

REPUBLIC OF KENYA



THE SENATE

THIRTEENTH PARLIAMENT | SECOND SESSION

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

PARLIAMENT OF KENYA LIBRARY

REPORT ON THE EMPLOYMENT (AMENDMENT) BILL, 2022  
(SENATE BILLS NO. 11 OF 2022)

PAPERS LAID	
DATE	30/3/23
TABLED BY	Sen. Mwangi
COMMITTEE	Labour
CLERK AT THE TABLE	M. Mwangi

**Rt. Hon. Speaker**  
You may approve for tabling  
J. M. Nyegenye, C.B.S.,  
Clerk of the senate/secretary, PSC  
Date: 29/03/23

Clerk's Chambers,  
The Senate,  
Parliament Buildings,  
NAIROBI.

March, 2023

Approved.  
30.03.2023  
PSC

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### LIST OF ABBREVIATIONS AND ACRONYMS

MP	Member of Parliament
PSC	Parliamentary Service Commission
Sen.	Senator

## PRELIMINARIES

### Establishment and Mandate of the Committee

The Senate Standing Committee on Labour & Social Welfare is established pursuant to standing order 228 of the Senate Standing Orders. The Committee is mandated to consider all matters related to *Manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

### Membership of the Committee

The Committee is comprised of –

- |  |                    |
|--|--------------------|
| 1. Sen. Julius Murgor Recha, MP,                 | - Chairperson      |
| 2. Sen. George Mungai Mbugua, MP,                | - Vice Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP, | - Member           |
| 4. Sen. Mohamed Faki Mwinyihaji, MP,             | - Member           |
| 5. Sen. Erick Okong'o Mogeni, SC, MP,            | - Member           |
| 6. Sen. Alexander Munyi Mundigi, MP,             | - Member           |
| 7. Sen. Crystal Kegehi Asige, MP,                | - Member           |
| 8. Sen. Miraj Abdullahi Abdulrahman, MP,         | - Member           |
| 9. Sen. Gloria Magoma Orwoba MP,                 | - Member           |

## FOREWORD BY THE CHAIRPERSON

**Hon. Speaker,**

The Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022), sponsored by Senator Samson Cherarkey, MP was published *vide* Kenya Gazette Supplement No. 198 of 30<sup>th</sup> November 2022. The Bill was read a First Time in the Senate on Thursday, 16<sup>th</sup> February, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration.

The Bill seeks to strike a balance between work and private life to allow digital technology have a positive effect on workers' quality of life supported by employers by providing for the right to disconnect in the digital age.

**Hon. Speaker,**

Pursuant to Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on Tuesday, 28<sup>th</sup> February, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. The advertisement was also posted on the Parliament website and social media platforms. Following the call for submissions, the Committee received written memoranda from stakeholders.

The Committee proceeded to consider the Bill extensively, scheduled and held meetings with various stakeholders including the Ministry of Labour and Social Protection, the Council of Governors, the County Assemblies Forum, the Federation of Kenyan Employers, Kenya Association of Manufacturers, Central Organization of Trade Unions, and the Kenya Private Sector Alliance.

The Committee did not receive any specific amendments to the Bill, but suggestions, including reservations on the Bill. This Report proposed by the Committee is therefore an account of the deliberations, including the resolution to pass the Bill without amendments.

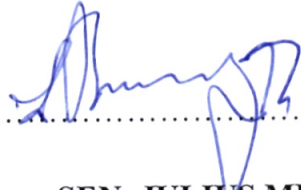
**Hon. Speaker,**

May I take this opportunity to commend the Members of the Committee for their devotion and commitment to duty, which made the consideration of the Bill successful. I also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the Committee in undertaking this assignment.

**Hon. Speaker,**

It is now my pleasant duty, pursuant to standing order 148(1) of the Senate Standing Orders, to present the Report of the Standing Committee on Labour and Social Welfare on the Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022).

Signed .....


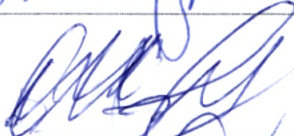
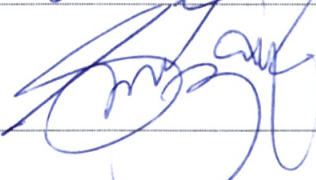


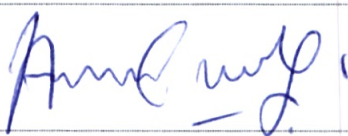




Date *Friday, 24<sup>th</sup> March, 2023*

**SEN. JULIUS MURGOR RECHA, MP  
CHAIRPERSON, STANDING COMMITTEE ON LABOUR AND SOCIAL  
WELFARE**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON  
LABOUR AND SOCIAL WELFARE ON THE EMPLOYMENT  
(AMENDMENT) BILL, 2022 (SENATE BILLS NO. 11 OF 2022)**

