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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

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ELEVENTH PARLIAMENT- FOURTH SESSION- 2016

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THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON

SESSIONAL PAPER NO. 1 OF 2015 ON THE NATIONAL POLICY ON ELIMINATION  
OF CHILD LABOUR

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DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

APRIL, 2016

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## **1.0 PREFACE**

On behalf of the Departmental Committee on Labour and Social Welfare, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Sessional Paper No.1 of 2015 on the National Policy on Elimination of Child Labour.

The Sessional Paper was laid in the House on 19<sup>th</sup> August, 2015 and referred to the Committee.

### **1.1 Mandate of the Committee**

As set out in Standing Order 216 (5), the Committee is mandated to;

- 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, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- V. to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister;*
- 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.*

## **1.2 Committee Membership**

The Departmental Committee on Labour and Social Welfare was constituted on Thursday 16<sup>th</sup> May, 2013 and comprises the following Members:-

1. Hon. David Were, MP - **Chairperson**
2. Hon. Tiyah Galgalo, MP - **Vice Chairperson**
3. Hon. Janet Teyiaa, MP
4. Hon. Peris Tobiko, MP
5. Hon. John Ndirangu Kariuki, MP
6. Hon. Winnie Karimi Njuguna, MP
7. Hon. Janet Nangabo, MP
8. Hon. John Serut, MP
9. Hon. Samuel Gichigi, MP
10. Hon. Elijah Lagat, MP
11. Hon. Cornelly Serem, MP
12. Hon. Abdinoor Mohamed Ali, MP
13. Hon. Daniel Wanyama, MP
14. Hon Regina Nyeris Changorok, MP
15. Hon. Wesley Korir, MP
16. Hon. Kinoti Gatobu, MP
17. Hon. Elijah Mosomi Moindi, MP
18. Hon. James Onyango K'Oyoo, MP
19. Hon. Omondi John Ogutu, MP
20. Hon. Aisha Jumwa Karisa, MP
21. Hon. Patrick Wangamati, MP
22. Hon. Rose Museo Mumo, MP
23. Hon. Silvance Onyango Osele, MP
24. Hon. Nyasuna Gladys Munga, MP
25. Hon. John Owuor Ombani, Kobado, MP
26. Hon. Mwanyoha Hassan Mohammed, MP
27. Hon. Mlolwa Jones Mungogo, MP
28. Hon. Ferdinand Wainaina, MP

### **1.3 Committee Sitings**

The Committee held two sittings on 29<sup>th</sup> September, 2015 and 20<sup>th</sup> November, 2015 in which the Acting Cabinet Secretary, the Principal Secretary and the relevant officials from the Ministry of Labour, Social Security and Services were invited by the Committee in considering the Sessional Paper.

### **1.4 Adoption of the Report**

The Members of the Departmental Committee on Labour and Social Welfare, pursuant to Standing Order 199 adopted this report on Sessional Paper No.1 of 2015 on the National Policy on Elimination of Child Labour and affixed their signatures as affirmed by the attached annex 1 of 20<sup>th</sup> November, 2015.

### **1.5 Committee Observations and Recommendations**

#### **1.5.1 Observations**

Having interrogated the Cabinet Secretary, Principal Secretary Ministry of Labour, Social Security and Services and the relevant Heads of Department while scrutinizing the Policy Paper, the Committee made the following observations. That;-

1. Comprehensive and up-to-date child labour statistics is a key component of sustainable Child Labour interventions. There are no comprehensive child labour statistics, child labour surveys have not been frequently carried out and that data gaps lead to conflicting estimates and poor targeting.
2. There exist several legislations touching on child labour but weak capacity of enforcement authorities hamper interventions. The institution suffers from low budgetary allocation, staffing capacity and facilities.
3. The Policy also aims to establish and maintain an up to date and reliable database on child labour and eliminate all the Worst forms of Child Labour by 2020.
4. The policy proposes to promote and deepen resource mobilization through Public Private Partnership and strengthen the National Steering Committee, Child Labour Division and County/Sub-County Labour Committees.

### 1.5.2 Recommendations

The Committee recommends that:-

1. **The House adopts the National Policy on Elimination of Child Labour as contained in the Sessional Paper No. 1 of 2015.**
2. The National Assembly should increase budgetary allocation to the Ministry of Labour, Social Security and Services to fast track the implementation of the policy.

### 1.6 Acknowledgements

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.

I take this opportunity to thank all Members for their useful contribution in the production of this report which enabled the Committee to complete the task within the stipulated period.

The Committee wishes to record its appreciation for services rendered by the staff of the National Assembly attached to the Committee, whose efforts and input made the work of the Committee and the production of this Report possible.

On behalf of the Departmental Committee on Labour and Social Welfare, it is my pleasure and duty to present the Committee's observations and recommendations on the Sessional Paper No.1 of 2015 on the National Policy on Elimination of Child Labour.

Signed..........Date.....30-03-2016.....

Hon. David Were, MP (Chairperson)

Departmental Committee on Labour and Social Welfare

## **2.0 MEETING WITH THE MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES**

The acting Cabinet Secretary, Amb. Raychelle Omamo, the Principal Secretary, Mr. Ali Noor Ismail and the relevant officials from the Ministry of Labour, Social Security and Services appeared before the Committee on 29<sup>th</sup> September, 2015 and 20<sup>th</sup> November, 2015 and briefed them on Sessional Paper No.1 of 2015 on the National Policy on Elimination of Child Labour as follows, That;-

1. The Constitution of Kenya defines a child as an individual who has not attained the age of 18 years and protects children from child labour which at times assumes other forms including slavery, servitude, forced labour and trafficking.
2. Child Labour is engagement of a child in paid or unpaid work, and/or activities that are mentally, physically, socially or morally dangerous and harmful to children. It involves work that deprives children of opportunities for schooling or participation in vocational and other training programmes. It is also work which requires them to assume the multiple burdens of schooling and work which is regulated.
3. Children are not required to perform any form of Hazardous work and/or the Worst Forms of Child Labour. Hazardous work jeopardizes the physical, mental or moral well-being of a child. This may be because of the nature of the work or the conditions under which the work is carried out.
4. The Worst Forms of Child Labour (WFCL) are activities related to slavery, trafficking, prostitution, engagement of children in illicit activities and work likely to harm the health, safety and/or morals of the child.

