
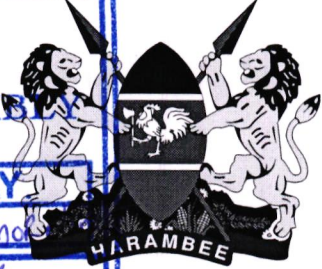


Approved for tabling.

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 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b> <b>DATE: 05 DEC 2018</b>	
 <b>HARAMBEE</b>	
<b>TABLED BY:</b>	CHAIRPERSON, COMMITTEE ON LABOUR & SOCIAL WELFARE
<b>CLERK-AT THE TABLE:</b>	Moses Lemana

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THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE CONSIDERATION OF THE NATIONAL YOUTH SERVICE BILL, 2018

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

DECEMBER 2018



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1. Advert for submission of Memoranda;
2. Minutes of the Committee proceedings on the Bill.
3. Memoranda from stakeholders.



## 1.0 CHAIRPERSON'S FOREWORD

The National Youth Service Bill, 2018 seeks to provide for the establishment, functions, discipline, organization and administration of the National Youth Service, and for connected matters. National Youth Service is a function assigned to a department in the Ministry of Public Service Youth and Gender affairs in the State Department of Youth Affairs. There is in existence the current National Youth Service Act, Cap 208 which the Bill seeks to repeal.

The Kenya National Youth Service – NYS Kenya was established on September 1, 1964, as a uniformed and disciplined service; its operations are regulated by the National Youth Service Act (Cap 208). In line with the Vision 2030, the NYS Kenya offers trainees technical and vocational programmes at its training institutions.

As presently composed, the National Youth Service has faced numerous operational and managerial challenges which have affected the implementation of its social programs and service delivery. This has occasioned loss of funds, dented organizational image and erosion of public trust; threatening not only the vision but the very existence of the Service. The Bill will therefore help in addressing the above challenges.

In deliberating on the Bill, the Committee subjected it to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and indeed did receive views from the Ministry of Public Service, Gender and Youth Affairs, Kenya Law Reforms, Mr. Moses Mwangi of Pacis Research and Mr. Githinji Mbugua.

The National Youth Service and the Kenya Law Reform (technical officers who drafted the bill) made very detailed and insightful joint submissions to the Committee. Thereafter the Committee did deliberate on the submissions on each clause of the Bill and made recommendations which will inform the committee stage amendments to the Bill.

The Committee appreciates the support accorded to it in discussing the Bill by the office of the Clerk and also the participation of the Honourable Members of the Committee. This report represents an analysis of the Bill, submissions made to the Committee by different stakeholders, observations and recommendations of the Committee on the Bill





Hon. Ali Wario, MP

Chairperson, Departmental Committee on Labour and Social Welfare.

4<sup>th</sup> Dec 2018





## 1.1 EXECUTIVE SUMMARY

The National Youth Service Bill, 2018 underwent first Reading on 14<sup>th</sup> November, 2018 and was subsequently committed to the Departmental Committee on Labour and Social Welfare for consideration pursuant to the provisions of National Assembly Standing Order 127.

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and National Assembly Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on Friday November 23, 2018 inviting the public to submit memoranda on the Bill. By close of business on Friday November 30, 2018, the Committee had received submissions from the Ministry of Public Service, Gender and Youth Affairs, Kenya Law Reform Commission, Mr. Moses Mwangi of Pacis Research and Mr. Githinji Mbugua.

Further, the Committee held meetings with Ministry of Public Service, Gender and Youth Affairs, Kenya Law Reform Commission on Tuesday 28<sup>th</sup> November 2018, and public hearing on Thursday 29<sup>th</sup> November 2018. Mr. Githinji Mbugua sent his written memorandum on the Bill and did not appear before the Committee.

The Committee thereafter proceeded to write a report where it analyzed the submissions from the stakeholders and made various observations and recommendations as indicated in this Report.



## 2.0 PREFACE

### 2.1 Mandate of the Committee

The Departmental Committee on Labour and Social Welfare is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -

- (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) 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 or a Minister.
- (vi) study and review all legislation referred to it

### 2.2 Committee subjects

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.

### 2.3 Oversight

The Committee oversights:

In executing its mandate, the Committee oversees the following Government Ministries, Departments and or Agencies, namely:

- i. Ministry of Labour



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

#### 2.4 Committee Membership

The Committee is currently comprised of:

**Chairperson:**           **The Hon. Ali Wario, MP**

**Vice Chairperson:** **The Hon. Joyce Korir, MP**

**Members:**           The Hon. Gladys Wanga, MP  
                               The Hon. Janet Marania Teyiaa, MP  
                               The Hon. Janet Nangabo Wanyama, MP  
                               The Hon. Ronald Kiprotich Tunoi, MP  
                               The Hon. James Onyango Koyoo, MP  
                               The Hon. Rose Museo, MP  
                               The Hon. Alfred Kiptoo Keter, M.P  
                               The Hon. Charles Kanyi Njagua, MP  
                               The Hon. Catherine Wambilyanga, MP  
                               The Hon. Fabian Kyule Muli, MP  
                               The Hon. Ole Sankok David, MP  
                               The Hon. Abdi Mude Ibrahim, MP  
                               The Hon. Michael Mwangi Muchira, MP  
                               The Hon. Safia Sheikh Adan, MP  
                               The Hon. Tom Odege, MP  
                               The Hon. Wilson Sossion, MP  
                               The Hon. Omboko Milemba, MP

#### Committee Secretariat

<b>First Clerk Assistant</b>	Mr. Adan Gindicha
<b>Clerk Assistant III</b>	Mr. John Mugoma
<b>Legal Counsel</b>	Ms. Marlene Ayiro
<b>Research Officer</b>	Mr. Said Osman
<b>Fiscal Analyst</b>	Ms. Amran Mursal.



## 2.5 COMMITTEE OBSERVATIONS

Having considered the Bill and the memoranda submitted to the Committee by the public, the Committee observed and made comments as follows-

1. The Bill seeks to create an oversight institution within the National Youth Service to be chaired by a person to be appointed by the President.
2. The National Youth Service has camps in Counties as the Bill should concern Counties or should be decentralized.
3. Both the Chairperson of Council and the Director General shall be appointed by the President. This might cause friction in the operations of National Youth Service.
4. National Youth Service trainees are not trained on weaponry, as such, it will not be proper for them to be deployed in times of war as provided for in clause 7(3).
5. Kenya Coast Guard should be included in the disciplined services as per clause 16 (3)
6. To allow for the promotion and growth in the Service clause 16 (2) (b) should be amended to provide for the promotion of a senior ranking officer in the Service to the level of the Director-General.
7. Disciplinary proceedings must be in line with provisions of Fair Administrative Act.
8. That though deduction of salaries under clause 34(g) is a form of discipline in Forces, the Committee observed that it was a harsh punishment which is against the labour laws and need to be reviewed.
9. Under Clause 11(2), there was no need for clearance from the Cabinet Secretary for the Council to Co-opt an expert.
10. Qualification of a Director General should be First Degree and not Masters Degree.
11. Under Clause 6(i), the number of Servicemen and women should be determined by absorption capacity of the NYS at that time of recruitment.

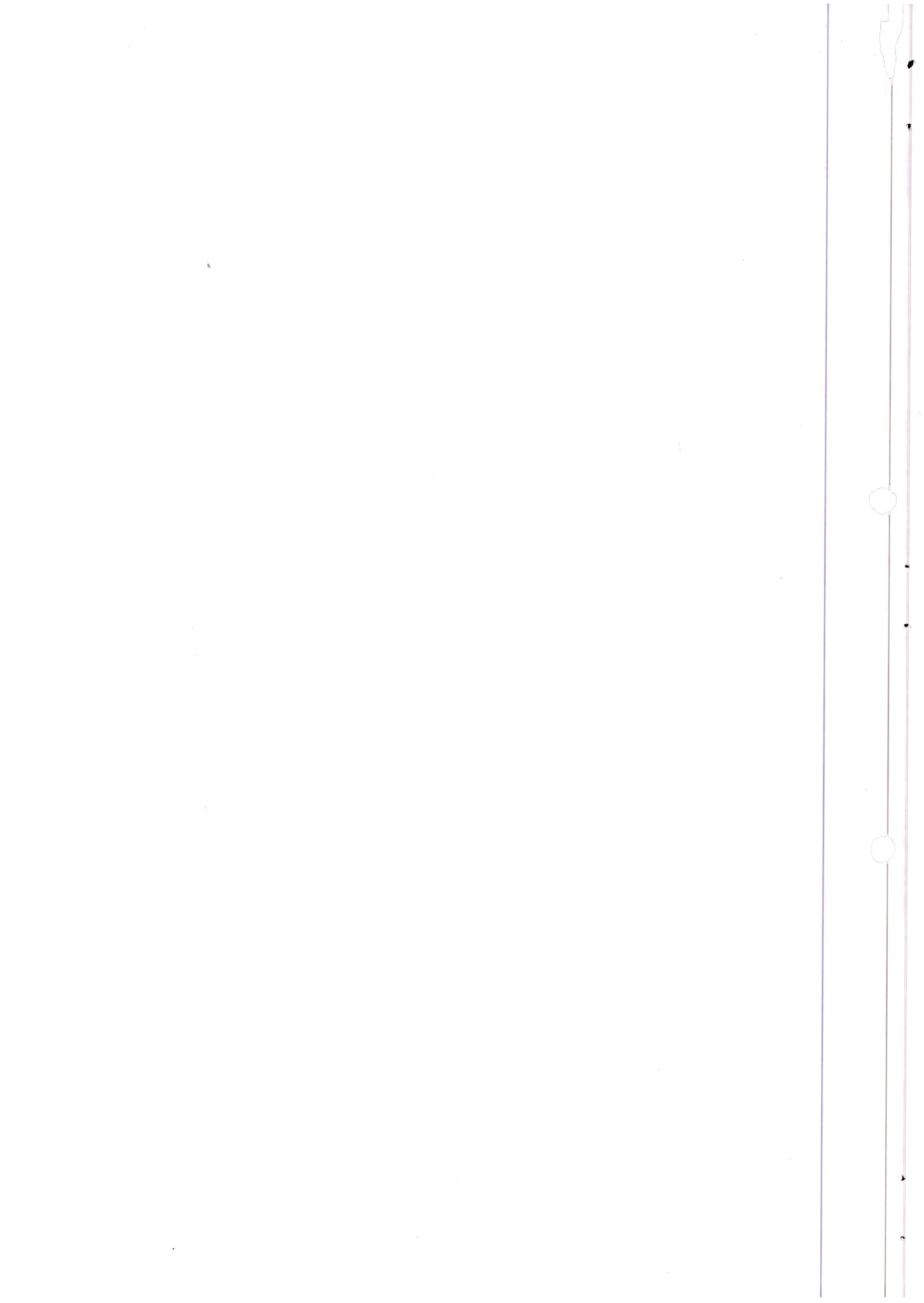




12. Need to include experts in the council who shall push for the commercialization venture in the Service.
13. The Director General and not the Council should be given powers to discipline, demote, promote and transfer officers. (The delegated powers are already given to the Director General by the Council).
14. Under Clause 9(g), one of the Youth must have background in paramilitary training as a qualification.

#### 2.6 COMMITTEE RECOMMENDATION

Having analyzed the Bill vis-à-vis the memoranda submitted by the public, the Committee recommends that the Bill is timely since there is need to ensure that the former National Youth Service Act CAP 208 which is a fairly old piece of legislation be amended to make it consistent to the New Constitution and to the changing face of the Service. That the Bill be approved and passed by the House subject to the proposed amendments in this Report.



### 3.0 INTRODUCTION

The proposal seeks to establish the National Youth Service; to provide for its functions, discipline, organizations and administration; and for connected purposes. National Youth Service is a function assigned to a Department in the Ministry of Public Service Youth and Gender affairs in the State Department of Youth Affairs.

There is the current National Youth Service Act, Cap 208, which this Bill seeks to repeal.

The Bill with regard to finances of National Youth Service activities the commercialization is a gray area and the National Youth Service will be checked as it engages in commercialization with the aim of ensuring that it supports itself.

The bill seeks to professionalize the Human esource capacity of the Institution. The National Youth Service has been facing operational and managerial challenges that have dented the public image of the Service and the bill will be instrumental in changing this environment.

