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Pat SNA  
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REPUBLIC OF KENYA




TWELFTH PARLIAMENT - THIRD SESSION - 2019

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE  
REPORT ON THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019 (NO.4 OF  
2019)

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Directorate of Committee Services

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JULY, 2019

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

HELB	Higher Education Loans Board
Hon	Honourable
KRA	Kenya Revenue Authority
KTGA	Kenya Tea Growers Association
MP	Member of Parliament
NA	National Assembly
NHIF	National Health Insurance Fund
NITA	National Industrial Training Authority
NSSF	National Social Security Fund
PAYE	Pay As You Earn
TVET	Technical and Vocational Education and Training

## **LIST OF ANNEXURES**

**Annexure 1:** Minutes of Committee sittings on the consideration of the Bill

**Annexure 2:** Adoption Schedule

**Annexure 3:** Newspaper Advert

**Annexure 4:** Memoranda from the public

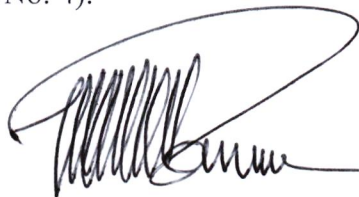
## **CHAIRPERSON'S FOREWORD**

The Industrial Training (Amendment) Bill (National Assembly Bill No. 4 of 2019), underwent First Reading on 20<sup>th</sup> March, 2019. Thereafter, the Bill was committed to the Committee on Labour and Social Welfare to review and report to the House pursuant to the provisions of Standing Order 216(5) (c).

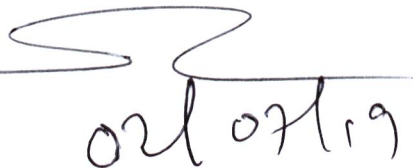
Consequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 127 (3), invited submissions from members of the public on the above Bill via advertisements in national dailies on 28<sup>th</sup> March, 2019. During its Sittings held on 25<sup>th</sup> April, 2019, 20<sup>th</sup> May, 2019 and 20<sup>th</sup> June, 2019 the Departmental Committee on Labour and Social Welfare considered the submissions on the Bill from the Sponsor of the Bill and Key stakeholders. Thereafter, the Committee retreated to consider the submissions and deliberate on the provisions in the Bill.

May I take this opportunity to commend the Committee members for their devotion and commitment to duty in the consideration of the Bill and express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing technical and logistical support.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Industrial Training (Amendment) Bill (National Assembly Bill No. 4).



**HON. ALI WARIO, M.P.,**



**Chairperson, Departmental Committee on Labour and Social Welfare.**

## CHAPTER ONE

### 1.1 Mandate of the Committee

1. The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*:-

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
- iii. *To study and review all legislation referred to it;*
- iv. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- vii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

2. The Committee is mandated to consider the following subjects: -

- i. Labour,
- ii. Labour relations,
- iii. Manpower or Human Resource Planning,
- iv. Gender,
- v. Youth,
- vi. Social Welfare and Security,
- vii. Children`s Welfare,
- viii. And Persons Living with Disabilities.

## **1.2 Oversight**

3. In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. The State Department for Labour
- ii. The State Department for Social Protection
- iii. The State Department for Gender
- iv. The State Department for Youth
- v. The State Department for Arid and Semi-Arid Lands
- vi. National Gender and Equality Commission

## **1.3 Committee Membership**

4. The Committee comprises of the following members -

1. **The Hon. Ali Wario, MP - Chairperson**
2. **The Hon. Joyce Korir, MP- Vice Chairperson**
3. The Hon. Gladys Wanga, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Janet Nangabo Wanyama, MP
6. The Hon. Ronald Kiprotich Tunoi, MP
7. The Hon. James Onyango Koyoo, MP
8. The Hon. Rose Museo, MP
9. The Hon. Alfred Kiptoo Keter, M.P
10. The Hon. Charles Kanyi Njagua, MP
11. The Hon. Catherine Wambilyanga, MP
12. The Hon. Fabian Kyule Muli, MP
13. The Hon. Abdi Mude Ibrahim, MP
14. The Hon. Michael Mwangi Muchira, MP
15. The Hon. Safia Sheikh Adan, MP
16. The Hon. Tom Odege, MP
17. The Hon. Omboko Milemba, MP
18. The Hon. Ole Sankok David, MP
19. The Hon. Wilson Sossion, MP

#### **1.4 Committee Secretariat**

1. Mr. Adan Gindicha - Clerk Assistant 1
2. Mr. John Mugoma - Clerk Assistant III
3. Ms. Doreen Karani - Legal Counsel I
4. Mr. Said Osman - Researcher Officer
5. Ms. Amran Mursal - Fiscal Analyst



## CHAPTER TWO:

### **PART A: OVERVIEW OF THE INDUSTRIAL TRAINING (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2019)**

5. The Industrial Training (Amendment) Bill, sponsored by Hon. Jude Njomo, M.P was referred to the Departmental Committee on Labour and Social Welfare for public participation.
6. The Principal Objective of this Bill is to principal object of the Bill is to amend the Industrial Training Act, Cap. 237 of the Laws of Kenya, in order to provide for the mechanisms of implementing the Act in terms of collecting the training levies which is currently a function of the National Industrial Training Authority. As it stands, the Authority is unable to effectively perform the function of assessing and collecting training levies bestowed on it by virtue of section 3A of the Act effectively as there exist no proper mechanisms of collecting training levies from employers.
7. In addition to the above challenges in the Act, there are no mechanisms in which the Authority can identify potential employers and levy the training fees, there are no timelines for employers to remit the levies, the amount levied is too minimal and there are no penalties and sanctions to guard against non-remittance of the levies by employers. The training and skills development of Kenyans in various industrial sectors of the country is an issue that need not be overstated as it serves as a catalyst for social, economic and political development of any nation.
8. In this regard, this Bill seeks to amend the Act in order to provide-
  - (a) that the Kenya Revenue Authority shall have the mandate of assessing and collecting training levies from employers;
  - (b) for timelines within which employers shall remit training levies;
  - (c) that the Income Tax Act and the Kenya Revenue Authority Act shall apply in respect of payment and recovery of the levies and penalties; and

- (d) For the formula of distributing the training levies collected by the Kenya Revenue Authority.
9. The Bill does not limit rights and fundamental freedoms in the Bill of Rights and it does not delegate legislative powers.
10. The enactment of this Bill shall not occasion additional expenditure of public funds.

## **PART B: PUBLIC PARTICIPATION**

11. Through an advertisement on 28<sup>th</sup> March, 2019(annexure 3), the Committee invited the public to present submissions on the Industrial Training (Amendment) Bill, 2019.
12. The Committee received submissions on the Industrial Training (Amendment) Bill, 2019 from the following stakeholders-
- (i) The National Industrial Training Authority (NITA);
  - (ii) The Kenya Tea Growers Association (KTGA) and
  - (iii)The Kenya Revenue Authority (KRA).
13. The details of the submissions are annexed to this report as annexure 4. The Committee extensively considered the contents of the submissions on the 25<sup>th</sup> April, 2019, 20<sup>th</sup> May, 2019 and 20<sup>th</sup> June, 2019 and the details of the deliberations and the Committee's observations and resolutions as relates to specific clauses are contained in Part C of this Chapter.

### **2.1 Submissions by the National Industrial Training Authority**

14. The National Industrial Training Authority(NITA) made the following submissions-
- (a) The Industrial Training Act is an Act of Parliament giving the National Industrial Training Authority the mandate of regulating the training of persons engaged in industry. The training of persons in industry is supported by the Industrial Training Levy.
  - (b) The Act vests the power of assessing and collecting industrial training levy on NITA. Currently, the amount collected from all employers in the country is Kshs. 50 per employee per month as per the prevailing Training Levy Order No 113 dated 14th June

2007. The Act also provides for a penalty of 5% per month on the amount in default on any employer.

- (c) The Act further provides that any training levy due plus the five percent penalty imposed is recoverable summarily by the Authority as a civil debt due to the Authority. Of the amount collected a minimum of 65% of the levy collected is used to support direct and indirect cost of skills development of employees in the industry and a maximum of 35% caters for operational costs of the Authority;
- (d) NITA embarked on a vibrant strategy to transform industrial training in Kenya and developed a Transformation agenda framework. One of the areas of focus is sustainable funding of industrial training in Kenya. It is instructive to note that during the development of the Transformation framework, one of the proposals were to have KRA collect the training levies on behalf of the Authority. The proposal was not considered favorably based on the imminent fear of non-remittance or late remittance of the levy by the KRA, which can ground the Authority's operations. Further, collection of levy by KRA may be misconstrued by the employers as an additional tax.
- (e) NITA rejected the Bill on the following grounds-
  - (i) The loss of mandate of the Authority to comprehensively assess Industry training demands will lead to the inability to determine industry-wide training needs to inform the uptake and utilization of Industrial training levy.
  - (ii) The high reduction in the percentage proportion allocated to Industrial training to only 39% of the total levy collected will affect the implementation of the expanded qualifications under the approved skills pathway of the Kenya National Qualifications Framework mandated to NITA.
  - (iii) The limited percentage of funding will greatly impede the development of industry driven training programs, assessment and certification for the expanded qualifications and growing demand for high productivity through skilled labour.
  - (iv) The proposed 100% increase in monthly contribution from Kshs. 50 to Kshs. 100 will be a burden to the employers and may be resisted by social partners.

- (v) Given the foregoing, potential resistance and apathy by employers to contribute to the industrial training levy will be eminent as they will view the collection through KRA as additional tax. It is a trite principle of governance that those who would be affected by a decision are given the opportunity to meaningfully engage and make informed decisions. Public participation is not only a governance issue but also a constitutional right that is protected. It is therefore our view that more engagements with stakeholders be considered.
- (vi) Industrial Training Levy must at all times be seen as employers' money; thus, the distribution of levy collected to other institutions undermines the essence of having an Industrial Training Levy Fund. The Levy fund works better if utilized for workplace trainings to increase productivity of staff. Further, TVETA and HELB are funded through the exchequer and refunding it through levies collected from employees leaves NITA with little resources to benefit the employers.
- (vii) The possibility of non-remittances or late remittance of the Training Levy collected. This may ground operations of the Authority and will further affect support for training in the industry.
- (viii) Legislating on amount payable in an Act of law is not sustainable given that future review will require legislative process rather than an executive process, as currently is. The Training Levy Order No. 113 dated 14th June 2007 stipulates Kshs. 50 per employee per month as per the prevailing rate.
- (ix) The Authority partners with the industry and often undertakes demand driven Training need assessment, impact of such training and therefore best suited in assessing and establishing amount payable.
- (x) Whereas the Bill is progressive and seeks to ensure efficiencies as well as large coverage, addressing inefficiencies in collections can be done through administrative arrangements and not necessarily through legislative arrangements. This can be done through agency arrangements with KRA.

- (xi) The Bill does not state when the amounts to be collected by KRA shall be paid into the Fund.
- (xii) The likelihood of rendering as redundant, approximately 10% of the NITA staff undertaking the mandate to be transferred to KRA, a move that worsens the already precarious unemployment situation in the Country. This is because the Bill does not preserve the employment status of the employees who are undertaking the function.

15. The National Industrial Training Authority humbly requested Parliament to reject the Bill. This will allow NITA to proceed with the Transformation Agenda that seeks, inter alia, to repeal and re-enact the Industrial Training Act.

16. In the meantime, administrative arrangements be made to have KRA collect levy on behalf of NITA through an agreement between the two Agencies. The administrative arrangement will address two fundamental issues at the core of the Bill to ensure efficiency and wider collection coverage.

## **2.2 Submissions by the Kenya Revenue Authority**

17. The Kenya Revenue Authority submitted that-

- (a) Under the proposed new section 5B (3), the due date of the training levy to be 9th of every month when PAYE falls due for ease of enforcement and to avoid numerous due dates. This creates simplicity, reduces costs of compliance and improves ease of doing business.
- (b) Under the proposed new section 5B (7), -
  - (i) replacement of the reference to “the Kenya Revenue Authority Act” with the “Tax Procedures Act” since it is the relevant Act that deals with procedural matters of tax.;
  - (ii) the amendment of Clause 5B (7) (b) to read ‘assessment of levies payable and penalties’ to allow for the assessment of penalties by KRA.