### **ILO Convention 138 on Minimum age of Entry into Employment and Convention 182 on Worst Forms of Child Labour**

1. Kenya, as a member of International Labour Organization has ratified ILO Convention 138 on minimum age of entry into employment which was adopted in 1973. The Convention has been domesticated and in accordance with the provisions of Employment Act, 2007 the minimum age of entry into employment in Kenya is 16 years. The



Convention requires member countries to prioritize and pursue active policies and legislative agenda to prohibit and restrict work by children.

2. The Country has also domesticated ILO Convention 182 which has outlawed certain activities in which children below 16 years cannot work. The activities are contained in legal notice no. 28 of 2014 under the Employment (General) Rules, 2014. The Convention seeks to:
  - a) Strengthen existing programmes on Child Labour;
  - b) Focuses international attention on urgency of action to eliminate Worst Forms Child Labour;
  - c) Reiterates the need for countries to remain focused on the long-term goal of effective elimination of all forms of Child Labour.

### **Dynamics of Child Labour in Kenya**

1. Child labour is a major developmental challenge in Kenya. The 2005/2006 Kenya Integrated Household Budget Survey (KIHBS) showed that the total number of working children in the country declined from 1.9 million in 1999 to 1.01 million in 2005 /2006. This represents a drop of 46.8 percent. The Child Labour Analytical Report (2008) also indicated that about 1 million children were working in Kenya. The 2009 Kenya Population and Housing Census estimated that over 4 million children of school going age were out of school and could be working.
2. Of the 1.01 million children who were working in 2008, about 52.9 per cent were boys while 47.1 per cent were girls. The Child Labour Analytical Report (2008) also indicated that 773,697 children were involved in child labour.

### **Policy Goal**

The policy goal is to protect all children in Kenya from all forms of child labour, and promote holistic development of children.

### **Objectives of the Policy**

The main objectives of the policy are to:-

- a) Eliminate all the Worst Forms of Child Labour by 2020.
- b) Establish and maintain an up to date and reliable database on child labour.



- c) Mainstream elimination of child labour in national, county and sectoral policies and programmes.
- d) Harness stakeholder's efforts towards elimination of all forms of child labour.

## **SELECTED POLICY ISSUES**

### **1. Child Labour Statistics**

Comprehensive and up-to-date Child Labour statistics is a key component of sustainable Child Labour interventions. Currently, there is no comprehensive child labour statistics and child labour surveys have not been frequently carried out. Lack of data gaps leads to conflicting estimates and poor targeting.

The policy proposes the following interventions:

- a) National Child Labour Survey to be undertaken as an immediate measure;
- b) The Ministry to collaborate with stakeholders and NCCS to update and maintain the National Children Database;
- c) The Ministry through Child Labour Division to collect Child Labour statistics regularly and feed into the National Children Database;
- d) The Ministry to Network with stakeholders and to partner with KNBS to design and implement a Child Labour data collection instrument.

### **2. Child Labour Free Zones**

Child Labour Free Zones are geographical areas where children are systematically withdrawn from work, rehabilitated and reintegrated into formal education or vocational training. It is a strategy whereby the community is mobilized to track and withdraw out-of-school children.

ILO/IPEC has piloted CLFZs in Kilifi, Kitui and Busia since 2010. At the end of the programme in 2013, a total 8,348 were withdrawn from child labour.

The other programmes which are being implemented are as follows:-

- i. The African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) is undertaking a pilot of the CLFZs in 42 villages in Mbita, Ugunja, Bondo and Kisumu East.

- ii. Kenya Alliance for Advancement of Children (KAACR) is piloting in Naivasha, Thika, Machakos and Kwale Counties.

The policy proposes that:-

- a) Government should consolidate and build on the gains from CLFZs pilots.
- b) Establish CLFZs in 10 Counties in 2016/17 financial year.
- c) Additional 15 CLFZs to be established in each of the subsequent years up to 2019/20 financial year in the remaining counties.
- d) An integrated M&E system to be developed and implemented to monitor progress.

### **3. Enforcement of Legislation**

There exists several legislations touching on child labour but weak capacity of enforcement authorities hampers interventions. The Ministry of Labour Social Security and Services is responsible for enforcement of employment regulations whilst cases involving criminal violation of child abuse are referred to the National Police Service for enforcement. The institutions also suffer low budgetary allocation, staffing, capacity and facilities.

The policy proposes to:

- a) increase budgetary allocation to the Ministry ;
- b) Employ and deploy additional labour Inspectors;
- c) Mobilize resources to facilitate regular training of staff and volunteers;
- d) Process and disseminate information on child labour investigations prosecutions and penalties.

### **4. Education Reform**

The policy proposes to put up measures towards undertaking education reform such as building of more schools, reduce direct cost of education, promote vocational training. It also proposes to diversify education to include remedial, bridging education and establish child right clubs in all primary schools.

### **5. Financing of Child Labour Interventions**

Resource mobilization is a critical aspect of effective interventions towards acceleration of elimination of Child Labour and its worst forms. Activities geared towards elimination of CL

and WFCL have mainly been supported by development partners. Only in 2012/2013 financial year did the Ministry receive Kshs. 10 million on issues pertaining to child labour. Concerted efforts on resource mobilization from all quarters are therefore critical.

Towards this end, the policy proposes to promote and deepen resource mobilization through Public Private Partnership and establish a Basket of Funds to implement high-impact CL/WFCL elimination interventions.

## **6. Institutional Mechanism**

The National Steering Committee on Child Labour is a gazetted Institution which is mandated to manage and coordinate Child Labour activities in the country. The Institution is however not institutionalized in the legal framework and rarely meets due to financial constraints.

The policy proposes to strengthen the NSC, Child Labour Division and County/ Sub- County Child Labour Committees. The Child Labour Division will be the Secretariat of the NSC.