#### 3.1 ANALYSIS OF THE BILL

The Bill contains 68 clauses, 8 parts and 4 schedules and it seeks to repeal the National Youth Service Act, CAP 208. The Bill seeks to create an oversight institution within the National Youth Service to be chaired by a person to be appointed by the President. The Clauses of the Bill are as follows –

**PART I (Clauses 1-4)** of the proposal provides for preliminary provisions of the Bill including the long title, short title of the Act, the interpretation clause, the object of the Act which outlines the overall purpose of the Bill and the Guiding principles.

**PART II (Clauses 5-22)**



Part ii of the bill deals with the substantive clauses of the bill it establishes the Service, the oversight body which is the council

**Clause 5** establishes the National Youth Service as a body corporate and assigns it a legal person's veil.

**Clause 7** establishes the functions of the Service.

**Observation:** The proposal on the functions provide for commercialization of the National Youth Service as is provided for in S.7 (1) (d)—

**“(d) undertake such enterprises and commercial activities as the Council may from time to time determine”**

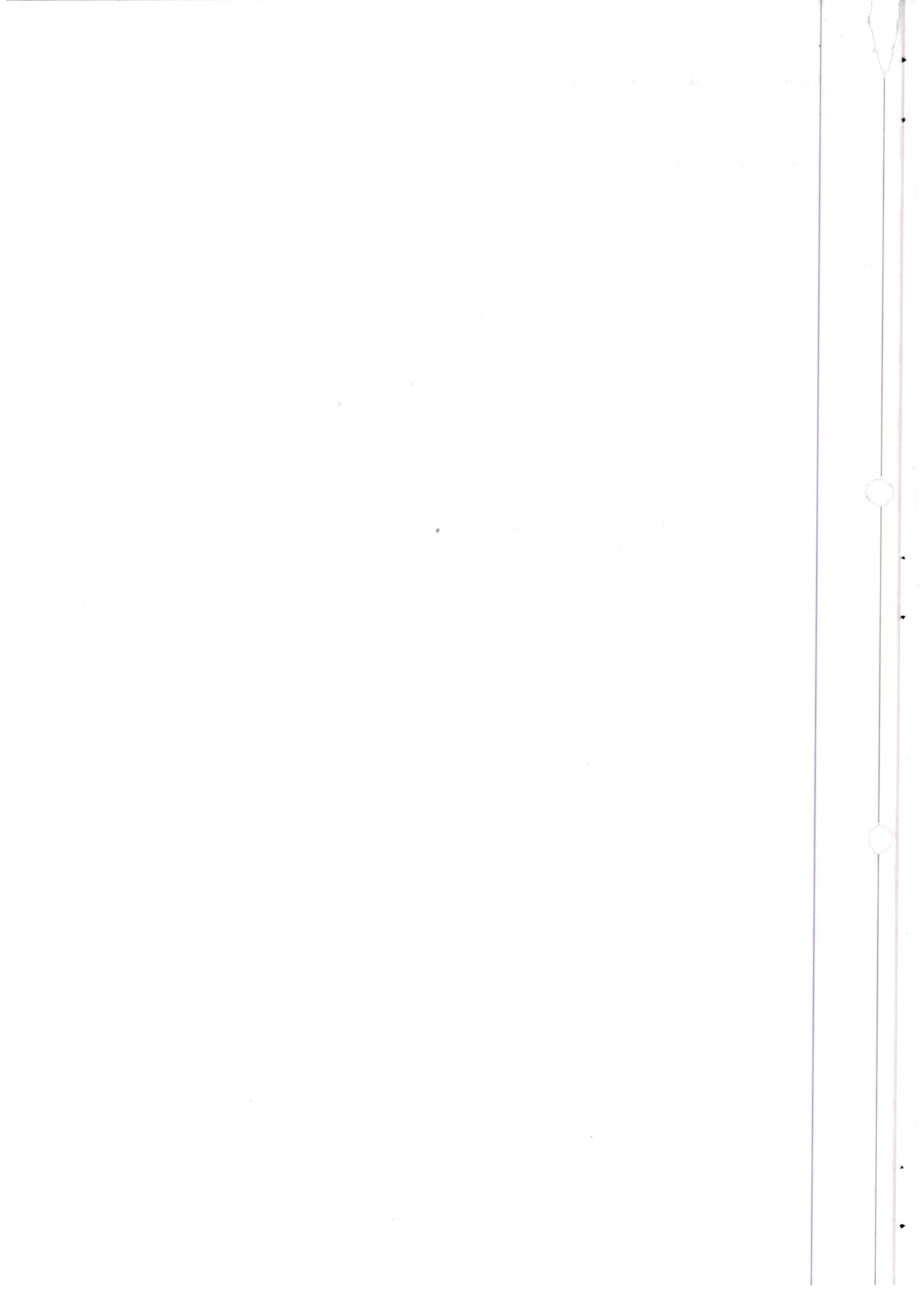
**Observation:** Is the law providing adequate safeguards pursuant to the Public Finance Management Act to ensure that the service does not lose any public funds as has been the norm.

**Observation:** Part of the functions of the Service will make National Youth Service to be an auxiliary body to Kenya Defence Forces and Kenya Prisons Service.

**Observation:** The proposal also provides that the Service shall co-operate with and assist the Kenya Defence Forces, National Police Service Commission and other public authorities during emergencies, disasters, war or insurrection or in the execution of the mandates of the public authorities as the council may determine

**Observation:** Besides this the law may need to provide for parameters in which the presidential directive of engaging the grandaunts of National Youth Service in the Kenya Police Service, the Kenya Defence forces and other uniformed forces so as to ensure absorption of the graduands.

**Clause 9** creates powers of the authority which include the power to partner with the public and private sector in the financing, construction, development or operation or maintenance of



infrastructure or development projects of the Service through concession or other contractual arrangements pursuant to the provisions of the Public Private Partnership Act.

**Observation:** Basically this part allows the Service to enter into agreements, invest any surplus or profit for the performance of its function. There is therefore a need to ensure that there are water tight provisions in the Public Finance Management Act and other relevant statutes to safeguard and protect these surplus monies from abuse and syphoning

**Clause 9** on composition of the Council of the National Youth Service.

**Sub-clause (1)** on the membership of the Board:

- The Mwongozo guidelines provides for a maximum of nine members of the Board, the proposal proposes thirteen members;
- Mwongozo provides for at least a third membership of the Board to be independent persons who are not government or county employees.

**Sub-clause (2)** provide for appointment of the Chairperson by the President

- Indeed, the Mwongozo Code and the State Corporations Act provide for appointment of Chairpersons of state Corporations to be done by the President.
- In the Composition of the Board as is depicted in 9 2(g) it provides that one of the appointees shall be a youth. Yet in sub clause (8) (a) it is provided that such person must have knowledge and experience of not less **than ten years** in any relevant field. This clause is bound to lock out the **youth representatives**.

**Clause 10**of the Bill is on Vacancy of member of the Council

**Clause 11**of the Bill provides for Committees of the Council

**Observation** clause 11 (2) provides that the Council may with the **approval of the Cabinet Secretary** co-opt into the membership of committees. This need to have the approval of the Cs for co-option may slow the functions of the Committees and the same should be deleted.

**Clause 12**of the Bill provides for the Functions of the Council





**Clauses 13, 14 and 15** of the Bill provide for the terms and conditions of members of the service, conduct of the business and affairs of the Council and protection from liability.

**Clause 16** of the Bill provides for the Appointment of the Director General

**Observation;** The marginal note should have the article “**the**” between the term of and the Director General.

**Clause 17** of the Bill provides for the Functions of the Director-General

**Observation** clause 2(m) provides that the Director General shall bring any matter to the attention of the Cabinet Secretary responsible for the Service **through the Council**, if in their opinion, a decision or policy or proposed decision or policy of the service may result in resources being used in a way that is contrary to subsection (1). This clause then limits the Director General from bringing to the attention of the Cabinet Secretary any matter that may raise an alarm...where the Council may not be able to meet for one reason or another.

**Clause 18** of the Bill provides that the Director-General may delegate powers or functions.

**Clause 19** of the Bill provides for the term of office of the Director General.

**Observation:** The Bill provides for a single and non-renewable term of five years. The Committee may consider enhancing the period of service of the Director General. To allow for continuity and succession management in the Service.

Can the marginal note be amended by inserting the article “the” between the words of and the Director General?

**Clause 20** of the Bill provides for Vacancy in the office of the Director General.

**Clauses 21, 21, 23, and 24** of the Bill provides for retirement or deployment of the DG, oath of office by D-G, Enlistment to the Service and Termination of service.

Clause 25, 26, 27, 28, 29 30, 31 and 32 of the Bill provide for resignation from the Service, Extension of service during times of emergency, return of service property, members not to engage in any other gainful employment, pension scheme and other schemes, oaths of office by members of Service, staff of the Service and Terms and conditions of service for staff of the service.



Observation: Need to amend the marginal note as the same is not clear. The same to be amended to read as follows- **the Terms and conditions of the Staff of the service**

**PART III (Clauses 33-38)** of the Bill deals with the Discipline provisions of the Service.

**PART IV (Clauses 39-44)** of the Bill provides for the offences generally which offences deal with persons who are not members of the Service. Persons accused of an offence under this Part shall be tried by a subordinate court established under Article 169 of the Constitution.

**PART V Limitation of Rights or fundamental freedoms (Clauses 45-50)** of the Bill contains limitation of rights or fundamental freedoms. Which part shall apply to members of the Service. The limitation of a right or fundamental freedom under this Part shall be in compliance with Article 24 of the Constitution.

The rights and freedoms to be limited shall of those disciplined members of the Service. (See the Kenya Defence Forces Act, and Kenya Police Service Act) but the rights should not be limited unjustifiably.

Limitations of the rights based on human dignity, right to privacy, right to access to information, freedom of association, right to assemble, demonstrate, picket or petition authorities, not form join agitate or participate in the activities of a trade union or go on strike.

**Observation:** The Act has given the Cabinet Secretary the powers to come up with regulations on the limitation of rights, there is a need to have timelines within which the regulations shall be made so as to safeguard against any form of abuse of the fundamental rights of the Service men and women.

**PART V Financial Provisions (Clauses 53-54)** Which provides for the funds of the service and accounts and audit.

**Observation:** The Service seeks to ensure that it is self-sustainable therefore it would like to ensure that part of the funds it generates are used in the Service.

**PART VII- Miscellaneous Provisions (Clauses 55-65)** proposal contains miscellaneous provisions. It outlines the relevant legislation and guiding principles for the Cabinet Secretary when formulating delegated legislation.



**PART VII (Clause 66-68)** of the proposal deals with savings and transitional provisions.

Seeking to save the previous employees of the National Youth Service immediately after the former Act has been repealed.

**First schedule** provides for the ranking structure in the service.

**Second Schedule** provides for the Conduct of the business and affairs of the Council

**Third Schedule** Provides for the Oath of office

#### 4.0 SUBMISSIONS AND PUBLIC PARTICIPATION

The Committee subjected the Bill to the provisions of Article 118 of the Constitution and Standing Order 127 of the National Assembly Standing Orders on public participation and placed an advert in the print media on Friday November 23<sup>rd</sup>, 2018 inviting the public to submit memoranda on the Bill. By close of business on Friday November 30, 2018, the Committee had received submissions from-

- 1) Ministry of Public Service, Gender and Youth Affairs and Kenya Law Reforms
- 2) Mr. Moses Mwangi of Pacis Research
- 3) Mr. Githinji Mbugua.

Further the Committee held meetings with Ministry of Public Service, Gender and Youth Affairs, Kenya Law Reform Commission, on Tuesday 28<sup>th</sup> November 2018, and public hearing on Thursday 29<sup>th</sup> November 2018. Mr. Githinji Mbugua sent his written memoranda on the Bill and did not appear before the Committee.