- (iii) introduction of paragraph (f) to read ‘Objection to assessment’ which harmonizes dispute resolution mechanisms for the convenience of taxpayers by creating a single point of appeal.
- (c) KRA further proposes to introduce a new section to allow employers to appeal to the Tax Appeal Tribunal for matters relating to assessment and payment of levies. This will require amendment of the Tax Appeals Tribunal Act.

### **2.3 Submissions by Kenya Tea Growers Association (KTGA)**

18. KTGA submitted that-

- (a) Under clause 2, the provision on assessment of industrial training levy and fees should be retained with NITA. NITA has capacity to assess the same, has administered the fund under the Act and it hasn't been demonstrated that NITA lacks capacity. No justification exists either to enhance efficiency or improve assessments in light of the fact that presently, contributions to the funds annually are not exhausted by the claims for reimbursement. It is agreeable that efficiency of collection of the levy may be enhanced through the mechanisms available to KRA.
- (b) Clause 3, should be amended to provide for prompt disbursement of funds back to NITA to enable it undertake its functions of efficiently administering funds for facilitating industrial training. Such a mechanism is necessary as KRA often faces other challenges such as those experienced with inordinate delays in processing VAT refunds (it currently takes several years to get a refund). It would be detrimental and counterproductive for contributors if the funds are caught up in the inefficiencies of public funds administrations.
- (c) Under the proposed new section 5B, the fee of Kshs. 50 should be retained until such a time when established that the funds collected are put to use in benefiting contributors. NITA is presently able to reimburse employers who claim twice the amount contributed and there is therefore no justification for the upward revision of the levy. The upward increase would also increase the cost of labour for employers

who may be unable to retain large numbers (hence termination) of employees which is a counter-productive move.

(d) Clause 4 should be amended as it is inconsistent with the long title, which sets out the purpose of the Act as “to make provision for the regulation of the training of persons engaged in industry”. TVET and HELB are not involved in training in industry but in the provision of education services falling under Ministry of Education and receive funding therefrom. KTGA proposed that the money be distributed as-

- 10% for administrative expenses of NITA; and
- 90% for reimbursement of contributors

(e) It is inaccurate to suggest that NITA has been unable to perform its functions of assessing and collecting training levies as the Authority has consistently released unused funds (which it collected but were not claimed by employers) to the Consolidated Fund. Further as highlighted earlier, the contributors have often been able to claim more than they contribute hence there is no shortage of funds.

#### **PART C: CLAUSE BY CLAUSE CONSIDERATION OF THE BILL**

19. This part deals with the clause by clause consideration of the Bill by the Committee after taking into consideration the views of the aforementioned stakeholders.

- **CLAUSE 2- AMENDMENT OF SECTION 3A OF THE INDUSTRIAL TRAINING ACT**

20. Clause 2 provides –

*The Industrial Training Act hereinafter referred to as “the principal Act” is amended in section 3A by deleting paragraph (b).*

- **Stakeholder views**

21. NITA opposed the provision, which proposes to remove from its mandate, the assessment and collection of industrial training levy and fees. It stated that the loss of mandate of the Authority to comprehensively assess industry training demands will lead to the inability to

determine industry-wide training needs to inform the uptake and utilization of industrial training levy.

22. **KTGA** proposed that the provision on assessment of industrial training levy and fees should be retained with NITA as NITA has capacity to assess the same, has administered the fund under the Act and it hasn't been demonstrated that NITA lacks capacity. No justification exists either to enhance efficiency or improve assessments in light of the fact that presently, contributions to the funds annually are not exhausted by the claims for reimbursement. It is agreeable that efficiency of collection of the levy may be enhanced through the mechanisms available to KRA.

▪ **Committee observations and recommendation on clause 2**

23. **The Committee observed that –**

- (a) The assessment and collection of industrial training levy and fees should be retained as a function of NITA;
- (b) The loss of mandate of NITA to comprehensively assess industry training demands will lead to the inability to determine industry-wide training needs to inform the uptake and utilization of industrial training levy;
- (c) There is a likelihood of rendering as redundant, approximately 10% of the NITA staff undertaking the mandate proposed to be transferred to KRA;
- (d) The duty to determine the levy rests with the Cabinet Secretary responsible for Labour upon receiving an advisory from the NITA Board. This is most ideal as he is best placed to know the skill needs of the industry and how much is required to fund the trainings;

24. **The Committee recommends that Clause 2 be rejected in entirety.**

▪ **CLAUSE 3- INSERTION OF A NEW SECTION 5B INTO THE INDUSTRIAL TRAINING ACT**

25. Clause 3 provides –



The principal Act is amended by deleting section 5B and substituting therefor the following new section—

*Training levies.*      **5B.** (1) *The Commissioner-General of the body responsible for the assessment and collection of revenue shall be responsible for collecting training levies from employers.*

*No.2 of 1995.*      (2) *For purposes of this Act, the Commissioner-General shall have all the powers conferred on the Commissioner-General by the Kenya Revenue Authority Act and Income Tax Act.*

*Cap. 470.*

(3) *An employer shall pay the training levy to the Commissioner-General at the time when an employee's salary is payable and shall be remitted to the Commissioner-General not later than the fifth day of the month following the month in which the levy becomes due.*

(4) *The training levy collected under this section shall be paid into the Training Levy Fund.*

(5) *A training levy shall be charged every month at one hundred shillings per employee.*

(6) *A training levy shall not be deducted from the emoluments of an employee.*

*Cap. 470.*      (7) *Subject to the provisions of this Act, the Income Tax Act and the Kenya Revenue Authority Act shall apply in this Act including in respect of—*

*No.2 of 1995.*

*(a) the payment and recovery of the levies and penalties;*

*(b) assessment of levy payable;*

*(c) filing of returns;*

*(d) the furnishing of information and production of documents; and*

*(e) keeping of records.*

▪ **Stakeholder Views**

26. NITA opposed the provision and stated that-

- a. it embarked on a vibrant strategy to transform industrial training in Kenya and developed a Transformation agenda framework. During the development of the Transformation framework, one of the proposals were to have KRA collect the training levies on behalf of the Authority. The proposal was not considered

- favorably based on the imminent fear of non-remittance or late remittance of the levy by KRA, which can ground the Authority's operations.
- b. Collection of levy by KRA may be misconstrued by the employers as an additional tax and potential resistance and apathy by employers to contribute to the industrial training levy will be eminent.
  - c. It is a trite principle of governance that those who would be affected by a decision are given the opportunity to meaningfully engage and make informed decisions. Public participation is a not only a governance issue but also a constitutional right that is protected. More engagements with stakeholders be considered.
  - d. There's a possibility of non-remittances or late remittance of the Training Levy collected. This may ground operations of the Authority and will further affect support for training in the industry. The Bill does not state when the amounts to be collected by KRA shall be paid into the Fund.
  - e. The proposed 100% increase in monthly contribution from Kshs. 50 to Kshs. 100 will be a burden to the employers and may be resisted by social partners. Legislating on amount payable in an Act of law is not sustainable given that future review will require legislative process rather than an executive process, as currently is. The Training Levy Order No. 113 dated 14th June 2007 stipulates Kshs. 50 per employee per month as per the prevailing rate.
  - f. Whereas the Bill is progressive and seeks to ensure efficiencies as well as large coverage, addressing inefficiencies in collections can be done through administrative arrangements and not necessarily through legislative arrangements. This can be done through agency arrangements with KRA to ensure efficiency and wider collection coverage.
  - g. There is a real likelihood of rendering as redundant, approximately 10% of the NITA staff undertaking the mandate to be transferred to KRA, a move that worsens the already precarious unemployment situation in the Country. This is because the Bill

does not preserve the employment status of the employees who are undertaking the function.

**27. Kenya Revenue Authority** proposed-

(a) that under the proposed new section 5B (3), the due date of the training levy to be 9th of every month when PAYE falls due for ease of enforcement and to avoid numerous due dates. This creates simplicity, reduces costs of compliance and improves ease of doing business.

(b) Under the proposed new section 5B (7)-

(i) an amendment in paragraph (a) to substitute the words “the Kenya Revenue Authority Act” with the words “Tax Procedures Act” since it is the relevant Act that deals with procedural matters of tax.;

(ii) An amendment in paragraph (b) to read ‘assessment of levies payable and penalties’ to allow for the assessment of penalties by KRA.

(iii) Insertion of a new paragraph (f) to read ‘objection to assessment’ which harmonizes dispute resolution mechanisms for the convenience of taxpayers by creating a single point of appeal.

(c) the introduction of a new section to allow employers to appeal to the Tax Appeal Tribunal for matters relating to assessment and payment of levies. This will require amendment of the Tax Appeals Tribunal Act.

**28. Kenya Tea Growers Association** proposed-

(a) Clause 3, should be amended to provide for prompt disbursement of funds back to NITA to enable it undertake its functions of efficiently administering funds for facilitating industrial training. Such a mechanism is necessary as KRA often faces other challenges such as those experienced with inordinate delays in processing VAT refunds (it currently takes several years to get a refund). It would be detrimental and counterproductive for

contributors if the funds are caught up in the inefficiencies of public funds administrations.

- (b) The fee of Kshs. 50 should be retained until such a time when established that the funds collected are put to use in benefiting contributors. NITA is presently able to reimburse employers who claim twice the amount contributed and there is therefore no justification for the upward revision of the levy. The upward increase would also increase the cost of labour for employers who may be unable to retain large numbers (hence termination) of employees which is a counter-productive move.

▪ **Committee observations and recommendation on clause 3**

**29. The Committee observed that-**

- (a) The mandate to assess and collect the levy should rest with NITA. This is most ideal as it is the institution best placed to know the skill needs of the industry and how much is required to fund the trainings;
- (b) Setting the due date of payment of the training levy to be 5th of every month will create challenges in enforcement and compliance due to numerous due dates (for remittance of various taxes and levies such as PAYE, NHIF and NSSF contributions etc). This will create complexity, increase costs of compliance and reduce ease of doing business.
- (c) The fee of Kshs. 50 is sufficient and is already provided for in the Training Levy Order. It is more efficient for the Cabinet Secretary to revise the levy through subsidiary legislation than amend legislation every time the levy requires to be revised. ;
- (d) The penalties of provided are of 5% per month on the amount in default on any employer and since the levy is not a tax, KRA should not be given the mandate to assess any penalties.
- (e) The proposal by KRA for introduction of a new section to allow employers to appeal to the Tax Appeal Tribunal for matters relating to assessment and payment of levies should be rejected as KRA's function will simply be collecting levies on behalf of NITA.

Further, the levy should not be misunderstood as a tax hence any disputes may be addressed through the judiciary and not the tax appeals tribunal;

- (f) Whereas the Bill is progressive and seeks to ensure efficiencies as well as large coverage, addressing inefficiencies in collections can be done through administrative arrangements and not necessarily through legislative arrangements. This can be done through agency arrangements with KRA

**30. The Committee recommends that clause 3 be rejected in entirety.**

▪ **CLAUSE 4- AMENDMENT OF SECTION 5C OF THE INDUSTRIAL TRAINING ACT**

31. Clause 4 provides –

*Section 5C of the principal Act is amended by—*

*(a) deleting the marginal note and substituting therefor the following new marginal note—*

*“Distribution of training levies”.*

*(b) deleting sub-section (1A);*

*(c) deleting sub-section (2) and substituting therefor the following new sub-section—*

*“(2) The Director-General, acting on the advice of the Board, shall make payments out of the Fund not later than the fifteenth day of each month as follows—*

*(a) sixty percent of the training levies collected shall be used for the reimbursement of employers for the training costs incurred including costs and wages of apprentices, interns or indentured learners while attending training courses or industrial attachment;*

*(b) twenty percent of the training levies collected shall be used for funding the establishment and operation of technical and vocational education and training institutions established across the country;*

*(c) ten percent of the training levies collected shall pursuant to section 12(1)(e) of the Higher Education Loans Board Act be allocated and disbursed to the Higher Education Loans Management Board for purposes of funding the training of students in technical and vocational education and training institutions;*

*(d) ten percent of the training levies collected shall be used for such other expenditure related to training as may be approved by the Board.*

▪ **Stakeholder views**

32. **NITA** rejected the proposals in clause 4 relating to distribution of the levy. In its view, industrial training levy must at all times be seen as employers' money; thus, the distribution of levy collected to other institutions undermines the essence of having an Industrial Training Levy Fund. The Levy fund works better if utilized for workplace trainings to increase productivity of staff. Further, TVETs and HELB are funded through the exchequer and refunding it through levies collected from employers leaves NITA with little resources to benefit the employers.

