




REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ON THE CONSIDERATION OF THE STATUTE LAW MISCELLANEOUS
AMENDMENT BILL, 2022(NATIONAL ASSEMBLY BILL NO. 60)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2023	
DAY: TUESDAY	
TABLED BY:	HON. GEORGE MURUGARA MP, CHAIRPERSON SLAC
CLERK-AT THE-TABLE:	ESTHER NGINYO

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Parliament Buildings
NAIROBI

March, 2023

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PART I

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Labour was constituted on 27th October, 2022 and is established under provisions of S.O 216. Standing Order No. 216(5) grants the Committee amongst other functions to:

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
- c) study and review all legislation referred to it;
- d) study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) 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;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- (fa) examine treaties, agreements and conventions;
- g) make reports and recommendations to the House as often as possible, including recommendation of propose legislation;
- h) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) examine any questions raised by Members on a matter within its mandate.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to Labour, human capital and remuneration, trade union relations and public service.

1.2 Oversight

In line with the assigned subject matter, and in executing this mandate, the Committee oversees the following Ministries, Departments and Agencies (MDAs):

- 1) The State Department for Public Service and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) Kenya School of Government; and
 - b) Institute of Human Resource Management
- 2) The State Department for Labour and Skills Development and its Autonomous and Semi-Autonomous Government Agencies which include;
 - a) National Industrial Training Authority (NITA);
 - b) National Productivity and Competitiveness Centre (NPCC);
 - c) Kenya National Labour Board and the Wages Council;
 - d) National Employment Authority (NEA);
 - e) Migrant Workers Welfare Fund
 - f) Department of Labour Migration Management;
- 3) Public Service Commission;

4) Salaries and Remuneration Commission;

CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendment) Bill, 2022 (National Assembly Bill No. 60) was read a first time on 8th December, 2022 and was subsequently committed to respective Departmental Committees for consideration and facilitation of public participation pursuant to Standing Order 127. The Bill seeks to, among other Statutes; amend the Labour Institutions Act (No. 12 of 2007), The Public Service Commission Act, 2017 (No. 10 of 2017) and The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011).

The Clerk of the National Assembly placed advertisements in the print media on 16th December, 2022 seeking for comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee received written memoranda from five (5) stakeholders.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee, Committee Secretariat and all those who responded to the National Assembly's advert inviting the public to present their views on the Bill.

On behalf of the Committee and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Statute Law (Miscellaneous Amendment) Bill, 2022.

HON. ERIC MUCHANGI KAREMBA, M.P.
CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON LABOUR

1.3 Committee Composition

1. The Departmental Committee on Labour was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency

UDA Party

Vice-Chairperson

Hon. Fabian Kyule Muli, MP
Kangundo Constituency

GDDP

Members

Hon. James Onyango K'Oyoo, MP
Muhoroni Constituency

ODM Party

Hon. Richard Kiti Chonga, MP
Kilifi South Constituency

ODM Party

Hon. George Aladwa Omwera,
Makadara Constituency

ODM Party

Hon. Amina Dika Abdullahi, MP
Tana River Constituency

KANU

Hon. Patrick Simiyu Barasa, MP
Cherangany Constituency

DAP-K Party

Hon. Peter Irungu Kihungi, MP
Kangema Constituency

UDA Party

Hon. Lilian Chebet Siyoi, MP
Trans Nzoia County

UDA Party

Hon. Ernest Ogesi Kivai Kagesi, MP
Vihiga Constituency

ANC Party

Hon. Joseph Samal Lomwa, MP
Isiolo North Constituency

Jubilee Party

MP Hon. Catherine Wambiliaga, MP
Bungoma County

FORD-K

Hon. Dorice Aburi Donya, MP
Kisii County

WDM-K

Hon. Mangale Munga Chiforomodo, MP
Lunga Lunga Constituency

UDM Party

Hon. Leah Sopiato Sankaire, MP
Kajiado County

UDA Party

1.4 Committee Secretariat

The Committee has the following technical staff, representing the Office of the Clerk:

Ms. Rose M. Wanjohi
Senior Clerk Assistant /Head of Secretariat

Mr. Binensa Mabungu
Clerk Assistant III

Mr. Samuel Wanjiru
Clerk Assistant III

Ms. Christine Odhiambo
Senior Legal Counsel

Mr. Fredrick Muthengi
Chief Fiscal Analyst

Ms. Wambui Nyachae
Research Officer III

Mr. Timothy C. Tsungulah
Research Officer III

Ms. Zainab Wario
Serjeant-At-Arms

Ms. Rehema Koech
Audio Officer

2.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022

2.1 Background Information

The Statute Law (Miscellaneous Amendment) Bill, 2022 seeks to among other Statutes, amend the Labour Institutions Act 2007 (No. 12 of 2007), Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011) and the Public Service Commission Act, 2017 (No. 10 of 2017).

2.2 Summary of the Bill

1. The Bill seeks to amend the Labour Institutions Act (No. 12 of 2007) in order to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157(92) of the Constitution, who has the state prosecutorial powers in criminal matters.
2. The Bill also seeks to amend the Public Service Commission Act, 2017 (No. 10 of 2017) in order to ensure that Public Service Commission presents its annual report to the President and Parliament within six months after the expiry of the year to which it relates.
3. The Bill also seeks to amend the Salaries and Remuneration Act, 2011 (No. 10 of 2011) in order to ensure that Salaries and Remuneration Commission presents its annual report to the President and Parliament within six months after the expiry of the year to which it relates
4. **Proposed amendment to s.35(1)(k) of the Labour Institutions Act, 2007 (No. 12 of 2007)**

Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".

5. **Proposed amendment to s.90 (1) of the Public Service Commission Act, 2017 (No. 10 of 2017).**

Delete the word "three" and substitute therefor the word "six".

6. **Proposed amendment to s.24 of the Salaries and Remuneration Commission Act 2011 (No. 10 of 2011)**

Insert the following new subsection immediately after subsection (1)-

(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.

2.3 Public Participation in the Review of the Bill

7. Article 118 (1) (b) of the Constitution of Kenya provides as follows: -

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

Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

8. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of 16th December, 2022 invited the public to make representations on the proposed amendments in the Bill as per annexure 2 of the report. The Committee received written submissions on the proposed amendments to the Labour Institutions Act, 2007(No. 12 of 2007) and the Public Service Commission Act, 2017 (No. 10 of 2017).
9. The following Stakeholders were requested to submit their views to the Committee:
 - a. Ministry of Labour and Social Protection (State Department for Labour and Skill Development
 - b. Ministry of Public Service, Gender and Affirmative Action(State Department for Public Service
 - c. The Office of Director of Public Prosecutions
 - d. The Kenya Law Reform Commission
 - e. The Public Service Commission
 - f. The Salaries and Remuneration Commission
 - g. Law Society of Kenya (LSK)
 - h. Katiba Institute
 - i. Institute of Certified Public Accountants of Kenya (ICPAK)
 - j. Central Organization of Trade Unions8 (COTU-K)
 - k. Federation of Kenya Employees
10. The following stakeholders submitted their memoranda to the Committee:-
 - a. Ministry of Labour and Social Protection (State Department for Labour and Skill Development
 - b. Ministry of Public Service, Gender and Affirmative Action(State Department for Public Service
 - c. The Office of Director of Public Prosecutions
 - d. The Kenya Law Reform Commission
 - e. The Public Service Commission

3.0 Submissions from Stakeholders

3.1 The Labour Institutions Act, No. 12 of 2007

11. In their written submissions,

- a. Office of the Attorney General stated that they were in concurrence with the proposed amendment
- b. The Ministry of Labour and Social Protection (State Department for Labour and Skills Development) stated that they had no objection to the proposed amendment as the provision brings conformity with Article 157 of the Constitution.
- c. The Office of the Director of Public Prosecution stated they had no objection.
- d. Kenya Law Reform Commission stated that they were in agreement with the amendment.
- e. The Ministry of Public Service, Gender and Affirmative Action (State Department for Public Service) stated that they were in concurrence with the amendment

3.2 Public Service Commission Act, 2017

12. In their written submission

- a. Office of the Attorney General stated that they were in concurrence with the proposed amendment
- b. The Ministry of Public Service, Gender and Affirmative Action (State Department for Public Service) stated that they were in concurrence with the amendment
- c. The Office of the Director of Public Prosecution in their written submissions stated that they had no objection to the proposed amendment
- d. Kenya Law Reform Commission stated that they were in agreement with the amendment.

Additional submissions from stakeholders

1. The Office of the Attorney-General stated that they had sought the policy guidance of the Ministry of Labour and Social Protection, which was similar to the submissions presented by the Ministry
2. The Ministry of Labour and Social in its submissions proposed additional amendments to sections 7, 10, 14 and 15 of the Labour Institutions Act, No. 12 of 2007. These amendments are however limited by the provisions of Standing Order 133(5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.