The stakeholders made the following written and oral submissions among others-

##### **I. Submissions by National Youth Service**

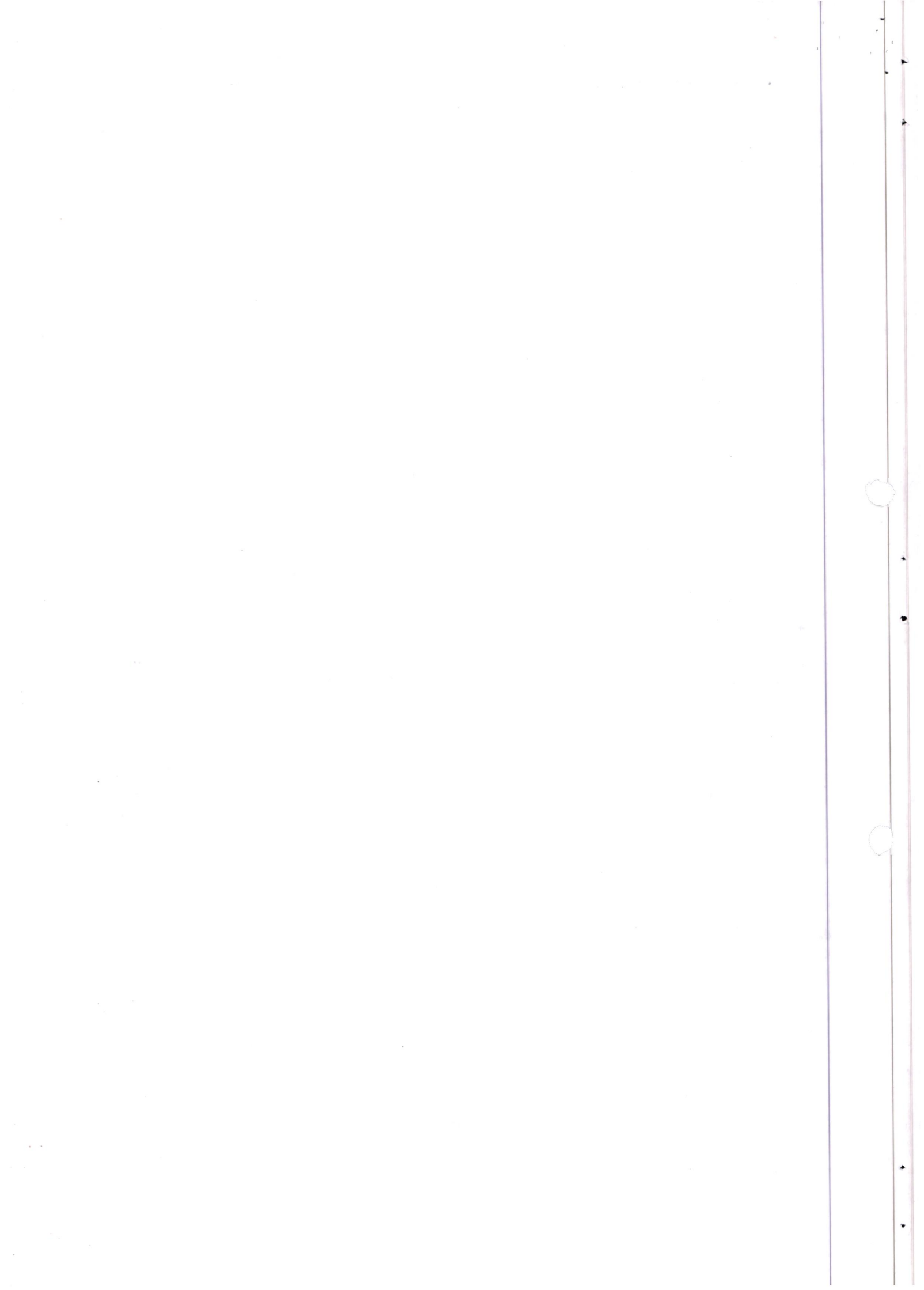
The National Youth Service made its submissions on the Bill as follows-

##### **1. Part I – Preliminary**

- Clause 2 “**restricted information**” is repeated twice with slight difference in their meaning.
- It is proposed the wording “restricted information” be used once with clear elaboration on meaning.

##### **2. Part II**

**A. Clause 9 – Establishment of the Council of the National Youth Service.**



- Under **clause 9 (g)** the bill proposes the appointment of five other members to the council to be appointed by the Cabinet Secretary and one of whom should be a youth.
- For ease of fair representation in terms of voting on crucial decisions affecting the National Youth Service, the members of the Service are of the view that among the five people to be appointed at least two of them should be retired uniformed officers who once served in the National Youth Service at a Senior level of the rank of Senior Deputy Director so long as they merit the requirements stipulated at **clause 9 (7)**.

**B. Clause 11:** Committees of the Council under **11 (2)** insert the word “**of the**” Immediately after the word “**approval**” to give the sentence a grammatical flow.

**C. Clause 11 (1) and 12(d)(g) and (h)** highlights functions put under the Council. It is proposed that these functions be moved to the Director General functions.

The sub clauses are essentially operational management aspects which best fall under the purview and responsibility of the Director General. This is on account of the fact that the Director General is basically on the ground and handles day to day management and administrative issues of the Service including Human Resource function that mirror largely the highlighted sub clauses. The execution of the mentioned functions by the Director General are to see enhanced commitment on duty, discipline in the ranks, swiftness in decision making and trust in the management and leadership of the Service. The Council is essentially to concentrate on the bigger picture of handling the Service mandate in terms of policy formulation, oversight and guidance.

**D. Clause 12(2):** it is stated that the Council may in writing, delegate to the Director General the power to promote, transfer or retire subordinate and under officers. It is proposed that the sub clause should entirely be part of the functions of the Director General.

The Director General among other responsibilities exercises delegated powers by the Public Service Commission to promote and discipline officers at certain level of ranks. This is a routine HR function managed by the Director General and therefore it will be duplication of the role and may create conflict of responsibility if the same function is also to be handled by the proposed Council.

**E. Clause 16:** Appointment of the Director General.

Under this clause and specifically **16(2)**, on disciplined Service”, the National Youth Service has been omitted among the segments that form the “disciplined Service”. It is proposed National Youth Service be included as a “disciplined Service” in consistent with **clause 2(1)**.





For purposes of growth in career structure for the serving National Youth Service uniformed officers, **clause 16(2)(b)** should be substituted to read “has served in the National Youth Service at a senior most rank and has not attained retirement age. It is the desire of every officer of the Service to rise through the ranks to the top most rank.

**F. Clause 17: Functions of the Director General.**

The functions should include the following additional responsibilities which had been proposed under the functions of the Council:

- (a) direct and oversee the deployment of the members of the Service as authorized under this Act.
- (b) recruit, transfer or promote members of the Service.
- (c) develop the criteria for appointments, posting or promotions of senior officers of the Service.

**G. Clause 22: Oath of office by the Director General.**

The third schedule to be amended and be in conformity to the Constitution of Kenya where the office holder bears true allegiance to the People and the Republic of Kenya.

**H. Clause 25: Resignation from the Service.**

Under 25(2) the sub clause omitted the Inspectorate rank of the Service. It is proposed the sub clause to read “A gazetted officer, Inspectorate Officer or Subordinate Officer may be permitted to resign from the Service in the manner prescribed”

**3. Part III – Discipline.**

Under **clause 36 (2)** insert the additional word “equipment” after “any”.

Under **clause 37 (1)** insert the word “on receiving information from the National Youth Service entity” after “a police officer may”

Under **clause 62 (1)** insert the word “on request by the Director General when need arises” immediately after “Service”.



**4. Third Schedule**

**Oath of Office**

I .....do hereby swear by almighty God that-

I will be faithful and bear true allegiance, to the people and the republic of Kenya, as an officer of the National Youth Service of Kenya (-)

I will be loyal, to his Excellency the President, and the government of the republic of Kenya. (-)

I will obey all laws, orders, regulations, directions and instructions relating to the National Youth Service, in accordance with The National Youth Service Act, and the Constitution of the Republic of Kenya (-)

I will faithfully discharge my duties and perform my functions in the said office, to the best of my judgment (-)

I will diligently serve the nation, to my utmost ability, as an officer of the National Youth Service of Kenya, without any fear, favour, and affection or ill-will (-)

.....

***(Signature or thumb-print of person making oath)***

Sworn/Affirmed by the said

.....

after the Oath has been read over and explained to him/her in the

.....

language, which he/she has acknowledged to understand at

..... on this ..... day of....., 20.....



.....  
*(Name and signature of witness)*

**II. Submission by Mr. Moses Mwangi of Pacis Research**

Mr. Moses Mwangi appeared before the Committee but did not make any presentations. He committed to submit a written communication but by the stipulated time of 5.00 pm on Friday 30<sup>th</sup> he had not submitted any document to the Committee.

**III. Submission by Mr. Githinji Mbugua**

**A. CURRENT CLAUSE AS PROVIDED FOR IN THE BILL:**

7 (1) The functions of the Service shall be to:

- (d) undertake such enterprises and commercial activities as the Council may from time to time, determine;
- (e) collaborate with stakeholders for the furtherance of its functions;
- (i) perform any other function that may be conferred by this Act or any other written law.

**B. PROPOSED AMENDMENT:**

7 (1) The functions of the Service shall be to:

- i) execute, manage and maintain all National and County Government construction and infrastructure projects in the capacity of a fully equipped and fully certified construction firm.
- ii) undertake the running of a public transport enterprise at intra and inter county level and manage all public transport networks that house both public and private investors.



- iii) collect and up-cycle all organic solid waste and manage the sale of the products thereof.
  - iv) collect and up-cycle all inorganic solid waste and manage the sale of the products thereof.
  - v) collect and up-cycle all sewage and manage the sale of the products thereof.
  - vi) be the preferred supplier in all government contracts for any goods or services and to be fully equipped and trained to meet the demand.
  - vii) provide Savings and Credit Cooperative Services to all its members and to willing youth investors from the public in lieu of the Youth Fund.
  - viii) undertake any additional enterprises and commercial activities as the Council may from time to time, determine upon approval by Parliament.
  - ix) achieve profit targets as set by Parliament and remit them to meet specific national budget requirements as determined by Parliament.
- (e) collaborate with stakeholders for the furtherance of its functions;
- (i) perform any other function that may be conferred by this Act or any other written law.
- (j) maintain an open- ledger account of its enterprises that is fully accessible for public scrutiny.

### **C. RATIONALE:**

1. Without clearly stating what the NYS owns, who it can partner with, what business it can engage in and how the profits are to be used, we create loopholes for abuse and theft of funds.
2. By mandating the NYS to take over construction of all government projects, we eliminate the corruption associated with award and execution of tenders by the private sector.





3. By mandating the NYS to take over the management of public transportation and to be a player, we eliminate transport cartels and rogue police. The disciplined NYS will also eliminate road anarchy and therefore traffic congestion and road carnage.
4. By mandating the NYS to collect and up-cycle organic waste, inorganic waste and sewage, we eliminate cartels and ensure instant conservation of our environment.
5. By making NYS the preferred supplier of all government goods and services, we ensure an perpetual market for anything NYS produces and eliminate all corruption associated with the government tendering process.
6. By providing SACCO services to the youth in exchange for labour, we do away with the Youth Fund that gives credit freely without exchanging it for labour.
7. By clearly stating the mandatory enterprises the NYS must engage in and by giving it mandatory preference as the supplier to government tenders, we ensure no act of parliament can sabotage NYS and return these enterprises to the private sector.
8. By allowing Parliament to vet all ADDITIONAL enterprises the NYS proposes to undertake, we ensure the NYS cannot be abused to work for the benefit of any private interests.
9. By putting Parliament in charge of setting the profit targets of all NYS enterprises (both mandatory and additional) and by allowing parliament to allocate the profits to specific uses in the national budget, we eliminate the possibility of NYS profits being below par or being embezzled once accrued.
10. By having an open-ledger reporting system for the enterprises, we ensure the public can monitor the NYS and no mismanagement shall happen.

#### **D. SUMMARY**

- a. The NYS should have mandatory enterprises allocated to it in the areas most needed by the public and yet most hit by cartels.
- b. Any additional enterprises must be approved by Parliament.



c. NYS must be the preferred supplier of all government goods and services.

d. All profit targets for NYS must be set by Parliament and must be allocated to specific uses in the National Budget.

e. Youth Fund should be disbanded and NYS mandated to be the national youth SACCO.



