive pension. //

As contemplated in the advice issued on 13th March, 2019 by SRC, Members of Parliament who elect for payment of gratuity at the end of their term are also entitled to a refund of their contributions without interest. Therefore, a Member of Parliament who has served for more than one term of Parliament and elects to be paid a gratuity in lieu of a pension in line with the proposed Section 7(2) is equally entitled to a refund of their contribution.

The proposed Section 7(4) grants Members of Parliament, who may have been paid a gratuity in lieu of a pension, the option to pay contributions towards their pension after repayment of the gratuity. The proposed Section 7(5) on the other hand stipulates that gratuity repaid by the Member shall be treated for the purposes of section 7 as if it were a contribution made by the Member at the time when he or she makes that payment.

The proposed Section 7(5) which seeks to treat the gratuity repaid under the proposed section 7(4)(a), in addition to the contributions under 7(4)(b), as a Member's contribution is unjust and

disadvantages Members of Parliament who only make contributions. The gratuity repaid under the proposed section 7(4)(a) should not be treated as contributions made by a Member who opts to receive pension after receiving gratuity.

SRC therefore recommends that the proposed Section 7(5) be deleted from the Bill.

~~In the alternative, and without prejudice to the above recommendation, SRC recommends that:~~

1. The proposed Section 7(5) be amended to make provision that only the Member's pension contribution paid in full shall be treated as if it were a contribution made by the Member and not the gratuity.

Section 7(4) should also indicate that it shall only apply for continuous service not where there is a break in service.

3. CLAUSE 11 OF THE AMENDMENT BILL SEEKS TO AMEND SECTION 11 OF THE PRINCIPAL ACT TO PROVIDE FOR PAYMENT OF ONE FULL YEAR'S SALARY TO LEGAL REPRESENTATIVES OF MEMBERS OF PARLIAMENT WHO DIE BEFORE THEY SERVE FOR A PERIOD OF TWELVE MONTHS;

Clause 11 (b) that proposes the amendment of section 11(a) seeks to enhance the amount paid to legal representatives of deceased Members of Parliament whose aggregate period of reckonable service is less than twelve months to an amount equal to the deceased Member's annual salary. SRC notes that in addition to this proposal not aligning to the Memorandum and Objects of the Bill, it is an added cost to the Scheme given that contributions by Members will not be enhanced to cater for the added cost.

SRC further notes that the proposed amendment to Section 11(a) is already well catered for as Members of Parliament are entitled to Group Life Insurance Cover.

SRC recommends that section 11 (a) of the Principal Act be retained as it is and Clause 11 (b) of the Amendment Bill be deleted.

4. CLAUSE 13A THE AMENDMENT BILL SEEKS TO INSERT A NEW SECTION 18B TO MAKE PROVISION FOR POST RETIREMENT MEDICAL SCHEME;

The proposed section 18B(1) and (2) seeks to confer the Parliamentary Service Commission with authority to establish a voluntary post-retirement medical scheme for Members of Parliament.

This proposed section contravenes the provisions of Article 230 (4) (a) of the Constitution which vests SRC with the mandate to set and regularly review the remuneration and benefits for all State officers, including Members of Parliament. A post-retirement medical scheme is a benefit within the meaning of Article 230 (4) of the Constitution.

SRC recommends that the proposed section 18B and the proposed Clause 23(2)(b) which vests the Parliamentary Service Commission with authority to make regulations on establishment, regulation and supervision of the management of the post-retirement medical fund scheme for Members of Parliament should be deleted from the Bill. The Parliamentary Service Commission submit a proposal to SRC on this benefit for consideration.

B. PARLIAMENTARY PENSIONS (AMENDMENT) BILL NO. 15 OF 2023

The Parliamentary Pensions (Amendment) Bill No. 15 of 2023 seeks to amend section 8 of the Parliamentary Pensions Act, CAP 196 by inserting a new subsection 8(3) which provides that:

'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 shall be entitled to a monthly pension of one hundred thousand shillings'.