## **7. Promote Social Dialogue**

The Ministry is responsible for coordination and management of institutions of Social Dialogue in the Country. The Country has well developed structures of Social Dialogue such as the National Labour Board. The policy endeavors to:-

- a) Strengthen and deepen the institutions of social dialogue to prioritize child labour.
- b) The Child Labour Focal Point Network for Line ministries, NGOs and development partners will be strengthened. The Network currently meets after three months.
- c) Trade unions and employers will be encouraged to develop programmes on child labour.

## **8. Expand Social Protection System**

There is limited range of social protection which exposes families to vulnerability and destitution. The policy proposes to increase the national coverage of the National Social Protection policy. The Government with the support of other stakeholders will promote initiatives for income generation activities.

## **9. Integrate Child Labour in Corporate Social Responsibility Programmes**

Corporate Social Responsibility (CSR) is one of the means through which the corporate sector can support efforts towards elimination of child labour. The government in consultation with the

social partners and the various private sector associations will encourage the corporate sector to develop and implement a code of conduct to deter use of child labour. Currently, the Federation of Kenyan Employers has partnered with business community to implement “adopt a school strategy” which has been successfully implemented in Machakos.

The corporate sector, including the MSEs will be encouraged to design and implement programmes on the elimination of all forms of child labour in the country as part of their CSR programmes.

#### **10. Undertake Awareness Raising and Sensitization Programmes**

Awareness raising and sensitization is a critical component of efforts towards elimination of all forms of child labour. The government will champion awareness raising and sensitization programmes amongst various spectrum of stakeholders such as print and electronic media, business community, religious groups and members of the public.

The Committee was further informed that:-

1. There are County Child Labour Committees chaired by the County Commissioner although they are not effective as they lack the institutional capacity, finances and legal framework.
2. A baseline survey was done in the County of Kitale and Kwale which showed that 52% of child labour is in the agricultural sector followed by domestic, mining and quarrying sectors.
3. The Employment Act states that those who are engaged in child labour will be fined with a penalty of 200,000 or twelve month jail term or both.
4. The Employment Act further allows children between the age of 16-18 to work but under restricted conditions.
5. Children between the ages of 13-15 years are allowed to do light work but only for two hours per day with a maximum of 14 hours per week so long as the work doesn't interfere with the Child's education.
6. There was a mismatch between the Employment Act of 2007 and the Basic Education Act of 2012 on the minimum entry for employment.

### 3.0 OBSERVATIONS

The Committee observed that;-

1. Comprehensive and up-to-date child labour statistics is a key component of sustainable Child Labour interventions. There are no comprehensive child labour statistics, child labour surveys have not been frequently carried out and that data gaps lead to conflicting estimates and poor targeting.
2. There exist several legislations touching on child labour but weak capacity of enforcement authorities hamper interventions. The institution suffers from low budgetary allocation, staffing capacity and facilities.
3. The Policy also aims to establish and maintain an up to date and reliable database on child labour and eliminate all the Worst forms of Child Labour by 2020.
4. The policy proposes to promote and deepen resource mobilization through Public Private Partnership and strengthen the National Steering Committee, Child Labour Division and County/Sub-County Labour Committees.

### 4.0 RECOMMENDATIONS

The Committee recommends that;-

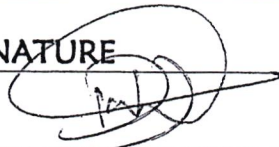

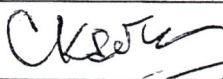
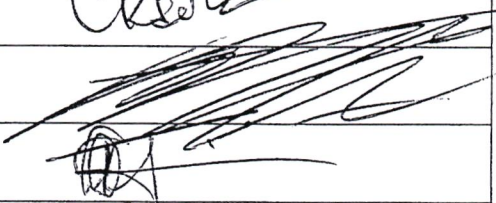
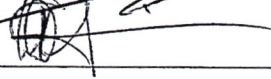
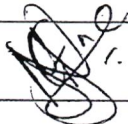

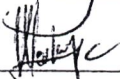
1. **The House adopts the National Policy on Elimination of Child Labour as contained in the Sessional Paper No. 1 of 2015.**
2. The National Assembly should increase budgetary allocation to the Ministry of Labour, Social Security and Services to fast track the implementation of the policy.

**DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

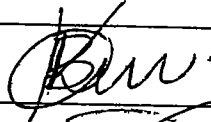
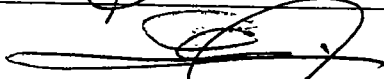
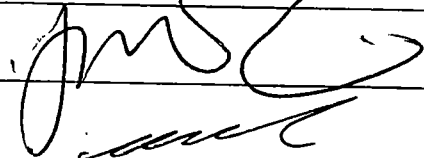
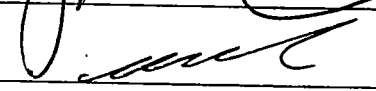
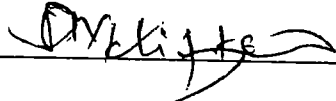
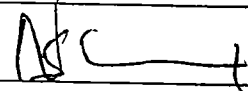
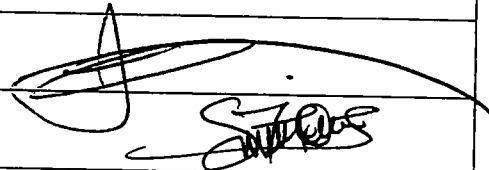

Agenda: *Consideration of Sessional Paper on National Children Policy and Elimination of Child Labour and Industrial Training Amendment Bill, 2015.*