#### 4.1 CONSIDERATION OF THE BILL

The Committee deliberated on the Bill as follows:

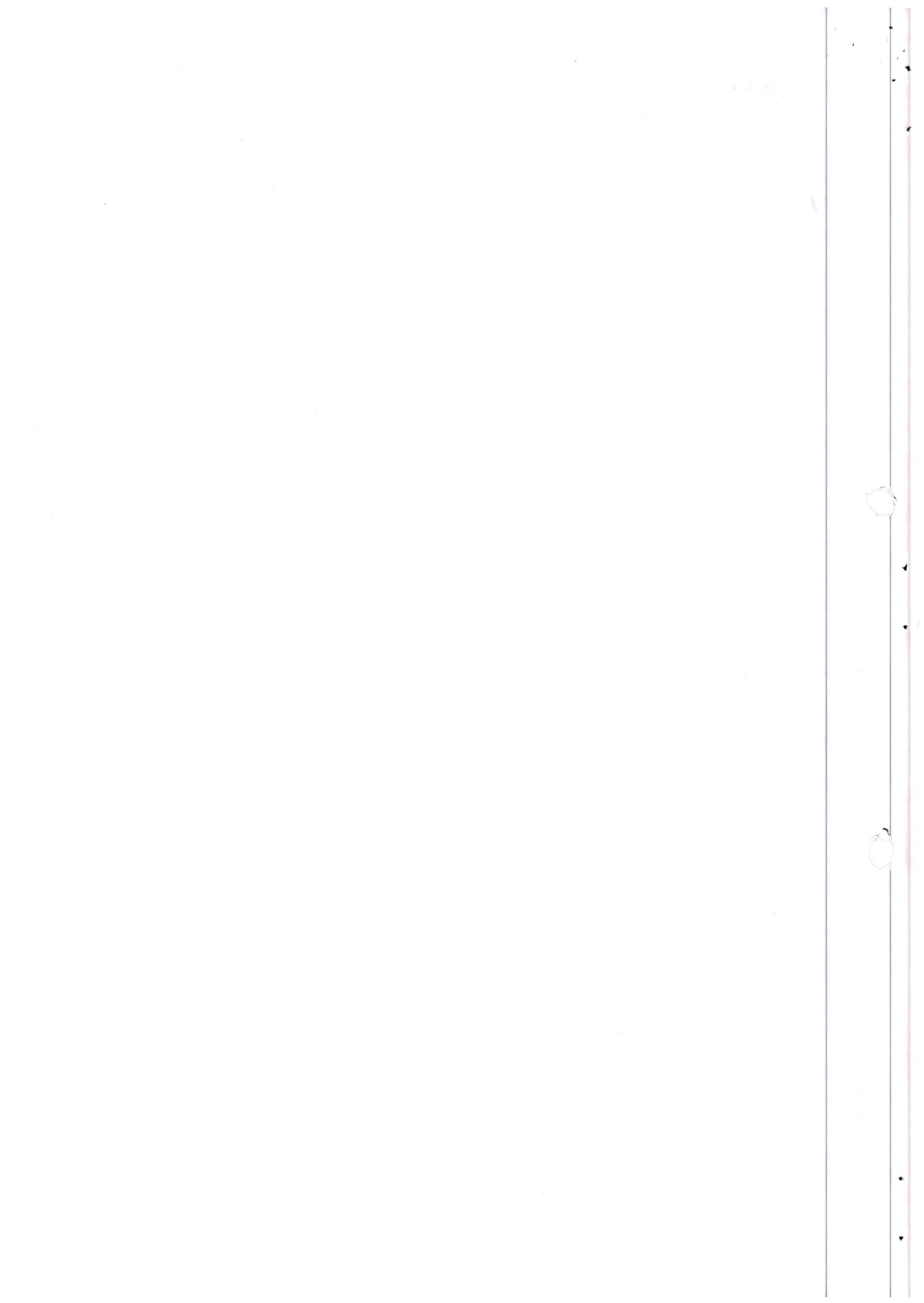
Clause 1	Agreed to
Clause 2	Proposed amendments
Clause 3 to 9	Agreed to
Clause 10	Proposed amendments
Clause 11	Proposed amendment
Clause 12	Proposed amendments
Clause 13	Agreed to
Clause 14	Agreed to
Clause 15	Agreed to
Clause 16	Proposed amendments
Clause 17	Agreed to
Clause 18	Agreed to
Clauses 19	Agreed to
Clause 20	Proposed amendments
Clauses 21 to 35	Agreed to
Clause 36	Proposed amendments
Clauses 37 to 68	Agreed to



## 5.0 GENERAL OBSERVATIONS

The Committee made the following observations and comments on the Bill:

1. The Bill seeks to create an oversight institution within the National Youth Service to be chaired by a person to be appointed by the President.
2. The National Youth Service has camps in Counties as the Bill should concern Counties or should be decentralized.
3. Both the Chairperson of Council and the Director General shall be appointed by the President. This might cause friction in the operations of National Youth Service.
4. National Youth Service trainees are not trained on weaponry, as such, it will not be proper for them to be deployed in times of war as provided for in clause 7(3).
5. Kenya Coast Guard should be included in the disciplined services as per clause 16 (3)
6. To allow for the promotion and growth in the Service clause 16 (2) (b) should be amended to provide for the promotion of a senior ranking officer in the Service to the level of the Director-General.
7. Disciplinary proceedings must be in line with provisions of Fair Administrative Act.
8. That though deduction of salaries under clause 34(g) is a form of discipline in Forces, the Committee observed that it was a harsh punishment which is against the labour laws and need to be reviewed.
9. Under Clause 11(2), there was no need for clearance from the Cabinet Secretary for the Council to Co-opt an expert.
10. Qualification of a Director General should be First Degree and not Masters Degree.
11. Under Clause 6(i), the number of Servicemen and women should be determined by absorption capacity of the NYS at that time of recruitment.
12. Need to include experts in the council who shall push for the commercialization venture in the Service.
13. The Director General and not the Council should be given powers to discipline, demote, promote and transfer officers. (The delegated powers are already given to the Director General by the Council).
14. Under Clause 9(g), one of the Youth must have background in paramilitary training as a qualification.





## 6.0 COMMITTEE RECOMMENDATION

Having analyzed the Bill vis-à-vis the memoranda submitted by the public the Committee recommends the Bill be approved and passed by the House subject to the proposed amendments in this Report.

### 6.2 PROPOSED AMENDMENTS

The Committee made the following proposed amendments to the Bill—

- a) **THAT Clause 2** of the Bill be amended in the definition of the term “disciplined service” by inserting the words “Kenya Coast Guard Service” immediately after the words “Kenya Forest Service”;

**Justification:** Kenya coast Guard services has now been established and should form part of the definition of the disciplined services

- b) **THAT Clause 7** of the Bill be amended in paragraph (d) of sub-clause (1) by inserting the word “pursuant to the provision of the fourth schedule of the Constitution” immediately after the words “commercial activities”

- c) **THAT Clause 10** of the Bill be amended in paragraph (e) by deleting the word “commission” and substituting thereof the word “Council”;

**Justification:** The Bill establishes a council of the service and not a commission

- d) **THAT Clause 11** of the Bill be amended I sub-clause (2) by deleting the words “with the approval of the Cabinet Secretary”;

**Justification:** The amendment seeks to remove excessive consultation between the council and the Cabinet Secretary when dealing with basic operations of the Council like co-option of members to the committees of the Council

- e) **THAT clause 12** of the Bill be amended by inserting the following new paragraph immediately after paragraph “k” —

“(ka) in consultation with the disciplined services, the Council shall develop a criteria for the absorption members of the National Youth Service in the disciplined services and in other government institutions;



**Justification:** The proposed amendment is to provide for the absorption of the Service men and women of the National Youth Service upon their graduation from the service to other disciplined services so that they are not left to go back to the society after being equipped with specialized para-military skills.

f) **THAT Clause 16** of the Bill be amended-

(i) in the marginal note by inserting the word “the” immediately after the words “Appointment of”;

(ii) in sub-clause (2) by deleting paragraph “(d)”and

(iii)in sub-clause 3 by inserting the words “Kenya Coast Guards Service, National Youth Service” immediately after the words “Kenya Wildlife Service”.

**Justification:** The Proposed amendments are to correct some typographical error, and to remove the requirement for a master’s degree for an officer seeking to be appointed as the Director-General.

g) **THAT Clause 20** of the Bill be amended in the marginal note by inserting the word “the” immediately after words “office of”

**Justification:** The amendment aims to neaten the bill as there has been an omission of an article in the marginal note.

**h) Clause 36:**

**THAT** clause 36of the Bill be amended in sub-clause (1) by inserting the word “equipment” immediately after the words “any article”.

**Justification:** The Service as an entity handles various equipments, some of which may be very expensive and there is need to ensure that safeguards are provided for in the law to protect the equipment, and properties of the service. The amendment therefore seeks to **include equipment** as part of the properties that may be protected from loss and in the event of loss the same should be deducted in the salary of the service men.

Signed..........Date.....<sup>th</sup> 4 Dec 2018.....

**Hon. Ali Wario, M.P**  
**Chairperson, Departmental Committee on Labour and Social Welfare**

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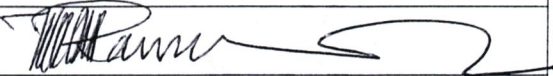


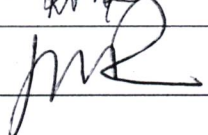
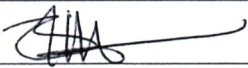
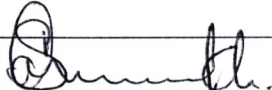
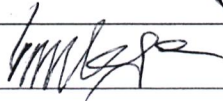
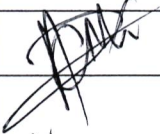
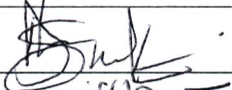

**KENYA NATIONAL ASSEMBLY – 12<sup>TH</sup> PARLIAMENT**  
**DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE**

**Attendance Schedule / Payment Schedule**

Venue: CPA ROOM

Date: 4/12/2018

Agenda: CONSIDERATION AND ADOPTION OF NTS, 2018 BILL REPORT.

<u>No.</u>	<u>NAME</u>	<u>SIGNATURE</u>
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. Abdi Mude Ibrahim, MP	
12.	The Hon. Michael Mwangi Muchira, MP	
13.	The Hon. Safia Sheikh Adan, MP	
14.	The Hon. Tom Mboya Odege, MP	
15.	The Hon. Catherine Wambilianga, MP	
16.	The Hon. Charles Kanyi Njagua, MP	
17.	The Hon. Omboko Milemba, MP	
18.	The Hon. Ole Sankok David, MP	
19.	The Hon. Wilson Sossion, MP	



# REPUBLIC OF KENYA



## THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - SECOND SESSION

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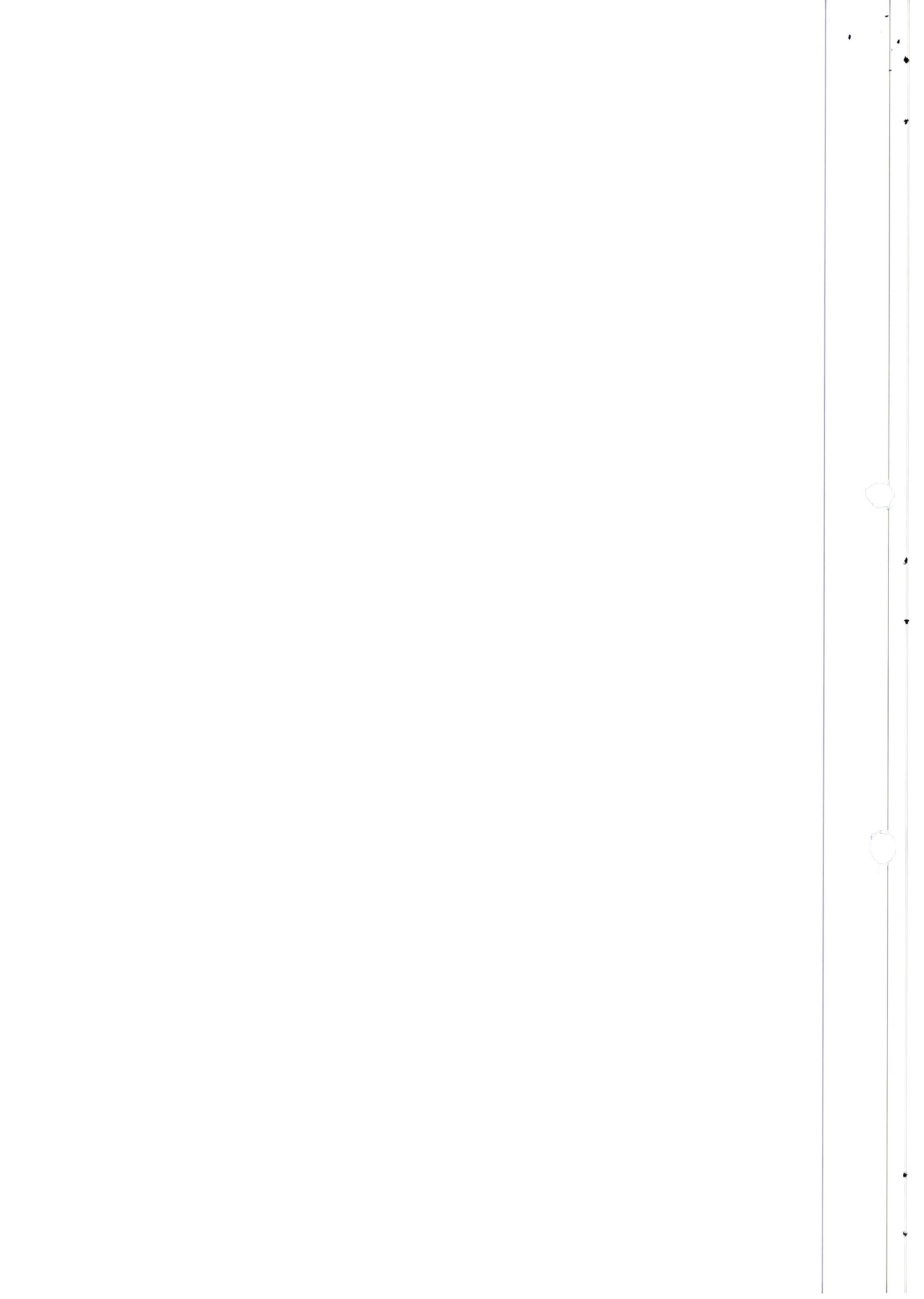
In the Matter of consideration of The National Youth Service Bill, 2018