4.0 COMMITTEE OBSERVATIONS

The Committee while considering the Bill made the following key observations;

1. Pursuant to Article 157 of the Constitution, the Director of Public Prosecutions is required to exercise State powers of prosecution and may institute criminal proceedings against any person before any court;
2. Pursuant to Article 156 of the Constitution, the Attorney General is the principal legal adviser to the Government and is to represent the national government in court or any other legal proceedings to which the national government is a party, other than criminal proceedings.
3. Pursuant to Article 254(1) of the Constitution, after the end of each financial year, each commission, and each holder of an independent office is required to submit a report to the President and to Parliament as soon as practicable.
4. The Ministry of Labour and Social in its submissions proposed additional amendments to sections 7, 10, 14 and 15 of the Labour Institutions Act, No. 12 of 2007. These amendments are however limited by the provisions of Standing Order 133(5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill

5.0 COMMITTEE RECOMMENDATIONS

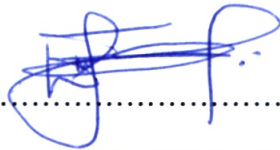
Having considered the Bill and the views by different stakeholders, the Committee recommends–

- 1) THAT, the proposed amendments to the Labour Institutions Act, 2007(No. 12 of 2007) be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, 2022;
- 2) THAT, the proposed amendments to the Public Service Commission Act, No. 10 of 2017 be adopted as contained in the Statute Law (Miscellaneous Amendment) Bill, 2022; and
- 3) THAT, the proposed amendment to the Salaries and Remuneration Commission Act, No. 10 of 2011 be amended by deleting the words “National Assembly” and substituting therefor the word “Parliament”

JUSTIFICATION

The amendment is necessary to align the Act with Article 254(1) of the Constitution which mandates commissions and independent offices to submit reports to the President and to Parliament.

SIGNED.....



DATE.....

8/03/2023

HON. ERIC MUCHANGI KAREMBA, M.P.

CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON LABOUR

BRIEF ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022- NO. 60 OF 2022

PRESENTED TO THE DEPARTMENTAL COMMITTEE ON LABOUR

Act	Amendment	Observation and comments	Stakeholder	Stakeholder Comments
<p>The Labour Institutions Act, No. 12 of 2007</p>	<p><u>Section 35(1)(k)</u> 35. Powers of labour officer (1) A labour officer may, for the purpose of monitoring or enforcing compliance with any labour law— (k) without prejudice to the powers of the Attorney-General Director of Public Prosecutions, institute proceedings in respect of any contravention of any provision of this Act or for any offence committed by an employer under this Act or any other labour law;</p>	<p>The amendment seeks to align the Act with Article 157(6) of the Constitution which gives the Director of Public Prosecutions the power to institute criminal proceedings.</p>	<ul style="list-style-type: none"> • Ministry of Labour and Social Protection (State Department for Labour and Skills Development) • Ministry of Public Service, Gender and Affirmative Action (State Department for Public Service) • The Office of Director of Public Prosecutions • The Office of Director of Public Prosecutions • The Kenya Law Reform Commission 	<p>In support of the amendment</p>
<p>The Public Service Commission Act, No. 10 of 2017</p>	<p><u>Section 90(1)</u> 90. Annual Report (1) The Commission shall within three six months after the closure of the financial</p>	<p>The amendment seeks to extend the time within which the Public Service Commission shall be required to prepare an annual report, from three months after the end of the financial year to six months.</p>	<ul style="list-style-type: none"> • Ministry of Public Service, Gender and Affirmative Action (State Department for Public Service) • The Public Service Commission 	<p>In support of the amendment</p>

	<p>year prepare a report for submission to the President and Parliament.</p>	<p>We however note that Article 254(1) of the Constitution provides that <u>as soon as practicable</u> after the end of each financial year, each commission, and each holder of an independent office, shall submit a report to the President and to Parliament.</p>	<ul style="list-style-type: none"> • The Office of Director of Public Prosecutions • The Kenya Law Reform Commission 	
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Other comments from stakeholders

- The Office of the Attorney-General stated that they had sought the policy guidance of the Ministry of Labour and Social Protection, which was similar to the submissions presented by the Ministry
- The Ministry of Labour and Social in its submissions proposed additional amendments to sections 7, 10, 14 and 15 of the Labour Institutions Act, No. 12 of 2007. These amendments are however limited by the provisions of Standing Order 133(5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

A17

Rose Wanjohi
Deal
12/1/23

Our Ref: AG/LDD/190/1/84
Your Ref. NA/DD/LABOUR/2022/005

30th December, 2022

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI

(Attn: Mr. Jeremiah Ndombi MBS)

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL BILLS NO. 60 OF 2022)

This has reference to your letter dated the 21st December, 2022 under Ref. NA/DD/LABOUR/2022/005, requesting our views on the proposed amendments to the Labour Institutions Act (No. 12 of 2007) and Public Service Commission Act (No. 10 of 2017) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Labour and Social Protection, which is responsible for the policy relating to the aforementioned statute and shall share the results of that guidance as and when we receive it.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

Copies to: Hon. J.B.N. Muturi EGH
Attorney-General

Mr. Kennedy Ogeto CBS
Solicitor-General

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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M.N. Nzioka (Mrs.)
Deputy Solicitor-General

② Rose Wanyika
Philip Lokorou
D/DC
Please deal.
11/01/23
Deal
11/1/23



NATIONAL ASSEMBLY
RECEIVED
10 JAN 2023
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

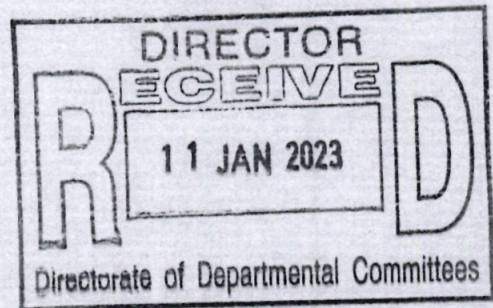
Telegraphic address: "Personnel", Nairobi
Telephone: Nairobi 2732090/2732240
Mobile: 0723202888/ 0787880580
Fax: 2243524/2251808
Email: info@odpp.go.ke

ODPP House,
Ragati Road, Upper Hill
P.O. BOX 30701 - 00100
NAIROBI

When replying please quote:
REF. ODPP/ES/GEN

9th January, 2023

The Clerk,
National Assembly,
Parliament Building,
P.O. Box 41842 - 00100,
NAIROBI

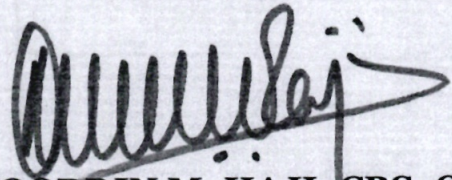


ATTN: Mr. Jeremiah W. Ndombi

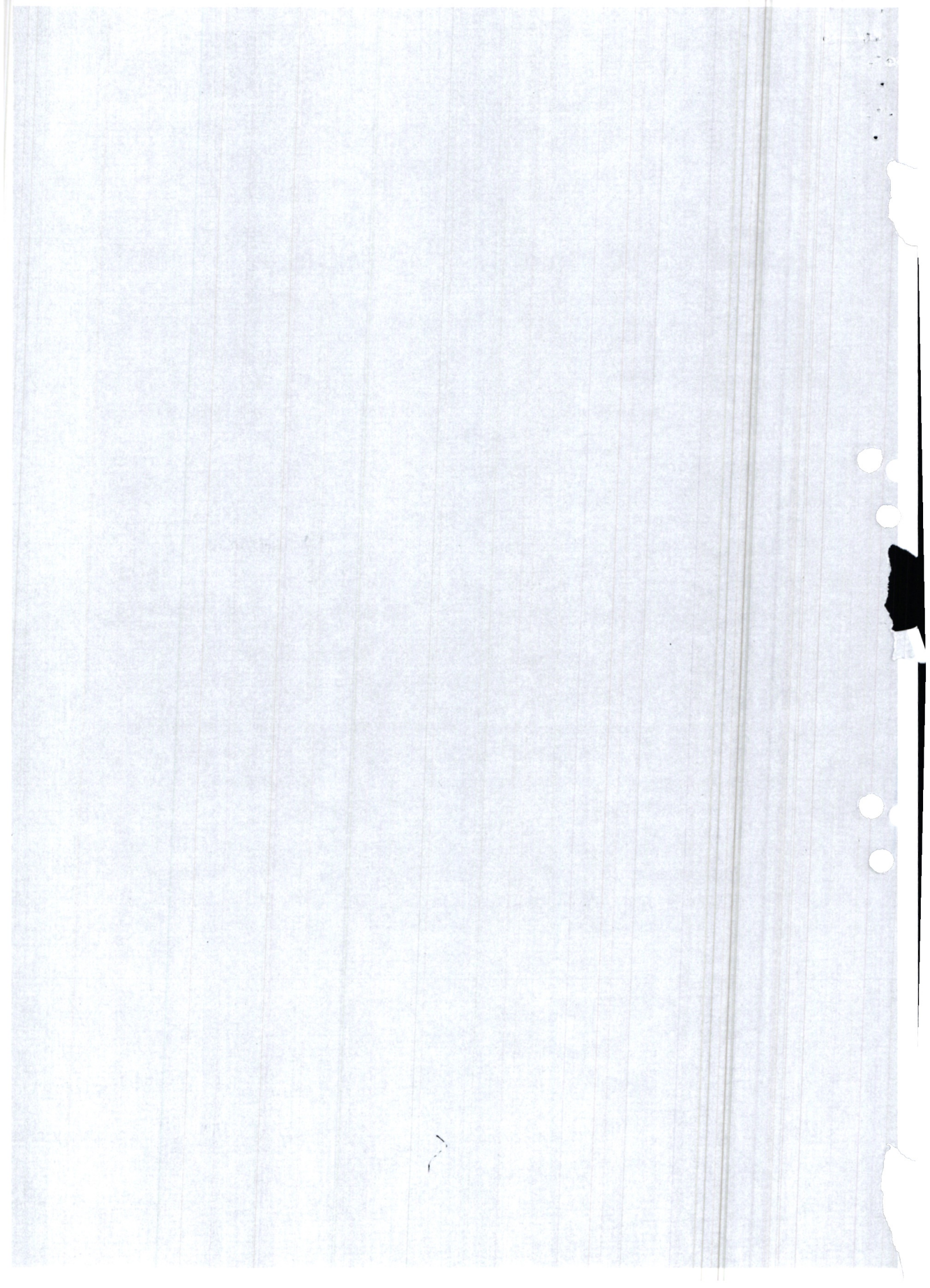
**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL
ASSEMBLY BILLS NO. 60 OF 2022)**