SRC has considered the proposed amendment and submits its memorandum as follows:

- (i) Pension is an employment benefit and therefore falls within the mandate of SRC and any legislative proposal or review thereof is subject to the mandate of SRC as provided in the Constitution.
- (ii) The legislative proposal contained in the Bill infringes SRC's mandate as provided in Article 230 (4) (a) to set and regularly review remuneration and benefits of all state officers, by proposing to amend section 8 of the Parliamentary Pensions Act Cap 196.
- (iii) In view of the foregoing, SRC is of the considered view that the proposal to review the pension benefits for State Officers in Parliament is in contravention of Article 230 (4) (a) of the Constitution and therefore unconstitutional.

Any Public Institution that desires to have the remuneration and benefits of its State officers including pension reviewed, is required to submit a request in writing to SRC pursuant to Article 230 (4) (a) of the Constitution, providing among others, justification for the request and confirmation of availability of funds for the proposed review.

The purpose of this letter, therefore, is to submit SRC's memorandum on the three Bills.

The Commission appreciates your continued cooperation and support as we discharge our respective mandates.

Yours


Mrs. Anne R. Gitau, MBS
COMMISSION SECRETARY/CEO

The following information is for your information only. It is not intended to be used as a substitute for professional advice. The information is provided for your information only and is not intended to be used as a substitute for professional advice. The information is provided for your information only and is not intended to be used as a substitute for professional advice.



**Salaries & Remuneration
Commission**
Rewarding productivity

Ref No: SRC/TS/5 (52)

19th October, 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
National Assembly
Parliament Buildings
P.O Box 41842- 00100
NAIROBI

Dear *Mr. Njoroge*

**MEMORANDUM ON THE PARLIAMENTARY PENSIONS (AMENDMENTS) (NO.48)
BILL, 2022.**

Reference is made to the captioned Bill and the proposed amendments to the Parliamentary Pensions Act CAP 196 Laws of Kenya.

The Salaries and Remuneration Commission (SRC) has reviewed the Bill and notes that the Memorandum and Objects of the Bill is to bring the Act into conformity with the provisions of the Constitution of Kenya, 2010 and provide for the Act to apply to Members of both Houses of Parliament. The Bill further seeks to bring CAP 196 into conformity with the directions of the SRC as regards the retirement benefits due to Members of Parliament.

The SRC vide letter Ref. No: SRC/TS/NA/3/4 (80) dated 13th March, 2019 advised the Parliamentary Service Commission that Members of Parliament who serve one term in Parliament and are not re-elected shall be entitled to a service gratuity of 31% of their basic pay at the end of their term as well as a refund of their contributions without interest. The Commission further advised that no State Officer should benefit from pension and gratuity benefits from the same public service employer for a similar period.

SRC has examined the proposed amendments to the Parliamentary Pensions Act as set out in the Parliamentary Pensions Amendment Bill No. 48 of 2022 and wishes to submit its views as follows:

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1. CLAUSE 4 OF THE BILL SEEKS TO AMEND THE PRINCIPAL ACT BY INSERTING THE FOLLOWING NEW SECTION IMMEDIATELY AFTER SECTION 3:

3A. A Member of Parliament shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act.

The effect of this proposed amendment is that it enables Members of Parliament to elect, from the onset of their term in Parliament, either to be paid a pension or gratuity at the end of their term of service.

This proposed amendment, runs contrary to another proposed amendment in Clause 8 of the Amendment Bill, which provides that a person shall be entitled to receive gratuity where the person ceases to be a Member of Parliament and has served an aggregate period of five years or less. The effect of the proposal in Clause 8 of the Amendment Bill is that only gratuity is payable to a person who ceases to be a Member of Parliament after serving for 5 years or less. Therefore, even if such a person would have, at the onset of their term in Parliament, elected to be paid a pension, such option would not be applicable to them.

Consequently, the SRC is of the considered view that the provisions of Clause 4 of the Amendment Bill cannot subsist together with the proposed amendment at Clause 8.

The SRC recommends that the proposal in Clause 4 of the Amendment Bill be deleted as it would not only be redundant but also in conflict with the provisions of the proposed amendments in Clause 8 of the Bill.

In the alternate, the SRC recommends that the proposed Section 3A be amended to read as follows;

3A. A Member of Parliament who has previously served for at least one term shall, at the beginning of the term of a newly elected Parliament, elect to be paid either a pension or gratuity in accordance with the provisions of this Act.