### 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 National Youth Service Bill, 2018** an Act of Parliament to establish the National Youth Service, to provide for its functions, discipline, organisation and administration and for connected purposes has 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 National Youth Service Bill ,2018**. The presentations 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 Friday 30<sup>th</sup> November,2018**. Copies of the bill may be obtained from the following address: [www. Parliament.go.ke](http://www.Parliament.go.ke). Pursuant to the aforementioned provisions, the Committee will also hold **public hearings** on the Bill on **Thursday 29<sup>th</sup> November**





**MINUTES OF THE 99<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY 28<sup>TH</sup> NOVEMBER, 2018 AT 8.50AM IN THE KUMBAYA CONFERENCE HALL, SAFARI PARK HOTEL.**

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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 Nangabo, MP
5. The Hon. Janet Marania Teyiaa, MP
6. The Hon. James Onyango K'Oyoo, MP
7. The Hon. Safia Sheikh Adan, MP
8. The Hon. Michael Mwangi Muchira, MP
9. The Hon. Abdi Mude Ibrahim, MP

**ABSENT WITH APOLOGY**

1. The Hon. Ronald Kiprotich Tonui, MP
2. The Hon. Tom Mboya Odege, MP
3. The Hon. Fabian Kyule Muli, MP
4. The Hon. Omboko Milemba, MP
5. The Hon. Charles Kanyi Njagua, MP
6. The Hon. Catherine Wambilianga, MP
7. The Hon. Wilson Sossion, MP
8. The Hon. David Ole Sankok, MP

**ABSENT**

1. The Hon. Alfred K. Keter, MP
2. The Hon. Rose Museo Mumo, MP

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -First Clerk Assistant
2. Mr. John Mugoma -Third Clerk Assistant
3. Ms. Marlene Ayiro -Senior Legal Counsel
4. Mr. Nickson Kibet -Audio Officer

**Ministry of Public Service, Youth and Gender Affairs**

1. Ms. Matilda Sakwa - Ag. Director General, NYS
2. Mr. James Tembur - Deputy Director, NYS
3. Mr. Samson Wangusi - Director Administration, Youth Affairs
4. Ms. Scholastica Ndambuki - Chief State Counsel



5. Ms. Fancy N. Ngwatu - AOA II
6. Ms. Betty Ntika - AOA II
7. Mr. Isaac Ngugi - Parliamentary Liaison Officer
8. Ms. Margret Wamuto - USLA

### **Kenya Law Reforms**

1. Mr. Joash Dache, MBS - CEO
2. Ms. Rachel Osondi
3. Mr. James Nombi

### **AGENDA**

1. Prayers
2. Preliminaries
  - i. introductions
  - ii. Communication from the Chairperson
3. **Consideration of National Youth Service Bill, 2018**
4. Any Other Business
5. Adjournment/Date of the Next Sitting

### **MIN.NO. DC/LSW/472/2018: PRELIMINARIES**

The Chairperson called the meeting to order at 08.50am with a prayer. The Chairperson then welcomed officials from the Ministry of Public Service, Youth and Gender Affairs and officials from Kenya Law Reforms to the meeting. This was then followed by introductions.

In his opening remarks, the Chairperson stated that –

1. The National Youth Service is a noble institution and that the reforms through the NYS Bill and new leadership will enable it to resume its normal operations.
2. NYS was facing operational and managerial challenges that dented the public image of the Service and the NYS, 2018 Bill will be instrumental in changing this environment.
3. Due to past negative publicity, there was need to take time and critically analyze the Bill, follow the law making process and involve as many stakeholders as possible so that once the Bill is passed, it shall be a document that is supported and accepted by majority of Kenyans.
4. The House will proceed for a long recess on 6<sup>th</sup> December, 2018. This might slow down the process until when the House resumes in February, 2019.

The Ag. Director General conveyed apologies for the Cabinet Secretary, Principal Secretary and the Chief Administrative Secretary who were held up in Ministerial duties. She further stated that the enactment of Bill will open up the National Youth Service in terms of administration and operations.



In his opening remarks, the Chief Executive Officer of Kenya Law Reforms stated that NYS Bill, 2018 was not a new Bill but it was repealing the existing NYS ACT CAP 208. As such, the two key aspects in the Bill were the corporate aspect and creation of a Council which shall be appointed by the President for oversight purposes.

The representation in the Council shall be a balanced between government and private sector. Further, the commercialization component shall be approved by the Council with the consent of the Cabinet Secretary.

Further, the Committee was informed that:-

- i. The main reason for commercialization aspect is for the National Youth Service to be self sustainable.
- ii. Quasi corporate, paramilitary and discipline nature of NYS informed the philosophical reasoning behind the clauses on appointment of both the Director General and the Chairperson of the Council by the President.
- iii. National Youth Service shall be the Primary source of persons to be recruited in the Discipline Forces.

#### **MIN.NO. DC/LSW/473/2018: ANALYSIS OF THE NATIONAL YOUTH SERVICE BILL, 2018**

The Committee was taken through the summary of Bill as follows:-

##### **A. BRIEF OVERVIEW**

- i. That the Kenya National Youth Service – NYS Kenya was established on September 1, 1964, as a uniformed and disciplined service; its operations are regulated by the National Youth Service Act (Cap 208).
- ii. In line with the VISION 2030, the NYS Kenya offers trainees technical and vocational programmes at its training institutions.
- iii. Under the Act, the functions of the Service are to train young citizens to serve the nation, and the employment of its members in tasks of national importance and otherwise in the service of the nation.
- iv. NYS has rehabilitated its 3,000 acre Bura/Hola Irrigation Scheme's farm for production of short food crops (maize) to alleviate hunger in line with the government policy.
- v. In 2011, the service was involved in the rehabilitation of Mogotio rural access roads and the ongoing road construction of the Hola- Garsen Malindi road.
- vi. In continuing to give voluntary service to the nation, NYS has set up disaster management units in its Mombasa, Nairobi and NYS College- Gilgil camps.



## B. SITUATION ANALYSIS

- a) The National Youth Service has faced numerous operational and managerial challenges which have affected the implementation of its social programs and service delivery. This has occasioned loss of funds, dented organizational image and erosion of public trust; threatening not only the vision but the very existence of the Service.
- b) To address these challenges, the Cabinet Secretary, Ministry of Public Service, Youth and Gender Affairs on Tuesday 14th August, 2018 presented a memorandum to the Cabinet on restructuring of the NYS.
- c) The Cabinet approved the restructuring of the National Youth Service (NYS) to implement a series of short, medium and long term measures.

## C. CENTRAL ISSUES TO BE ADDRESSED

The Inter-Ministerial team was tasked to review the NYS Act to address the recommendations of the Cabinet which included:

- Establishment of NYS as a corporate body;
- Introduction of an oversight body;
- Resourcing the service including finance and Human Resource;
- Provide for clear functional mandate including paramilitary training and regimentation, National service, vocational trainings and youth economic empowerment;
- Address any other issues for the better carrying out of its functions

Further, the Committee was informed that the Bill has eight (8) parts and has four (4) schedules.

### A. PART I

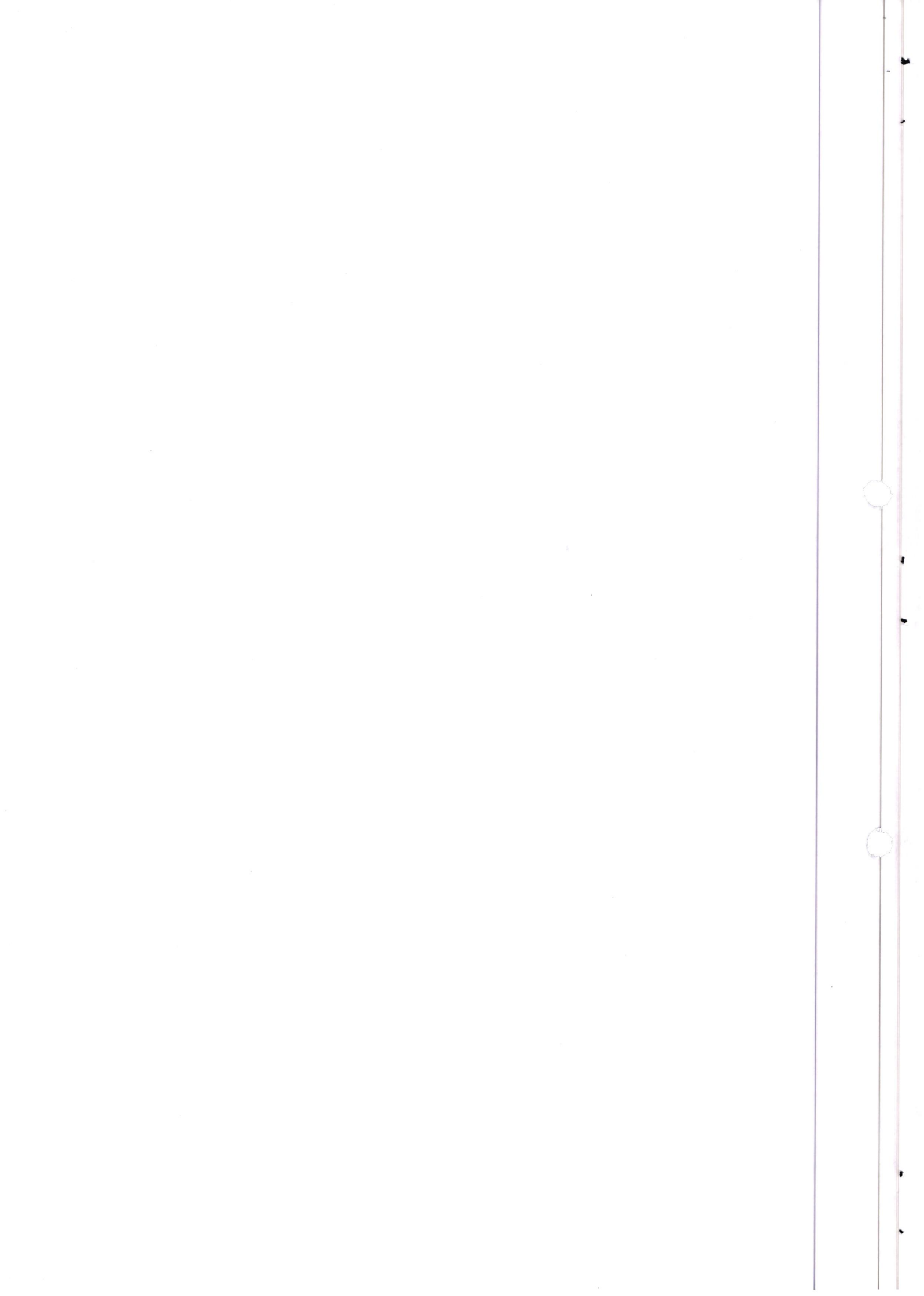
That the Part I of the Bill is the Preliminary section that provides for items such as Long Title, Short Title, Enacting Clause, Commencement, Application and Interpretation.

