



REPUBLIC OF KENYA
TWELFTH PARLIAMENT - (SIXTH SESSION)
THE NATIONAL ASSEMBLY

NOTIFICATION FROM THE SPEAKER
[Standing Order 42(2)]
(No. 05 of 2022)

ON
THE REFERRAL OF THREE BILLS BY H.E. THE PRESIDENT FOR
RECONSIDERATION

WHEREAS, on diverse dates, the National Assembly considered **The Insurance Professionals Bill** (National Assembly Bill No. 25 of 2020) (sponsored by the Hon. Benjamin Washiali, MP), **The Higher Education Loans Board (Amendment) Bill** (National Assembly Bill No. 37 of 2020) (sponsored by the Hon. John Mwirigi, MP), and **The Information Communication Technology Practitioners Bill** (National Assembly Bill No. 38 of 2020) and separately passed them on 8th June, 2022;

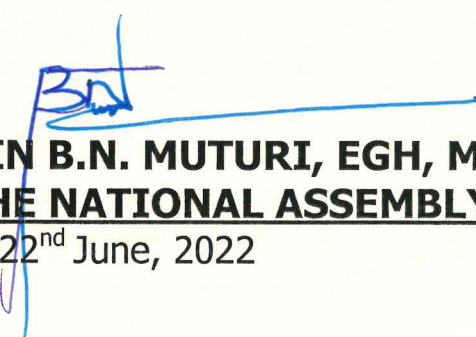
WHEREAS, I did present the said Bills for Assent in accordance with the provisions of the Constitution and our Standing Orders;

FURTHER WHEREAS, by way of Memoranda dated 21st June, 2022, H.E the President has sent a *Message* to the Speaker conveying that, in exercise of the powers conferred under Article 115(1)(b) of the Constitution, he has referred the three Bills back to the National Assembly for reconsideration, together with his **reservations** on each of them;

COGNISANT, that the House adjourned *Sine Die* on 9th June, 2022 in accordance with its Calendar for the Sixth Session (*Regular Sessions-2022*);

NOW THEREFORE, IT IS NOTIFIED to all Members of the National Assembly and the general public –

1. **THAT**, H.E. The President has discharged his functions on the three Bills in accordance with the provisions of the Constitution;
2. **THAT**, pursuant to the provisions of Standing Order 42(2), I have directed the Clerk of the National Assembly to **circulate** the *Message* from H.E. The President to all Members, together with his **reservations** on the three Bills; and,
3. **THAT**, the House being on *Sine Die* recess, the three Bills may **NOT** be reconsidered and shall therefore **lapse** at the end of the term of the Twelfth Parliament in accordance the provisions of Standing Order 141.


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

Wednesday, 22nd June, 2022



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE INSURANCE PROFESSIONALS BILL, 2022

MEMORANDUM

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

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled "A Bill for An Act of Parliament to make provision for the establishment of the Insurance Institute of Kenya, and the Insurance Professionals Examination Board, to provide for examination, registration and regulation of standards of practice of insurance professionals and to make provision for matters concerned therewith and incidental thereto", the short title of which is "The Insurance Professionals Act, 2022", was passed by the National Assembly on the 8th June, 2022;



AND WHEREAS the Insurance Professionals Act, 2022, was presented to me for assent, in accordance with the provisions of the Constitution, on the 21st June, 2022;

NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refuse to assent to the Insurance Professionals Bill, 2022, for the reasons set out hereunder:

CLAUSE 4

Clause 4 of the Bill provides for the membership of the Institute. Subclause (2) only provides for two categories of members, being fellows and associates. Currently, the Insurance Institute of Kenya (IIK) has affiliate members comprising professionals who provide services to the insurance industry whose professional standards should also be regulated by the Institute. IIK also has other service providers who are corporate bodies whose services standards should also be regulated. In our considered view, corporate members and affiliate members have been unfairly excluded from membership of the Institute without any legal or policy justification. The Bill, if passed in its current form, will stifle IIK's growth instead of facilitating it. Furthermore, clause 4 provides that the



membership of the Institute shall comprise members who have undertaken the Insurance Institute of Kenya examinations and Chartered Insurance Institute of London examinations. In my considered view, the membership of the Institute should be separated from the examination and examination bodies. While we recognise the historical link between the insurance sector and the Chartered Insurance Institute of London, it is my view that this recognition should not disadvantage other institutes offering professional insurance examinations, including Kenyan institutes, and current insurance practitioners who may not have undertaken the Chartered Insurance Institute of London examinations.