33. **KTGA** proposed that the Clause 4 should be amended as it is inconsistent with the long title, which sets out the purpose of the Act as "to make provision for the regulation of the training of persons engaged in industry". In its view, TVETs and HELB are not involved in 'training in industry' but in the provision of education services falling under Ministry of Education and receive funding therefrom. **KTGA** proposed that the money be distributed as-

- 10% for administrative expenses of NITA; and
- 90% for reimbursement of contributors

▪ **Committee observations and recommendation on clause 4**

34. **The Committee observed** that –

(a) The Industrial Training Act is an Act of Parliament relating to the regulation of training of persons engaged in industry. The training of persons engaged in industry is supported by the Industrial Training Levy, which is employers' money. The intent of this Bill is for employers to give back, as beneficiaries, to the investment for the training undertaken on persons *before* the entry to the world of work which is contrary to the intention of the Act that contemplates training after employment. The proposal to

fund other programmes that are not work place related removes the focus of the Industrial levy fund from work place trainings. Industrial training levy fund works better if utilized for workplace trainings to increase productivity of staff. Thus, the distribution of levy collected to other institutions undermines the essence of having an Industrial Training Levy Fund.

- (b) Some of these institutions proposed to benefit are already funded by the Treasury. TVETs and HELB are funded through the exchequer and funding it through levies collected from employers leaves NITA with little resources to benefit the employers.

**35. The Committee recommends that Clause 4 be rejected in entirety.**

- **CLAUSE 5- AMENDMENT OF THE FIRST SCHEDULE OF THE KENYA REVENUE AUTHORITY ACT**

36. Clause 5 provides –

*Part II of the First Schedule to the Kenya Revenue Authority Act is amended by inserting the following new paragraph immediately after paragraph 10—*

*(10A) The Industrial Training Act (Cap. 237.)*

- **Committee observations and recommendation on clause 5**

**37. The Committee observed that –**

- (a) There were no stakeholder comments received on this provision; and
- (b) The proposed amendment relates to Part II of the First Schedule to the Kenya Revenue Authority Act. The said First Schedule was anchored to section 25 of the Act that was deleted from the KRA Act vide the Tax Procedures Act, No. 29 of 2015. Consequently, an amendment to the First Schedule would be an exercise in futility as the schedule also stands repealed.

**38. The Committee recommends that Clause 5 be rejected in entirety.**

## **CHAPTER THREE:**

### **COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS**

#### **3.1 COMMITTEE'S OBSERVATIONS**

39. As relating to the Bill, the Committee observed-

- (a) The Industrial Training Act is an Act of Parliament giving the National Industrial Training Authority the mandate of regulating the training of persons engaged in industry. The training of persons in industry is supported by the Industrial Training Levy. The proposed loss of mandate of the Authority to comprehensively assess industry training demands will lead to the inability to determine industry-wide training needs to inform the uptake and utilization of Industrial training levy. There is also a likelihood of rendering as redundant, approximately 10% of the NITA staff undertaking the mandate to be transferred to KRA, a move that worsens the already precarious unemployment situation in the Country.
- (b) Currently, the amount collected from all employers in the country is Kshs. 50 per employee per month as per the prevailing Training Levy Order No 113 dated 14th June 2007. This is a sufficient amount as NITA has been able to support refunds to employers for amounts requested. The proposed increase in monthly contribution from Kshs. 50 to Kshs. 100 will be a burden to the employers and may be resisted by social partners. Further, providing for this in legislation may create implementation challenges since an amendment of the Act would be required every time a revision of the amount is needed. It is therefore best for the determination of the levy amount to be left to subsidiary legislation.
- (c) The Act also provides for a penalty of 5% per month on the amount in default on any employer.
- (d) Industrial Training Levy must at all times be seen as employers' money; thus, the distribution of levy collected to other institutions undermines the essence of having an



Industrial Training Levy Fund and goes against the intention of the Act. The Levy fund works better if utilized for workplace trainings to increase productivity of staff. Further, TVETs and HELB are funded through the exchequer and refunding it through levies collected from employees leaves NITA with little resources to benefit the employers.

- (e) The Bill does not state when the amounts to be collected by KRA shall be paid into the Fund. The possibility of non-remittances or late remittance of the Training Levy collected by KRA to NITA may ground operations of the Authority and will further affect support for training in the industry.
- (f) NITA embarked on a vibrant strategy to transform industrial training in Kenya and developed a Transformation agenda framework. One of the areas of focus is sustainable funding of industrial training in Kenya. During the development of the Transformation framework, one of the proposals was to have KRA collect the training levies on behalf of the Authority. The proposal was not considered favorably based on the imminent fear of non-remittance or late remittance of the levy by the KRA, which can ground the Authority's operations. Further, collection of levy by KRA may be misconstrued by the employers as an additional tax.
- (g) Whereas the Bill seeks to ensure efficiencies as well as large coverage, addressing inefficiencies in collections can be done through administrative arrangements such as agency arrangements with KRA and not necessarily through legislative measures. KRA may therefore collect the industrial training levy on behalf of NITA through an agreement between the two Agencies. The administrative arrangement will address two fundamental issues at the core of the Bill to ensure efficiency and wider collection coverage.

### **3.2 COMMITTEE'S RECOMMENDATION**

40. The Committee, having considered the Bill clause by clause proposes that the Industrial Training (Amendment) Bill be rejected.



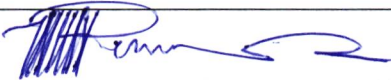

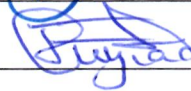
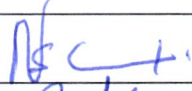

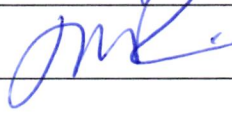
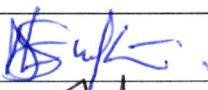


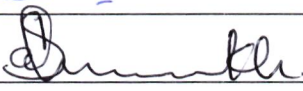
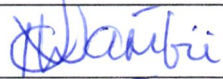
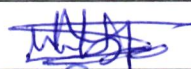

**HON. ALI WARIO, M.P.,**

**CHAIRPERSON,**

**DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE.**

**KENYA NATIONAL ASSEMBLY – 12<sup>TH</sup> PARLIAMENT**  
**DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE**  
**REPORT ADOPTION SCHEDULE**  
**INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019**

DATE: 25-06-2019

No.	NAME	SIGNATURE
1.	The Hon. Ali Wario, MP – Chairperson	
2.	The Hon. Joyce Korir Chepkoech, MP – Vice Chairperson	
3.	The Hon. Gladys Wanga, MP	
4.	The Hon. Janet Marania Teyiaa, MP	
5.	The Hon. Alfred Kiptoo Keter, MP	
6.	The Hon. Janet Nangabo Wanyama, MP	
7.	The Hon. Ronald Kiprotich Tonui, MP	
8.	The Hon. James Onyango K'Oyoo, MP	
9.	The Hon. Rose Museo, MP	
10.	The Hon. Fabian Kyule Muli, MP	
11.	The Hon. Ole Sankok David, MP	
12.	The Hon. Abdi Mude Ibrahim, MP	
13.	The Hon. Michael Mwangi Muchira, MP	
14.	The Hon. Safia Sheikh Adan, MP	
15.	The Hon. Tom Mboya Odege, MP	
16.	The Hon. Catherine Wambilianga, MP	
17.	The Hon. Charles Kanyi Njagua, MP	
18.	The Hon. Omboko Milemba, MP	
19.	The Hon. Wilson Sossion, MP	

# REPUBLIC OF KENYA



## THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - THIRD SESSION

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In the Matter of consideration of:

1. The Industrial Training (Amendment) Bill(National Assembly Bill No.4 of 2019)
2. The National Youth Council(Amendment) Bill(National Assembly Bill No.8 of 2019)

### SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, *“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”* Standing Order 127(3) provides that, *“the Departmental Committee to which a Bill is committed shall facilitate public participation through appropriate mechanism, including inviting submission of memoranda and holding public hearing and shall take into account views and recommendations of the public when the Committee makes its report to the House.”*

The Industrial Training (Amendment) Bill (National Assembly Bill No. 4 of 2019) and the National Youth Council(Amendment)Bill(National Assembly Bill No.8 of 2019) have undergone First reading and stands committed to the Departmental Committee on Labour and Social Welfare for consideration and reporting to the House, pursuant to Standing Order 127(1)

Pursuant to Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3) of the National Assembly Standing Orders, the Committee invites interested members of the public to submit any presentations they may have on the aforementioned Bills, copies of which may be accessed from the Parliamentary Website at [www.parliament.go.ke](http://www.parliament.go.ke). The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-

00100,Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to the [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received by Close of Business on Wednesday 3rd April ,2019.

MICHAEL. R SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY



**MINISTRY OF LABOUR AND SOCIAL PROTECTION  
OFFICE OF THE CABINET SECRETARY**

Telephone: +254-020- 2729800  
Fax: +254-020-2726222  
E-Mail: cabinetsecretary@labour.go.ke  
When Replying please quote

Social Security House  
Block 'A' Eastern  
Bishops Road  
P.O. Box 40326-00100,  
**NAIROBI**

**REF: ML&SP/37/1**

**27<sup>th</sup> May, 2019**

**Mr. Michael Sialai, EBS**  
Clerk of the National Assembly  
National Assembly  
**NAIROBI**

Dear *clerk,*

*1. D/Coms*  
*Please deal.*  
*28/05/19*

*2. Ginchsha*  
*For consideration*  
*by committee*  
*29/5/19*

**RE: SUBMISSION OF THE REVISED MEMORANDUM ON THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019 TO THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE COMMITTEE OF THE NATIONAL ASSEMBLY**

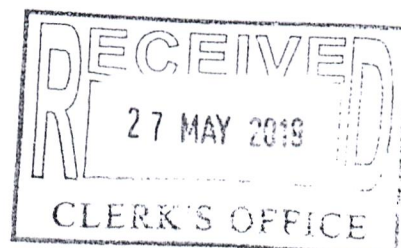
Following the presentation by my Ministry and the National Industrial Training Authority, on the Industrial Training (Amendment) Bill, 2019 to the Labour and Social Welfare Committee of Parliament on 22<sup>nd</sup> May, 2019, the Committee advised that we review and re-submit a revised Memorandum that correctly reflects our position to reject the Bill.

In this regard, I hereby re-submit the revised Memorandum and formally request the withdrawal of the earlier submission by NITA and the Ministry of Labour and Social Protect, on the Bill.

We appreciate the guidance of the Committee on the provisions of the Bill which will significantly enhance the management of levy in the country resulting in effectiveness, efficiency and accountability.

Kind Regards,

Hon. (Amb.) Ukur Yatani  
**CABINET SECRETARY**



**MEMORANDUM ON THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019- NATIONAL BILL NO 4 OF 2019 SUBMITTED BY THE MINISTRY OF LABOUR AND SOCIAL PROTECTION AND THE NATIONAL INDUSTRIAL TRAINING AUTHORITY**

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This submission is made pursuant to the meeting held on 22<sup>nd</sup> May, 2019 between the esteemed Labor and Social Welfare Committee of Parliament, the Ministry of Labour and Social Protection and the National Industrial Training Authority, which sought withdrawal of the earlier submission made by the National Industrial Training Authority and the request granted.