Reference is made to your letter Ref. NA/DDC/LABOUR/2022/005 and dated 21st December 2022 on the above subject calling for written submissions on the proposed amendments.

Pursuant to Article 118(1)(b) of the Constitution, the Office of the Director of Public Prosecutions (ODPP) hereby submits views for your consideration in respect of the proposed amendments to the *Labour Institutions Act, No. 12 of 2007*, and the *Public Service Commission Act, No. 10 of 2017*.


NOORDIN M. HAJI, CBS, OGW
DIRECTOR OF PUBLIC PROSECUTIONS
Encl.

NATIONAL ASSEMBLY
RECEIVED
10 JAN 2023
DEPUTY CLERK
P.O. Box 41842 - 00100, NAIROBI





OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

COMMENTS ON

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

IN RESPECT OF

**THE LABOUR INSTITUTIONS ACT, NO. 12 OF 2007, AND THE
PUBLIC SERVICE COMMISSION ACT, NO. 10 OF 2017.**

9 JANUARY 2022

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ JUSTIFICATION
1.	Labour Institutions Act, 2007	35 (1) (k)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution, 2010.</p> <p>The Cases SHALL be instituted with the consent of the Director of Public Prosecutions or officers acting on delegated authority by the DPP Pursuant to Article 157 (9) of the Constitution and Section 22 of the ODPP Act, 2013.</p>
2.	Public Service Commission Act, 2017	90 (1)	Delete the word "three" and substitute therefor the word "six".	<p>The proposal seeks to expand the time allotted to the PSC for the presentation of its annual report from three (3) to six (6) months.</p> <p>The proposal is acceptable.</p>

labar

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"
Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke



KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
3RD FLOOR
TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

When replying please quote
Ref. No. **KLRC/RES/93 VOL.VI (38)**
and Date

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear *Jerem*,

Uhan secret
make copies and distribute to sue relevant committees involved
upw 17/1/23

RECEIVED
10 JAN 2023
DEPUTY CLERK
P.O. Box 41842, NAIROBI

12th January, 2023

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO.60 OF 2022)

We acknowledge with thanks receipt of your letter Ref.No.NA/DDC/JLAC/2022/010 dated 20th December, 2022 on the above subject.

Enclosed herein please find the Commission's comments on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No.60 Of 2022) for further action.

As always, we are grateful for your continued support and collaboration.

Yours *faithfully,*

Joash Dache, MBS
Secretary/Chief Executive Officer

Encl.

NATIONAL ASSEMBLY
RECEIVED
13 JAN 2023
CLERK'S OFFICE
P O Box 41842, NAIROBI

DIRECTOR
RECEIVED
16 JAN 2023
Directorate of Departmental Committees



THE KLRC COMMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

I. INTRODUCTION

This memorandum is issued in furtherance of the Kenya Law Reform Commission's mandate under section 6 of the Kenya Law Reform Commission Act, No, 19 of 2013, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The Kenya Law Reform Commission (KLRC) is in receipt of a letter from the National Assembly dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) seeking its comments on the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bill, No. 60 of 2022. The Bill seeks to "amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of several separate Bills". The National Assembly has sought KLRC's comments on the Bills under the purview of the Departmental Committee on Justice and Legal Affairs.

Against this background and pursuant to the KLRC's mandate, KLRC has undertaken an analysis of the relevant Bills as set out below.

II. ANALYSIS

	LAW	S.	PROPOSED AMENDMENT	KLRC COMMENT	JUSTIFICATION
1.	The Judicature Act (Cap.8)	7(1)	Delete the word "thirty" and substitute therefor the word "seventy".	No objection to the proposed amendment.	Increasing the number of judges at the Court of Appeal will facilitate speedy delivery of justice.
2.	The Appellate Jurisdiction Act (Cap. 9)	59(7)	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Court of Appeal Rules in the requisite	The proposed amendment would align the Rules to Article 157(6) of the Constitution which provides that the Director of Public Prosecutions is the one to exercise State powers of prosecution.

				manner and not through the amendment of the Appellate Jurisdiction Act.	
	The Appellate Jurisdiction Act (Cap. 9)	73	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Rules in the requisite manner and not through the amendment of the Appellate Jurisdiction Act.	The proposed amendment would align the Rules to Article 157 of the Constitution.
3.	The Vexatious Proceedings Act (Cap. 41)	4	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157(6) of the Constitution.
4.	The Penal Code (Cap. 63)	146	Delete the words "idiots or imbeciles" wherever they appear and substitute therefor the words "persons with mental disabilities".	No objection to the proposed amendment.	The proposed amendment aligns the Code with the constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No. of 2003) and the conventions that Kenya has ratified on persons with disabilities.
5.	The Criminal Procedure Code (Cap.75)	2	Delete the expression "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	No objection to the proposed amendment.	The proposed amendment would align the Code to the Office of the Director of Public Prosecutions Act, 2013.

		<p>Delete the definition of “police officer” and substitute therefor the following new definition—</p> <p>“police officer” has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
		<p>Delete the definition of “police station” and substitute therefor the following new definition—</p> <p>“police station” has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
	83	<p>Delete and substitute therefore the following new section—</p> <p>83.(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Secretary of Prosecution Services, the Deputy Director of Public Prosecutor, the Senior Assistant Director of Public Prosecutions, the Senior Principal Prosecution Counsel, Senior Prosecution Counsel and Prosecution Counsel, and the exercise of those powers by the specified officers shall then operate as if they had been exercised by the Director of Public Prosecutions.</p>	No objection to the proposed amendment.	The proposed amendment would align the Act to the Office of the Director of Public Prosecutions Act, 2013.

			(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.		
		90(3)	Delete the words "a Sunday" and substitute therefor the words "any day of the week including Sunday".	No objection to the proposed amendment.	The proposed amendment clarifies the provision.
		123(1)	Delete the words "other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence".	No objection to the proposed amendment.	The proposed amendment aligns the Code to Article 49(1) (h) of the Constitution which provides that offences are bailable.
		131(2)	Delete the word "movable".	No objection to the proposed amendment.	The proposed amendment widens the scope of property that may be attached. This may, in turn, act as a deterrent to a person bound by a recognizance.
		137	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
6.	The Extradition (Commonwealth) Countries Act (Cap. 77)	7	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		8	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		9	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.

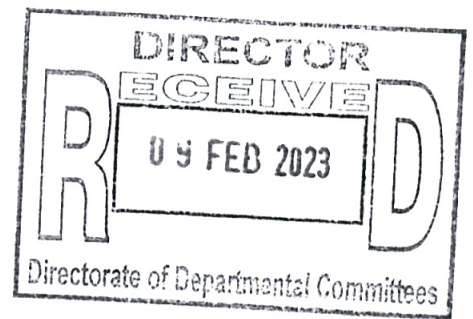
		10	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
7.	Official Secrets Act (Cap. 187)	10(1). 49(1)	Deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
8.	The Evidence Act (Cap. 80)	3	Insert the following definition in proper alphabetical sequence— "photograph" means an image created by light falling on a light sensitive surface, either photographic film or an electronic medium and made visible and permanent by chemical treatment or stored digitally,	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		78(1)	Insert the words "or an electronic and digital medium" immediately after the word "film".	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		125 (2)	Insert the word "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	No objection to the proposed amendment.	The proposed amendment aligns the Act with constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No.14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
9.	The Vetting of Judges and Magistrates Act (No. 2 of 2011)		Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment save that the citation of the Act is wrong. It should read No. 2 of 2011 and not 2010).	The proposed amendment would align the Act to Article 157 of the Constitution.