2. CLAUSE 8 OF THE AMENDMENT BILL SEEKS TO AMEND THE PRINCIPAL ACT BY DELETING SECTION 7 AND SUBSTITUTING THEREFOR THE FOLLOWING NEW SECTION:

7. (1) Subject to the provisions of this Act, a person shall be entitled to receive gratuity under this section where the person —

(a) ceases to be a Member of Parliament; and

(b) has served an aggregate period of five years or less.

(2) Notwithstanding subsection (1)(b), a Member of Parliament who has served for more than one term of Parliament may elect to be paid a gratuity in lieu of a pension at the end of the term of Parliament which the Member is at the time serving.

(3) ...

(4) If after receiving gratuity under subsection (2) the Member elects to pay pension contributions under Section 4, the Member may if he so desires-

a) repay all the gratuity paid to the member plus, interest at the rate of three percent per month for a period of fifteen months, from the date he elects to be pensionable; and

b) pay the contributions under section 3 for the entire period of non-contribution to match up with existing contributors.

(5) Any amount paid by the Member under subsection (4) shall be treated for the purposes of this section as if it were a contribution made by the Member at the time when he or she makes that payment.

(6) For the purpose of calculating a person's aggregate period of reckonable service, no account shall be taken of any period in respect of which gratuity had been paid to that person under this section and not subsequently repaid by the person.

(7) ...

(8) ...

The proposed amendment seeks to delete and replace section 7 of the Principal Act with a new section to provide for payment of gratuity to Members of Parliament who serve for one term. A clear reading of the proposed Section 7(1)(b) creates the impression that only Members of Parliament that have served an aggregate period of 5 years or less are eligible for payment of gratuity. Therefore, persons who may have served for a period of more than 5 years, but less than 10 years, are eligible for payment of pension.



This proposal contradicts the provisions of Section 8(1)(b) of the Principal Act which provides that a person shall only be entitled to receive a pension if his or her aggregate period of reckonable service is two terms of Parliament.

SRC is of the considered view that Section 8(1)(b) of the Principal Act should be amended to allow persons who may have served for an aggregate period of more than 5 years to be entitled to receive pension.

As contemplated in the advice issued on 13th March, 2019 by the SRC, Members of Parliament who elect for payment of gratuity at the end of their term are also entitled to a refund of their contributions without interest. Therefore, a Member of Parliament who has served for more than one term of Parliament and elects to be paid a gratuity in lieu of a pension in line with the proposed Section 7(2) is equally entitled to a refund of their contribution.

The proposed Section 7(4) grants Members of Parliament, who may have been paid a gratuity in lieu of a pension, the option to pay contributions towards their pension after repayment of the gratuity. The proposed Section 7(5) on the other hand stipulates that gratuity repaid by the Member shall be treated for the purposes of section 7 as if it were a contribution made by the Member at the time when he or she makes that payment.

The proposed Section 7(5) which seeks to treat the gratuity repaid under the proposed section 7(4)(a), in addition to the contributions under 7(4)(b), as a Member's contribution is unjust and disadvantages Members of Parliament who only make contributions. The gratuity repaid under the proposed section 7(4)(a) should not be treated as contributions made by a Member who opts to receive pension after receiving gratuity.

The SRC therefore recommends that the proposed Section 7(5) be deleted from the Bill.

In the alternative, and without prejudice to the above recommendation, the SRC recommends that:

1. The proposed Section 7(5) be amended to make provision that only the Member's pension contribution paid in full shall be treated as if it were a contribution made by the Member and not the gratuity.

Section 7(4) should also indicate that it shall only apply for continuous service not where there is a break in service.

3. CLAUSE 11 OF THE AMENDMENT BILL SEEKS TO AMEND SECTION 11 OF THE PRINCIPAL ACT TO PROVIDE FOR PAYMENT OF ONE FULL YEAR'S SALARY TO LEGAL REPRESENTATIVES OF MEMBERS OF PARLIAMENT WHO DIE BEFORE THEY SERVE FOR A PERIOD OF TWELVE MONTHS;

Clause 11 (b) that proposes the amendment of section 11(a) seeks to enhance the amount paid to legal representatives of deceased Members of Parliament whose aggregate period of reckonable service is less than twelve months to an amount equal to the deceased Member's annual salary. The SRC notes that in addition to this proposal not aligning to the Memorandum and Objects of the Bill, it is an added cost to the Scheme given that contributions by Members will not be enhanced to cater for the added cost.