Appended below kindly find our final submission on the Bill for your consideration.

**1. INTRODUCTION**

- i. The Industrial Training Act Cap 237 is an Act of Parliament giving the National Industrial Training Authority the mandate of regulating the training of persons engaged in industry. The training of persons in industry is supported by the Industrial Training Levy. The Act vests the power of assessing and collecting industrial training levy on the Authority. Currently the amount collected from all employers in the country is Ksh 50 per employee per month as per the prevailing Training Levy Order No 113 dated 14<sup>th</sup> June 2007. The Act also provides for a penalty of 5% per month on the amount in default on any employer. The Act further provides that any training levy due plus the five percent penalty imposed is recoverable summarily by the Authority as a civil debt due to the Authority. Of the amount collected a minimum of 65% of the levy collected is used to support direct and indirect cost of skills development of employees in the industry and a maximum of 35% caters for operational costs of the Authority.
- ii. The Authority embarked on a vibrant strategy to transform industrial training in Kenya and developed a Transformation agenda framework. One of the areas of focus is sustainable funding of industrial training in Kenya. It is instructive to note that during the development of the

Transformation framework, one of the proposals were to have KRA collect the training levies on behalf of the Authority. The proposal was not considered favorably based on the imminent fear of non-remittance or late remittance of the levy by the KRA, which can ground the Authority's operations. Further, collection of levy by KRA may be misconstrued by the employers as an additional tax.

## **2. ANALYSIS OF THE BILL**

The Bill proposes to amend sections 3A, 5B and 5C in the following respects:

**Clause 2-** proposes to delete Section 3A by deleting paragraph b, which means that assessment and collection of industrial training levy will be taken away from the Authority

**Clause 3-** proposes to delete Section 5B and thus:

- ✓ Takes away the power of the Cabinet Secretary in charge of Labour to make the levy orders
- ✓ Removes the provisions relating to the consequences of non-payment from the parent Act. (5% penalty; recovery summarily of what is due to the Authority when in default)
- ✓ Vests the powers of collection on the Commissioner General of KRA
- ✓ Levy to be paid when the employee's salary is payable and remitted not later than the 5<sup>th</sup> day of the month following the month in, which the levy became due.
- ✓ Increases the training levy from the current kes50 to kes100.

**Clause 4-** seeks to amend section 5C of the Act by:

- ✓ Deleting the marginal notes which reads "Disbursement powers of the Director General" and substitution it with "distribution of training levies"
- ✓ Deleting sub sec 1A there shall be paid into the Fund all industrial training levy contributions for each industry, as may be determined by the Board.



- ✓ Deleting sub section 2 on purposes for payment of levy and substituting it with a new sub section.
- ✓ Providing for payments out of fund by Director General to be by 15<sup>th</sup> day each month
- ✓ Proposing distribution from the Training Levy Fund as follows;
  - a. 60%- Reimbursements, which includes Trainings, Interns, Industrial attachment and Apprentices
  - b. 20%- Funding establishment and operations of TVET institutions
  - c. 10%- HELB for funding of students in TVET institutions
  - d. 10%- Training expenditure as approved by the Board.

### 3. POSITION ON THE BILL

Upon undertaking an analysis on the Bill, the Authority herewith submits its position to **reject the bill** in *toto* on the following grounds:

- i. The loss of mandate of the Authority to comprehensively assess Industry training demands will lead to the inability to determine industry wide training needs to inform the uptake and utilization of Industrial training levy
- ii. The high reduction in the percentage proportion allocated to Industrial training to only 39% of the total levy collected will affect the implementation of the expanded qualifications under the approved skills pathway of the Kenya National Qualifications Framework mandated to NITA.
- iii. The limited percentage of funding will greatly impede the development of industry driven training programs, assessment and certification for the expanded qualifications and growing demand for high productivity through skilled Labour
- iv. The proposed 100% increase in monthly contribution from Ksh.50 to Ksh.100 will be a burden to the employers and may be resisted by social partners.
- v. Given (iv) above, potential resistance and apathy by employers to contribute to the Industrial training levy will be eminent as they will view the collection through KRA as additional tax. It is a trite principle of governance that those who would be affected by a decision are given

the opportunity to meaningfully engage and make informed decisions. Public participation is not only a governance issue but also a constitutional right that is protected. It is therefore our view that more engagements with stakeholders be considered.

- vi. Industrial Training Levy must at all times be seen as employers' money; thus, the distribution of levy collected to other institutions undermines the essence of having an Industrial training levy fund. The Levy fund works better if utilized for workplace trainings to increase productivity of staff. Further to (vii) above, TVETA and HELB are funded through the exchequer and refunding it through levies collected from employees leaves NITA with little resources to benefit the employers.
- vii. The possibility of non-remittances or late remittance of the Training Levy collected. This may ground operations of the Authority and will further affect support for training in the industry.
- viii. Legislating on amount payable is not sustainable given that future review will require legislative process rather than an Executive process, as currently is.
- ix. The Authority partners with the industry and often undertakes demand driven Training need assessment, impact of such training and therefore best suited in assessing and establishing amount payable.
- x. Whereas the Bill is progressive and seeks to ensure efficiencies as well as large coverage, addressing inefficiencies in collections can be done through administrative arrangements and not necessarily through legislative arrangements. This can be done through agency arrangements with KRA.
- xi. The Bill does not state when the amounts to be collected by KRA shall be paid into the Fund.
- xii. Redundancies of approximately 10% of the NITA staff undertaking the mandate to be transferred to KRA, a move that worsens the already precarious unemployment situation in the Country. This is because the Bill does not preserve the employment status of the employees who are undertaking the function.

#### **4. REQUEST TO PARLIAMENT**

The Ministry and the National Industrial Training Authority humbly requests Parliament to reject the Bill. This will allow the Authority to proceed with the Transformation Agenda, alluded to earlier in this Memorandum. The Transformation Agenda seeks *inter alia* to repeal and re-enact the Industrial Training Act.

In the meantime, NITA will proceed with administrative arrangements to engage KRA to collect levy on behalf of the Authority through an agency agreement between the parties. The administrative arrangement will address two fundamental issues at the core of the Bill to ensure efficiency and wider collection coverage.

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# THE KENYA TEA GROWERS' ASSOCIATION KTGA

Affiliated to the Federation of Kenya Employers (FKE) and the East African Tea Trade Association (EATTA)

P.O. Box 320,  
Kericho

www.ktga.or.ke

Email: info@ktga.or.ke

Date: 3<sup>rd</sup> April 2019

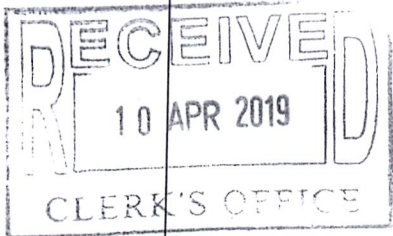
COMMENTS ON THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019

② Amendment  
pls deal

③ Emergent  
note  
15/4/19

15/4/19

Clause & Title	Current Provision	Proposed Change	Rationale/Justifications
2. Amendment of Section 3A of Cap 237	Amends the Principal Act at section 3A by deleting paragraph (b)	Retain "b) ...the assessment of training levies."	The National Industrial Training Authority (NITA) has capacity to assess industrial training levies as it had administered the fund under the Act. No justification exists either to enhance efficiency or improve the assessments, in light of the fact that presently, contributions to the Funds annually are not exhausted by the claims for reimbursement. It has not emerged or been demonstrated that NITA lacks technical capacity to assess training levies. It is agreeable that the efficiency of collection of the levy be enhanced through the mechanisms available to KRA
3. Deletion of section 5B of Cap 237	5B. The Commissioner General of the body responsible for the assessment and collection of revenue shall be responsible for the collection of training levies from employers	Amend to introduce a clause to ensure the prompt disbursement of the Funds back to the National Industrial Training Authority to undertake the functions of efficiently administering the funds for the intended purpose of facilitating industrial training.	To the extent that the objective of this proposal is to expand the reach of the NITA to employers and facilitate compliance by employers with the obligations under the Act by utilizing the infrastructure available to the Kenya Revenue Authority, it is laudable. Notably however, a mechanism for the prompt and effective disbursement of the funds back to the National Industrial Training Authority is necessary. To cite the challenges of processing of claims for Value Added Tax refunds by KRA, it will be detrimental and indeed counterproductive to contributors if the funds required for training of employees and which are contributed solely for the purpose of enhancing industrial skills, are caught up in the inefficiencies of public funds administration which is



<p><b>3. Substitution of section 5B in the principal Act with a new Section 5B</b></p>	<p><i>5B (5) A training levy shall be charged every month at one hundred shilling per employee.</i></p>	<p>A training levy shall be charged every month at fifty shillings per employee</p>	<p>a reality with KRA transactions in processing of tax refunds.</p> <p>We propose that the current rate be retained until such a time as it can be established that the Funds collected are all put to use in benefiting contributors. At present, the National Industrial Training Authority is able to grant reimbursements to employers who claim, <b>at twice the amount contributed</b>. Consequently, no justification exists for upward review of the amount that is contributed toward training because as it is, the only reason it is possible to claim twice what you contribute, is because not all who contribute claim. Further, the overall effect of the upward review in the absence of any justifiable grounds, as is the case, is to increase the cost of labour for employers. This discourages employment in a population plagued by high unemployment rates. Avenues of lowering cost of labour are ideal to encourage employers to retain large numbers of employees. The consequence of this, will be to cause loss of jobs. If you adopt machines/technology you don't have to incur training costs and without justification, this is counterproductive to the objective placed on industries to create jobs.</p>
<p><b>4. Amendment of section 5C of cap 237</b></p>	<p><i>The Director-General, acting on the instructions of the Board, shall pay out the Fund... .. as follows:</i></p> <p>a) <i>...sixty percent of the levies collected for reimbursement of employers</i></p> <p>b) <i>twenty percent of the levies</i></p>	<p>Delete and substitute with:</p> <p>a) Ten percent of the funds to be utilized for the administrative expenses of the National Industrial Training Authority</p> <p>b) Ninety percent to be used for reimbursement</p>	<p>This proposal is inconsistent with the objectives of the industrial training levy under the Principal Act. The objective of the Act as cited in its preamble is "<b>An Act of Parliament to make provision for the regulation of the training of persons engaged in industry</b>". The industrial Training Levy is charged for training in industry. TVET and HELB are institutions involved with the provision of education services and fall within the Ministry of</p>

	<p><i>collected...to technical and vocational education training institutions (TVET)</i></p> <p><i>c) ten percent of the levies collected...shall pursuant to Section 12(1) (e) Higher Educations Loans Board Act be allocated and disbursed to the Higher Education Loans Board</i></p>	<p>of employers for industrial training</p>	<p>Labour and additionally, they are allocated funds under the Ministry. It is therefore irregular to propose that institutions founded under the Ministry of Education, be funded under the Ministry of Labour.</p>
<p><b>MEMORANDUM OF OBJECTS AND REASONS</b></p>	<p><i>The Authority is presently unable to perform the function of assessing and collecting training levies as.....per Section 3A of the principal Act</i></p>		<p>As indicated above, it is inaccurate to proffer that the Authority is unable to perform its function of collection because the Authority has consistently released unused Funds to the Consolidated Fund/Treasury which it collected but were not claimed by employers or not reimbursed due to inefficiencies in the reimbursement system. As indicated above, employers have been able to claim more that they contribute to the Authority hence, inefficiency in collection of funds, has not occasioned a lack of funds in order to justify the proposed amendment to increase the contribution.</p>