Venue: *ACACIA PREMIER HOTEL, KISUMU*

Date: *20<sup>TH</sup> NOVEMBER, 2015 AT 9:00 AM.*

| NO. | NAME                                      | SIGNATURE   |
|-----|---|---|
|     | Hon David Were, MP-Chairperson            |     |
|     | Hon. Tiyah Galgalo, MP-Vice Chairperson   |   |
|     | Hon. Janet Teyiaa, MP                     |   |
|     | Hon. Peris Tobiko, MP                     |   |
|     | Hon. John Ndirangu Kariuki, MP            |   |
|     | Hon. John Serut, MP                       |   |
|     | Hon. Winnie Karimi Njuguna, MP            |   |
|     | Hon. Samuel Gichigi, Mp                   |  |
|     | Hon. Cornelly Serem, MP                   |  |
|     | Hon. Dan Wanyama, MP                      |   |
|     | Hon .Elijah Lagat, MP                     |  |
|     | Hon. Patrick Wangamati, MP                |   |
|     | Hon. Nyasuna Gladys Wanga, MP             |  |
|     | Hon. Abdinoor Mohamed Ali, MP             |   |
|     | Hon. Regina Nyeri, MP<br><i>Changoria</i> |   |
|     | Hon. Wesley Korir ,MP                     |   |



|     |                                   |   |
|-----|-----------------------------------|---|
| 7.  | Hon. Kinoti Gatobu, MP            |    |
| 8.  | Hon. Elijah Mosomi Moindi, MP     |     |
| 9.  | Hon. James Onyango K'Oyoo, MP     |     |
| 10. | Hon. Omondi John Ogutu, MP        |     |
| 11. | Hon. Rose Museo Mumo, MP          |   |
| 12. | Hon. Mustaffa Idd, MP             |     |
| 13. | Hon. John Owuor O. Kobado, MP     |   |
| 14. | Hon. Janet Nangabo, MP            |    |
| 15. | Hon. Mwanyoha Hassan Mohammed, MP |   |
| 16. | Hon. Mlolwa Jones Mwangogo, MP    |   |
| 17. | Hon. Silvance Onyango Osele, MP   |  |
| 18. | Hon. Aisha Jumwa Karissa, MP      |   |
| 19. | Hon. Ferdinand Waititu, MP        |   |

**Erick Nyambati**

**For: Clerk of the National Assembly**

Minutes of the 50<sup>th</sup> Sitting of the Departmental Committee on Labour and Social Welfare held on Friday, 20<sup>th</sup> November, 2015, in Acacia Premier Hotel, Kisumu at 9.00 a.m.

Present

1. Hon. David Were, MP- **Chairperson**
2. Hon. Samuel Gichigi, MP
3. Hon. Dan Wanyama, MP
4. Hon. Kinoti Gatobu, MP
5. Hon. Elijah Mosomi Moindi, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Elijah Lagat, MP
8. Hon. John Omondi Ogutu, MP
9. Hon. Gladys Wanga, MP
10. Hon. Regina Nyeris Changorok, MP
11. Hon. Wesley Korir, MP
12. Hon. Mustafa Idd, MP
13. Hon. Silvanice Onyango Osele, MP
14. Hon. Cornelly Serem, MP
15. Hon. James Onyango K'oyoo, MP
16. Hon. Janet Nangabo, MP

Apologies

1. Hon. Tiyah Galgalo Ali, M.P. - **Vice Chairperson**
2. Hon. Janet Teyiaa, MP
3. Hon. Patrick Wangamati, MP
4. Hon. Abdinoor Mohamed Ali, MP
5. Hon. Aisha Jumwa Karissa, MP
6. Hon. Mwanyoha Hassan Mohamed, MP
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9. Hon. John Serut, MP
10. Hon. Peris Tobiko, MP
11. Hon. John Ndirangu Kariuki, MP
12. Hon. Ferdinand Waititu, MP
13. Hon. Winnie Karimi Njuguna, MP

National Assembly Secretariat

1. Mr. Erick Nyambati -Third Clerk Assistant (Lead Clerk)
2. Mr. Abdirahman G. Hassan -Third Clerk Assistant

- |                          |                         |
|--------------------------|-------------------------|
| 3. Ms. Ella Kendi Mwenda | -Third Clerk Assistant  |
| 4. Mr. Donald Manyala    | -Research Officer three |
| 5. Ms. Mercy Wanyonyi    | -Legal Counsel two      |

**Officials from the Ministry of Labour, Social Security and Services**

- |                              |   |
|------------------------------|---|
| 1. Mrs. Josephine Oguye      | -Deputy Director, Children Services           |
| 2. Mr. Charles O. Odongo     | -Senior Assistant Director, Children Services |
| 3. Mr. James Ndegwa Ndiho    | -Senior Assistant Labour Commissioner         |
| 4. Mrs. Hellen Iminza Maneno | -Assistant Labour Commissioner                |
| 5. Mrs. Irine Moraa Ogamba   | -Manager Legal Affairs/Board Secretary, NITA  |

**Minute No.268/2015 Preliminaries**

The meeting was called to order at 9.25 a.m. followed by a word of prayer from Hon. Gladys Wanga, MP.

**Minute No.269/2015 Confirmation of the Minutes of the Previous Sittings**

Confirmations of the Minutes of the previous sittings were deferred to the next sitting.

**Minute No.270/ 2015 Meeting with Mr. James Ndegwa Ndiho, Senior Assistant Labour Commissioner**

Mr. James Ndegwa Ndiho presented the Cabinet Secretary's summary on the Sessional Paper No.1 of 2015 on the National Policy on Elimination of Child Labour and informed the Committee as follows; That:-

1. The Constitution of Kenya defines a child as an individual who has not attained the age of 18 years and protects children from child labour which at times assumes other forms including slavery, servitude, forced labour and trafficking.
2. Child Labour is engagement of a child in paid or unpaid work, and/or activities that are mentally, physically, socially or morally dangerous and harmful to children. It involves work that deprives children of opportunities for schooling or participation in vocational and other training programmes. It is also work which requires them to assume the multiple burdens of schooling and work which is regulated.
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#### **ILO Convention 138 on Minimum age of Entry into Employment and Convention 182 on Worst Forms of Child Labour**

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2. The Country has also domesticated ILO Convention 182 which has outlawed certain activities in which children below 16 years cannot work. The activities are contained in legal notice no. 28 of 2014 under the Employment (General) Rules, 2014. The Convention seeks to:
  - a) Strengthen existing programmes on Child Labour;
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1. Child labour is a major developmental challenge in Kenya. The 2005/2006 Kenya Integrated Household Budget Survey (KIHBS) showed that the total number of working children in the country declined from 1.9 million in 1999 to 1.01 million in 2005 /2006. This represents a drop of 46.8 percent. The Child Labour Analytical Report (2008) also indicated that about 1 million children were working in Kenya. The 2009 Kenya Population and Housing Census estimated that over 4 million children of school going age were out of school and could be working.