10.	The Judicial Service Act (No. 1 of 2011)	38	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read “Parliament” instead of “National Assembly” in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) of the Constitution which requires constitutional commissions and independent offices to submit a report to the President and to Parliament. In addition, the proposed amendment contravenes section 38(4) of the Judicial Service Act which requires the report to be tabled before the two Houses of Parliament.</p>
				<p>Consider standardizing the provision for all constitutional commissions and independent offices.</p>	<p>This ensures consistency in legislation.</p>
11.	Independent Electoral and Boundaries Commission Act (No. 9 of 2011)	24(1)	<p>Delete the word “three” and substitute therefor the word “six”.</p>	<p>No objection to the proposed amendment.</p>	<p>Three months is too short a period to file the annual report in view of the magnitude of work involved.</p>
12.	The Kenya National Commission on Human Rights Act, (No. 14 of 2011)	53	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read “Parliament” instead of “National Assembly” in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) which requires constitutional commissions and independent offices to submit a report to the President and to Parliament.</p>

				Consider standardizing the provision for all constitutional commissions and independent offices.	This ensures uniformity in legislation.
13.	Ethics and Anti-Corruption Commission Act (No. 22 of 2011)	27(2)	Delete the word "three" and substitute therefor the word "six".	No objection to the proposed amendment.	Three months is too short a period to file the annual report in view of the magnitude of work involved.
14.	Anti-Corruption and Economic Crimes Act (No. 3 of 2003)	25A.	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendments.	The proposed amendment would align the Act to Article 157 of the Constitution.
		37(6)			
		62(5)	62(6)	(6A) Notwithstanding the provisions of any other law, where a state officer is under investigation for, or has been charged with corruption or economic crime, the Commission may, by an <i>ex parte</i> application in the High Court, seek for an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and supervising staff. (6B) The provisions of subsection (6A) shall apply where the Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to— (a) conceal, alter, destroy, or remove	No objection to the proposed amendment. However, consider including the expression "public officer" in subsection (6A) as has been proposed in subsection (6B).

			<p>records, documents or other evidence;</p> <p>(b) intimidate, threaten or otherwise interfere with witnesses; or</p> <p>(c) interfere with investigations in any other manner.</p>		
15.	Sexual Offences Act (No. 3 of 2006)	40	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
16.	International Crimes Act (No. 16 of 2008)		Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
17.	Leadership and Integrity Act, 2012 (No. 19 of 2012)	12A.	New subsections to mandate the EACC vet all the shortlisted candidates.	Considering the number of requests that the EACC may receive from the various public entities, it would be prudent for the Commission to be mandated to vet only those who are considered for appointment, that is, those who have undergone the interview process.	This would save the EACC time and money.
18.	The Kenya Law Reform Commission Act (No. 19 of 2013)			Although the National Assembly's letter dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) and the Memorandum to the Public indicates that the Statute Law (Miscellaneous Amendment) Bill, 2022, seeks to amend the Kenya Law Reform Commission	

				<p>Act to provide for clarifications on the attendance of the <i>ex officio</i> members at the Commission meeting, the Bill does not contain any proposed amendments.</p> <p>Further, the Kenya Law Reform Commission Act is erroneously cited as Act, No. 35 of 2013 instead of No. 19 of 2013.</p>	
19.	Bribery Act (No. 47 of 2016)	1.	Delete the expression "Bribery Act" and substitute "Anti-Bribery Act".	No objection to the proposed amendment.	The proposed amendment describes what the Act is about and avoids any misrepresentation.
		5.	Delete the word "who" and substitute therefore the word "if the person offering, promising or giving knows".	The word "who" appears in both subsection (1) and (2), hence there is need for clarity on where the phrase "if the person offering, promising or giving knows" is to be inserted.	This will clarify the provision.



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR LABOUR AND SKILLS
DEVELOPMENT
OFFICE OF THE PRINCIPAL SECRETARY**

Tel: +254 (20) 2729800
Fax: +254 (20) 2726222
Email: ps@labour.go.ke
When replying, please quote:

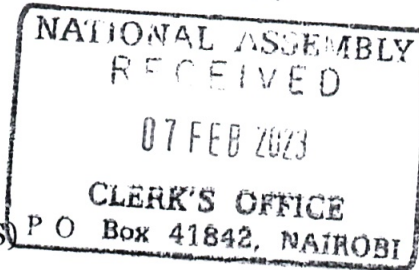
Social Security House,
Bishops Road
P.O. Box 40326-00100
Nairobi, Kenya

Ref. No. MLSP/L/12/95

Rose wanjohi
pls facilitate
lawyer
9/2/23

3rd February, 2023

The Clerk of the National Assembly,
Clerk's Chambers,
National Assembly,
Parliament Buildings,
P.O. Box 41842-00100
NAIROBI



Departmental Committee
For attention
of relevant
committees

(Attn: Jeremiah W. Ndombi, MBS)

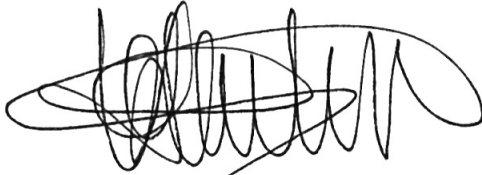
**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY
BILLS NO. 60 OF 2022**

Your letter dated 21st December, 2022 reference No. NA/DDC/LABOUR/2022/005 on the above captioned matter, please refer.

The State Department for Labour and Skills Development in the Ministry of Labour and Social Protection is in the process of substantively reviewing various Labour Laws administered by the Ministry which include, the Labour Institutions Act, 2007 (No. 12 of 2007); the Labour Relations Act, 2007; and the Employment Act, 2007. The review is an elaborate process that requires the involvement of the Tripartite Partners and technical assistance of the ILO, among others. It is aimed at aligning those statutes to comply with the Constitution of Kenya and the International Labour Organization Conventions.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 60 of 2022) sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, MP is an Omnibus Bill which seeks to amend among others, the Labour Institutions Act, 2007 (No. 12 of 2007). The bill is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills. The proposed minor amendments to the Act are before the Departmental Committee on Labour established under National Assembly Standing Order 216 and mandated to amongst others, "study and review all legislation referred to it".

Enclosed herewith, please find twenty (20) hard copies of our comprehensive Memorandum and a soft copy, detailed in a matrix format that indicates our proposals for consideration by the Committee indicating the section of the Act, specific clause, proposed amendment and justification, as provided in Appendix A to our Memorandum.



Hon. Geoffrey E. Kaituko
PRINCIPAL SECRETARY

Encl.

Copy to: **Hon. Florence Bore**
Cabinet Secretary
Ministry of Labour and Social Protection
P.O. Box 40326 – 00100
NAIROBI



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR LABOUR AND SKILLS DEVELOPMENT**

**MEMORANDUM BY THE PRINCIPAL SECRETARY ON THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY
BILLS NO. 60 OF 2022)**

Introduction:

1. The State Department for Labour and Skills Development in the Ministry of Labour and Social Protection is in the process of substantively reviewing various Labour Laws administered by the Ministry that includes among others, the Labour Institutions Act, 2007 (No. 12 of 2007); the Labour Relations Act, 2007; and the Employment Act, 2007 an elaborate process that require the involvement of the Tripartite Partners and technical assistance of the ILO, among others, in order to align those statutes to comply with the Constitution of Kenya, 2010 and the International Labour Organization Conventions.
2. However, in administration of those statutes as currently existing in the Statute Book, the link between the Ministry and the Office of the Director of Public Prosecutions has proven to be the Achilles' heel in the enforcement and prosecution of labour offences, due to improper alignment of the Labour laws with the Constitutional functions and powers of the Director of Public Prosecutions under Article 157 of the Constitution of Kenya, 2010, vis-à-vis the functions and powers of the Attorney-General in all civil cases which has greatly affected the dispensation of justice to the public due to the dualist nature of labour offences.
3. Hitherto, the Director of Public Prosecutions used to appoint and Gazette Public Prosecutors for the purposes of all cases arising under the Labour Institutions Act,

2007, pursuant to the provisions of section 85 (1) of the Criminal Procedure Code (Cap. 75) and section 35(1) (k) of the Labour Institutions Act, 2007 (No. 12 of 2007) of the Laws of Kenya. Gazette Notice No. 9399 of 2013 by the Director of Public Prosecutions appointing Public Prosecutors to that end, is quite illustrative.