The SRC further notes that the proposed amendment to Section 11(a) is already well catered for as Members of Parliament are entitled to Group Life Insurance Cover.

The SRC recommends that section 11 (a) of the Principal Act be retained as it is and Clause 11 (b) of the Amendment Bill be deleted.

4. CLAUSE 13A THE AMENDMENT BILL SEEKS TO INSERT A NEW SECTION 18B TO MAKE PROVISION FOR POST RETIREMENT MEDICAL SCHEME;

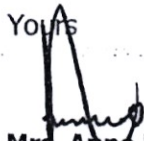
The proposed section 18B(1) and (2) seeks to confer the Parliamentary Service Commission with authority to establish a voluntary post-retirement medical scheme for Members of Parliament.

This proposed section contravenes the provisions of Article 230 (4) (a) of the Constitution which vests the Salaries and Remuneration Commission with the mandate to set and regularly review the remuneration and benefits for all State officers, including Members of Parliament. A post-retirement medical scheme is a benefit within the meaning of Article 230 (4) of the Constitution.

SRC recommends that the proposed section 18B and the proposed Clause 23(2)(b) which vests the Parliamentary Service Commission with authority to make regulations on establishment, regulation and supervision of the management of the post-retirement medical fund scheme for Members of Parliament should be deleted from the Bill. The Parliamentary Service Commission submit a proposal to SRC on this benefit for consideration.

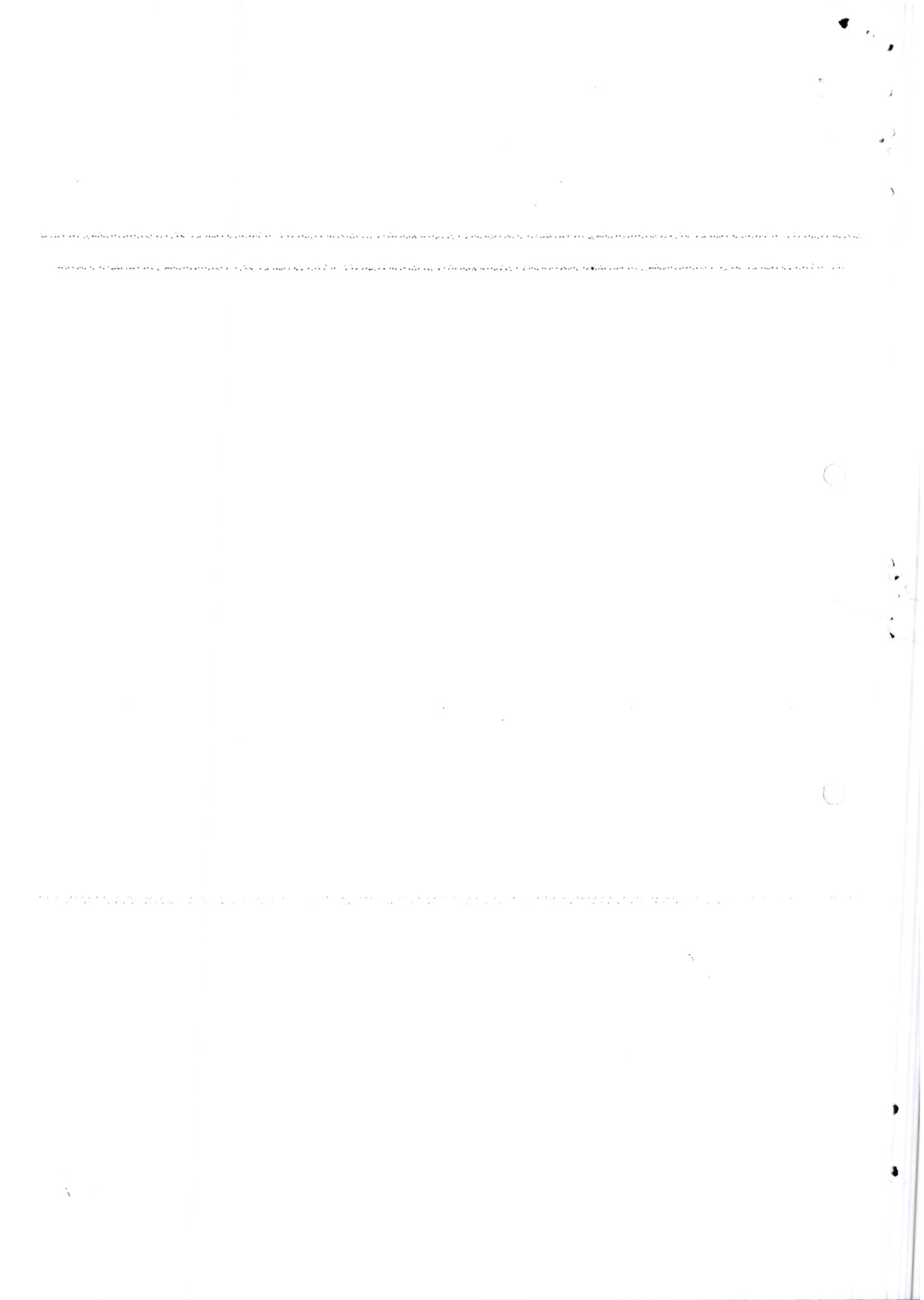
The purpose of this letter is to communicate the views of SRC on the Amendment Bill for your consideration.