2. Of the 1.01 million children who were working in 2008, about 52.9 per cent were boys while 47.1 per cent were girls. The Child Labour Analytical Report (2008) also indicated that 773,697 children were involved in child labour.

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### **Objectives of the Policy**

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- a) Eliminate all the Worst Forms of Child Labour by 2020.
- b) Establish and maintain an up to date and reliable database on child labour.
- c) Mainstream elimination of child labour in national, county and sectoral policies and programmes.
- d) Harness stakeholder's efforts towards elimination of all forms of child labour.

## **SELECTED POLICY ISSUES**

### **1. Child Labour Statistics**

Comprehensive and up-to-date Child Labour statistics is a key component of sustainable Child Labour interventions. Currently, there is no comprehensive child labour statistics and child labour surveys have not been frequently carried out. Lack of data gaps leads to conflicting estimates and poor targeting.

The policy proposes the following interventions:

- a) National Child Labour Survey to be undertaken as an immediate measure;
- b) The Ministry to collaborate with stakeholders and NCCS to update and maintain the National Children Database;
- c) The Ministry through Child Labour Division to collect Child Labour statistics regularly and feed into the National Children Database;
- d) The Ministry to Network with stakeholders and to partner with KNBS to design and implement a Child Labour data collection instrument.

## **2. Child Labour Free Zones**

Child Labour Free Zones are geographical areas where children are systematically withdrawn from work, rehabilitated and reintegrated into formal education or vocational training. It is a strategy whereby the community is mobilized to track and withdraw out-of-school children.

ILO/IPEC has piloted CLFZs in Kilifi, Kitui and Busia since 2010. At the end of the programme in 2013, a total 8,348 were withdrawn from child labour.

The other programmes which are being implemented are as follows:-

- i. The African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) is undertaking a pilot of the CLFZs in 42 villages in Mbita, Ugunja, Bondo and Kisumu East.
- ii. Kenya Alliance for Advancement of Children (KAACR) is piloting in Naivasha, Thika, Machakos and Kwale Counties.

The policy proposes that:-

- a) Government should consolidate and build on the gains from CLFZs pilots.
- b) Establish CLFZs in 10 Counties in 2016/17 financial year.
- c) Additional 15 CLFZs to be established in each of the subsequent years up to 2019/20 financial year in the remaining counties.
- d) An integrated M&E system to be developed and implemented to monitor progress.

## **3. Enforcement of Legislation**

There exists several legislations touching on child labour but weak capacity of enforcement authorities hampers interventions. The Ministry of Labour Social Security and Services is responsible for enforcement of employment regulations whilst cases involving criminal violation of child abuse are referred to the National Police Service for enforcement. The institutions also suffer low budgetary allocation, staffing, capacity and facilities.



The policy proposes to:

- a) increase budgetary allocation to the Ministry ;
- b) Employ and deploy additional labour Inspectors;
- c) Mobilize resources to facilitate regular training of staff and volunteers;
- d) Process and disseminate information on child labour investigations prosecutions and penalties.

#### **4. Education Reform**

The policy proposes to put up measures towards undertaking education reform such as building of more schools, reduce direct cost of education, promote vocational training. It also proposes to diversify education to include remedial, bridging education and establish child right clubs in all primary schools.

#### **5. Financing of Child Labour Interventions**

Resource mobilization is a critical aspect of effective interventions towards acceleration of elimination of Child Labour and its worst forms. Activities geared towards elimination of CL and WFCL have mainly been supported by development partners. Only in 2012/2013 financial year did the Ministry receive Kshs. 10 million on issues pertaining to child labour. Concerted efforts on resource mobilization from all quarters are therefore critical.

Towards this end, the policy proposes to promote and deepen resource mobilization through Public Private Partnership and establish a Basket of Funds to implement high-impact CL/WFCL elimination interventions

#### **6. Institutional Mechanism**

The National Steering Committee on Child Labour is a gazetted Institution which is mandated to manage and coordinate Child Labour activities in the country. The Institution is however not institutionalized in the legal framework and rarely meets due to financial constraints.

The policy proposes to strengthen the NSC, Child Labour Division and County/ Sub-County Child Labour Committees. The Child Labour Division will be the Secretariat of the NSC.

### **7. Promote Social Dialogue**

The Ministry is responsible for coordination and management of institutions of Social Dialogue in the Country. The Country has well developed structures of Social Dialogue such as the National Labour Board. The policy endeavors to:-

- a) Strengthen and deepen the institutions of social dialogue to prioritize child labour.
- b) The Child Labour Focal Point Network for Line ministries, NGOs and development partners will be strengthened. The Network currently meets after three months.
- c) Trade unions and employers will be encouraged to develop programmes on child labour.

### **8. Expand Social Protection System**

There is limited range of social protection which exposes families to vulnerability and destitution. The policy proposes to increase the national coverage of the National Social Protection policy. The Government with the support of other stakeholders will promote initiatives for income generation activities.

### **9. Integrate Child Labour in Corporate Social Responsibility Programmes**

Corporate Social Responsibility (CSR) is one of the means through which the corporate sector can support efforts towards elimination of child labour. The government in consultation with the social partners and the various private sector associations will encourage the corporate sector to develop and implement a code of conduct to deter use of child labour. Currently, the Federation of Kenyan Employers has partnered with business community to implement “adopt a school strategy” which has been successfully implemented in Machakos.

The corporate sector, including the MSEs will be encouraged to design and implement programmes on the elimination of all forms of child labour in the country as part of their CSR programmes.

## **10. Undertake Awareness Raising and Sensitization Programmes**

Awareness raising and sensitization is a critical component of efforts towards elimination of all forms of child labour. The government will champion awareness raising and sensitization programmes amongst various spectrum of stakeholders such as print and electronic media, business community, religious groups and members of the public.