APOLLO KIARII  
**EXECUTIVE OFFICER**

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 10/4/19

ANALYSIS TO THE LEGISLATIVE PROPOSALS TO AMEND THE INDUSTRIAL TRAINING ACT

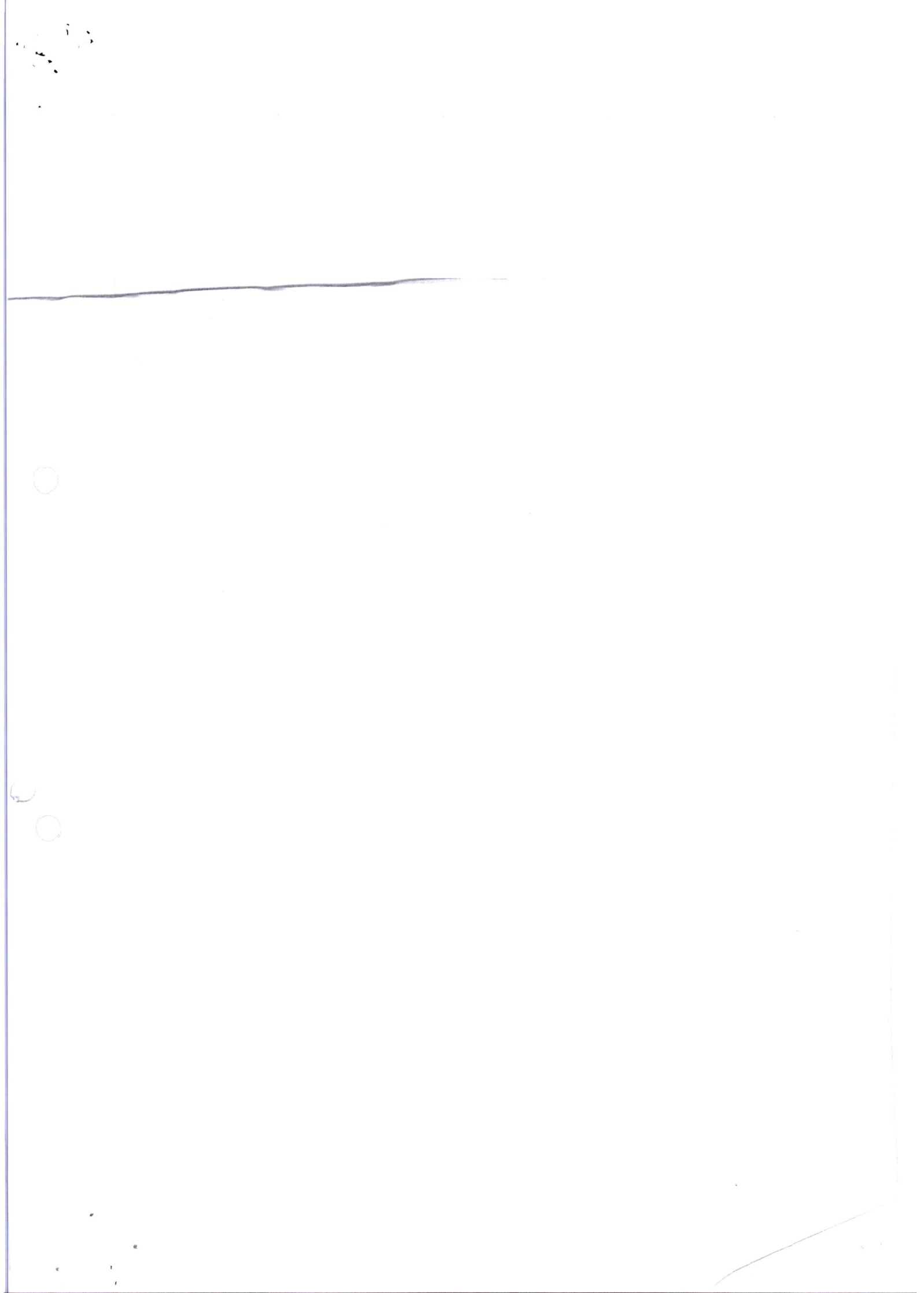
S/NO	PROPOSAL	ANALYSIS	COMMENTS/ SUGGESTIONS BY NITA	CONSENSUS BUILT
	<p>Clause 2 proposes to amend Section 3A and 5B of the Act</p> <p>It proposes deleting of paragraph (b) of 3A and substituting new section under 5B</p>	<p><b>a.</b> Assessment and collection of industrial training functions taken away from the Authority and Commissioner General made responsible for the same</p> <p><b>b.</b> The Commissioner General given all the powers conferred by KRA Act and Income Tax Act</p> <p><b>c.</b> Training levy paid latest by 5<sup>th</sup> day of the month into training levy fund</p> <p><b>d.</b> Training levy Fund increased from kes50 to kes100</p> <p><b>e.</b> The word 'Industrial' dropped from the title of the fund</p> <p><b>f.</b> Cap 470 No.2 of 1995 applies in payment, recoveries, penalties, assessment, returns, furnishing of documents and records.</p>	<p>The collection efficiency and reach will be increased. Revenue base will grow, as they cover even informal sector</p> <p>The fear of non-remittances or timely remittances by the KRA is real and the major risk factor relating to the bill.</p> <p>The duty to determine the levy rests with the Cabinet Secretary responsible for Labour upon receiving an advisory from the NITA Board. This is most ideal as he is best placed to know the Skill needs of the industry and how much is required to fund the trainings.</p> <p>Suggestions:</p> <ol style="list-style-type: none"> <li>1. Include the timeline by when Commissioner General forward the Monthly collections to the Director General appointed under section 4C of the Industrial Training Act, Cap 237 laws of Kenya</li> <li>2. The word "Industrial training Levy" be retained to conform to the principal Act and appreciate</li> </ol>	<p>That should the Bill be approved, then the following be considered</p> <ol style="list-style-type: none"> <li>1. Training levy be paid by 10<sup>th</sup> day in line with PAYE and the Commissioner General to remit the whole amounts collected by 15<sup>th</sup> of the month.</li> <li>2. The word <i>industrial</i> training to precede the term <i>training</i> levy</li> <li>3. Add under 5B (4) fund managed by the Director General.</li> <li>4. The 50 shillings per employee be retained as an increment will make it a money Bill.</li> <li>5. The increment of the funding from 50 to 100 which is positive but renders the bill a money bill and amount should be retained at 50 shillings.</li> </ol>

THE NATIONAL ASSEMBLY  
 RECEIVED  
 10 APR 2019  
 DIRECTOR COMMITTEE SERVICES  
 Time:.....

NATIONAL ASSEMBLY  
 RECEIVED  
 04 APR 2019  
 SENIOR DEPUTY CLERK  
 J. W. N.  
 P. O. Box 41842-00100, NAIROBI

<p>Proposed clause 3 which seeks to amend Section 5C (disbursement power of the Director General) the principal Act</p>	<p>The section proposes to allocate percentages of levy collected to different entities and programmes.</p> <p>Payments out of fund by Director General is expected to be by 15<sup>th</sup> day each month and this calls for automation of the process further.</p> <p>1. 60%- Reimbursements which includes; Trainings, Interns, Industrial attachment and Apprentices</p>	<p>Industrial training levy fund works better if utilized for workplace trainings to increase productivity of staff. Further, some of these institutions are already funded by the Treasury.</p> <p>The proposal to fund other programmes that are not work place removes the focus of the Industrial levy fund from work place trainings. <u>Suggestions:</u></p>	<p>The intent of the proposer of the Bill is for the employer to give back, as beneficiaries, to the investment for the training undertaken on persons before the entry to the world of work. Further, it is to ensure that the employer has a say in the training</p> <p><u>Agreed areas</u></p> <ol style="list-style-type: none"> <li>1. Distribute 100% of the 65% collection in line with the current provision of section 4H (5) of the act. Noting that there is no proposal to review section 4H(5).</li> <li>2. Payments to the fund to be made by 15<sup>th</sup> of the following month</li> <li>3. 10% proposed to be disbursed to HELB for funding students in TVET institutions be dropped</li> </ol>
		<p>the levy fund as employer's money</p> <ol style="list-style-type: none"> <li>3. Add under 5B (4) -----fund managed by DG, NITA</li> <li>4. Administratively agree with KRA through an MOU on charges and how the inspection roles of Industrial Training Inspectors to enhance compliance.</li> <li>5. A proposal that the Training Levy should be 0.25% on contract value for employers in the building and construction sector and 0.5% of wage bill on all the employers in other sectors.</li> <li>6. Retain the duty to determine levy and gazette levy amounts to the Cabinet Secretary, labour</li> </ol>	



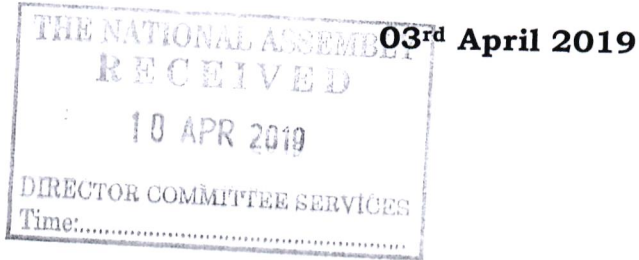


<p>1. 5C(a) the funding o dropped</p> <p>2. 5(b) 20% Funding c dropped and replac establishment and Industrial Training accredited employ training institutions training of employe SME's and inform:</p> <p>3. 5C(C)10% to HEL dropped and inste with 15% to meet costs in running tr</p> <p>4. 5C(d) Reduce 10 the for such other relating to training approved by the l</p>	<p>2. 20%- establishment operations of institutions</p> <p>3. 10%- HELB for funding of students in institutions</p> <p>4. 10%- Training expenditure as approved by the Board</p>	<p>1. 5C(a) the funding o dropped</p> <p>2. 5(b) 20% Funding c dropped and replac establishment and Industrial Training accredited employ training institutions training of employe SME's and inform:</p> <p>3. 5C(C)10% to HEL dropped and inste with 15% to meet costs in running tr</p> <p>4. 5C(d) Reduce 10 the for such other relating to training approved by the l</p>
<p>Memorandum of objects and reasons</p>	<p>The Memorandum suggests that there are no timelines for employers to remit the levies and there no penalties and sanctions to guard against non-remittance.</p>	<p>The Levy Order of 20 that an employer sh Director a Levy of employee per month the last working day of the Act further provide:</p>

**OFFICES**

KOSE Heights Building  
Hurlingham  
Sixth floor, Suite W6:1  
Tel: 0722574460, 0722828196  
Email:kacetp@gmail.com  
info@kacet.org / Web:www.kacet.org

*COMMUNICATA*  
*pls deep*  
*DA*  
*10/4/19*



The Clerk of the National Assembly,  
P.O Box 41842 00100  
Nairobi.

Dear Sir/Madam,

**RE: THE INDUSTRIAL TRAINING (Amendment) BILL (National Assembly Bill 4 of 2019)**

The Kenya Association For certified Training Providers for Industry (KACET) is a Training and Standards Certification Trust Fund Registered as a Trust and incorporated Under Perpetual Succession Act Cap. 164 of the Laws of Kenya.

KACET is working with all Certified Competency Industrial Training Providers for Industry in all the Eighteen Industrial Sectors.

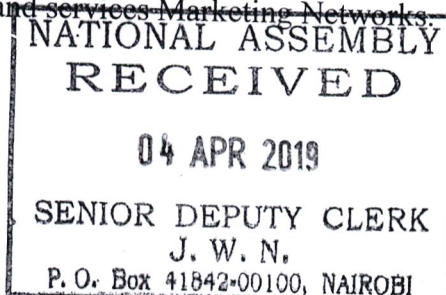
KACET main focus is to train, certify with Standards and develop the over 6 Million Master craftsmen/Women in Kenya, who comprise the Kenya Cottage Industries (This is the GOK unstructured ignored Kenyan Industrial Power House).

KACET is collaborating in Industrial/Occupational Standards Training and Certification with the following:

- 1) Kenya Industrial Estates (KIE)
- 2) Micro and Small Enterprises Authority (MSEA)
- 3) Kenya Industrial Research and Development Institute (KIRDI)
- 4) Export Promotion Council (EPC)
- 5) Kenya Bureau of Standards (KEBS)
- 6) National Employment Authority (NEA)
- 7) National Industrial Training Authority (NITA)
- 8) Over 10,000 TOT Master Craftsmen registered by KACET who are training Providers for the Industry.