RECOMMENDATION

For the foregoing reasons, I recommend that the said Bill should be amended in clause 4 by deleting subclause (2) and substituting therefor the following new subclause—

(2) The Members of the Institute shall be classified into the following categories—

(a) Fellows, comprising those persons who are Fellows of the Insurance Institute of Kenya, or Fellows of the



Chartered Insurance Institute of London, or Fellows of any other insurance institute recognised in Kenya;

- (b) Associate Members, comprising those persons who are Associate Members of the Insurance Institute of Kenya, or Associate Members of the Chartered Insurance Institute of London, or Associate Members of any other insurance institute recognised in Kenya;**
- (c) Affiliate Members, comprising those members who work in the insurance industry but are not insurance professionals including accountants, lawyers and members of other professional bodies; and**
- (d) Corporate Members, comprising private and public institutions and organisations including companies, partnerships and other corporate bodies.**



CLAUSE 37

Clause 37 of the Bill provides for funds of the Institute. However, the Bill is silent on the sources of funds for the Examinations Board. In my considered view, this lacuna shall have an adverse impact on the operations of the critical institution in respect of the resources needed to undertake its critical functions under the Act. Current best practice indicates that professional examinations' boards are funded from public funds and the same should be undertaken for the Examinations Board.

RECOMMENDATION

For the foregoing reasons, I recommend that clause 37 of the Bill should be renumbered as subclause (1) and the following new subclause added thereto—

(2) The funds of the Examinations Board shall consist of—

- (a) monies allocated to the Board from the subscription fees paid to the Institute;**
- (b) examination fees levied by the Institute against any person who**



applies to sit for an examination given by the Examination Board;

- (c) donations, gifts and endowments from lawful sources; and**
- (d) grants.**

CLAUSE 40

Clause 40 of the Bill provides that the Cabinet Secretary shall declare, by notice on the Gazette, within 12 months after the commencement of the Act, that a person shall not practice as an insurance professional unless that person possesses a valid practicing certificate. However, the provision is unclear about the procedure to be followed by current insurance professionals to bring them up to good standing under the Act. In my considered view, it is necessary to bring clarity to the procedure necessary to bring current insurance professionals into good standing with the Institute.

RECOMMENDATION

For the foregoing reasons, I recommend that clause 40 of the Bill be amended by adding the following new subclause immediately after subclause (2)—



(3) The Cabinet Secretary, in consultation with the Institute, shall, in the notice under subsection (1), prescribe the procedure for obtaining a practicing certificate to be followed by insurance professionals who were in practice on the date of the commencement of this Act.

FOURTH SCHEDULE

Paragraph 8 (2) of the Fourth Schedule to the Bill provides that a person commits an offence if that person, when appearing as a witness before the Disciplinary Committee, refuses or fails to be sworn; refuses or fails to answer a question that he is required to answer by the chairperson of the Disciplinary Committee; or refuses or fails to produce a document that he is required to produce by a summons served on him under the Act. In our considered view, it is the duty of the Disciplinary Committee or any person who alleges wrongdoing on the part of an insurance professional to adduce sufficient evidence to prove the wrongdoing. It is a constitutional right under Article 50 (2) (i) and (l) that a person has the right to remain silent and not give evidence during any proceedings or to give any self-incriminating evidence.



RECOMMENDATION

For the foregoing reasons, I recommend that paragraph 8 of the Fourth Schedule to the Bill should be amended by deleting subparagraph (2).

Dated the 21st June, 2022.

A handwritten signature in green ink, appearing to read 'U. Kenyatta', with a long horizontal line extending to the right.

UHURU KENYATTA,
President.



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL, 2020

MEMORANDUM

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

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled "A Bill for An Act of Parliament to amend the Higher Education Loans Board Act", the short title of which is "The Higher Education Loans Board (Amendment) Bill, 2020", was passed by the National Assembly on the 8th June, 2022;

AND WHEREAS the Higher Education Loans Board (Amendment) Bill, 2020, was presented to me for assent, in accordance with the provisions of the Constitution, on the 20th June, 2022;



NOW THEREFORE, in exercise of the powers conferred on me by Article 115 of the Constitution, I refuse to assent to the Higher Education Loans Board (Amendment) Bill, 2020 for the reasons set out hereunder:

CLAUSE 2:

Clause 2 of the Bill provides for amendments of section 15(1) of the Higher Education Loans Board Act by -

Deleting the words “completion of his studies” appearing immediately after the words “year of” and substituting therefor the words “securing employment”.