The Committee was further informed that:-

1. There are County Child Labour Committees chaired by the County Commissioner although they are not effective as they lack the institutional capacity, finances and legal framework.
2. A baseline survey was done in the County of Kitale and Kwale which showed that 52% of child labour is in the agricultural sector followed by domestic, mining and quarrying sectors.
3. The Employment Act states that those who are engaged in child labour will be fined with a penalty of 200,000 or twelve month jail term or both.
4. The Employment Act further allows children between the age of 16-18 to work but under restricted conditions.
5. Children between the ages of 13-15 years are allowed to do light work but only for two hours per day with a maximum of 14 hours per week so long as the work doesn't interfere with the Child's education.
6. There was a mismatch between the Employment Act of 2007 and the Basic Education Act of 2012 on the minimum entry for employment.
7. The Ministry intends to amend Labour Institutions Act, Labour Relations Act and the Employment Act and the amendments have been forwarded to the Attorney General's office for review.
8. There was presidential bursary scheme that caters/targets for children who are orphans, vulnerable and from poor homes and studying in public secondary schools where those in public boarding schools get Kshs.30,000 while those in public day schools get 15,000 per term.

## **Observations**

The Committee observed that:-

1. Kenya as a member of International Labour Organization has ratified ILO Convention 138 on minimum age of entry into employment which was adopted in 1973. The Convention has been domesticated and in accordance with the

provisions of Employment Act, 2007 the minimum age of entry into employment in Kenya is 16 years.

2. There are no comprehensive child labour statistics and child labour surveys had not been frequently carried out and that a data gap leads to conflicting estimates and poor targeting.
3. Comprehensive and up-to-date Child Labour statistics is a key component of sustainable Child Labour interventions.
4. There exists several legislations toughing on child labour but weak capacity of enforcement authorities hamper interventions.
5. The institution also suffers low budgetary allocation, staffing, capacity and facilities.
6. The Country had well developed structures of Social Dialogue such as the National Labour Board.
7. The Policy aims to eliminate all the Worst forms of Child Labour by 2020.
8. The Policy also aims to establish and maintain an up to date and reliable database on child labour.
9. The policy proposes to strengthen the National Steering Committee, Child Labour Division and County/Sub-County Labour Committees.
10. The policy proposes to promote and deepen resource mobilization through Public Private Partnership.

## **Recommendations**

The Committee recommends that:-

1. **The House adopts the National Policy on Elimination of Child Labour as contained in the Sessional Paper No. 1 of 2015.**
2. The Ministry of Labour, Social Security and Services should undertake a National child labour survey as an immediate measure.
3. The Ministry to collaborate with stakeholders and National Council for Children Services to update and maintain the National Children Database.
4. The Ministry through Child Labour Division to collect Child Labour statistics regularly and feed into the National Children Database.
5. The Ministry to network with stakeholders and partner with Kenya National Bureau of Statistics to design and implement a Child Labour data collection instrument.
6. The Ministry of Labour, Social Security and Services should develop and implement an integrated Monitoring and Evaluation system to monitor progress.
7. The National Assembly should increase budgetary allocation to the Ministry of Labour, Social Security and Services so that the Ministry can employ additional labour inspectors.

8. The Ministry of Labour, Social Security and Services should establish a Fund to implement Child Labour elimination interventions.
9. The Ministry should coordinate well with other Ministries and organizations to curb child labour menace in the country.
10. Trade Unions and employers should be encouraged to develop programmes on child labour.
11. The Government in consultation with the social partners and the various private sector associations should encourage the corporate sector to develop and implement a code of conduct to deter use of child labour.
12. The Ministry of Labour should coordinate well with other Ministries and organizations to curb child labour menace in the country.
13. The Ministry of Labour, Social Security and Services should create awareness on child labour and that information should reach to the people on the ground.
14. There was need for the Ministry to concentrate in marginalized areas where enrolments in schools are low.

**Minute No.271/2015 Meeting with the Deputy Director Children Services, Mrs. Josephine Oguye**

Mrs. Josephine Oguye made a presentation on the Sessional Paper No. 6 of 2014 on National Children Policy and informed the Committee as follows; that:-

1. The aim of the Policy was to create an environment where children will grow and thrive. The need for a National Children Policy arises from the Government's realization that without a comprehensive overall framework for guiding the different sectors and agencies, working with and for children substantial resources and efforts will continue to be duplicated and wasted.
2. According to the 2009 Housing and Population Census, Kenya's population was 38.6 million, with an annual growth rate of 2.2 percent. Approximately 19.15 million of the population is children. The population in Kenya is characterized by high fertility rates, a younger structure, a youth 'bulge', high dependence burdens, and high population growth rate.
3. All these constitute serious obstacles to poverty eradication and sustainable development, thus posing serious challenges to the well-being of children, and realization of their rights. This, combined with poverty, the devastating impact of HIV/AIDS, and moral decadence in society has threatened the protective

environment for children – as they become more vulnerable to abuse, violence, neglect, sexual exploitation, trafficking, child labour, harmful/cultural and religious practices (such as female genital mutilation and child marriages), among others.

4. According to the 2012 Kenya Social Protection Sector Review, approximately 2.6 million children in Kenya are Orphans or Vulnerable. This implies that their right to survival, development, and participation are unfulfilled and/or threatened. The need for a policy on children arises from the Government's commitment to address this vulnerable category of society through a comprehensive and coherent institutional legislative and enforceable framework.

#### **Objectives of the Policy were to:-**

1. Provide specific framework for addressing issues related to children's right and welfare in a holistic and focused manner.
2. Provide regulatory framework to coordinate the various related policies and legislations aimed at promoting children rights.
3. Provide a comprehensive institutional framework through effective institutions dealing with children issues.
4. Provide direction and purpose in establishing social and child protection mechanism while mobilizing resources for action.

#### **Scope of the Policy**

The policy addresses the various challenges impacting on the well-being of children in Kenya under the four pillars namely; child survival, child development, child protection and child participation.