4. However, on 16th December, 2019 vide Gazette Notice No. 12161 of 2019, the Director of Public Prosecutions reversed this trend by revoking all the appointments of public prosecutors in the Labour Inspectorate appointed vide Gazette Notice No. 9399 of 2013, as prosecutors on labour related cases throughout the Country, in exercise of his powers conferred by section 85(1) of the Criminal Procedure Code (Cap. 75) of the Laws of Kenya, for purposes of all criminal proceedings arising under the Labour Relations Act, 2007; the Employment Act, 2007; and the Labour Institutions Act, 2007 together with other relevant sectoral Orders and Statutes and further directed that labour cases are civil in nature and not under the realm of the Director of Public Prosecutions.
5. Under Article 157 (9) of the Constitution of Kenya, 2010, the powers of Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special directions.
6. Labour related offences are civil in nature and previously were prosecuted by Prosecutors from the Ministry trained and specialized in labour matters. The current impasse has witnessed a huge backlog of pending cases in the State Department for Labour and Skills Development, for want of prosecution.
7. Section 35(1) (k) of the Labour Institutions Act, 2007 empowers Labour Officers, for purposes of monitoring or compliance with any labour law and without prejudice to the powers of the Attorney-General, to institute proceedings in respect of any contravention of any provision of the Act or for any offence committed by the employer under the Act or any other labour law.
8. Section 49 of the Labour Institutions Act, 2007, provides that notwithstanding any provision of any written law, a labour officer may institute proceedings on behalf of and in the name of the employee for the recovery of the sum due from an employer to an employee by reason of the failure of the employer to-
 - (a) Pay to the employee the statutory minimum remuneration; or

- (b) Provide an employee with the conditions of employment prescribed in the Order.
9. The Judiciary under the former Chief Justice Willy Mutunga and Chief Justice David Maraga has in the past treated labour cases in court as criminal and respectively designated Magistrates' Courts to hear labour cases.
10. A Multi-Sectoral team comprising of the Judiciary, Director of Public Prosecutions, Attorney General, Parliament, Ministry of Labour & Social Protection and other key actors in the administration of justice, ought to urgently convene to resolve the unfolding grid lock, before it explodes to be of national concern.
11. The following is a substratum of offences under the Labour Institutions Act, 2007; the Employment Act, 2007 and other labour related laws. These include
- (a) Willfully obstructing or hindering an authorized officer in the exercise of any power conferred by the Labour Institutions Act;
 - (b) Neglecting or failing to comply with any requirement or Order made or given by an authorized officer in pursuance of any power conferred by the Labour Institutions Act, 2007 or the Rules made thereunder;
 - (c) Failure to keep employment records as are necessary to show whether or not an employer is complying with the Wages Order; and retain the records for at least three (3) years after the date of the last entry therein;
 - (d) Using or assisting any other person in recruiting, trafficking or using forced labour;
 - (e) Failure to grant or compensate for annual leave; overtime; maternity leave; paternity leave; sick leave, water, food and medical attention;
 - (f) Failure to grant or compensate for adequate notice or payment in lieu of notice;

- (g) Employment of a child in hazardous work,, worst forms of child labour or in violation of regulations on employment of children;
- (h) Failure to provide compensation for unfair termination;
- (i) Failure to pay terminal dues arising out of normal termination, summary dismissal or redundancy;
- (j) Failure to provide certificate of service upon termination;
- (k) Failure to issue an itemized pay sheet to an employee;
- (l) Failure by an employer to remit the amount deducted from an employee's remuneration;
- (m) Willfully failing to make payment of or to tender the wages earned by or payable to an employee;
- (n) Discriminating directly or indirectly against an employee or prospective employee or harassing an employee or prospective employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV/AIDS status, recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment; and
- (o) Contraventions of the Rules made under the Labour Institutions Act, 2007; the Labour Relations Act, 2007; and the Employment Act, 2007.

12. The Department of Labour in the Ministry has the cardinal mandate of among others, resolving reported labour complaints by engaging the parties through conciliation and dialogue. However when the employer fails to comply, the cases are referred to the Courts by the Labour officers for final determination.

13. The Statute Law (Miscellaneous Amendments)Bill (National Assembly Bills No. 60 of 2022) sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, MP is an Omnibus Bill which seeks to amend among others, the Labour

Institutions Act, 2007, in keeping with the practice of making minor amendments which do not merit the publication of separate Bills, and the proposed minor amendments to the Act are before the Departmental Committee on Labour established under National Assembly Standing Order 216 and mandated to amongst others, “study and review all legislation referred to it”.

14. The following therefore is a matrix format that indicates our proposals for consideration by the Committee indicating the section of the Act, specific clause, proposed amendment and justification, as provided in the Appendix below:

APPENDIX A

MATRIX OF THE MINISTRY OF LABOUR'S PROPOSED AMENDMENTS TO THE LABOUR INSTITUTIONS ACT, 2007 AS CONTAINED IN THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

1.The Labour Institutions Act, 2007 (No. 12 of 2007)	Section	Clause	Proposed amendment	Justification
1.	s. 35 (1)(k)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions "	Insert the expression "or Director of Public Prosecutions, as the case may be" immediately after the expression "Attorney General".	<p>1. The proposed amendment will enable the prosecution for the purposes of all criminal matters arising under the labour Institutions Act by the Director of Public Prosecutions under Article 157 of the Constitution of Kenya, 2010 and leave litigation of labour cases by the Attorney General which are deemed civil in nature and this will enable delegation of labour officers in the labour inspectorate to act as prosecutors in labour cases that are civil including small claims, given the dualistic nature of labour offences.</p> <p>2. Labour related offences are civil in nature and previously were</p>

				<p>prosecuted by Prosecutors from the Ministry trained and specialized in labour matters. The current impasse between DPP and the Ministry of Labour has witnessed a huge backlog of pending cases in the State Department for Labour and Skills Development, for want of prosecution.</p> <p>3. Section 49 of the Labour Institutions Act, 2007, provides that notwithstanding any provision of any written law, a labour officer may institute proceedings on behalf of and in the name of the employee for the recovery of the sum due from an employer to an employee by reason of the failure of the employer to-</p> <p>(a) Pay to the employee the statutory minimum remuneration; or</p> <p>(b) Provide an employee with the conditions of employment prescribed in the Order.</p>
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				<p>4. The following is a substratum of offences under the Labour Institutions Act, 2007; the Employment Act, 2007 and other labour related laws. These include-</p> <ul style="list-style-type: none">(a) Willfully obstructing or hindering an authorized officer in the exercise of any power conferred by the Labour Institutions Act;(b) Neglecting or failing to comply with any requirement or Order made or given by an authorized officer in pursuance of any power conferred by the Labour Institutions Act, 2007 or the Rules made thereunder;(c) Failure to keep employment records as are necessary to show whether or not an employer
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				<p>is complying with the Wages Order; and retain the records for at least three (3) years after the date of the last entry therein;</p> <p>(d) Using or assisting any other person in recruiting, trafficking or using forced labour;</p> <p>(e) Failure to grant or compensate for annual leave; overtime; maternity leave; paternity leave; ,sick leave, water, food and medical attention;</p> <p>(f) Failure to grant or compensate for adequate notice or payment in lieu of notice;</p> <p>(g) Employment of a child in hazardous work,, worst forms of child labour or in violation of regulations on</p>
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				<p>employment of children;</p> <p>(h) Failure to provide compensation for unfair termination;</p> <p>(i) Failure to pay terminal dues arising out of normal termination, summary dismissal or redundancy;</p> <p>(j) Failure to provide certificate of service upon termination;</p> <p>(k) Failure to issue an itemized pay sheet to an employee;</p> <p>(l) Failure by an employer to remit the amount deducted from an employee's remuneration;</p> <p>(m) Willfully failing to make payment of or to tender the wages earned by or</p>
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				<p>payable to an employee;</p> <p>(n) Discriminating directly or indirectly against an employee or prospective employee or harassing an employee or prospective employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV/AIDS status, recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment; and</p> <p>(o) Contraventions of the Rules made under the</p>
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				<p>Labour Institutions Act, 2007; the Labour Relations Act, 2007; and the Employment Act, 2007.</p> <p>5. However, in the administration of labour statutes as currently existing in the Statute Book, the link between the Ministry and the Office of the Director of Public Prosecutions has proven to be the Achilles' heel in the enforcement and prosecution of labour offences, due to improper alignment of the Labour laws with the Constitutional functions and powers of the Director of Public Prosecutions under Article 157 of the Constitution of Kenya, 2010, vis-a-vis the Constitutional functions and powers of the Attorney General under Article 156 of the Constitution of Kenya, 2010 in all civil matters, which has greatly affected the dispensation of justice to the public.</p>
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				<p>6. The Judiciary under the former Chief Justice Willy Mutunga and Chief Justice David Maraga has in the past treated labour cases in court as criminal and respectively designated Magistrates' Courts to hear labour cases.</p> <p>7. Hitherto, the Director of Public Prosecutions used to appoint and Gazette Public Prosecutors for the purposes of all cases arising under the Labour Institutions Act, 2007, pursuant to the provisions of section 85 (1) of the Criminal Procedure Code (Cap. 75) and section 35(1) (k) of the Labour Institutions Act, 2007 (No. 12 of 2007) of the Laws of Kenya. Gazette Notice No. 9399 of 2013 by the Director of Public Prosecutions appointing Public Prosecutors to that end, is quite illustrative.</p> <p>8. However, on 16th December, 2019 vide Gazette Notice No.</p>
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				<p>12161 of 2019, the Director of Public Prosecutions reversed this trend by revoking all the appointments of public prosecutors in the Labour Inspectorate appointed vide Gazette Notice No. 9399 of 2013, as prosecutors on labour related cases throughout the Country, in exercise of his powers conferred by section 85(1) of the Criminal Procedure Code (Cap. 75) of the Laws of Kenya, for purposes of all criminal proceedings arising under the Labour Relations Act, 2007; the Employment Act, 2007; and the Labour Institutions Act, 2007 together with other relevant sectoral Orders and Statutes and further directed that labour cases are civil in nature and not under the realm of the Director of Public Prosecutions.</p> <p>9. A Multi-Sectoral team comprising of the Judiciary, Director of</p>
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				Public Prosecutions, Attorney General, Parliament, Ministry of Labour & Social Protection and other key actors in the administration of justice, ought to urgently convene to advise on the implementation of the proposed amendment, to resolve the unfolding grid lock, before it explodes to be of national concern.
1.	s. 7(1)(a) (v)	Delete the word “and” and substitute therefore the word “or”	None	The proposed amendment is minor and in order.
2.	s. 7(1)(b) (i)	Delete the word “and” and substitute therefore the word “or”	None	The proposed amendment is minor and in order.
3.	s. 10	Delete the marginal note and substitute therefor the words “bribery by a	Delete	The proposed amendment(s) does not relate to the substance in the architecture of the Labour Institutions Act, 2007 and are an error on the face of the record and ought to be deleted.