This provision will adversely affect the sustainability of the Higher Education Loans Board (HELB) as a revolving fund. Delaying the date of commencement of repayment of student loans will consequently reduce the amount recovered by HELB as well as decrease the number of students funded by HELB annually. This is because graduates who are not in formal employment or those



that are self – employed are not likely to declare that they are generating income and are likely to fail or delay repaying their loans. Further, the proposed amendment will preclude loanees who have completed their studies or those who are self-employed from repaying their loans promptly.

Pursuant to the Government's policy on Technical and Vocational Education and Training (TVET), specifically institutional expansion, enhancement of student enrolment and skills development, many students have received loans from HELB; have graduated from TVET colleges and are generating income from the informal sector. Since, loan recovery is a major component of resource mobilization for HELB and contributes immensely to the funding of needy students on an annual basis, it is imperative that the status quo is maintained to prevent over reliance on the exchequer.



RECOMMENDATION:

In view of the foregoing, I recommend that clause 2 of the Bill be deleted.

Dated the 21st June, 2022.

A green ink signature of Uhuru Kenyatta, written in a cursive style.

UHURU KENYATTA,
President.



THE CONSTITUTION OF KENYA

REFUSAL TO ASSENT TO THE INFORMATION COMMUNICATION TECHNOLOGY BILL, 2022

MEMORANDUM

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

Submitted to the Speaker of the National Assembly.

WHEREAS a Bill entitled "A Bill for An Act of Parliament to provide for the training, registration, licensing, practice and standards of ICT practitioners and for connected purposes", the short title of which is "The Information Communication Technology Practitioners Act, 2022", was passed by the National Assembly on the 8th June, 2022;

AND WHEREAS the Information Communication Technology Practitioners Act, 2022, was presented to me for assent, in accordance with the provisions of the Constitution, on the 21st June, 2022;



NOW THEREFORE, in exercise of the powers conferred on me by Article 115 (1) (b) of the Constitution, I refuse to assent to the Information Communication Technology Practitioners Bill, 2022, for the reasons set out hereunder:

CLAUSE 2

The Bill, at a foundational level, fails to define unequivocally who an ICT practitioner is. The definition of "Information Communication Technology (ICT)" is so broad that it captures the entire population. Given that mobile phone penetration in Kenya is at 100%, going by the definition of ICT and ICT practitioner, the majority of the Kenyan population will be classified as ICT practitioner and, consequently, require to be registered and licensed under the Bill.

RECOMMENDATION:

For the foregoing reasons, I recommend that the said Bill should be amended in clause 2 by deleting the definition of "Information Communication Technology (ICT)".

CLAUSE 5

Clause 5 establishes the Council and at subclause (1), prescribes the members of the Council. Subclause (3) provides that the members of the Council nominated under subclause (1) (f) (i), (ii) and (iii) should be



nominated on a rotational basis so as to include the members of other recognised associations as may be determined by the Council in consultation with the members of the Institute. The two provisions are inconsistent with each other. Subclause (1) (f) prescribes which associations shall nominate while subclause (3) contemplates other associations shall nominate members of the Council.

RECOMMENDATION

For the foregoing reasons, I recommend that the Bill be amended in clause 5 (1) by deleting paragraph (f) and substituting therefor the following new subclause—

(f) three persons of good professional standing nominated by associations and one person nominated by the chairperson elected under section 8.

CLAUSE 10

Some of the functions of the Institute set out in clause 10 of the Bill deal with matters that fall within the jurisdiction of other regulatory or professional bodies and institutions including the Commission on University Education, the Tertiary and Vocational Education Training Authority, the Competition Authority, and the Information and Communications Technology Authority of Kenya.



Furthermore, the Bill fails to take into consideration that the ICT sector is a multi-profession sector that comprises professionals and practitioners from different industries including teachers, academia, business, civil society, engineering and other sectors that are regulated by other institutions. Therefore, it would not be in the best interests of the country to attempt to bring under regulation all these other professionals. In our considered view, the Bill fails to promote the development of a conducive environment for these stakeholders to maximise their potential and contribute to nation-building.