### B. PART II

- It deals with the establishment of the service, its functions, powers, establishment of the oversight body, appointment of the Director General, terms and conditions of service for members of the service as well as other staff members of the service among others.
- In this Part the Bill establishes the NYS as a uniformed and disciplined service.

### D. PART III – DISCIPLINE

- The Service shall be disciplined, as such, the fourth schedule of the Bill lists acts which are considered offences against discipline.
- The Bill provides that any member of the service who commits an offence under any written law will be liable to criminal proceedings.





- The Bill also provides that disciplinary action may be taken against any member of the service who commits an offence and penalties that may be meted against a member.
- This part also recognizes the central role of the Cabinet Secretary who will be consulted by the Council to develop rules of procedure for disciplinary action.

#### E. PART IV – OFFENCES GENERALLY

- This part applies to staff members of the Service and the general public. It does not apply to members of Service.
- That staff members of the service and general public may obstruct a member of the Service, assist a member of the Service to desert duty, use the uniform or decorations of the Service without any authority or interfere with aids to navigation.
- The offences shall be tried in a subordinate court in accordance with the rules of procedure in that court.

#### **Committee Observations and Recommendations.**

Having been taken through the Bill, the Committee observed and recommended the following –

1. The bill seeks to create an oversight institution within NYS to be chaired by a person to be appointed by the President.
2. The National Youth Service has camps in Counties as the Bill should concern Counties or should be decentralised.
3. Both the Chairperson of Council and the Director General shall be appointed by the President. This might cause friction in the operations of NYS.
4. National Youth Service trainees are not trained on weaponry, as such, it will not be proper for them to be deployed in times of war as provided for in clause 7(3).
5. Kenya Coast Guard should be included under disciplined services as per clause 16 (3).
6. Disciplinary proceedings must be in line with provisions of Fair Administrative Act.
7. That though deduction of salaries under clause 34(g) is a form of discipline in Forces, the Committee observed that it was a harsh punishment which is against the labour laws and need to be reviewed.
8. Under Clause 11(2), no need for clearance from the Cabinet Secretary for the Council to Co-opt an expert.
9. Qualification of a Director General should be First Degree and not Masters Degree.
10. Under Clause 6(i), the number of Servicemen and women should be determined by absorption capacity of the NYS at that time of recruitment.
11. Need to include experts in the council who shall push for the commercialization venture in the Service.
12. The Director General and not the Council should be given powers to discipline, demote, promote and transfer officers.
13. Under Clause 9(g), one of the Youth must have background in paramilitary training as a qualification.

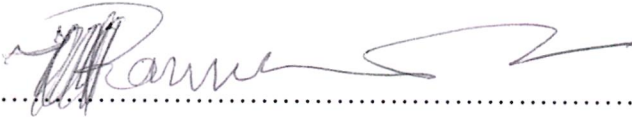


14. The law should provide adequate safeguards pursuant to the Public Finance Management Act to ensure that the service does not lose any public funds as has been the norm.
15. The Bill provides for a single and non-renewable term of five years for the D.G. The period of service of the D.G should be enhanced to allow for continuity and succession management in the Service.
16. The Bill gives the Cabinet Secretary the powers to come up with regulations on the limitation of rights, there was need to have timelines within which the regulations shall be made so as to safeguard against any form of abuse of the fundamental rights of the Service men and women.

**MIN.NO. DC/LSW/474/2018: ADJOURNMENT/DATE OF THE NEXT SITTING**

The Chairperson adjourned the Sitting at 10.20am

SIGNED: .....



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

DATE: .....

4<sup>th</sup> Dec 2018



**MINUTES OF THE 100<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 29<sup>TH</sup> NOVEMBER, 2018 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. Gladys Atieno Wanga, MP
3. The Hon. Janet Nangabo, MP
4. The Hon. James Onyango K'Oyoo, MP
5. The Hon. Ronald Kiprotich Tonui, MP
6. The Hon. Tom Mboya Odege, MP
7. The Hon. Michael Mwangi Muchira, MP
8. The Hon. Abdi Mude Ibrahim, MP
9. The Hon. Catherine Wambilianga, MP
10. The Hon. Charles Kanyi Njagua, MP
11. The Hon. David Ole Sankok, MP
12. The Hon. Wilson Sossion, 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. Fabian Kyule Muli, MP
5. The Hon. Omboko Milemba, MP
6. The Hon. Safia Sheikh Adan, MP

**ABSENT**

1. The Hon. Rose Museo Mumo, MP

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -First Clerk Assistant
2. Mr. John Mugoma -Third Clerk Assistant
3. Mr. Sydney Bwire - Legal Counsel
4. Mr. Nickson Kibet -Audio Officer

**Members of the Public**

1. Mr. Moses Mwangi - Coordinator, Pacis Research
2. Mr. Enock L. Amudavi - Director Administration, NYS
3. Patrick G. Muchai - Senior Assistant Director, NYS
4. Mr. Nicholas Makokha - Superintendent, NYS



## AGENDA

1. Prayers
2. Preliminaries
  - i. introductions
  - ii. Communication from the Chairperson
3. **Public Hearing on the National Youth Service Bill, 2018**
4. Any Other Business

### MIN.NO. DC/LSW/475/2018: PRELIMINARIES

The Chairperson called the meeting to order at 10.00am with a prayer. The Chairperson then welcomed the Members of public to give their views regarding the National Youth Service Bill, 2018.

### MIN.NO. DC/LSW/476/2018: SUBMISSIONS BY THE MEMBERS OF THE PUBLIC

- I. **COMMENTS VIEWS AND INPUT ON NYS BILL, 2018 BY PACIS RESEARCH**
- II. **COMMENTS, VIEWS AND INPUT ON NYS DRAFT BILL, 2018 BY THE NATIONAL YOUTH SERVICE**

The following Clauses in the proposed NYS Draft Bill should be relooked at:

#### 1. **Part I – Preliminary**

- Clause 2 “**restricted information**” is repeated twice with slight difference in their meaning.
- It is proposed the wording “restricted information” be used once with clear elaboration on meaning.

#### 2. **Part II**

##### A. **Clause 9** – Establishment of the Council of the National Youth Service.

- Under **clause 9 (g)** the bill proposes the appointment of five other members to the council to be appointed by the Cabinet Secretary and one of whom should be a youth.
- For ease of fair representation in terms of voting on crucial decisions affecting the National Youth Service, the members of the Service are of the view that among the five people to be appointed at least two of them should be retired uniformed officers who once served in the National Youth Service at a Senior level of the rank of Senior Deputy Director so long as they merit the requirements stipulated at **clause 9 (7)**.

##### B. **Clause 11:** Committees of the Council under **11 (2)** insert the word “**of the**” Immediately after the word “**approval**” to give the sentence a grammatical flow.





**C. Clause 11 (1) and 12(d)(g) and (h)** highlights functions put under the Council.

It is proposed that these functions be moved to the Director General functions.

The sub clauses are essentially operational management aspects which best fall under the purview and responsibility of the Director General. This is on account of the fact that the Director General is basically on the ground and handles day to day management and administrative issues of the Service including HR function that mirror largely the highlighted sub clauses. The execution of the mentioned functions by the Director General are to see enhanced commitment on duty, discipline in the ranks, swiftness in decision making and trust in the management and leadership of the Service. The Council is essentially to concentrate on the bigger picture of handling the Service mandate in terms of policy formulation, oversight and guidance.

**D. Clause 12(2):** it is stated that the Council may in writing, delegate to the Director General the power to promote, transfer or retire subordinate and under officers. It is proposed that the sub clause should entirely be part of the functions of the Director General.

The Director General among other responsibilities exercises delegated powers by the Public Service Commission to promote and discipline officers at certain level of ranks. This is a routine HR function managed by the Director General and therefore it will be duplication of the role and may create conflict of responsibility if the same function is also to be handled by the proposed Council.

**E. Clause 16:** Appointment of the Director General.

Under this clause and specifically **16(2)**, on disciplined Service”, the National Youth Service has been omitted among the segments that form the “disciplined Service”. It is proposed National Youth Service be included as a “disciplined Service” in consistent with **clause 2(1)**.

For purposes of growth in career structure for the serving National Youth Service uniformed officers, **clause 16(2)(b)** should be substituted to read “has served in the National Youth Service at a senior most rank and has not attained retirement age. It is the desire of every officer of the Service to rise through the ranks to the top most rank.

**F. Clause 17:** Functions of the Director General.

The functions should include the following additional responsibilities which had been proposed under the functions of the Council:

- (a) direct and oversee the deployment of the members of the Service as authorized under this Act.



- (b) recruit, transfer or promote members of the Service.
- (c) develop the criteria for appointments, posting or promotions of senior officers of the Service.

**G. Clause 22:** Oath of office by the Director General.

The third schedule to be amended and be in conformity to the Constitution of Kenya where the office holder bears true allegiance to the People and the Republic of Kenya.

**H. Clause 25:** Resignation from the Service.

Under 25(2) the sub clause omitted the Inspectorate rank of the Service. It is proposed the sub clause to read "A gazetted officer, Inspectorate Officer or Subordinate Officer may be permitted to resign from the Service in the manner prescribed"

**3. Part III – Discipline.**

Under **clause 33 (2)** insert the additional word "equipment" after "any".

Under **clause 37 (1)** insert the word "on receiving information from the National Youth Service entity "after "a police officer may"

Under **clause 62 (1)** insert the word "on request by the Director General when need arises" immediately after "Service".

**4. The Third Schedule should be as follows –**

**Oath of Office**

I .....do hereby swear by almighty God that-

I will be faithful and bear true allegiance, to the people and the republic of Kenya, as an officer of the National Youth Service of Kenya (-)

I will be loyal, to his Excellency the President, and the government of the republic of Kenya. (-)

I will obey all laws, orders, regulations, directions and instructions relating to the National Youth Service, in accordance with The National Youth Service Act, and the Constitution of the Republic of Kenya (-)



I will faithfully discharge my duties and perform my functions in the said office, to the best of my judgment (-)

I will diligently serve the nation, to my utmost ability, as an officer of the National Youth Service of Kenya, without any fear, favour, and affection or ill-will (-)

.....  
*(Signature or thumb-print of person making oath)*

Sworn/Affirmed by the said

.....  
after the Oath has been read over and explained to him/her in the

.....  
language, which he/she has acknowledged to understand at

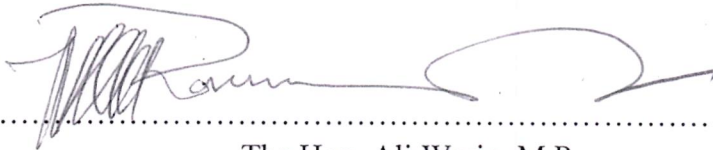
..... on this ..... day of....., 20.....