		private entity”		
4.	s. 14 (1)	Delete the words “holding a position of authority”	Delete	The proposed amendment(s) does not relate to the substance in the architecture of the Labour Institutions Act, 2007 and are an error on the face of the record and ought to be deleted.
5.	s. 15 (1)	Delete the words “within the meaning of sections 11 and 12”	Delete	The proposed amendment(s) does not relate to the substance in the architecture of the Labour Institutions Act, 2007 and are erroneously provided and ought to be deleted.

Dated the 6th february....., 2023.



Geoffrey E. Kaituko,
PRINCIPAL SECRETARY.

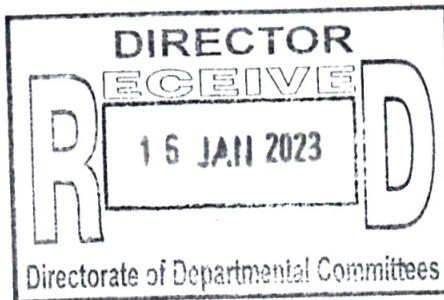
D/DC
 Please deal.
 16/01/23



REPUBLIC OF KENYA
MINISTRY OF PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION
STATE DEPARTMENT FOR PUBLIC SERVICE
Office of the Principal Secretary

Telegraphic address: "Personnel", Nairobi
 Telephone: Nairobi 227411
 Telex: 23125
 Fax: 2243620
 When Replying please quote
Ref. No. MPSG&AA13/1

P.O. BOX 30050-00100
 NAIROBI
 KENYA



11th January, 2023

The Clerk
 National Assembly
NAIROBI

4/1/23
 Rose wa Johi
 pr facta
 17/1/23

(Att: Mr. Jeremiah W. Ndombi, MBS)

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS No.60 OF 2022)

Reference is made to your letter Ref: NA/DDC/LABOUR/2022/005 dated 21st December, 2022 on above requesting for views on the proposed amendments to the Labour Institutions Act (No.12 of 2007) and Public Service Commission Act No.10 of 2017) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.60 of 2022.

After perusing through the proposed amendments the following are the views:-


ACT	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
Labour Institution Act, 2007 (No.12 of 2007)	Section 35(1)(k)	Deleting the expression "Attorney General" and substituting therefore expression "Director of Public Prosecution"	In concurrence with the proposed amendment - Constitution being Supreme Law of the Land, the proposed amendment will align the Act to the Constitution Article 157(2)

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 13 JAN 2023
 CLERK'S OFFICE
 P O Box 41842, NAIROBI

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 13 JAN 2023
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 P.O. Box 41842 - 00100, NAIROBI

ACT	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
The Public Service Commission Act, 2017 (No.10 of 2017)	Section 90(1)	The requirement to submit Annual Reports to be extended from 3 months to 6 months after the expiry of the year to which it relates	In concurrence with proposed amendment - the amendment seeks to give the Commission reasonable (ample) time to prepare Annual Report

In conclusion, this office is in concurrence with proposed amendments.



Anos N. Gathecha, EBS, 'ndc' (K)
PRINCIPAL SECRETARY

D/DC

Please deal.
Sgnl.

18/01/23



Labour

PUBLIC SERVICE COMMISSION

PSC/LEG/GEN/006/056/VOL.XIX/74

16th January 2023

Mr. Samuel Njoroge
Clerk of the National Assembly
Parliament Buildings
NAIROBI

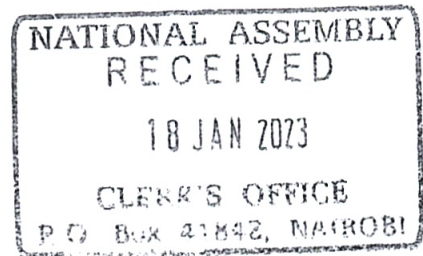
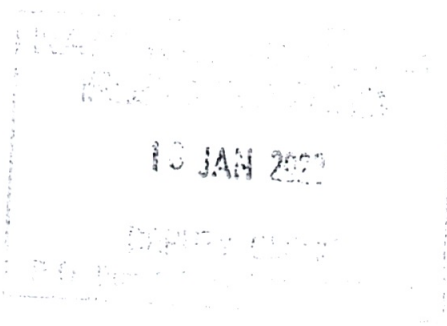
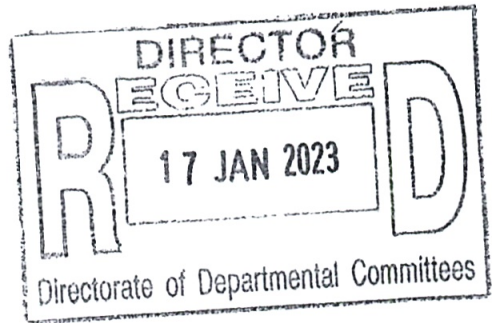
Lilian
Kindly distribute copies
to relevant committees
Lilian
18/1/23

**RE: INVITATION TO SUBMIT VIEW ON THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS
NO. 60 OF 2022)**

This has reference to your letter dated 21st December 2022.

The Commission supports the proposed amendment which is aimed at extending the period for submitting annual reports from three to six months.

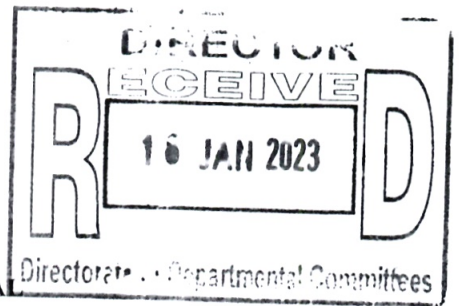
dm
**DR. SIMON K. ROTICH, CBS
SECRETARY/CEO
PUBLIC SERVICE COMMISSION**



D/Dc
Please deal.
17/01/23



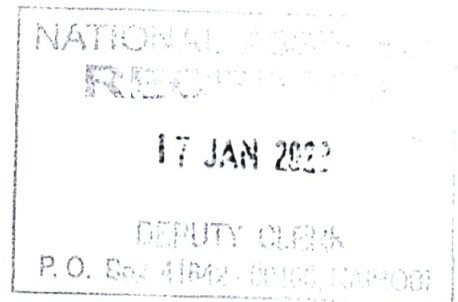
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE



Our Ref: AG/LDD/190/1/84
Your Ref. NA/DD/LABOUR/2022/005

13th January, 2023

The Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O. Box 41842-00100
NAIROBI



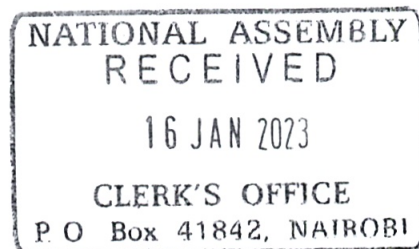
(Attn: Mr. Jeremiah Ndombi MBS)

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL BILLS NO. 60 OF 2022)

This has reference to your letter dated the 21st December, 2022 under Ref. NA/DD/LABOUR/2022/005, requesting our views on the proposed amendments to the Labour Institutions Act (No. 12 of 2007) and Public Service Commission Act (No. 10 of 2017) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Labour and Social Protection, which is responsible for the policy relating to the aforementioned statutes which we hereby forward to you for your further necessary action.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL



Copies to: Hon. J.B.N. Muturi EGH
Attorney-General

Mr. Kennedy Ogeto CBS
Solicitor-General

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

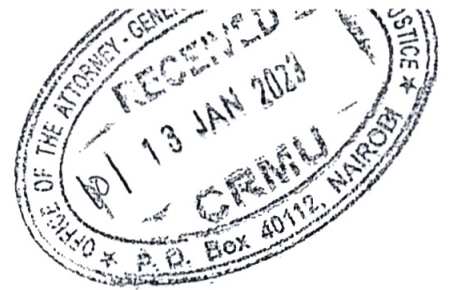
Ms. Rose Wanjohi
Plc TNA
18/01/2023

ISO 9001:2008 Certified



M.N. Nzioka (Mrs.)
Deputy Solicitor-General





REPUBLIC OF KENYA
MINISTRY OF PUBLIC SERVICE, GENDER AND AFFIRMATIVE ACTION
STATE DEPARTMENT FOR PUBLIC SERVICE
Office of the Principal Secretary

Telegraphic address: "Personnel", Nairobi

Telephone: Nairobi 227411

Telex: 23125

Fax: 2243620

When Replying please quote

Ref. No. MPSG&AA13/1

P.O. BOX 30050-00100

NAIROBI

KENYA

11th January, 2023

The Attorney General of the Republic of Kenya
 Office of the Attorney General and Department of Justice
 Sheria House
NAIROBI



(Att: Mr. Samson Davies Maundu,
 Principal Parliamentary Counsel)

RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS No.60 OF 2022)


Reference is made to your letter Ref: AG/LDD/190/1/84 dated 30th December, 2022 on above requesting for views on the proposed amendments to the Labour Institutions Act (No.12 of 2007) and Public Service Commission Act No.10 of 2017) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.60 of 2022.

After perusing through the proposed amendments the following are the views:-

ACT	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
Labour Institution Act, 2007 (No.12 of 2007)	Section 35(1)(k)	Deleting the expression "Attorney General" and substituting therefore expression "Director of Public Prosecution"	In concurrence with the proposed amendment - Constitution being Supreme Law of the Land, the proposed amendment will align the Act to the Constitution Article 157(2)

ACT	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
The Public Service Commission Act, 2017 (No.10 of 2017)	Section 90(1)	The requirement to submit Annual Reports to be extended from 3 months to 6 months after the expiry of the year to which it relates	In concurrence with proposed amendment - the amendment seeks to give the Commission reasonable (ample) time to prepare Annual Report

In conclusion, this office is in concurrence with proposed amendments.


 Amos N. Gathechia, EBS, 'ndc' (K)
PRINCIPAL SECRETARY

SPECIAL ISSUE

Kenya Gazette Supplement No. 199 (National Assembly Bills No. 60)



REPUBLIC OF KENYA

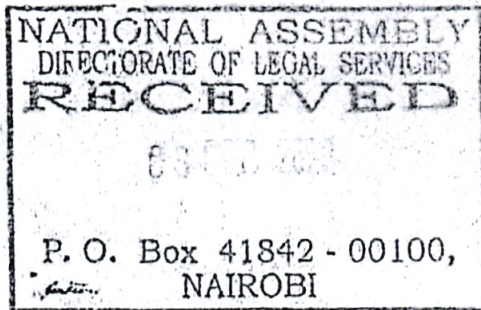
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2022

NAIROBI, 22nd November, 2022

CONTENT

Bill for Introduction into the National Assembly—	PAGE
The Statute Law (Miscellaneous Amendments) Bill, 2022	1455



s. 62(5) Delete the expression "the Attorney General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions."

s. 62 Delete subsection (6).

Insert the following new subsections—

(6A) Notwithstanding the provisions of any other law, where a state officer is under investigation for, or has been charged with corruption or economic crime, the Commission may, by an *ex parte* application in the High Court, seek for an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and supervising staff.

(6B) The provisions of subsection (6A) shall apply where the Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to—

- (a) conceal, alter, destroy, or remove records, documents or other evidence;
- (b) intimidate, threaten or otherwise interfere with witnesses; or
- (c) interfere with investigations in any other manner.

The Sexual Offences Act, 2006 (No. 3 of 2006).


s. 40

Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".

The National Museums and Heritage Act, 2006 (No. 6 of 2006).

s. 57(2)


Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".

 The Labour Institutions Act, 2007 (No. 12 of 2007).

s. 35(1)(k)

Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".

- s. 7(1)(a)(v) Delete the word “and” and substitute therefor the word “or”.
- s. 7(1)(b)(i) Delete the word “and” and substitute therefor the word “or”.
- s. 10 Delete the marginal note and substitute therefor the words “bribery by a private entity”.
- s. 14(1) Delete the words “holding a position of authority”.
- s. 15(1) Delete the words “within the meaning of sections 11 and 12”.
- s. 90(1) Delete the word “three” and substitute therefor the word “six”.

 The Public Service Commission Act, 2017 (No. 10 of 2017).

The Energy Act, s. 2 2019 (No. 1 of 2019)

Delete the definition of the term “distribution licence”.

Insert the following new definition in proper alphabetical sequence—

“distribution licence” means a document or instrument authorising a person to distribute energy in the manner described in the document or instrument, in that person’s authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;

- s. 4(1) Insert the following new paragraph immediately after paragraph (e) —
- (ea) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative.
- s. 4(1)(f)(i) Delete the word “the” and substitute therefor the word “a”.
- s. 4(1)(f)(v) Delete.

MEMORANDUM OF OBJECTS AND REASONS

The Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to make various amendments to various statutes. It is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills into one Bill.

The Bill contains proposed amendments to the following statutes—

The Judicature Act (Cap. 8)

The Bill proposes to amend the Judicature Act to increase the number of judges of the Court of Appeal from thirty to seventy.

Appellate Jurisdiction Act (Cap. 9)

The Bill proposes to amend the Appellate Jurisdiction Act to harmonise the provisions of the Act with the provisions of Article 157(2) of the Constitution relating to the functions of the Director of Public Prosecutions.

The Vexatious Proceedings Act (Cap 41)

The Bill proposes to amend the Vexatious Proceedings Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.

The Penal Code (Cap.63)

The Bill proposes to amend section 146 of the Penal Code by deleting expressions therein that may be perceived to be discriminatory towards persons with mental disabilities.

The Criminal Procedure Code (Cap. 75)

The Bill proposes to amend the Criminal Procedure Code to harmonise the terms therein with the provisions of the Constitution and the National Police Service Act, 2011. It additionally proposes to amend the Act to allow the Director of Public Prosecution to delegate his powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2006.

The Extradition (Commonwealth Countries) Act (Cap. 77)

The Bill proposes to amend the Extradition (Commonwealth Countries) Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.

The Evidence Act (Cap 80)

The Bill proposes to amend the Evidence Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with current technological advancements. It also seeks

The Copyright Act, 2001 (No. 12 of 2001)

The Bill proposes to amend the Copyright Act, 2001 to make provisions for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organisations towards the authors and performers.

It is also proposed to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)

The Bill proposes to amend the Anti-Corruption and Economic Crimes Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution. It also proposes to amend the Act to allow the Commission to seek for a court order for a State Officer under investigation or charged with corruption or economic crimes to be barred from accessing their office or exercising powers of that office where the public officer is likely to interfere with investigations in any way.

The Sexual Offences Act, 2006 (No. 3 of 2006)

The Bill proposes to amend the Sexual Offences Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

The National Museums and Heritage Act, 2006 (No. 6 of 2006)

The Bill proposes to amend the National Museums and Heritage Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

*** The Labour Institutions Act, 2007 (No. 12 of 2007)**

The Bill proposes to amend the Labour Institutions Act, to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

The Accountants Act, 2008 (No. 15 of 2008)

The Bill seeks to amend the Accountants Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

The International Crimes Act, 2008 (No. 16 of 2008)

The Bill proposes to amend the International Crimes Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

The Water Act, 2016 (No. 43 of 2016)

The Bill proposes to amend the Water Act to include the Attorney-General as a member of the Water Resources Management Board. It also proposes to amend the Act to require the appointments of chief executive officers under the Act to be in line with the Guidelines made by the Salaries and Remuneration Commission. It also proposes to amend the Act to allow designation of representatives to sit in the boards in place of designated officer holders.

Additionally, it proposes to amend the Act to introduce new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.

The Bribery Act, 2016 (No. 47 of 2016)

The Bill proposes to amend the Bribery Act to include both private and public entities in the scope of the application of the Act and to make other minor amendments.

~~X~~ The Public Service Commission Act, 2017 (No. 17 of 2017)

The Bill proposes to amend the Public Service Commission Act to require the presentation of the Commissions Annual report be done within six months after the expiry of the year to which it relates.