RECOMMENDATION

In view of the foregoing, I recommend that the Bill be amended by deleting Clause 10 of the Bill and substituting therefor the following new clause—

**Functions
of the
Institute.**

**10. The functions of the
Institute shall be to—**

- (a) protect, assist and
educate the public in
Kenya in all matters
touching, ancillary or
incidental to the
profession of ICT;**



- (b) administer such examinations as may be necessary to determine whether persons are qualified for registration under this Act;
- (c) register ICT practitioners for the purposes of this Act upon payment of the prescribed fees;
- (d) collaborate with training institutions, professional associations and other relevant bodies in matters relating to training and professional development of ICT practitioners;
- (e) upon request, to act as an arbitrator in any disputes between a registered ICT Practitioner and a client;
- (f) formulate policies and programs governing the profession of



**Information
Communication
Technology
Practitioners;**

- (g) plan, arrange, co-ordinate and oversee continuing professional training and development of ICT practitioners;**
- (h) promote the international recognition of the Institute; and**
- (i) carry out any other functions prescribed for it under any of the other provisions of this Act or under any other written law.**

CLAUSE 12

Clause 12 of the Bill proposes that the Council shall determine the remuneration, fees or allowances of the members of the Council. The provision is inconsistent with Article 230 (4) (b) of the Constitution which mandates the Salaries and Remuneration Commission to advise the national and county governments on the remuneration and benefits of public officers. Furthermore, the provision



is consistent with the Government policy contained in the *Mwongozo* Code of Governance for State Corporations that ensures that members of leadership bodies in public institutions do not determine their own remuneration or benefits.

RECOMMENDATION

For the foregoing reasons, I recommend that the Bill be amended by deleting clause 12 and substituting therefor the following new clause—

12. There shall be paid to the Council such salaries, fees and allowances as the Cabinet Secretary, on the advice of the Salaries and Remuneration Commission, shall determine.

CLAUSE 13

Clause 13 (3) of the Bill provides that the Council shall determine the terms and conditions of service of the Institute's chief executive officer, including the remuneration and benefits payable to the chief executive. The provision is inconsistent with Article 230 (4) (b) of the Constitution which mandates the Salaries and Remuneration Commission to advise the national and county governments on the remuneration and benefits of public officers.



RECOMMENDATION

For the foregoing reasons, I recommend that clause 13 of the Bill should be amended in subclause (3) by inserting the words "on the advice of the Salaries" and Remuneration Commission" immediately after the words "by the Council".

CLAUSE 14

Clause 14 of the Bill provides that the Council shall determine the determine the terms and conditions of service of the Institute's officers and staff, including the remunerations and benefits payable to them. The provision is inconsistent with Article 230 (4) (b) of the Constitution which mandates the Salaries and Remuneration Commission to advise the national and county governments on the remuneration and benefits of public officers.

RECOMMENDATION

For the foregoing reasons, I recommend that clause 14 of the Bill should be amended by adding the words on the advice of the Salaries" and Remuneration Commission" immediately after the words "as the Council".



CLAUSE 24

Clause 24 of the Bill provides that an ICT practitioner, including an ICT firm, shall be required to obtain an annual practicing licence from the Council. It also prohibits an ICT practitioner or firm from ICT practice if that person or firm has not obtained the annual practicing licence. The licensing requirement imposes an undue barrier to entry into the ICT sector and places an unfair burden on ICT practitioners.

RECOMENDATION

For the foregoing reasons, I recommend that the Bill should be amended by deleting clause 24.

CLAUSE 25

Clause 25 of the Bill provides for the period during which an annual practicing licence shall be valid, the conditions for renewal, and the payment of a fee upon the application of a renewal of the annual license. The requirements under clause 25 impose an unfair burden on ICT practitioners and users of ICT services to whom the cost of the annual licence shall be passed.



RECOMMENDATION

For the foregoing reasons, I recommend that the Bill should be amended by deleting clause 25.

CLAUSE 26

Clause 26 of the Bill provides that the Council shall publish annually in the *Gazette* the issuance, cancellation, revocation and withdrawal of licenses under the Act, and the names, qualifications and registered addresses of licensed ICT practitioners. The ICT sector in Kenya has expanded at its current pace due, in part, to fewer onerous administrative procedures of the Government. Clause 26 may severely undermine the current pace of ICT development by creating additional and unnecessary bureaucratic procedures that do not promote growth, innovation and investment in the sector.

RECOMMENDATION

For the foregoing reasons, I recommend that section 26 of the Bill be deleted and replaced by the following new clause—

**Publication
of names of
registered
ICT**

26. The Council shall, at least once in each year but in any case, not later than the 31st March, publish in the



**practitioners
and firms.**

***Gazette* the names,
addresses and specialisation
of registered ICT
practitioners and ICT firms.**

Dated the 21st June, 2022.

A handwritten signature in green ink, appearing to read 'Uhuru Kenyatta', written over a horizontal dotted line.

**UHURU KENYATTA,
President.**