**We, the undersigned Members of the Standing Committee on Labour and Social Welfare, do hereby append our signatures to adopt this Report.**

No	Name	Signature
1.	Sen. Julius Murgor Recha, MP (Chairperson)	
2.	Sen. George Mungai Mbugua, MP (Vice-Chairperson)	
3.	Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP	
4.	Sen. Mohamed Faki Mwinyihaji, MP	
5.	Sen. Erick Okong'o Mogeni, SC, MP	
6.	Sen. Alexander Munyi Mundigi, MP	
7.	Sen. Crystal Kegehi Asige, MP	Present (visually disabled)
8.	Sen. Miraj Abdillahi Abdulrahman, MP	
9.	Sen. Gloria Magoma Orwoba, MP	

## CHAPTER ONE: INTRODUCTION

### 1.0 Background

1. The Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022), sponsored by Senator Samson Cherarkey, MP was published *vide* Kenya Gazette Supplement No. 196 dated 30<sup>th</sup> November 2022. The Bill was introduced in the Senate by way of First Reading on 16<sup>th</sup> February, 2023 and thereafter stood committed to the Standing Committee on Labour and Social Welfare for consideration. A copy of the Bill is annexed to this Report as *Appendix 2*.
2. Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee published an advertisement in the Daily Nation and Standard Newspapers on 28<sup>th</sup> February, 2023, inviting members of the public to submit written memoranda to the Committee on the Bill. A copy of the advertisement is attached as *Appendix 3*. The advertisement was also posted on the Parliament website and social media platforms.
3. Following the call for submissions, the Committee received written memoranda from various stakeholders including the Council of Governors and the County Assemblies Forum.
4. The Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022) seeks to amend the Employment Act, 2017 to provide for the right to disconnect in the digital age.
5. This will ensure that employees strike a balance between work and private life to allow digital technology have a positive effect on workers' quality of life supported by employers.

#### 1.1. Overview of the Bill

The Bill proposes to insert a new section **27A** on the right to disconnect to provide for—

- (a) the right to disconnect by an employee from their employer;
- (b) the development of policies under which an employer may contact an employee during out of work hours;
- (c) the definition of the “right to disconnect”; and
- (d) the definition of “out of work hours”.

## 1.2. Comparative Analysis of the Bill

### 1. Comparative Analysis

#### (i) Ireland

Ireland has introduced a Code of Practice for organisations on the right to disconnect. The three key rights enshrined in the Code are—

- (a) the right of an employee to not have to routinely perform work outside their normal working hours;
- (b) the right not to be penalised for refusing to attend to work matters outside of normal working hours; and
- (c) the duty to respect another person's right to disconnect (eg, by not routinely emailing or calling outside normal working hours).

#### (ii) Belgium's right to disconnect

Belgium passed a law in February, 2022 allowing civil servants to switch off work emails, texts and phone calls received out of hours, without fear of reprisals. The legislation protects the country's public-sector employees from exposure to being permanently on-call, although out-of-hours contact is permissible in exceptional circumstances.

#### (iii) European Union

The European Union (EU) defines the right to disconnect as “*a worker's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours*”.

And while this right has not yet passed into EU law, a resolution passed in January, 2021 called for an EU directive to be established.

#### (iv) France

France was the first European country to introduce legislation on the right to disconnect. Since January 2017, France has legally required employers to negotiate agreements with unions for a right to disconnect from technology after working hours.



(v) **Italy**

Italy introduced a right to disconnect legislation in 2017. The legislation states that only remote workers have the right to disconnect from technological devices and from online platforms without suffering any consequences with regard to their employment status or compensation. There are also sectoral and company-level collective agreements that provide for the right to disconnect.

(vi) **Portugal**

The Portuguese parliament introduced new legislation surrounding remote work in December, 2021. Right to privacy went into effect in January, 2022. The Labour Code now stipulates that employers must refrain from contacting employees during their rest period, except in case of force majeure. It has become a serious offense for employers to violate the employee's privacy.

**1.3. Consequences of the Bill**

The Bill will lead to policy changes in the National and county labour standards. The Bill will also provide a balance between work and private life to allow digital technology to have a positive effect on workers' quality of life supported by employers.

## CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

### 2.0 Committee Undertakings

6. The Committee, pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, published an advertisement in the *Daily Nation* and *Standard* Newspapers on Tuesday, 28<sup>th</sup> February, 2023, inviting members of the public to submit written memoranda on the Bill. The advertisement was also posted on the Parliament website and social media platforms. A copy of the advertisement is attached as *Appendix 3*.
7. The Committee received submissions from the Ministry of Labour and Social Protection, the Council of Governors, the County Assemblies Forum, the Federation of Kenya Employers, Kenya Association of Manufacturers, COTU, Kenya Private Sector Alliance, and Ms. Annabel Monthe.
8. The Federation of Kenya Employers (FKE) and Kenya Association of Manufacturers (KAM) disagreed with the proposed Employment (Amendment) Bill, 2022, stating that the proposed amendments will have negative consequences on the operations and development of businesses, labour market, the economy and the industrial relations.
9. The Council of Governors agreed with the content of the Bill.
10. The Central Organization of Trade Unions in Kenya (COTU (K)) opposed the Bill in totality citing lack of proper and comprehensive analysis of the implication of the Bill.
11. The County Assemblies Forum agreed with the contents of the bill but called for more clarity on the development of work hours.
12. The Ministry of Labour did not oppose the bill but rather called for total overhaul of labour laws.

## **CHAPTER THREE: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**

### **3.0 Committee Observations on the Bill**

8. Based on extensive deliberations on the Bill, the Committee made the following observations-
- (a) That the Ministry of Labour and Social Protection preferred a comprehensive overhaul of the Employment Act, 2007 to align it to the 2010 Constitution, and devolution;
  - (b) Employers including the Kenya Federation of Employers and the Kenya Association of Manufacturers raised concerns on the amendment citing that the Kenyan business environment and is unique and that many businesses may be hurt by the implementation of the law thus hurting the already fragile economy.
  - (c) The Council of Governors and the County Assemblies Forum supported the Bill; and
  - (d) The advent of COVID19 and Digital explosion makes it imperative to have the disconnect stakeholder engagement continuous so as to develop structures that would fit the Kenyan context.

### **3.1 Committee Recommendations**

9. Arising from the above observations, the Committee **recommends** that the Senate passes the Employment (Amendment), 2022 (Senate Bills No. 11 of 2022) without amendments.

## APPENDICES

- Appendix 1:* Minutes of the sittings of the Committee in considering the Bill
- Appendix 2:* The Employment (Amendment) Bill (Senate Bills No. 11 of 2022)
- Appendix 3:* Advertisement published in the *Daily Nation* and *Standard* Newspapers on Tuesday, 28<sup>th</sup> February, 2023
- Appendix 4:* Public Participation Submissions



**MINUTES OF THE 22<sup>ND</sup> MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 28<sup>TH</sup> MARCH, 2023 11.00 AM IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS**

**MEMBERS PRESENT**

- |                                  |                      |
|----------------------------------|----------------------|
| 1. Sen. Gloria Orwoba, MP        | - Member (Ag. Chair) |
| 2. Sen. George Mungai Mbugua, MP | - Vice-Chairperson   |
| 3. Sen. Crystal Kegehi Asige, MP | - Member             |

**ABSENT WITH APOLOGIES**

- |   |                      |
|---|----------------------|
| 1. <b>Sen. Julius Murgor Recha, MP</b>          | <b>- Chairperson</b> |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member             |
| 3. Sen. Erick Okong'o Mogeni, SC, MP            | - Member             |
| 4. Sen. Mohamed Faki Mwinyihaji, MP             | - Member             |
| 5. Sen. Alexander Munyi Mundigi, MP             | - Member             |
| 6. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member             |

**SECRETARIAT**

- |                        |                           |
|------------------------|---------------------------|
| 1. Ms. Mwanate Shaban  | - Senior Clerk Assistant  |
| 2. Mr. Jeremy Chabari  | - Legal Counsel           |
| 3. Mr. Rhyan Injendi   | - Research Officer        |
| 4. Ms. Lilian Onyari   | - Fiscal Analyst          |
| 5. Ms. Felistas Mutune | - Media Relations Officer |
| 6. Ms. Swaluha Yusuf   | - Protocol Officer III    |
| 7. SAA                 |                           |

**PRAYERS**

The Chairperson called the meeting to order at 11.20 am followed by a word of prayer.

**MIN/SEN/SCLSW/95/2023**

**- ADOPTION OF AGENDA**

The Agenda of the meeting was adopted after being proposed by Sen. Crystal Asige, MP. and seconded by Sen. George Mungai Mbugua, MP. as follows-

1. Prayer
2. Adoption of the Agenda;
3. Communication from the Chair;
4. Confirmation of Minutes –
  - a) Minutes No. 14 of Thursday, 2<sup>nd</sup> March, 2023 at 10.00 am;
  - b) Minutes No. 16 of Monday, 13<sup>th</sup> March, 2023 at 2.00 pm;
  - c) Minutes No. 19 of Monday, 20<sup>th</sup> March, 2023 at 2.00 pm; and
  - d) Minutes No. 21 of Friday, 24<sup>th</sup> March, 2023 at 2.30 pm.
5. Consideration of the Persons with Disabilities Bill, 2023 (Senate Bills No. 7 of 2023), and the Heritage and Museums Bill, 2023 (Senate Bills No. 8 of 2023) (Committee Paper No. 11)
6. Any Other Business; and
7. Adjournment and Date of the Next Meeting.