.....  
*(Name and signature of witness)*

**MIN.NO. DC/LSW/477/2018: ADJOURNMENT/DATE OF THE NEXT SITTING**

The Chairperson adjourned the Sitting at 1.30pm

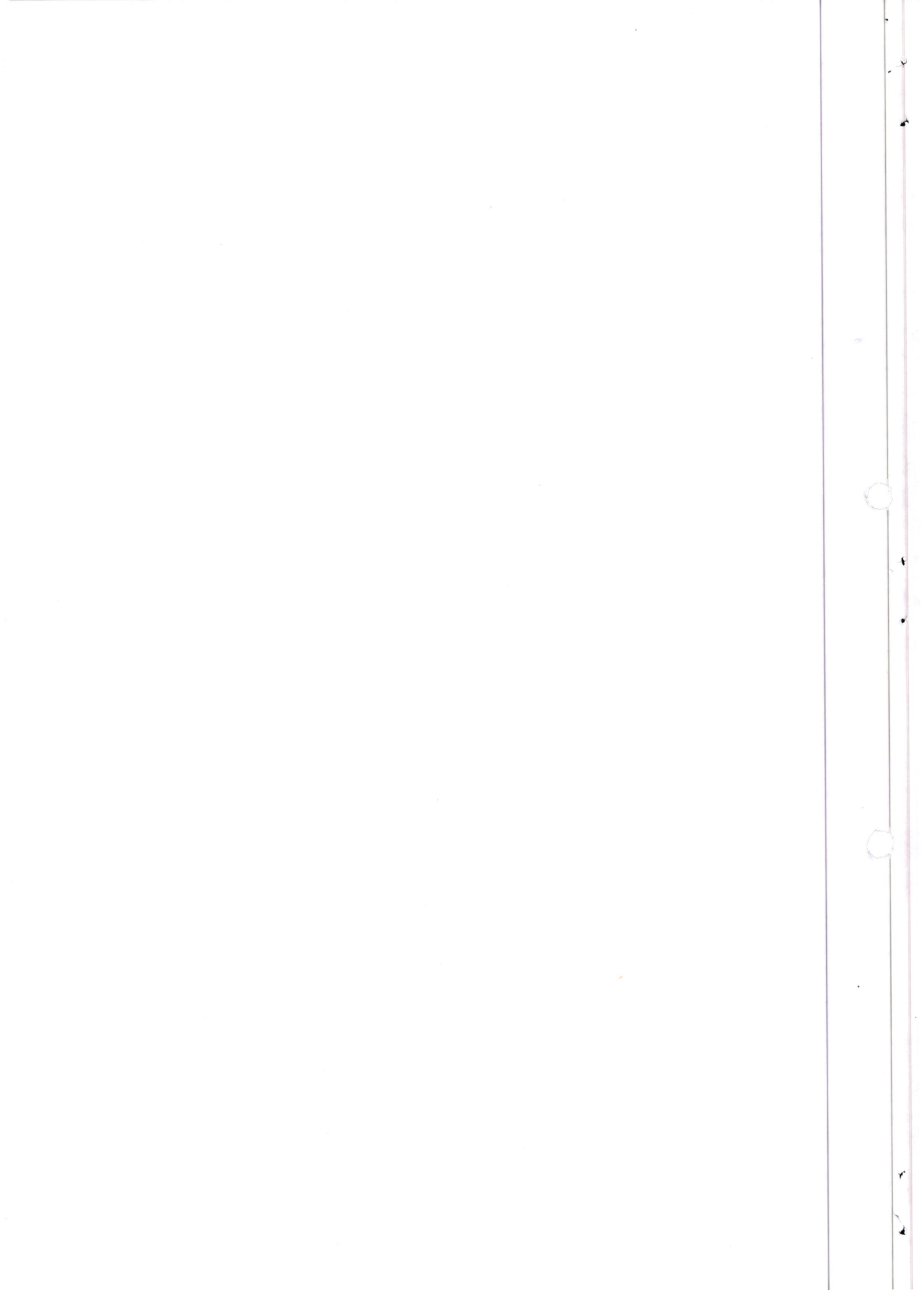
SIGNED: .....



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

DATE: .....

4<sup>th</sup> Dec 2018



**MINUTES OF THE 101<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY 4<sup>TH</sup> DECEMBER, 2018 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 Tonui, MP
3. The Hon. James Onyango K'Oyoo, MP
4. The Hon. Gladys Atieno Wanga, MP
5. The Hon. Tom Mboya Odege, MP
6. The Hon. Abdi Mude Ibrahim, MP
7. The Hon. Safia Sheikh Adan, MP
8. The Hon. Charles Kanyi Njagua, MP
9. The Hon. David Ole Sankok, MP
10. The Hon. Wilson Sossion, MP

**ABSENT WITH APOLOGY**

1. **The Hon. Joyce Korir, MP** - Vice Chairperson
2. The Hon. Janet Nangabo, MP
3. The Hon. Alfred K. Keter, MP
4. The Hon. Michael Mwangi Muchira, MP
5. The Hon. Janet Marania Teyiaa, MP
6. The Hon. Catherine Wambilianga, MP
7. The Hon. Fabian Kyule Muli, MP
8. The Hon. Omboko Milemba, MP

**ABSENT**

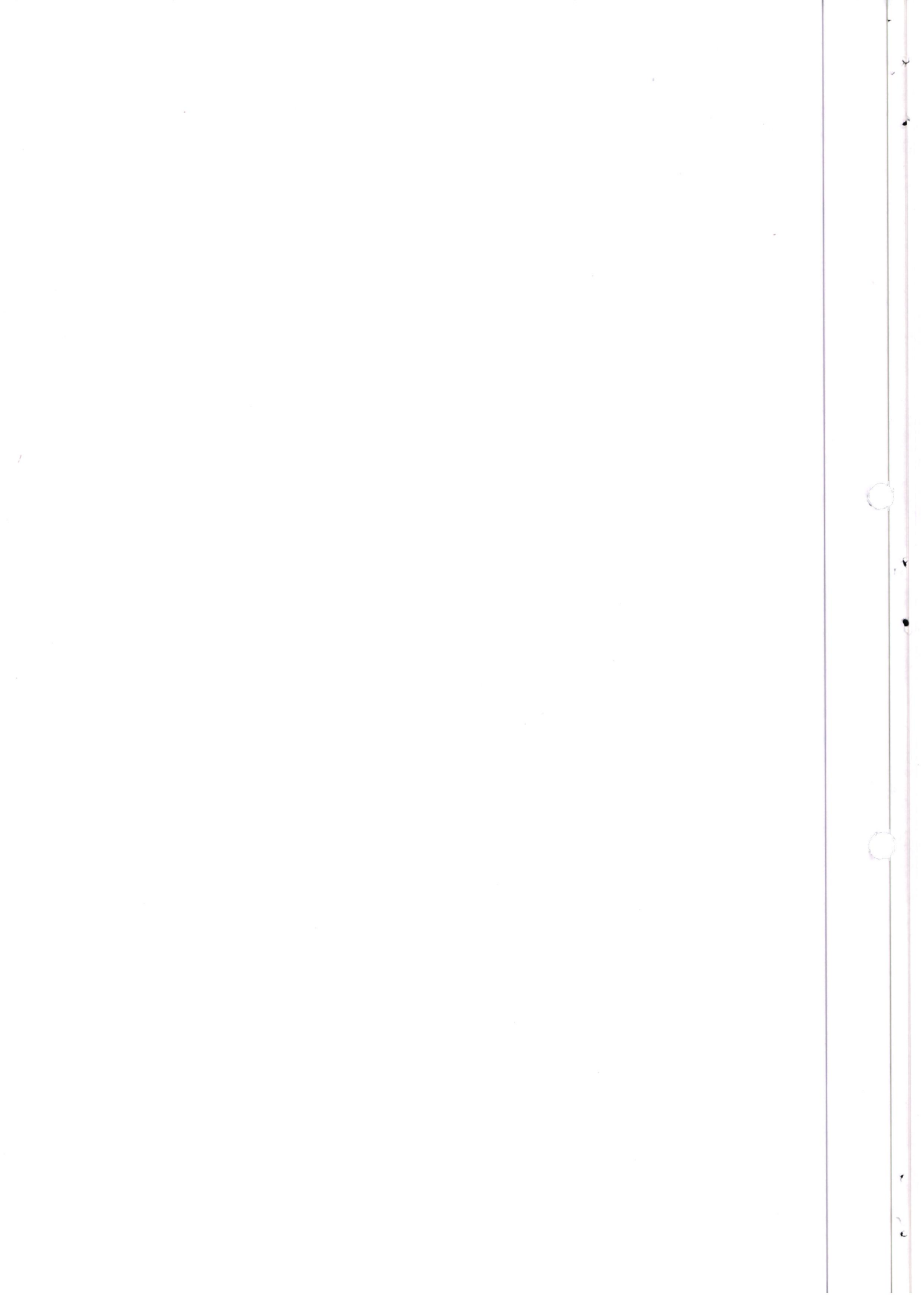
1. The Hon. Rose Museo Mumo, MP

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -First Clerk Assistant
2. Mr. John Mugoma -Third Clerk Assistant
3. Ms. Marlene Ayiro -Legal Counsel
4. Mr. Nickson Kibet -Audio Officer

**AGENDA**

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





3. **Consideration and Adoption of National Youth Service Bill, 2018**
4. **Consideration of the Report on Proposed Employment Bill, 2018**
5. Any Other Business

**MIN.NO. DC/LSW/478/2018: PRELIMINARIES**

The Chairperson called the meeting to order at 10.00am with a prayer.

**MIN.NO. DC/LSW/479/2018: ADOPTION OF THE AGENDA**

The Agenda of the meeting were adopted having been proposed by the Hon. Tom Odege, M.P and seconded by the Hon. Ibrahim Mude, M.P respectively. Consequently, agenda four was deferred to next Sitting of the Committee.

**MIN.NO. DC/LSW/480/2018: CONSIDERATION AND ADOPTION OF THE REPORT ON NYS BILL, 2018**

The Committee noted that –

1. The Bill envisaged paramilitary training, commercialization and vocational training and as such, there was need to consult more stakeholders and experts in the above fields. Further, it was noted that it would be important to get the views of the disciplinary forces so as to address issues that might arise due to conflict of interest.
2. National Youth Service should be a leeway for the Youths to join other forces.
3. National Youth Service training should have end results that benefits the youths hence making them relevant to the society;
4. After further consultations and for the interests of the youths, the Committee resolved to adopt the report on NYS Bill, 2018 with the following amendments and that if concerns arises, further amendments shall be introduced at the Committee stage–
  - a) **THAT Clause 2** of the Bill be amended in the definition of the term “disciplined service” by inserting the words “Kenya Coast Guard Service” immediately after the words “Kenya Forest Service”;  
**Justification:** Kenya coast Guard services have now been established and should form part of the definition of the disciplined services.
  - b) **THAT Clause 7** of the Bill be amended in paragraph (d) of sub-clause (1) by inserting the word “pursuant to the provision of the fourth schedule of the Constitution” immediately after the words “commercial activities”
  - c) **THAT Clause 10** of the Bill be amended in paragraph (e) by deleting the word “commission” and substituting thereof the word “Council”;  
**Justification:** The Bill establishes a council of the service and not a Commission.



- d) **THAT Clause 11** of the Bill be amended I sub-clause (2) by deleting the words “with the approval of the Cabinet Secretary”;

**Justification:** The amendment seeks to remove excessive consultation between the council and the Cabinet Secretary when dealing with basic operations of the Council like co-option of members to the committees of the Council.

- e) **THAT clause 12** of the Bill be amended by inserting the following new paragraph immediately after paragraph “k” –

“(ka) in consultation with the disciplined services, the Council shall develop a criterion for the absorption members of the National Youth Service in the disciplined services and in other government institutions;

**Justification:** The proposed amendment is to provide for the absorption of the Service men and women of the National Youth Service upon their graduation from the service to other disciplined services so that they are not left to go back to the society after being equipped with specialised para-military skills.

- f) **THAT Clause 16** of the Bill be amended-

- (i) in sub-clause (2) by deleting paragraph “(d)”and  
(ii) in sub-clause 3 by inserting the words “Kenya Coast Guards Service, National Youth Service” immediately after the words “Kenya Wildlife Service”.

**Justification:** The Proposed amendments are to correct some typographical error, and to remove the requirement for a master’s degree for an officer seeking to be appointed as the Director-General.

- g) **Clause 36:**

**THAT** clause 36of the Billbe amended in sub-clause (1) by inserting the word “equipment” immediately after the words “any article”.

**Justification:** The Service as an entity handles various equipments, some of which may be very expensive and there is need to ensure that safeguards are provided for in the law to protect the equipment, and properties of the service. The amendment therefore seeks to **include equipment** as part of the properties that may be protected from loss and in the event of loss the same should be deducted in the salary of the service men.

#### **MIN.NO. DC/LSW/481/2018: ANY OTHER BUSINESS**

The following concerns were raised –

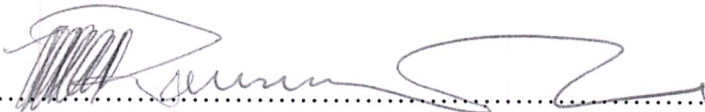
- I. The need for Committee Members to observe time during Committee Sitting days.