**TRAINING TO BE PROVIDED BY KACET AND COLLABORATORS:**

- 1) Train over one Million TOT Master craftsmen/Women (Cottage Industries) in spontaneous Business growth Course: Social Enterprise with Pedagogy. The Expert Labour after 2years are admitted as shareholders (Labour shares 10%)
- 2) Train and certify with Standards competence Skills and Modern Technology.
- 3) Make Youth training and Apprentice by Master craftsmen/women (Cottage Industries) a profitable Training Scheme.
- 4) Help build an IT Sectors goods, skills and services Marketing Networks



**Solving the problem of Unemployment:**

KACET and the Industry collaborators have the following Main Objectives:

- 1) Train, certify and Incubate 3,000,000 Master Craftsmen/Women (Cottage Industries) in 10 years.
- 2) The 3 Million Master craftsmen/Women to train, give apprentice, incubate and start over 30 million Youth cottage Industries over the next 10 years.
- 3) Capacity Build over 1 Million SME Cottage Industries to Medium and Large Industries in the next 10 years.
- 4) Capacity Build over 500,000 SME Cottage Industries to medium and Large Scale Exporters.
- 6) Train over one Million cottage Industries in Social Enterprise.

**KACET recommendation:**

The Government should mandate The Principal Secretary for State Department for Post Training and Skills Development to constitute The Training Levy (Collected from The Industry) Skills Training Trust Fund or Commission. NITA should continue to be the Secretary to the Trust Fund. All stake holders should be brought on Board.

The CS Treasury has other sources to finance the University and colleges Training.

KACET is representing other players in the Kenya Industrial Training and we shall lobby for Industry Training Rights.

Yours Faithfully,

Rev. Nelson Kariuki.  
National Executive Chairman.

**MINUTES OF THE 20<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 25<sup>TH</sup> APRIL, 2019 AT 9.30AM IN THE CPA ROOM, MAIN PARLIAMENT BUILDING.**

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**PRESENT**

1. **The Hon. Ali Wario, MP** - Chairperson
2. The Hon. Ronald Kiprotich Tunoi, MP
3. The Hon. Gladys Atieno Wanga, MP
4. The Hon. Janet Nangabo, MP
5. The Hon. James Onyango K'Oyoo, MP
6. The Hon. Tom Mboya Odege, MP
7. The Hon. Fabian Kyule Muli, MP
8. The Hon. Omboko Milemba, MP
9. The Hon. Michael Mwangi Muchira, MP
10. The Hon. Catherine Wambilianga, MP
11. The Hon. Safia Sheikh Adan, MP

**ABSENT WITH APOLOGY**

1. **The Hon. Joyce Korir, MP** - Vice Chairperson
2. The Hon. Alfred K. Keter, MP
3. The Hon. Janet Marania Teyiaa, MP
4. The Hon. Rose Museo Mumo, MP
5. The Hon. Charles Kanyi Njagua, MP
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. David Ole Sankok, MP
8. The Hon. Wilson Sossion, MP

**IN ATTENDANCE**

**Friends of the Committee**

1. Hon. Sabina Chege, M.P
2. Hon. Jude Njomo, M.P
3. Hon. Ali Mbogo, M.P

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha - Clerk Assistant I
2. Mr. John Mugoma -Clerk Assistant III
3. Ms. Doreen Karani -Legal Counsel
4. Ms. Sheila Chebotibin -Sergeant-At-Arms
5. Mr. Simon Muinde -Audio Officer

## **AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sittings
  - iv. Matters Arising
3. **Meeting with the following Hon. Members:-**
  - i. **Hon. Sabina Chege, M.P regarding the Legislative Proposal on Breast Feeding Mothers Bill, 2018.**
  - ii. **Hon. Ali Mbogo, M.P Menza, M.P regarding the Petition on Non Payment of Former Employees of the African Safari Club.**
  - iii. **Hon. Jude Njomo regarding the Industrial Training (Amendment) Bill, 2019 .**
4. Any Other Business
5. Adjournment/Date of the next Sitting

### **MIN.NO. DC/LSW/097/2019:- PRELIMINARIES**

The Chairperson called the meeting to order at 10.00am and thereafter a prayer was said. The Chairperson informed the Committee that the main agenda of the meeting was to consider a Petition, a Legislative Proposal and an amendment Bill as stipulated in the Agenda.

### **MIN.NO. DC/LSW/098/2019: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Hon. Janet Nangabo, M.P and seconded by Hon. Michael Mwangi Muchira, M.P respectively.

### **MIN.NO. DC/LSW/099/2019: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

### **MIN.NO.DC/LSW/100/2019: CONSIDERATION OF THE LEGISLATIVE PROPOSAL ON BREAST FEEDING MOTHERS BILL, 2018.**

#### **I. Brief by the Legal Counsel**

The Legal Counsel took Members through the content of the Legislative Proposal highlighting the following:-

- i. The Principal Objective of the legislative proposal which is to provide a legal framework on mothers who may wish to breastfeed their children at the work place, provide the employers' obligations, and to provide for baby changing facilities for use by the public.

- ii. Long Title, Clause Two on definitions, Clause 3, Clause 4 on Lactation place, Clause 5 on breastfeeding time, Clause 6 on Flexible work arrangement, Clause 7 on baby changing facility, Clause 8, General penalty and Regulations.
- iii. The Committee was also taken through General comments from the Kenya Law Reform Commission and Federation Of Kenya Employers:

## **II. Submissions by Hon. Sabina Chege, M.P**

The sponsor of the Legislative Proposal, Hon. Sabina Chege, M.P submitted as follows:-

- a) That the principal object of the Bill is to provide for a legal framework on mothers who may wish to breastfeed their children at the work place.
- b) That breastfeeding is the first preventive health measure that can be given to a child at birth and it also enhances mother-infant relationship. It is nature's first immunization, enabling the infant to fight potential serious infection and it contains growth factors that enhance the maturation of an infant's organ systems.
- c) Kenya is a signatory to treaties that provide for the right of an infant to exclusive breastfeeding for six months. The Government should therefore promote and encourage breastfeeding and provide specific measures that would present opportunities for working mothers to continue expressing their milk and breastfeeding their infant or young child.
- d) The practice of breastfeeding may save the country's valuable foreign exchange that may otherwise be used for milk importation.
- e) The Bill contains two parts; part one which provides for preliminary matters including the title of the Bill and the interpretation of terms used in the proposed Act.
- f) Part two of the Bill provides for:-
  - The fundamental principles and rights at work for breastfeeding mothers.
  - It provides for the right to freely breast feed or express one's milk for the baby.
  - It places the obligation on the employers to provide breastfeeding working mothers with rooms to either breastfeed or express their milk. It provides for the standards of such rooms.
  - The Bill further provides for baby changing tables. This is important because the greater public finds it unsanitary to change a baby in a public setting such as a restaurant.
  - The provision will also cater for persons who are travelling for long distances in the accompaniment of babies, ensuring that in each public restroom, a baby changing facility is provided.

## **Committee Observations**

- (i) The idea was noble as it seeks to uphold the right of a child to basic nutrition, parental care and protection.

- (ii) The provision relating to capacity of a building to which the legislative proposal applies should be revised upwards from thirty persons to fifty persons in a building.
- (iii) It may not be practicable to comply with some of the provisions such as providing facilities in public places like buses but it is possible for the facilities to be provided at bus-stops.
- (iv) It was prudent to have, in law, provisions that protect a mother who breastfeeds in public from discrimination, victimization, harassment or attacks.
- (v) The Bill does not contain any transitional provisions or a grace period within which employers and owners of buildings etc. will be required to comply with the provisions of the law upon enactment.
- (vi) There was need for the Government to consider giving tax and other incentives to employers who comply with these provisions;
- (vii) Considering the importance of the matter at hand, there would be need for wider stakeholder participation which may be undertaken upon publication of the Bill pursuant to Article 118 of the Constitution.

**MIN.NO.DC/LSW/101/2019: CONSIDERATION OF THE PETITION REGARDING NON PAYMENT OF FORMER EMPLOYEES OF THE AFRICAN SAFARI CLUB.**

The Hon. Ali Mbogo Menza informed the Committee that:-

1. African Safari Club (ASC) was registered as a legal entity in 1976 and became a dominant player in the tourism industry;
2. It operated a number of hotels, camps and other businesses;
3. African Safari Club offered employment to more than 2,400 employees;
4. In March 2011, it issued notices to employees, clients and other stakeholders that it had ceased its operations;
5. By the time of cessation of operation, the club owed employees salaries and dues amounting to Kshs. 295,080,614.84. This include outstanding salaries of the employees as at 30<sup>th</sup> June, 2011, retirees benefits as at 28<sup>th</sup> March, 2018 and employees benefits as at 30<sup>th</sup> June, 2011;
6. In February, 2014, the Petitioners learnt that the African Safari Club was being wound up and sort assistance from the office of the Attorney General by duly submitting the necessary pleases, documentation and other requirements;
7. Proceeds from the sales were not utilized to pay terminal dues to former employees;
8. Numerous attempts to address the matter with the relevant authorities have been futile;
9. The matter was not pending before a Court of Law.
10. The Petitioners prayers were that the Departmental Committee on Labour & Social Welfare should:-
  - i. Causes for an audit to be undertaken on the assets of African Safari Club to ascertain the value of the assets with a view of recommending that the proceeds from sales of such assets be used to settle terminal dues owed to the former employees;
  - ii. Ensure that the plight of the Petitioners is addressed.



## Way Forward

Give the nature of the Petition that may require the Committee to engage various stakeholders and witnesses, the Committee resolved to:-

- Ask for extension of time from the Hon. Speaker to enable the Committee conclude on the petition;
- Write to the Receiver Manager to appear before the Committee to respond to the issues raised by the Petitioners;
- Carry out an inspection visit and hold a session with the petitioners.

## MIN.NO.DC/LSW/102/2019: CONSIDERATION OF THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019

### I. Brief by the Legal Counsel

The Legal Counsel took Members through the content of the Bill highlighting the following:-

The Bill seeks to amend various provisions of the principal Act to, among other things, provide-

- (i) that the Kenya Revenue Authority shall have mandate of **assessing** and **collecting** training levies from employers,
- (ii) for timelines within which employers should remit the levies
- (iii) that the Income Tax Act and KRA Act shall apply in respect of payment and recovery of levies and penalties
- (iv) for the formula for distribution of levies collected by the KRA

### II. Proposed Amendments

- A. **Clause 2:** Proposes to amend *Section 3A* of the Act by deleting of paragraph (b).
- B. **Clause 3:** Proposes to delete *Section 5B* of the Act and substituting new section under 5B- Training levies
- C. **Clause 4:** Seeks to amend Section 5C
- D. **Clause 5:** Amending Part II of the First Schedule to the **Kenya Revenue Authority Act**

The Committee was also taken through Memorandum of objects and reasons, comments and suggestions from the following stakeholders as contained in the main report; National Industrial Training Authority (NITA), Kenya Tea Growers Association (KTGA), The Kenya Association of Certified Training Providers for Industry (KACET),

### III. Submissions by Hon. Jude Njomo, M.P

- a. The Hon. Jude Njomo, M.P took Members through the proposed amendments as contained in the Bill.

- b. He observed that NITA collects below the target and as such, KRA should collect the levy and submit it to NITA since it's not NITA's core mandate to collect the funds.
- c. The proposal to increase the levy from kshs. 50 to kshs. 100 should be deleted.
- d. NITA to retain 60% of the total collected levy, give 20% to TVET institution, and retain 20% for training expenditure as may be approved by Board.
- e. Delete the Amendment of Section 5C (2c) on allocation of 10% of collected to Levy to HELB.

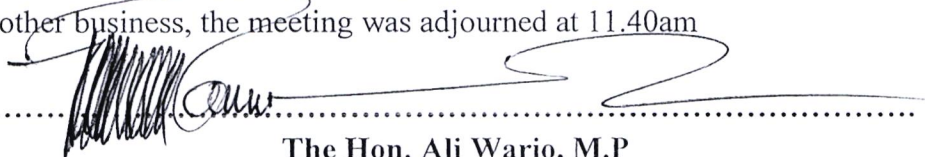
**Committee Observations and Recommendations**

- 1. The duty to determine (assess) the levy should remain with the Cabinet Secretary responsible for Labour upon receiving an advisory opinion from the NITA Board.
- 2. Collection of the levy may be done by KRA but the remittance of the levy monies by KRA to the Industrial Training Levy Fund under NITA should be done by 15<sup>th</sup> of every month.
- 3. Kshs. 50shs contribution levied was sufficient and there was no justification to increase the sum.
- 4. The proposal to pay TVET and HELB was inconsistent with the spirit of the Industrial Training Act, whose purpose under the long title is "to make provision for the regulation of the training of persons engaged in industry". *TVET and HELB* are not involved in training in industry but in the provision of education services.