**MIN/SEN/SCLSW/96/2023**

**COMMUNICATION FROM THE CHAIR**

The Chairperson welcomed the Members to the meeting and informed them that the Committee was going to be briefed on two bills that had been referred to it on Wednesday, 22<sup>nd</sup> March, 2023.

**MIN/SEN/SCLSW/97/2023**

**CONSIDERATION AND ADOPTION OF MINUTES**

- a) The Minutes of the 21<sup>st</sup> Sitting held on Friday, 24<sup>th</sup> March, 2023, at 2.30 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. George Mungai Mbugua, MP;
- b) The Minutes of the 19<sup>th</sup> Sitting held on Monday, 20<sup>th</sup> March, 2023 at 2.00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Gloria Orwoba, MP;
- c) The Minutes of the 16<sup>th</sup> Sitting held on Monday, 13<sup>th</sup> March, 2023 at 2.00 pm were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Crystal Asige, MP and seconded by Sen. Gloria Orwoba, MP; and
- d) The Minutes of the 14<sup>th</sup> Sitting held on Thursday, 2<sup>nd</sup> March, 2023 at 10.00 am were postponed due to lack of quorum of Members present.

**MIN/SEN/SCLSW/98/2023 CONSIDERATION OF THE PERSONS WITH DISABILITIES BILL, 2023 (SENATE BILLS NO. 7 OF 2023), AND THE HERITAGE AND MUSEUMS BILL, 2023 (SENATE BILLS NO. 8 OF 2023) (COMMITTEE PAPER NO. 11)**

1. The Legal Counsel took the Committee through the Persons with Disabilities Bill, 2023 whose principal object is to repeal the Persons with Disabilities Act, No. 14 of 2003 and have in place a law that is consistent with the Constitution. The Bill places emphasis on human rights approach towards the realization of specific rights for persons with disabilities. The Bill also sets out the obligations of both the National and County Governments in line with the Constitution to ensure that the County Government obligations are delineated in accordance with the provisions of the Fourth Schedule to the Constitution.
2. Members were also taken briefed on the Heritage and Museums Bill, 2023 whose principal object is to repeal the National Museums and Heritage Act and enact a new Bill that conforms to the Constitution which proposes to—
  - (a) retain the National Museums of Kenya already established under the National Museums and Heritage Act, 2006;
  - (b) provide for national and county museums;
  - (c) provide for the preservation, protection and management of cultural and natural heritage at National and County levels of Government; and
  - (d) repeal the National Museums and Heritage Act, 2006.

**Member's resolutions**

The Committee noted that the advertisement calling for written submissions was posted in the local dailies on Friday, 24<sup>th</sup> March, 2023 and therefore set the public hearing dates for the Heritage and Museums Bill, 2023 on Tuesday, 11<sup>th</sup> April, 2023; and for the PWD Bill, 2023 on Thursday, 13<sup>th</sup> April, 2023.

**MIN/SEN/SCLSW/99/2023 AOB, ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at 12.16 pm and the date of the next meeting to be on notice.

**SIGNED.....**

**DATE.....**

**(CHAIRPERSON: SEN. JULIUS MURGOR, MP)**

**STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**



**MINUTES OF THE 21<sup>ST</sup> MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON FRIDAY, 24<sup>TH</sup> MARCH, 2023 2.30 P.M AT THE KAHAWA LOUNGE, SERENA BEACH RESORT AND SPA**

**MEMBERS PRESENT**

- |   |                    |
|---|--------------------|
| 1. Sen. Julius Murgor Recha, MP                 | - Chairperson      |
| 2. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 3. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 4. Sen. Alexander Munyi Mundigi, MP             | - Member           |
| 5. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member           |
| 6. Sen. Crystal Kegehi Asige, MP                | - Member           |

**ABSENT WITH APOLOGIES**

- |                                      |          |
|--------------------------------------|----------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| 2. Sen. Mohamed Faki Mwinyihaji, MP  | - Member |
| 3. Sen. Gloria Orwoba, MP            | - Member |

**SECRETARIAT**

- |                       |                          |
|-----------------------|--------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Ms. Swaluha Yusuf  | - Protocol Officer III   |
| 3. Ms. Julia Gachoki  | - SAA                    |

**PRAYERS**

The Chairperson called the meeting to order at 2.30 p.m. followed by a word of prayer.