- II. Need to fast track the Social Assistance Bill so as to give legal backing to Cash Transfer Programme.
- III. The Committee to consider inviting Chairperson for Budget and Appropriation Committee to deliberate on issues concerning the budgetary allocations to State Departments under the purview of the Committee.
- IV. Hon. Members were called upon to confirm and attend the work with Disability Sector on Disability Bill.

**MIN.NO. DC/LSW/482/2018: ADJOURNMENT/DATE OF THE NEXT SITTING**

The Chairperson adjourned the Sitting at 12.25pm

SIGNED:  .....

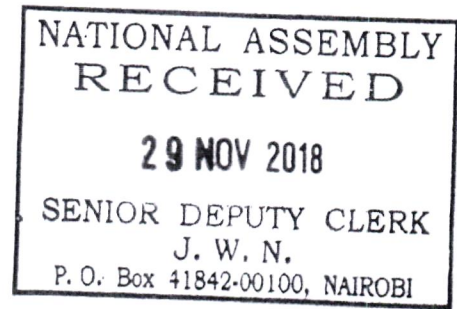
The Hon. Ali Wario, M.P  
(Chairperson)

DATE: 5<sup>th</sup> Dec 2018 .....



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Office of the Clerk of the National Assembly  
Main Parliament Buildings, 1st Floor  
P.O. Box 41842 - 00100  
NAIROBI  
Tel: 254- 020-2848300



**From:** "Githinji Mbugua" <arch.githinji@gmail.com>  
**To:** clerk@parliament.go.ke, pbo@parliament.go.ke  
**Sent:** Thursday, November 29, 2018 5:19:06 AM  
**Subject:** NATIONAL YOUTH SERVICE BILL 2018, SUBMISSION OF MEMORANDA

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

28.11.2018.

*Adan Gindcha*  
*pls TNA*  
*upwra*  
*30/11/18*  
*Discom-idea*  
*29/11*

RE: WRITTEN MEMORANDA FOR THE NATIONAL YOUTH SERVICE BILL, 2018.

Dear sir/ Madam.

I wish to make the following observations and suggestions on the National Youth Service Bill:

**CURRENT CLAUSE:**

**7 (1) The functions of the Service shall be to:**

- (d) undertake such enterprises and commercial activities as the Council may from time to time , determine;
- (e) collaborate with stakeholders for the furtherance of its functions;
- (i) perform any other function that may be conferred by this Act or any other written law.

**PROPOSED AMENDMENT:**

**7 (1) The functions of the Service shall be to:**

(d)

- i) execute, manage and maintain all National and County Government construction and infrastructure projects in the capacity of a fully equipped and fully certified construction firm.
- ii) undertake the running of a public transport enterprise at intra and inter county level and manage all public transport networks that house both public and private investors.
- iii) collect and up-cycle all organic solid waste and manage the sale of the products thereof.
- iv) collect and up-cycle all inorganic solid waste and manage the sale of the products thereof.
- v) collect and up-cycle all sewage and manage the sale of the products thereof.
- vi) be the preferred supplier in all government contracts for any goods or services and to be fully

equipped and trained to meet the demand.

vii) provide Savings and Credit Cooperative Services to all its members and to willing youth investors from the public in lieu of the Youth Fund.

viii) undertake any additional enterprises and commercial activities as the Council may from time to time, determine upon approval by Parliament.

ix) achieve profit targets as set by Parliament and remit them to meet specific national budget requirements as determined by Parliament.

(e) collaborate with stakeholders for the furtherance of its functions;

(i) perform any other function that may be conferred by this Act or any other written law.

(j) maintain an open- ledger account of its enterprises that is fully accessible for public scrutiny.

#### RATIONALE:

1. Without clearly stating what the NYS owns, who it can partner with, what business it can engage in and how the profits are to be used, we create loopholes for abuse and theft of funds.

2. By mandating the NYS to take over construction of all government projects, we eliminate the corruption associated with award and execution of tenders by the private sector.

3. By mandating the NYS to take over the management of public transportation and to be a player, we eliminate transport cartels and rogue police. The disciplined NYS will also eliminate road anarchy and therefore traffic congestion and road carnage.

4. By mandating the NYS to collect and up-cycle organic waste, inorganic waste and sewage, we eliminate cartels and ensure instant conservation of our environment.

5. By making NYS the preferred supplier of all government goods and services, we ensure an perpetual market for anything NYS produces and eliminate all corruption associated with the government tendering process.

6. By providing SACCO services to the youth in exchange for labour, we do away with the Youth Fund that gives credit freely without exchanging it for labour.

7. By clearly stating the mandatory enterprises the NYS must engage in and by giving it mandatory preference as the supplier to government tenders, we ensure no act of parliament can sabotage NYS and return these enterprises to the private sector.

8. By allowing Parliament to vet all ADDITIONAL enterprises the NYS proposes to undertake, we ensure the NYS cannot be abused to work for the benefit of any private interests.

9. By putting Parliament in charge of setting the profit targets of all NYS enterprises (both mandatory and additional) and by allowing parliament to allocate the profits to specific uses in the national budget, we eliminate the possibility of NYS profits being below par or being embezzled once accrued.

10. By having an open-ledger reporting system for the enterprises, we ensure the public can monitor the NYS and no mismanagement shall happen.

#### SUMMARY

a. The NYS should have mandatory enterprises allocated to it in the areas most needed by the public and yet most hit by cartels.



- b. Any additional enterprises must be approved by Parliament.
- c. NYS must be the preferred supplier of all government goods and services.
- d. All profit targets for NYS must be set by Parliament and must be allocated to specific uses in the National Budget.
- e. Youth Fund should be disbanded and NYS mandated to be the national youth SACCO.

Kindly consider these amendments.

Regards,

Githinji Mbugua.



605

(1) 0110m-4400r  
g  
30/11

Office of the Clerk of the National Assembly  
Main Parliament Buildings, 1st Floor  
P.O. Box 41842 - 00100  
NAIROBI  
Tel: 254- 020-2848300

**From:** "Enock Amudavi" <eamudavi@yahoo.com>  
**To:** clerk@parliament.go.ke  
**Sent:** Thursday, November 29, 2018 4:50:08 PM  
**Subject:** Fw: COMMENTS ON NATIONAL YOUTH SERVICE 2018 BILL BY THE NATIONAL YOUTH SERVICE MEMBERS

(2) GINDICHA  
pls see  
RA  
03/12

----- Forwarded Message -----

**From:** Enock Amudavi <eamudavi@yahoo.com>  
**To:** gindicha2006@gmail.com <gindicha2006@gmail.com>  
**Sent:** Thursday, November 29, 2018, 4:49:07 PM GMT+3  
**Subject:** Fw: COMMENTS ON NATIONAL YOUTH SERVICE 2018 BILL BY THE NATIONAL YOUTH SERVICE MEMBERS

----- Forwarded Message -----

**From:** Enock Amudavi <eamudavi@yahoo.com>  
**To:** gindicha2006@yahoo.com <gindicha2006@yahoo.com>  
**Sent:** Thursday, November 29, 2018, 4:47:55 PM GMT+3  
**Subject:** COMMENTS ON NATIONAL YOUTH SERVICE 2018 BILL BY THE NATIONAL YOUTH SERVICE MEMBERS

This is further to our discussion today in Parliament Chamber on submission of contributions/comments by the National Youth Service to the NYS BILL 2018. Attached please find the Service comments /contributions in soft copy for your further necessary action. We have already handed over to you the hard copy of the same.

Regards.

Enock L. Amudavi  
DIRECTOR ADMINISTRATION (NYS)

NATIONAL ASSEMBLY  
RECEIVED  
30 NOV 2018  
SENIOR DEPUTY CLERK  
J. W. N.  
P. O. Box 41842-00100, NAIROBI

11/30/2018, 11:38 AM



## COMMENTS, VIEWS AND INPUT ON NYS DRAFT BILL BY THE NATIONAL YOUTH SERVICE

Clauses in the proposed NYS Draft Bill that require to be relooked at:

1. **Part I – Preliminary**

At page 5 “**restricted information**” is repeated twice with slight difference in their meaning.

It is proposed the wording “restricted information” be used once with clear elaboration on meaning.

2. **Part II Clause 9** – Establishment of the Council of the National Youth Service.

Under **clause 9 (g)** the bill proposes the appointment of five other members to the council to be appointed by the Cabinet Secretary and one of whom should be a youth.

For ease of fair representation in terms of voting on crucial decisions affecting the National Youth Service, the members of the Service are of the view that among the five people to be appointed at least two of them should be retired uniformed officers who once served in the National Youth Service at a Senior level of the rank of Senior Deputy Director so long as they merit the requirements stipulated at **clause 9 (7)**.

3. **Clause 10:** Committees of the Council under **10 (2)** insert the word “**of the**” immediately after the word approval to give the sentence a grammatical flow.

4. **Clause 11.1 (d) (g) and (h)** highlights functions put under the Council. It is proposed that these functions be moved to the Director General functions. The sub clauses are essentially operational management aspects which best fall under the purview and responsibility of the Director General. This is on account of the fact that the Director General is basically on the ground and handles day to day management and administrative issues of the Service including HR function that mirror largely the highlighted sub clauses. The execution of the mentioned functions by the Director General are to see enhanced commitment on duty, discipline in the ranks, swiftness in decision making and trust in the management and leadership of the Service. The Council is essentially to concentrate on the bigger picture of handling the Service mandate in terms of policy formulation, oversight and guidance.

5. **Clause 11(2):** it is stated that the Council may in writing, delegate to the Director General the power to promote, transfer or retire subordinate and under officers. It is proposed that the sub clause should entirely be part of the functions of the Director General as cited above in **clause 11.1 (d) (g) and (h)**. The Director General among other responsibilities exercises delegated powers by the Public Service Commission to promote and discipline officers at certain level of ranks. This is a routine HR function managed by the Director General and therefore it will be duplication of the role and may create conflict of responsibility if the same function is also to be handled by the proposed Council.

6. **Clause 15:** Appointment of the Director General.

Under this clause and specifically **15 (2)**, on disciplined Service”, the National Youth Service has been omitted among the segments that form the “disciplined Service”. It is proposed National Youth Service be included as a “disciplined Service” in consistent with **clause 2.1**.

For purposes of growth in career structure for the serving National Youth Service uniformed officers, **clause 15.1 (b)** should be substituted to read “has served in the National Youth Service at a senior most rank and has not attained retirement age. It is the desire of every officer of the Service to rise through the ranks to the top most rank.

7. **Clause 16:** Functions of the Director General.

The functions should include the following additional responsibilities which had been proposed under the functions of the Council:

- (a) direct and oversee the deployment of the members of the Service as authorized under this Act.
- (b) recruit, transfer or promote members of the Service.
- (c) develop the criteria for appointments, posting or promotions of senior officers of the Service.

8. **Clause 21:** Oath of office by the Director General.

The third schedule to be amended and be in conformity to the Constitution of Kenya where the office holder bears true allegiance to the People and the Republic of Kenya.

9. **Clause 24:** Resignation from the Service.

Under 24.2 the sub clause omitted the Inspectorate rank of the Service. It is proposed the sub clause to read “A gazetted officer, Inspectorate Officer or Subordinate Officer may be permitted to resign from the Service in the manner prescribed”

10. **Part III – Discipline.**

Under **clause 32 (2)** insert the additional word “equipment, after any.

Under **clause 36 (1)** insert the word “on receiving information from the National Youth Service entity “after a police officer may

**Under clause 61 (1)** insert the word “on request by the Director General when need arises immediately after Service.

THIRD SCHEDULE

ss. 21 & 29

Oath of Office

I .....do hereby swear by almighty God that-

I will be faithful and bear true allegiance, to the people and the republic of Kenya, as an officer of the National Youth Service of Kenya (-)

I will be loyal, to his Excellency the President, and the government of the republic of Kenya. (-)

I will obey all laws, orders, regulations, directions and instructions relating to the National Youth Service, in accordance with The National Youth Service Act, and the Constitution of the Republic of Kenya (-)

I will faithfully discharge my duties and perform my functions in the said office, to the best of my judgment (-)

I will diligently serve the nation, to my utmost ability, as an officer of the National Youth Service of Kenya, without any fear, favour, and affection or ill-will (-)

.....

*(Signature or thumb-print of person making oath)*

Sworn/Affirmed by the said

.....

after the Oath has been read over and explained to him/her in the

.....

language, which he/she has acknowledged to understand at

..... on this ..... day of....., 20.....

.....

*(Name and signature of witness)*