**MIN.NO. DC/LSW/103/2019: ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.40am

SIGNED: .....



The Hon. Ali Wario, M.P  
(Chairperson)

DATE: .....

02/07/19

**MINUTES OF THE 27<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY 22<sup>ND</sup> MAY, 2019 AT 10.05AM AT ENGLISHPOINT HOTEL, MOMBASA COUNTY.**

---

**PRESENT**

1. **The Hon. Ali Wario, MP** - Chairperson
2. **The Hon. Joyce Korir, MP** - Vice Chairperson
3. The Hon. Gladys Atieno Wanga, MP
4. The Hon. James Onyango K'Oyoo, MP
5. The Hon. Janet Marania Teyiaa, MP
6. The Hon. Janet Nangabo, MP
7. The Hon. Ronald Kiprotich Tunoi, MP
8. The Hon. Alfred K. Keter, MP
9. The Hon. Safia Sheikh Adan, MP
10. The Hon. Abdi Mude Ibrahim, MP
11. The Hon. Catherine Wambilianga, MP
12. The Hon. Charles Kanyi Njagua, MP
13. The Hon. David Ole Sankok, MP
14. The Hon. Omboko Milemba, MP
15. The Hon. Michael Mwangi Muchira, MP
16. The Hon. Fabian Kyule Muli, MP
17. The Hon. Tom Mboya Odege, MP
18. The Hon. Wilson Sossion, MP

**ABSENT WITH APOLOGY**

1. The Hon. Rose Museo Mumo, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Clerk Assistant I
2. Mr. John Mugoma -Clerk Assistant III
3. Ms. Lucy Makara, -Fisical Analyst
4. Mr. Osman Said -Research Officer
5. Ms. Sheila Chebotibin -Sergeant-At-Arms

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions

- ii. Communication from the Chairperson
- 3. **Meeting with Kenya Revenue Authority and NITA regarding the Industrial Training Bill.**
- 4. Any Other Business
- 5. Adjournment/Date of the next Sitting

**MIN.NO. DC/LSW/134/2019:- PRELIMINARIES**

Chairperson called the meeting to order at 10.05am and thereafter a prayer was said. This was followed by introductions.

The Chairperson then welcomed the officials from KRA and NITA to the meeting and highlighted to them the content of the Bill. Thereafter, the two organizations submitted their views on the Bill to the Committee.

**MIN.NO. DC/LSW/135/2019: SUBMISSIONS BY KENYA REVENUE AUTHORITY**

The Kenya Revenue Authority submitted as follows:-

- (a) Kenya Revenue Authority was currently administering eleven funds established by an Act of Parliament. Four of the funds are related to tax.
- (b) Under the proposed new section 5B (3), the due date of the training levy to be 9th of every month when PAYE falls due for ease of enforcement and to avoid numerous due dates. This creates simplicity, reduces costs of compliance and improves ease of doing business.
- (c) Under the proposed new section 5B (7), -
  - (i) replacement of the reference to “the Kenya Revenue Authority Act” with the “Tax Procedures Act” since it is the relevant Act that deals with procedural matters of tax.;
  - (ii) The amendment of Clause 5B (7) (b) to read ‘assessment of levies payable and penalties’ to allow for the assessment of penalties by KRA.
  - (iii) Introduction of paragraph (f) to read ‘Objection to assessment’ which harmonizes dispute resolution mechanisms for the convenience of taxpayers by creating a single point of appeal.
- (d) KRA further proposed to introduce a new section to allow employers to appeal to the Tax Appeal Tribunal for matters relating to assessment and payment of levies. This will require amendment of the Tax Appeals Tribunal Act.

The Committee was further informed that:-

- i. Kenya Revenue Authority does not determine how funds are utilized but rather does the compliance management.
- ii. Once the money is collected, it's remitted to a special account in Central Bank with 48 hours.

**MIN.NO. DC/LSW/136/2019: SUBMISSIONS BY NATIONAL INDUSTRIAL TRAINING AUTHORITY**

The Cabinet Secretary briefed the Committee on the following:-

1. The Ministry of Labour and Social Protection rejects the Bill in totality;
2. The NITA Board met with the sponsor of the Bill without his consent and as such, the meeting was regarded as being informal;
3. The Ministry was opposed to the proposal of revenue sharing since the money was coming from the employers;
4. There was zero collection of money from mainstream government. NITA only collects money from the private sector;
5. There was improvement in terms of collection since the fund has grown to six hundred million against a target of nine hundred million.

The Cabinet Secretary officially withdrew the earlier submission made by NITA on 1<sup>st</sup> April, 2019. In withdrawing the earlier submissions, the Cabinet Secretary stated that the Ministry will administratively engage KRA on collection training money on contractual basis.

The Cabinet Secretary further made the following submissions on behalf of the National Industrial Training Authority (NITA) that:-

- (a) The Industrial Training Act is an Act of Parliament giving the National Industrial Training Authority the mandate of regulating the training of persons engaged in industry. The training of persons in industry is supported by the Industrial Training Levy.
- (b) The Act vests the power of assessing and collecting industrial training levy on NITA. Currently, the amount collected from all employers in the country is Kshs. 50 per employee per month as per the prevailing Training Levy Order No 113 dated 14th June 2007. The Act also provides for a penalty of 5% per month on the amount in default on any employer.

- (c) The Act further provides that any training levy due plus the five percent penalty imposed is recoverable summarily by the Authority as a civil debt due to the Authority. Of the amount collected a minimum of 65% of the levy collected is used to support direct and indirect cost of skills development of employees in the industry and a maximum of 35% caters for operational costs of the Authority;
- (d) NITA embarked on a vibrant strategy to transform industrial training in Kenya and developed a Transformation agenda framework. One of the areas of focus is sustainable funding of industrial training in Kenya. It is instructive to note that during the development of the Transformation framework, one of the proposals were to have KRA collect the training levies on behalf of the Authority. The proposal was not considered favorably based on the imminent fear of non-remittance or late remittance of the levy by the KRA, which could ground the Authority's operations. Further, collection of levy by KRA may be misconstrued by the employers as an additional tax.
- (e) NITA rejected the Bill on the following grounds:-
- (i) The loss of mandate of the Authority to comprehensively assess Industry training demands will lead to the inability to determine industry-wide training needs to inform the uptake and utilization of Industrial training levy.
  - (ii) The high reduction in the percentage proportion allocated to Industrial training to only 39% of the total levy collected will affect the implementation of the expanded qualifications under the approved skills pathway of the Kenya National Qualifications Framework mandated to NITA.
  - (iii) The limited percentage of funding will greatly impede the development of industry driven training programs, assessment and certification for the expanded qualifications and growing demand for high productivity through skilled labour.
  - (iv) The proposed 100% increase in monthly contribution from Kshs. 50 to Kshs. 100 will be a burden to the employers and may be resisted by social partners.
  - (v) Given the foregoing, potential resistance and apathy by employers to contribute to the industrial training levy will be eminent as they will view the collection through KRA as additional tax. It was a trite principle of governance that those who would be affected by a decision are given the opportunity to meaningfully engage and make informed decisions.
  - (vi) Public participation is a not only a governance issue but also a constitutional right that is protected. It is therefore our view that more engagements with stakeholders be considered.

- (vii) Industrial Training Levy must at all times be seen as employers' money; thus, the distribution of levy collected to other institutions undermines the essence of having an Industrial Training Levy Fund. The Levy fund works better if utilized for workplace trainings to increase productivity of staff.
  - (viii) Further, TVETA and HELB are funded through the exchequer and refunding it through levies collected from employees leaves NITA with little resources to benefit the employers.
  - (ix) The possibility of non-remittances or late remittance of the Training Levy collected. This may ground operations of the Authority and will further affect support for training in the industry.
  - (x) Legislating on amount payable in an Act of law is not sustainable given that future review will require legislative process rather than an executive process, as currently is. The Training Levy Order No. 113 dated 14th June 2007 stipulates Kshs. 50 per employee per month as per the prevailing rate.
  - (xi) The Authority partners with the industry and often undertakes demand driven Training need assessment, impact of such training and therefore best suited in assessing and establishing amount payable.
  - (xii) Whereas the Bill was progressive and sought to ensure efficiencies as well as large coverage, addressing inefficiencies in collections could be done through administrative arrangements and not necessarily through legislative arrangements. This can be done through agency arrangements with KRA.
  - (xiii) The Bill does not state when the amounts to be collected by KRA shall be paid into the Fund.
  - (xiv) The likelihood of rendering as redundant, approximately 10% of the NITA staff undertaking the mandate to be transferred to KRA, a move that worsens the already precarious unemployment situation in the Country. This was because the Bill does not preserve the employment status of the employees who are undertaking the function.
- f. Parliament should reject the Bill. This will allow NITA to proceed with the Transformation Agenda that seeks, inter alia, to repeal and re-enact the Industrial Training Act.
- g. Administrative arrangements would be made to have KRA collect levy on behalf of NITA through an agreement between the two Agencies. The administrative arrangement

will address two fundamental issues at the core of the Bill to ensure efficiency and wider collection coverage.

### COMMITTEE OBSERVATIONS

Having listened to the two submissions, the Committee made the following observations:-

1. Though KRA was the most efficient and appropriate body to collect the funds on behalf of NITA, there was need to ensure that the fund goes to its intended purposes as outlined in the Memorandum of objects and reasons.
2. Kenya Revenue has capacity to collect and enforce in terms of compliance unlike NITA that has challenges and lacks proper structure to enforce compliance.
3. There was need to upscale the mode of collection.
4. There was need to overhaul the policy and come up with a new Bill.

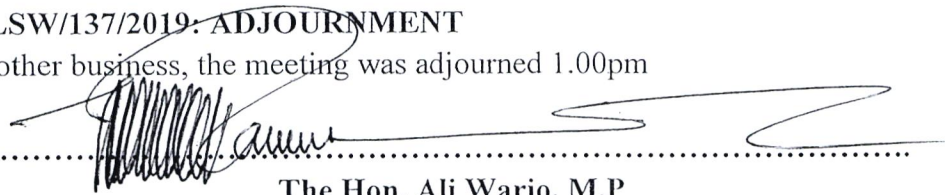
#### Way forward.

The Committee will deliberate on the submissions made by both Kenya Revenue Authority and Ministry of Labour and Social Protection and give its recommendations in the report.

#### MIN.NO. DC/LSW/137/2019: ADJOURNMENT

There being no other business, the meeting was adjourned 1.00pm

SIGNED: .....



The Hon. Ali Wario, M.P  
(Chairperson)

DATE: .....

02.07.19



**MINUTES OF THE 34<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 20<sup>TH</sup> JUNE, 2019 AT 10.30AM AT THE CPA ROOM.**

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**PRESENT**

1. **The Hon. Ali Wario, MP** - Chairperson
2. **The Hon. Joyce Korir, MP** - Vice Chairperson
3. The Hon. Gladys Atieno Wanga, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Janet Nangabo, MP
6. The Hon. Safia Sheikh Adan, MP
7. The Hon. Abdi Mude Ibrahim, MP
8. The Hon. David Ole Sankok, MP
9. The Hon. Charles Kanyi Njagua, MP
10. The Hon. Michael Mwangi Muchira, MP

**ABSENT WITH APOLOGY**

1. The Hon. Alfred K. Keter, MP
2. The Hon. James Onyango K'Oyoo, MP
3. The Hon. Ronald Kiprotich Tunoi, MP
4. The Hon. Rose Museo Mumo, MP
5. The Hon. Fabian Kyule Muli, MP
6. The Hon. Omboko Milemba, MP
7. The Hon. Catherine Wambilianga, MP
8. The Hon. Tom Mboya Odege, MP
9. The Hon. Wilson Sossion, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. John Mugoma -Clerk Assistant III
2. Ms. Doreen Karani -Legal Counsel
3. Ms. Farida Ngasura -Audio Officer
4. Ms. Sheila Chebotibin -Sergeant-At-Arms

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
3. **Consideration and adoption of reports on the following Bills:-**

(i) **Industrial Training (Amendment) Bill, 2019**

(ii) **Employment (Amendment) Bill, 2019**

4. Any Other Business
5. Adjournment/Date of the next Sitting

**MIN.NO. DC/LSW/164/2019:- PRELIMINARIES**

Chairperson called the meeting to order at 10.38am and thereafter a prayer was said.