**MIN/SEN/SCLSW/91/2023**

**- ADOPTION OF AGENDA**

The Agenda of the meeting was adopted after being proposed by Sen. Crystal Asige, MP. and seconded by Sen. Alexander Mundigi, MP. as follows-



1. Prayer;
2. Adoption of the Agenda;
3. Communication from the Chair;
4. **Consideration and Adoption of the Report on the Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022);**
6. Any Other Business; and
7. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/92/2023      COMMUNICATION FROM THE CHAIR**

The Chairperson thanked the Members for availing themselves at such short notice. He noted that the Bill had already been scheduled for 2<sup>nd</sup> Reading and therefore the Committee needed to consider and adopt its report so that it may be laid in the House.

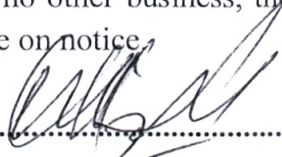
**MIN/SEN/SCLSW/93/2023      CONSIDERATION AND ADOPTION OF THE REPORT ON THE EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE BILLS NO. 11 OF 2022);**

The Committee considered the report of the Employment (Amendment) Bill, 2023 and resolved to pass it without any amendments. The Report was proposed by Sen. George Mungai Mbugua, MP and seconded by Sen. Alexander Mundigi, MP.

**MIN/SEN/SCLSW/94/2023      AOB, ADJOURNMENT AND DATE OF THE NEXT MEETING**

Members were reminded that the PWD Bill and the Heritage and Museums Bill had been read a First Time and had been referred to the Committee. The briefing on the Bill was scheduled for Tuesday, 28<sup>th</sup> March, 2023.

There being no other business, the meeting was adjourned at 3.17 pm and the date of the next meeting to be on notice.

SIGNED.....

DATE Tuesday, 28<sup>th</sup> March, 23

for: (CHAIRPERSON: SEN. JULIUS MURGOR, MP)  
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE



**MINUTES OF THE 19<sup>TH</sup> VIRTUAL MEETING OF THE STANDING COMMITTEE  
ON LABOUR AND SOCIAL WELFARE HELD ON MONDAY, 20<sup>TH</sup> MARCH, 2023 2.00  
P.M**

**MEMBERS PRESENT**

- |  |               |
|--|---------------|
| 1. Sen. Julius Murgor Recha, MP        | - Chairperson |
| 2. Sen. Alexander Munyi Mundigi, MP    | - Member      |
| 3. Sen. Miraj Abdulahi Abdulrahman, MP | - Member      |
| 4. Sen. Crystal Kegehi Asige, MP       | - Member      |
| 5. Sen. Gloria Orwoba, MP              | - Member      |

**ABSENT WITH APOLOGIES**

- |   |                    |
|---|--------------------|
| 1. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 3. Sen. Erick Okong'o Mogeni, SC, MP            | - Member           |
| 4. Sen. Mohamed Faki Mwinyihaji, MP             | - Member           |

**SECRETARIAT**

- |                       |                          |
|-----------------------|--------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Mr. David Ngamate  | - Clerk Assistant III    |
| 3. Mr. Jeremy Chabari | - Legal Counsel I        |
| 4. Mr. Wilson Bosimet | - Deputy Chief SAA I     |
| 5. Mr. Joseph Otieno  | - Audio Officer          |
| 6. Ms. Juliet Masinde | - Media Officer III      |

**PRAYERS**

The Chairperson called the meeting to order at 2.16 p.m. followed by a word of prayer.

**MIN/SEN/SCLSW/83/2023**

**- ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Crystal Asige, MP. and seconded by Sen. Gloria Orwoba, MP. as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Communication from the Chair;
4. **Meeting with the Ministry of Labour and Social Protection on the Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022);**
5. **Consideration of the Public Participation Matrix on the Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022);**
6. Any Other Business; and
7. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/84/2023**

**COMMUNICATION FROM THE CHAIR**

The Chairperson in his communication, informed members that the meeting was to receive the submissions by the Ministry of Labour and Social Protection on the Employment (Amendment) Bill, 2022.

He reminded Members that the Committee had carried out public participation in line with the Senate Standing Orders on legislation of the Employment Amendment Bill, 2022 and received both written memoranda and oral submissions from six key strategic stakeholders in the Labour sector -

1. The Council of Governors;
2. The County Assemblies Forum;
3. The Kenya Association of Manufacturers;
4. The Federation of Kenyan Employers;
5. The Kenya Private Sector Alliance; and
6. The Central Organization of Trade Unions.

The meeting therefore would consider the submissions matrix in relation to Bill.