Yours



**Mrs. Anne R. Gitau, MBS
COMMISSION SECRETARY/CEO**







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Salaries & Remuneration
Commission
Rewarding productivity



Ref No. SRC/TS/NA/3/4(80)

13th March, 2019

Hon. Justin Muturi, EGH
Chairperson, Parliamentary Service Commission
Parliament Buildings
NAIROBI

Dear Hon. Muturi,

REVIEW OF THE REMUNERATION AND BENEFITS STRUCTURE FOR STATE OFFICERS SERVING IN PARLIAMENT

Reference is made to the Memorandum by the Parliamentary Service Commission (PALSCOM) dated 31st January 2019 requesting the Salaries and Remuneration Commission (SRC) to review the remuneration and benefits for State Officers serving in Parliament.

The Commission notes from the onset that most of the issues raised in the Memorandum are currently subject to Court proceedings. However, out of the Memorandum, the Commission in its 180th Commission meeting held on 7th March 2019, isolated the following three issues, deliberated on them and in the discharge of its mandate as provided in Article 230 (4) (a) of the Constitution, hereby states as follows:

(a) Medical Ex Gratia

The Commission guides that where a member exhausts their medical cover entitlement, PARLSCOM may extend Ex-gratia assistance. However, this benefit will be managed on a case by case basis, in line with the larger Public Service Policy on Medical Ex Gratia.

(b) Car Maintenance Allowance, Mileage Allowance and Daily Subsistence Allowance

The Commission does not concur that Car Maintenance Allowance, Mileage Allowance and Daily Subsistence Allowance are facilities. Consequently, the determination of these benefits fall under the purview of the Mandate of SRC as per Article 230 (4) (a).

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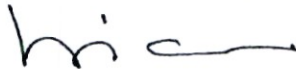
(c) Service Gratuity and Pension

The Commission is aware that Parliamentary Service Commission operates a pension scheme in accordance with the provisions of the Parliamentary Pensions Act, 2012, which has elaborate provisions on exit packages and pension emoluments for Members who have served either one or more terms. In situations where two policy frameworks exist on remuneration matters, the better one carries the day. In the above case therefore, if the service gratuity framework is better than the pension payable, Members who serve only one term of Parliament and are not re-elected shall be entitled to a service gratuity of 31% of basic pay at the end of their term of Parliament as well as a refund of their contributions without any interest. Please note however, that no State Officer should benefit from pension and gratuity benefits from the same public service employer for a similar period.

The above notwithstanding, you are guided to work with the provisions of the Parliamentary Pensions Act, 2012.

The purpose of this letter is to convey the SRC's position and apprise you on the progress in addressing your request.

Yours *Sincerely*



Mrs. Lyn C. Mengich
CHAIRPERSON