The Chairperson then thanked the Hon. Members for actively participating in the scrutiny of the FY 2019/20 Budget Estimates.

The Chairperson further informed the Hon. Members that there was an amendment to BAC report regarding amount allocated to NGEN. That Kshs 150,000 for Promotion of Gender Equality and Freedom from Discrimination was reallocated to NGAAF under Gender Empowerment Program.

**MIN.NO. DC/LSW/165/2019: CONSIDERATION AND ADOPTION OF REPORT ON THE EMPLOYMENT (AMENDMENT) BILL, 2019 BY HON. MARTHA WANGARI, M.P**

The Committee was taken through the report on the Employment (Amendment) Bill, 2019 and thereafter adopted it with the following observations and recommendations having been proposed and seconded by Hon. Joyce Korir, M.P and Hon. Ibrahim Mude, M.P respectively:-

**Observations**

The Committee observed that –

**1. Clause 1**

- (a) There were no stakeholder comments received on the provision.
- (b) Article 116(2) provides for coming into force of Acts of Parliament on the fourteenth day after publication in the *Gazette* unless the Act stipulates a different date on or time at which it will come into force. In this case, the Act shall come into force in accordance with the provisions of Article 116(2).

**2. Clause 2**

- (a) There were no stakeholder comments received on this provision;
- (b) The definition was necessary as it explains the meaning of the term ‘exit certificate’ for users of the law.

**3. Clause 3**

- (a) Article 53(2) guides that a child’s best interests are of paramount importance in all matters concerning the child. It was in the best interests of a child who is to be adopted to

be afforded adequate time to bond with a potential parent and to allow the adoption society and the Court, an opportunity to observe the relationship between the potential parent and child for a certain duration before granting an adoption order in order ascertain that the prospective parent can afford the child the requisite parental care and protection;

- (b) There was need to support employees who intend to adopt children for them to be able to comply with the statutory requirements under Section 157 of the Children Act (No.8 of 2001) which requires that a *child to be adopted be under the continuous care and control of the applicant for a period of at least three consecutive months* preceding the filing of the application. In view of the foregoing, applicants who are employees may be awarded pre-adoptive leave to enable them provide the requisite care and control in order to meet the statutory obligations under Section 157 of the Children Act.
- (c) Granting the leave after finalization of the adoption process, as proposed by some stakeholders, would not have a similar effect as what is intended in the proposed Bill. The purpose providing pre-adoptive leave is to enable an applicant to comply with the provisions of section 157 of the Children Act which requires a child to be under the care of the applicant for at least three months before even filing the adoption application;
- (d) The provisions of Section 157 of the Children Act stipulate that the child to be adopted be under continuous ‘care and control’ of the applicant for a period of three months.
- (e) There was need to strike a balance between the needs of the employee and employer while considering the best interests of the child. To that end, the Committee was of the view that provision of a period of one month for purposes of pre-adoptive leave is necessary.
- (f) There was need to accord special consideration to parents who intend to obtain leave to enable them care for and apply for adoption of children born as a result of surrogate motherhood agreements.

## **Recommendations**

1. Clause 3 of the Bill be amended in sub clause (1) by:-
  - (i) deleting the words “three consecutive months” in paragraph (a) and substituting therefore the words “one month”;
  - (ii) deleting the words “three consecutive months” in paragraph (b) and substituting therefore the words “one month”;
  - (iii) by inserting the following new sub clauses immediately after sub clause (3)—

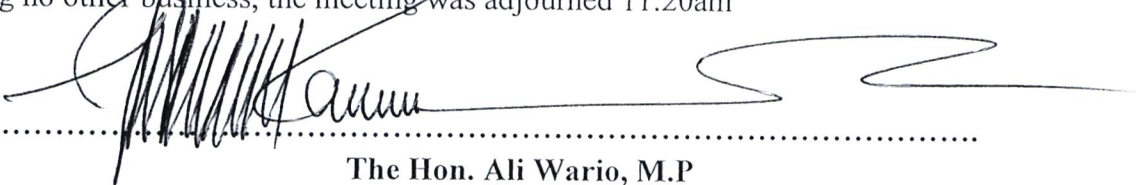
- “3A. Despite subsection (1), where a child is born as a result of a surrogate motherhood agreement, an employee who is a commissioning parent –
  - (a) shall be entitled to parental leave of two consecutive months from the date the child is born;
  - (b) in the case of a female employee who is married, the employee shall be entitled to two consecutive months parental leave with full pay; and
  - (c) in the case of a male employee who is married, the employee shall be entitled to two weeks paternal leave with full pay.
  
- 3B. An employee who is eligible for leave under subsection (3A) shall give the employer not less than seven days’ written notice in advance or a shorter period as may be reasonable in the circumstances of the intention to proceed on parental or paternal leave, as the case may be, on a specified date and to return to work thereafter.
  
- 3C. A notice under subsection (3B) shall be accompanied by documentation evidencing the surrogate motherhood agreement between the employee and the surrogate mother, and if required by the employer, a certificate as to the medical condition of the surrogate mother from a qualified medical practitioner or midwife.”
  
- In sub clause (4) by deleting the words “subsection (1)” and substituting the words “this section”

**MIN.NO.DC/LSW/166/2019: MIN.NO. DC/LSW/.../2019: CONSIDERATION AND ADOPTION OF REPORT ON THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019 BY HON. JUDE NJOMO, M.P**

The agenda was deferred to the next sitting to be held on Tuesday 25<sup>th</sup> June, 2019.

**MIN.NO. DC/LSW/167/2019: ADJOURNMENT**

There being no other business, the meeting was adjourned 11.20am

SIGNED: ..... 

**The Hon. Ali Wario, M.P  
(Chairperson)**

DATE: ..... 02.07.19 .....

**MINUTES OF THE 35<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY 25<sup>TH</sup> JUNE, 2019 AT 10.00AM AT THE CPA ROOM.**

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**PRESENT**

1. **The Hon. Ali Wario, MP** - Chairperson
2. The Hon. Ronald Kiprotich Tunoi, MP
3. The Hon. Gladys Atieno Wanga, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Janet Nangabo, MP
6. The Hon. James Onyango K'Oyoo, MP
7. The Hon. Abdi Mude Ibrahim, MP
8. The Hon. Omboko Milemba, MP
9. The Hon. Michael Mwangi Muchira, MP
10. The Hon. Catherine Wambilianga, MP
11. The Hon. Tom Mboya Odege, MP
12. The Hon. Wilson Sossion, MP
13. The Hon. David Ole Sankok, MP

**ABSENT WITH APOLOGY**

1. **The Hon. Joyce Korir, MP** - Vice Chairperson
2. The Hon. Rose Museo Mumo, MP
3. The Hon. Fabian Kyule Muli, MP

**ABSENT**

1. The Hon. Alfred Keter, M.P
2. The Hon. Safia Sheikh Adan, MP
3. The Hon. Charles Kanyi Njagua, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. John Mugoma -Clerk Assistant III
2. Ms. Doreen Karani -Legal Counsel
3. Mr. Onesmus Kiragu -Sergeant-At-Arms

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson

3. **Consideration and adoption of report on the Industrial Training (Amendment) Bill, 2019**
4. **Meeting with the Hon. Kimani Ichung'wa, M.P regarding the Labour Relations (Amendment) Bill, 2018**
5. Any Other Business
6. Adjournment/Date of the next Sitting

**MIN.NO. DC/LSW/168/2019:- PRELIMINARIES**

Chairperson called the meeting to order at 10.00am and thereafter a prayer was said.

The Chairperson then conveyed the apology from the Hon. Kimani Ichung'wa, M.P who could not make it to the meeting to present his views on the Labour Relations (Amendment) Bill, 2018. That the Hon. Member was engaged in the Budgetary process and as such, the agenda number four be rescheduled to 18<sup>th</sup> July, 2019.

**MIN.NO. DC/LSW/169/2019: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Hon. David Ole Sankok, M.P and seconded by Hon. Omboko Milemba, M.P respectively.

**MIN.NO. DC/LSW/170/2019: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

**MIN.NO. DC/LSW/171/2019: CONSIDERATION AND ADOPTION OF REPORT ON THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2019**

The Committee was taken through the report on the Industrial Training (Amendment) Bill, 2019 and thereafter adopted it with the following observations and recommendations having been proposed and seconded by Hon. David Ole Sankok, M.P and Hon. Ibrahim Mude, M.P respectively:-

**Observations**

- (a) The proposed loss of mandate of the Authority to comprehensively assess industry training demands will lead to the inability to determine industry-wide training needs to inform the uptake and utilization of Industrial training levy.
- (b) There was also a likelihood of rendering as redundant, approximately 10% of the NITA staff undertaking the mandate to be transferred to KRA, a move that could worsen the already precarious unemployment situation in the Country.

- (c) The proposed increase in monthly contribution from Kshs. 50 to Kshs. 100 will be a burden to the employers and may be resisted by social partners. Further, providing for this in legislation may create implementation challenges since an amendment of the Act would be required every time a revision of the amount is needed. It is therefore best for the determination of the levy amount to be left to subsidiary legislation.
- (d) The Act provides for a penalty of 5% per month on the amount in default on any employer.
- (e) Industrial Training Levy must at all times be seen as employers' money; thus, the distribution of levy collected to other institutions undermines the essence of having an Industrial Training Levy Fund and goes against the intention of the Act. The Levy fund works better if utilized for workplace trainings to increase productivity of staff. Further, TVETs and HELB are funded through the exchequer and refunding it through levies collected from employees leaves NITA with little resources to benefit the employers.
- (f) The Bill does not state when the amounts to be collected by KRA shall be paid into the Fund. The possibility of non-remittances or late remittance of the Training Levy collected by KRA to NITA may ground operations of the Authority and will further affect support for training in the industry.
- (g) NITA embarked on a vibrant strategy to transform industrial training in Kenya and developed a Transformation agenda framework. One of the areas of focus is sustainable funding of industrial training in Kenya. During the development of the Transformation framework, one of the proposals were to have KRA collect the training levies on behalf of the Authority. The proposal was not considered favorably based on the imminent fear of non-remittance or late remittance of the levy by the KRA, which can ground the Authority's operations.
- (h) Collection of levy by KRA may be misconstrued by the employers as an additional tax.
- (i) Addressing inefficiencies in collections can be done through administrative arrangements such as agency arrangements with KRA and not necessarily through legislative measures. KRA may therefore collect the industrial training levy on behalf of NITA through an agreement between the two Agencies. The administrative arrangement will address two fundamental issues at the core of the Bill to ensure efficiency and wider collection coverage.

### **Recommendation**

The Committee, having considered the Bill clause by clause proposed that the Industrial Training (Amendment) Bill be rejected.

**MIN.NO.DC/LSW/172/2019: CONSIDERATION OF THE LABOUR RELATIONS  
(AMENDMENT) BILL, 2018 BY THE HON. KIMANI ICHUNG'WA, M.P**

The agenda was postponed to a later date that shall be communicated to Members.

**MIN.NO. DC/LSW/173/2019: ADJOURNMENT**

There being no other business, the meeting was adjourned 11.00am

SIGNED: .....

  
The Hon. Ali Wario, M.P  
(Chairperson)

DATE: ..... 02. 02. 19 .....