**MIN/SEN/SCLSW/85/2023**

**MEETING WITH THE MINISTRY OF LABOUR AND SOCIAL PROTECTION ON THE EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE BILLS NO. 11 OF 2022);**

The Committee received an apology from the Cabinet Secretary Labour and Social Protection, who had earlier sent her written submission.

The Legal Counsel took the Committee through the written submissions by the Ministry of Labour and Social Protection. He noted that the Ministry had provided suggestions for the improvement and not any amendments. These included:

- (a) emergency should be defined in the proposed section 27A (2);
- (b) the mode and rate for compensation should be specified under the proposed section 27A (3) (b);
- (c) the Cabinet Secretary responsible for matters relating to labour and employment should be conferred with powers for policy development under the proposed section 27A (6);

The Chairman asked the Legal Counsel to take the Committee through the public participation matrix on the Employment Amendment Bill, 2022.

The Legal Counsel informed the Committee that six major stakeholders in the sector had made submissions on the Bill as follows -

1. The Federation of Kenya Employers (FKE) and Kenya Association of Manufacturers (KAM) disagreed with the proposed Employment (Amendment) Bill, 2022 as the proposed amendments are bad to the operations and development of businesses, labour market, the economy and the industrial relations. They cited the following reasons for their rejection—
  - (a) legislating the Right to disconnect has far reaching adverse effect on employee-employer relations;
  - (b) legislating the right to disconnect has had negative implications on the countries that have attempted to;
  - (c) the proposed amendments not only present radical changes to the Employment Act 2007 but also introduces new stringent measures that will curtail the prerogative to manage enterprises by the owners;
  - (d) these changes touch on employers' administrative prerogatives that should not be curtailed by legislation;
  - (e) the changes will make it difficult to persuade the informal enterprises to join the mainstream economy for the country's general growth and decent work;
  - (f) the bill, if passed, will create two centers of managerial power and ultimately disharmony and indiscipline at workplaces;
  - (g) the bill is too prescriptive by suggesting that employers should be required to develop policies to regulate phone usage by employees outside work hours;
  - (h) overtime is already provided for in the General Order. Most CBAs provide for flexibility in management and regulation of working time;
  - (i) the Bill will have an unintended adverse consequence on employment of youths and women in this country and who are most vulnerable;
  - (j) the Bill fails to recognize that the concept of Work, Workspace and work hours have changed, and we must all adapt to it;
  - (k) the Bill will make it hard for the employer and employee to effectively respond to challenges such as those presented by covid-19 pandemic;
  - (l) the engagement between employer and employee during out of work hours is a management issue and should not be legislated;
  - (m) whether the right to disconnect limited only to an employee; and
  - (n) the process of introducing the Bill is does not respect Tripartism and social dialogue: key principles in management of the Labour sector. The Bill puts the social partners in an awkward position as no consultation with the National Labour Board on the issue of the right to disconnect has been done.

2. The Council of Governors agreed with the content of the Bill.
3. The Central Organization of Trade Unions in Kenya (COTU (K)) opposed the Bill in totality citing lack of proper and comprehensive analysis of the implication of the Bill.
4. The County Assemblies Forum made the following submission—
  - (a) the Bill should give directions and procedures as to how out of work hours policies are to developed by providing practical guidance for both employees and employers to assist in meeting their obligations; and
  - (b) there is need to specify the nature of compensation for employees who work during out of work hours.
5. The Ministry of Labour made the following submissions—
  - (a) emergency should be defined in the proposed section 27A (2);
  - (b) the mode and rate for compensation should be specified under the proposed section 27A (3) (b);
  - (c) the Cabinet Secretary responsible for matters relating to labour and employment should be conferred with powers for policy development under the proposed section 27A (6);
  - (d) there is need to express that an employee may not be engaged during “out of work hours” to avoid burnout and to maintain work-family life balance under the proposed section 27A (7);
  - (e) there is need to provide for safeguards for employees who choose to disconnect; and
  - (f) the proposed amendments should be put through due process as required under section 8 of the Labour Institutions Act, 2007 and be presented to the National Labour Board to fulfil the requirement for Tripartite engagement.

**Resolutions of the Committee:**

- a) The Committee resolved to write to the Sponsor to advise him to further engage with the Ministry to make further improvements on the bill, during Committee Stage; and
- b) The Secretariat to prepare a draft Report for the Committee’s adoption and subsequent adoption in the House.

**MIN/SEN/SCLSW/87/2023      AOB, ADJOURNMENT AND DATE OF THE NEXT MEETING**

Members were reminded on the invitation by the National Gender and Equality Commission to the Parliamentary Legislative Dialogue on Two Thirds Gender Rule at Sarova Stanley Hotel, Nairobi, on 21<sup>st</sup> March 2023 from 9.00 am.

There being no other business, the meeting was adjourned at 3.17 pm and the date of the next meeting to be on notice.