#### **Rationale for developing the National Children Policy**

Through the policy, the rights and welfare of the children will be addressed recognizing that:-

1. Children are the most vulnerable members of the Kenya's society and should therefore be given priority, their rights respected and their needs provided for



through appropriate policy prescriptions, legislative instruments, enforcement mechanisms and developmental programmes.

2. Adequate budgetary and other resources should be allocated to facilitate programmes targeted for children.
3. An increasing number of children had significant implications on national development.
4. The government has moral and legal obligation to take adequate steps to provide for children's well-being and development
5. Children are the present and the future and therefore need to be nurtured to effectively participate in the national development process.
6. Kenya as a member of the United Nations and signatory of the World Summit Goals and African Common Position on Children and Action Plan, World Fit for children goals, subscribes to adding quality life to her children through the National Children Policy.

### **Contents of the Policy**

The National Children Policy is organized under four (4) pillars, namely:

#### **1. Child Survival**

The Policy provides that there was a notable decline in childhood mortality, but Kenya needs to maintain commitment to key interventions and programmes, and focus on areas where disparities are highest. According to 2008/2009 Kenya Demographic Survey Infant Mortality rate was 52 per thousand live births and under five mortality rate was 74 per 1000 live birth. This is a national average. In some areas the rate is higher. The prevalence of HIV/AIDS is also an important cause of maternal and child mortality in Kenya.

#### **2. Child Development**

The Policy provides that attention will be given to the main factors that prevent children from attending school. These include poverty, and long distances to school (particularly

in rural areas), disability or illness. Focus will also be given to other categories of children including Orphans and Children with Disabilities, who are likely to be more disadvantaged when it comes to attending Primary School and transiting to Secondary School.

### 3. Child Protection

Attention will be given to capacity gaps found in the social workforce, as it presents an important underlying cause of poor child protection services. Priority will be given to child protection system. This is about adopting an effective multi-agency/multi-disciplinary approach to ensure the children are safe, their development needs are met, and families supported to bring up their children.

### 4. Child Participation

Taking views of children and their experiences into account within family, school, in other settings helps develop children's self-esteem, social skills, and respect for others. The policy aims to strengthen the voice of children, adolescents, and youths to ensure their meaningful; participation through forums like Children Assemblies.

### **Guiding Principles**

This policy framework shall be guided by the following principles:-

1. Participation of Children in the Society: Children are entitled and have a duty to participate in the affairs of society in line with their evolving capacity.
2. Community Support and Care: Children are entitled to adequate care and assistance of family and the state.
3. Best Interests: In all situations the best interests of the child shall be paramount.
4. Dignity, security and freedom from exploitation: Children are entitled to live in dignity and respect and free from all forms of exploitation, discrimination, abuse and neglect.

## **Institutional Framework**

Implementation of the National Children Policy will involve multi-agency and multi-disciplinary approach by diverse shareholders. This will be under the leadership and coordination of National Council for Children Services and the Ministry in Charge of Children Services.

Implementation calls for collaboration from the private sector, development partners, Civil Society Organization, Faith based Organizations, Research Institutions and Institutions of higher learning among others

## **Monitoring and Evaluation of the Policy**

The Monitoring & Evaluation of the policy will be undertaken within the framework of the national integrated monitoring and evaluation system (NIMES).

## **Policy Review**

The Policy shall be due for review every five (5) years, or when societal needs and demands concerning the rights and welfare of children demand.

## **National Plan of Action**

To give life to the policy a plan of action 2015-2022 has been developed containing priority indicators and interventions in line with the four pillars. This is to guide various stakeholders and to ensure focus and coherence.

The National Plan of Action is aligned to Kenya Vision 2030 in order to contribute to the realization of the Vision.

The Committee was further informed that;

1. The Children Act of 2003 is under review at the Attorney General's office. Members suggested that since the amendments to the Act were many, the Old Act should be repealed and come up with a new Act.
2. Child mortality was a threat to child survival in the country.

3. Corporal punishment in schools was banned but there was no proper policy of discipline in children.
4. The Juvenile Justice system caters for children who are in conflict with the law. The Police cells have Child Protection Units which are separate cells for children.
5. There was a Child Helpline of 116 which is toll free and functional.
6. There were no specific laws and policy for the boy child. The Policy should recommend means of balancing between boy and girl child.
7. The challenges facing the Social Assistance programmes include but are not limited to:-
  - I. Financial constraints
  - II. Low scale up of the fund
  - III. There are no proper monitoring mechanisms
  - IV. No proper policy guidelines and directions

### **Observations**

The Committee made the following observations:-

1. The Policy seeks to ensure that children get quality, accessible, inclusive, equitable and affordable education to enhance holistic growth and development and participation in the development process at all levels.
2. The need for a policy on children arises from the Government's commitment to address the plight of the vulnerable category of society through a comprehensive and coherent institutional legislative and enforceable framework.
3. Despite the absence of a comprehensive policy on children, the Government of Kenya in collaboration with Non-Governmental Organizations, private sector, Community based groups and Development Partners has continued to offer support to children all over the Country.

### **Recommendation**

The Committee recommends that the National Assembly adopts the Sessional Paper No.6 of 2014 on the National Children Policy.

Minute No.272/2015 Meeting with Mrs. Irine Moraa Ogamba, Manager Legal Affairs/Board Secretary, National Industrial Training Authority

Mrs. Irine Moraa Ogamba made presentation on the Industrial Training (Amendment) Bill, 2015 and informed the Committee as follows; That:-

The objective of the Bill is to amend the Industrial Training Act No. 34 of 2011 to provide young people the opportunity to obtain training that will equip them for profitable employment and citizenship. The bill makes provision that compels the National and County Government to offer industrial attachment in public institutions to new graduate in all professions.

### **Analysis to the Legislative Proposals to amend the Industrial Training Act**

1. **Clause 2 proposes to amend Section 5C of the Act:** It proposes additional duty “to provide initial capital to apprentices for the purpose of setting up business”.