The Energy Act, 2019 (No. 1 of 2019)

The Bill proposes to amend the Energy Act, 2015 to give effect to the recommendations of the Presidential Taskforce on the Review of Power Purchase Agreements. The proposals include:

- (a) addressing the overlap in functions between the Energy Petroleum Regulatory Authority and the Ministry of Energy;
- (b) including the Kenya Power and Lighting Company in the Membership of the Rural Electrification and Renewable Energy Corporation established under the Act;
- (c) winding up the Nuclear Power and Energy Agency and transferring its functions to the Ministry and
- (d) subjecting the making of regulations to the attainment by the grid of the quality and reliability of supply and service prescribed by the Energy and Petroleum Regulatory Authority to allow for compensation of consumers for power outages when the country achieves N-I Grid Reliability status.

KIMANI ICHUNG'WAH,
Leader of Majority.



MINUTES OF THE 18TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR HELD ON THURSDAY 2ND MARCH 2023 IN THE COMMITTEE ROOM ,5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12:00 PM

PRESENT

1. The Hon. Karemba Eric Muchangi Njiru, M.P. -Chairperson
2. The Hon. Muli Fabian Kyule, M.P. -Vice Chairperson
3. The Hon. Kiti Richard Ken Chonga, M.P.
4. The Hon. Lomwa Joseph Samal, M.P
5. The Hon. Barasa Patrick Simiyu, M.P.
6. The Hon. Chiforomodo Mangale Munga, M.P.
7. The Hon. Kihungi Peter Irungu, M.P.
8. The Hon. Abdullahi Amina Dika, M.P.

APOLOGIES

1. The Hon. K'Oyoo James Onyango, M.P.
2. The Hon. Kagesi Kivai Ernest Ogesi, M.P.
3. The Hon. Omwera George Aladwa, M.P.
4. The Hon. Wambilianga Catherine Nanjala, M.P.
5. The Hon. Aburi Donya Dorice, M.P.
6. The Hon. Sankaire Leah Sopiato, M.P.
7. The Hon. Siyoi Lillian Chebet, M.P.

COMMITTEE SECRETARIAT

- | | | |
|---------------------------|---|------------------------|
| 1. Ms. Rose Wanjohi | - | Senior Clerk Assistant |
| 2. Mr. Binensa Mabungu | - | Clerk Assistant III |
| 3. Mr. Samuel Wanjiru | - | Clerk Assistant III |
| 4. Ms. Christine Odhiambo | - | Senior Legal Counsel |
| 5. Mr. Timothy Chiko | - | Research Officer III |
| 6. Ms. Mercylyn Kerubo. | - | Audio Officer |
| 7. Ms. Mwanaisha Juma | - | Serjeant-At-Arms |
| 8. Ms. Felitus Muiya | - | Protocol Officer |

AGENDA

1. Prayers
2. Preliminaries;
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business
 - i. Budget Policy Statement
 - ii. Two Bills
 - iii. Statement on the sexual harassment of female tea workers on various tea farms in Kericho County
 - iv. Benchmarking Visit by the Parliament of the Republic of South Africa
6. Consideration and adoption of the Draft report on the Budget Policy Statement FY 2023

7. **Consideration of the Draft report on Statute Law (Miscellaneous Amendment) Bill No 60. of 2022.**
8. Any Other Business
9. Adjournment

MIN. NO.120 NA/LABOUR/2023: PRELIMINARIES

The Chairperson called the Meeting to order at thirty minutes past twelve o'clock. This was followed by a prayer by The Hon. Muli Fabian Kyule, M.P.

MIN.NO.121 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

Confirmation of minutes was deferred to the next sitting.

MIN.NO.122 NA/LABOUR/2023: MATTERS ARISING

No matter arose.

MIN.NO.123 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE

The following items have been committed to the committee

- i. The Public Service (Values and Principles) (amendment) Bill no. 46 of 2022 on proposed amendments which seek to establish a mechanism for all state organs in the National and County governments and State Corporations to submit annual reports on details of the human resource in Constitutional Commissions, Independent offices, County Public Service Boards and County Assembly Service Boards.
- ii. Statute Law (Miscellaneous) Amendment Bill no. 60,2022 on proposed amendments to the Public Service Commission Act, Salaries and Remuneration Commission act and the state department for public service.
- iii. There is a proposed benchmarking visit by the Parliament of South Africa on matters Diaspora and Migrant Workers proposed for April 2023. This is to be done jointly with the select committee on Diaspora and Migrant workers Welfare
- iv. The Committee received a request for statement on 21st February 2023 from The Hon. Beatrice Kemei, M.P. with regard to the allegations of sexual harassment of female workers in various tea estates in Kericho County. The Committee resolved to undertake a site visit to meet with affected persons, tour the tea estates and for members to familiarize themselves with the situation on the ground. The Committee is proposing a three (3) day retreat from Thursday 2nd March, 2023 to Sunday 5th March,2023.

MIN. NO. 124 NA/ LABOUR/2023: CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE BUDGET POLICY STATEMENT FY 2023

The agenda was deferred to allow for more consultations between the Budget and Appropriation Committee and the National Treasury on the Budget Policy Statement proposed ceilings.

MIN. NO. 125 NA/LABOUR/2023: CONSIDERATION OF THE DRAFT REPORT ON STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL No.60 of 2022

Ms. Christine Odhiambo, Senior Legal Counsel, briefed the committee on The Statute Law (Miscellaneous Amendment) Bill, 2022.

The Statute Law (Miscellaneous Amendment) Bill, 2022 seeks to amend among other Statutes,

1. The Labour Institutions Act (No. 12 of 2007) in order to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157(92) of the Constitution, who has the state prosecutorial powers in criminal matters.
2. The Public Service Commission Act, 2017 (No. 10 of 2017) in order to ensure that Public Service Commission presents its annual report to the President and Parliament within six months after the expiry of the year to which it relates.
3. The Salaries and Remuneration Act, 2011 (No. 10 of 2011) in order to ensure that Salaries and Remuneration Commission presents its annual report to the President and Parliament within six months after the expiry of the year to which it relates.

In accordance with Article 118 (1) (b) of the Constitution of Kenya and Standing Order 127(3), the National Assembly in the local daily newspapers of 16th December, 2022 invited the public to make representations on the proposed amendments in the Bill.

The Committee requested for submission of views from the Ministry of Labour and Social Protection (State Department for Labour and Skill Development, Ministry of Public Service, Gender and Affirmative Action) (State Department for Public Service, The Office of Director of Public Prosecutions, The Kenya Law Reform Commission, The Public Service Commission, The Salaries and Remuneration Commission, Law Society of Kenya (LSK), Katiba Institute, Institute of Certified Public Accountants of Kenya (ICPAK), Central Organization of Trade Unions (COTU-K) and Federation of Kenya Employees.

The Committee received memoranda from the Ministry of Labour and Social Protection (State Department for Labour and Skill Development, Ministry of Public Service, Gender and Affirmative Action) (State Department for Public Service, The Office of Director of Public Prosecutions, The Kenya Law Reform Commission, The Public Service Commission. The stakeholders were in agreement with the proposed amendments.

Committee Observations

The Committee while considering the Bill made the following key observations;

1. Pursuant to Article 157 of the Constitution, the Director of Public Prosecutions is required to exercise State powers of prosecution and may institute criminal proceedings against any person before any court;
2. Pursuant to Article 156 of the Constitution, the Attorney General is the principal legal adviser to the Government and is to represent the national government in court or any other legal proceedings to which the national government is a party, other than criminal proceedings.
3. Pursuant to Article 254(1) of the Constitution, after the end of each financial year, each commission, and each holder of an independent office is required to submit a report to the President and to Parliament as soon as practicable.
4. The Ministry of Labour and Social in its submissions proposed additional amendments to sections 7, 10, 14 and 15 of the Labour Institutions Act, No. 12 of 2007. These amendments are however limited by the provisions of Standing Order 133(5) which provides that no amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill

Committee Recommendations

Having considered the Bill and the views by different stakeholders, the Committee recommends—

- 1) THAT, the proposed amendments to the Labour Institutions Act, 2007(No. 12 of 2007) be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, 2022;
- 2) THAT, the proposed amendments to the Public Service Commission Act, No. 10 of 2017 be adopted as contained in the Statute Law (Miscellaneous Amendment) Bill, 2022; and
- 3) THAT, the proposed amendment to the Salaries and Remuneration Commission Act, No. 10 of 2011 be amended by deleting the words “National Assembly” and substituting therefor the word “Parliament”

Justification

The amendment is necessary to align the Act with Article 254(1) of the Constitution which mandates commissions and independent offices to submit reports to the President and to Parliament.

The report on the Statute law (miscellaneous amendment) National Assembly bill No.60 of 2022 was unanimously adopted having been proposed by the Hon. Joseph Samal, MP and seconded by Hon. Barasa Simiyu, MP.

MIN. NO. 126 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose

MIN. NO. 127 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at four minutes to twelve o'clock. The next meeting will be held on notice.

SIGNED.....

(CHAIRPERSON)

DATE.....

16/03/2023