SIGNED.....

DATE Tuesday, 28<sup>th</sup> March 23

*For:* (CHAIRPERSON: SEN. JULIUS MURGOR, MP)  
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE



**MINUTES OF THE 16<sup>TH</sup> VIRTUAL MEETING OF THE STANDING COMMITTEE  
ON LABOUR AND SOCIAL WELFARE HELD ON MONDAY, 13<sup>TH</sup> MARCH, 2023 2.00  
P.M**

**MEMBERS PRESENT**

- |  |               |
|--|---------------|
| 1. Sen. Julius Murgor Recha, MP        | - Chairperson |
| 2. Sen. Mohamed Faki Mwinyihaji, MP    | - Member      |
| 3. Sen. Alexander Munyi Mundigi, MP    | - Member      |
| 4. Sen. Miraj Abdulahi Abdulrahman, MP | - Member      |
| 5. Sen. Crystal Kegehi Asige, MP       | - Member      |
| 6. Sen. Gloria Orwoba, MP              | - Member      |

**ABSENT WITH APOLOGIES**

- |   |                    |
|---|--------------------|
| 1. Sen. George Mungai Mbugua, MP                | - Vice-Chairperson |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member           |
| 3. Sen. Erick Okong'o Mogeni, SC, MP            | - Member           |

**IN ATTENDANCE**

- |                              |                           |
|------------------------------|---------------------------|
| 1. Sen. Samson Cherarkey, MP | - Friend of the Committee |
|------------------------------|---------------------------|

**SECRETARIAT**

- |                       |                          |
|-----------------------|--------------------------|
| 1. Ms. Mwanate Shaban | - Senior Clerk Assistant |
| 2. Mr. David Ngamate  | - Clerk Assistant III    |
| 3. Mr. Jeremy Chabari | - Legal Counsel I        |
| 4. Mr. Wilson Bosimet | - Deputy Chief SAA I     |
| 5. Mr. Joseph Otieno  | - Audio Officer          |
| 6. Ms. Juliet Masinde | - Media Officer III      |

**STAKEHOLDERS**

- |  |                      |
|--|----------------------|
| 1. Hon. Johnson Sakaja, CBS, MP, - Chair, HR, Labor, and Social Welfare, CoG |                      |
| 2. Mr. Anthony Mwangi  | - CEO, KAM           |
| 3. Dr. Abidan Mwachi   | - Chairperson, KMPDU |
| 4. Ms. Joyner Okonjo   | - KEPSA              |

- |   |                                |
|---|--------------------------------|
| 5. Mr. Eugene Lawi                          | - CoG                          |
| 6. Mr. Benson Okwaro                        | - CoTU                         |
| 7. Mr. George Masese                        | - Federation of Kenya Employee |
| 8. Mr. Ondiege Odera                        | - Kenya Metal Workers Union    |
| 9. Mr, Austin Munene                        | - County Assemblies Forum      |
| 10. Mr. Odhiambo Amollo                     |                                |
| 11. Ms. Adeledaide Wairimu,                 |                                |
| 12. Ms, Carol Mage                          |                                |
| 13. Mr. Eric Kanyi                          |                                |
| 14. Mr. Job Mucuha                          |                                |
| 15. Mr. John Chumo                          |                                |
| 16. Ms. Sheila Nyakundi                     |                                |
| 17. Ms. Miriam Bomet                        |                                |
| 18. Ms. Teresa Kagwa                        |                                |
| 19. Mr. George Maina                        |                                |
| 20. Ms. Sheila Nyakundi                     |                                |
| 21. Mr. Rajan Malde                         |                                |
| 22. Mr. Mathew Okeyo                        |                                |
| 23. Mr. Kahura Mundia                       |                                |
| 24. Mr. Isaac Mbingi Okello                 |                                |
| 25. Ms. Jackline Njambi Kibe; and 19 others |                                |

### **PRAYERS**

The Chairperson called the meeting to order at 2.08 p.m. followed by a word of prayer.

### **MIN/SEN/SCLSW/67/2023 - ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Crystal Asige, MP. and seconded by Sen. Alexander Mundigi, MP. as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Communication from the Chair;
4. Meeting with Stakeholders on the Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022);
5. Any Other Business; and
6. Adjournment/Date of the Next Meeting.

### **MIN/SEN/SCLSW/68/2023 COMMUNICATION FROM THE CHAIR**

The Chairperson welcomed the stakeholders in attendance to present their oral submissions to the Committee. He informed members that the genesis of the stakeholder engagement was advertisement requesting for submission of memoranda from members of the public that was

published in the Daily Nation and Standard Newspapers on Tuesday, 28<sup>th</sup> February, 2023 with the closing date for receipt of Memoranda set for Tuesday, 14<sup>th</sup> March, 2023.