#### Analysis

- I. The Bill makes reference to section 5(c), the actual provision is Section 5 providing for the Duties and functions of the Board.
- II. Under the industrial Training Act, an Apprentice is expected to serve an employer for a specified period in order to acquire skills. The trainer is the employer and not NITA and therefore it might be hard for NITA to play this role.
- III. While the proposal is timely, the proposal may encroach on mandates vested by law in institutions such as Micro Small Enterprise Authority (see sections 3 on the object and purpose of the Act and Sec 51 on the establishment of the Small Enterprises Development Fund and its purposes of *Micro and Small Enterprises Act No. 55 of 2012*), Uwezo fund, among others leading to duplicity of mandates and efforts

#### Comments

- I. The very most in terms of duty should be “To promote business incubation centres within the employers’ premises to train and mentor trainees undergoing apprenticeship scheme” and
- II. To collaborate and partner with other actors in sourcing for funds to provide initial capital to apprentices for the purpose of setting up business”.

**Note:** that currently the reimbursable cost of training an apprentice includes reimbursement capped at thirty five thousand (35,000 kshs) for tools and five thousand for safety gear. This is one of the items (Including the period of training and wages paid) that contribute to the high cost of apprenticeship programme.

*(Proposal is therefore not tenable)*

2. Proposed clause 3 which seeks to amend the principal Act by inserting Section 5D

#### a) Section 5D(1)

## - Clause Analysis

The section is very progressive. It requires County and National Government to place new graduate on industrial attachments. Currently, most attachments and internships are done in the public sector and countable in the Public sector- however, the commitments have now been entrenched in the Public sector Performance Contract. This is demonstration of commitment by the government but this is not sufficient, the commitments ought to be clearly provided in policy and legislative frameworks and ultimately regulations and standards developed to give guidance and direction.

### Comments/Suggestions

- I. The term '*attachment*' should be replaced with '*internship*' as the term attachment denotes persons who have not graduated from various training institutions while Internships is post-graduation.
- II. It is our view that this obligation/ duty could be extended to key government funded contracts which may not necessarily be undertaken by county and national government especially in Transport, ICT, Agriculture and other sectors.
- III. Workplace exposure vide Internships should find relevance in the Kenya National Qualifications framework and ultimately considered as experience, otherwise the intendment of the Act will be rendered useless.

b) **Section 5D (3):** Proposes that the attachés will serve on such terms as the Public Service Commission and Country Service Commission shall prescribe.

*"It is not clear, what "terms and condition entails".*

### Clause Analysis

- I. While it is clear that the attachés will serve at such levels, it would be proper to state the role of NITA who is vested with the role of managing attachment/ internships in the country.



- II. There are 47 County Service Boards each with its independent sets of rules, policies and procedures. It will therefore be hard to compel them to adopt uniform terms and conditions which would be ideal for the programme.

#### Comments/Suggestion

- I. The phrase should read “*will serve on such terms as the Public Service Commission and Country Service Commission shall prescribe in consultation with the National Industrial Training Authority*”
- II. **NOTE:** These policy statements should also be included in the Industrial Training and Attachment Policy, after including a chapter on internships and regulations developed.
- III. There is need to clearly provide for internships in the Industrial Training Act by amending the principal Act in the following respects;
  - a) Section 2 on Interpretation to be amended by inserting a definition of Internship- propose : “a formal program to provide practical experience for beginners in an occupation or profession”
  - b) Section 2 on interpretation be amended by deleting the definition of Industrial Attachment provided thereat i.e “means the placement of a person in a workplace for the purpose of gaining knowledge and practical skills” and replacing it with “a structured, credit-bearing work experience in a professional work setting during which the learner applies and acquires knowledge, skills and workplace values and attitudes;
  - c) Inserting a new section 7D to provide for Internship and where the management of attachment is provided, internships is included- these sections include 4H 2 (e), 19, 22.
- c) **Section 5D (4):** Provides for funding model and proposes that funding for administering industrial attachment (read internships) shall be from *donations, grants, loans or gifts.*

#### Analysis

- This funding model is not sustainable as it is unpredictable and therefore the first charge should be moneys provided by Parliament as envisaged in 4G of the principal Act.

#### Comments

Amend 4H (2) (e) on Annual estimates for the Authority to include internship. Further, there is no need to provide for funding as section 4G. *Funds of the Authority which include moneys provided by Parliament* provides for the same.

- d) **Section 5D (5):** The period of attachment shall be 3 years and shall not be renewable.

#### Analysis

The proposed duration might be too long to hold an individual attached considering that during the said period many more graduates shall be released from the training institutions.

#### Comments

The actual period should be determined by the specific need of the trainee on whose basis a training programme that will lead to continuous evaluation shall be prepared.

*(This Proposal is therefore not tenable)*

- e) **Section 5D (9):** Defines the term “a new graduate” as “a person who is conferred with a first degree by an institution of higher learning up to conclusion of his or her studies, within one year of such conclusion”

#### Analysis

This proposal is discriminatory as it seeks to benefit ONLY persons who have attained degrees. This will lock out many youth who have attained other qualifications, other than degrees.

#### Comments

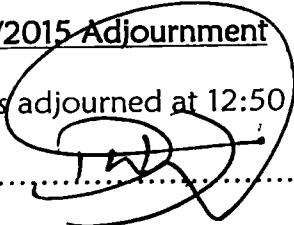
It is our proposal that the restrictions be removed.

The Committee was further informed that:-

1. There should be clear conceptualization of the terms attachments and internships.
2. The policy on qualification has already been developed and that the legal framework must have been provided in the policy framework.
3. A taskforce seeking to address the issues of attachment and internship had been established through a Gazette Notice No. 85 of 23<sup>rd</sup> October, 2015.
4. The Amendments are discriminatory as they target specific groups only and thus should integrate issues and be inclusive. The soft skills are also very critical.
5. The Micro and Small Enterprises Authority caters for some of the issues that the bill is seeking to address.

Minute No.273/2015 Adjournment

The meeting was adjourned at 12:50 p.m.

Signature..........Date.....11/2/2016.....

Hon. David Were, MP- Chairperson

Departmental Committee on Labour and Social Welfare