He informed members that 44 stakeholders were in attendance for the virtual meeting, and that the Committee had also received several written submissions. He relayed the apology from the Cabinet Secretary, Labour and Social Protection who was away on official Engagement. He directed that the Committee will meet the Ministry of Labour and Social Protection on Monday, 20<sup>th</sup> March, 2023.

**MIN/SEN/SCLSW/69/2023**

**MEETING WITH STAKEHOLDERS ON THE  
EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE  
BILLS NO. 11 OF 2022;**

**a) Council of Governors (CoG) submissions**

Hon. Johnson Sakaja, the Chair CoG Labour and Social Welfare Committee thanked the Committee for the invitation to contribute in the Bill Amendment Process. The Cog supported the Bill and noted that –

1. The Bill sought to expand the protection of employees from burn out as espoused in section 10(2)(g) of the Employment Act;
2. Required an institution with more than 10 employees to develop policy to actualize the provisions, within the context; and
3. The Bill did not apply to the provisions of essential services specified under section 81 of the Labour relations Act.

**b) Kenya Association of Manufacturers (KAM) Submissions**

Mr. Anthony Mwangi gave oral submissions on behalf of KAM, and notified the Committee that KAM was opposed to the amendments to the Bill, noting that the Bill would bring heavy regulatory burden on the employers which would lead to non-compliance concerns.

**c) Kenya Private Sector Alliance (KEPSA) Submissions**

Ms. Joyner OKonjo for KEPSA supported the Bill but requested the expunging of the ambiguous parts that would lead to an avalanche of litigations.

**d) Central Organisation of Trade Unions (COTU) Submissions**

COTU gave its support having proposed the enactment of several policies as contained in its written submission to safeguard the implementation of the Bill.

**e) Federation of Kenya Employees (FKE) submissions**

Mr. George Masese relayed the FKE's opposition to Bill and cited:

1. Legislating the Bill would have adverse implications on employee and employer relationships and workplace management;
2. That Countries that had passed similar legislations had negative implications and mentioned Italy, France, Spain, Belgium and Ireland
3. Preferred the contractual agreements to be left to the Employers and Employee negotiations.



**Committee Observations**

1. Members noted that the domestic workers and employment terms were not included in the amendments; and
2. There was need to understand Countries that enacted similar legislature successively.

**MIN/SEN/SCLSW/70/2023      AOB, ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at 3.47 pm and the date of the next meeting to be on notice.

SIGNED.....

DATE Tuesday, 28<sup>th</sup> March 23

*for*

**(CHAIRPERSON: SEN. JULIUS MURGOR, MP)  
STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**



**MINUTES OF THE 14<sup>TH</sup> VIRTUAL MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 2<sup>ND</sup> MARCH, 2023 10.00 A.M**

**MEMBERS PRESENT**

- |   |             |
|---|-------------|
| 1. Sen. Erick Okong'o Mogeni, SC, MP            | - Ag. Chair |
| 2. Sen. (Rtd.) Justice Stewart Madzayo, CBS, MP | - Member    |
| 3. Sen. Miraj Abdulahi Abdulrahman, MP          | - Member    |
| 4. Sen. Gloria Orwoba, MP                       | - Member    |

**ABSENT WITH APOLOGIES**

- |                                     |                    |
|-------------------------------------|--------------------|
| 1. Sen. Julius Murgor Recha, MP     | - Chairperson      |
| 2. Sen. George Mungai Mbugua, MP    | - Vice-Chairperson |
| 3. Sen. Alexander Munyi Mundigi, MP | - Member           |
| 4. Sen. Mohamed Faki Mwinyihaji, MP | - Member           |
| 5. Sen. Crystal Kegehi Asige, MP    | - Member           |

**IN ATTENDANCE**

1. Sen. Samson Cherarkey, MP- Sponsor of the Employment (Amendment) Bill, 2022

**SECRETARIAT**

- |                       |                       |
|-----------------------|-----------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant I   |
| 2. Mr. David Ngamate  | - Clerk Assistant III |
| 3. Mr. Jeremy Chabari | - Legal Counsel I     |
| 4. Mr. Wilson Bosimet | - Deputy Chief SAA I  |
| 5. Mr. Joseph Otieno  | - Audio Officer       |
| 6. Ms. Juliet Masinde | - Media Officer III   |

**PRAYERS**

In the absence of both the Chairperson and Vice Chairperson, the members present after confirming the quorum as proper constituted, elected Sen. Erick Okong'o Mogeni, SC, MP to chair the meeting. He called the meeting to order at 10.25 a.m. followed by a word of prayer.

**MIN/SEN/SCLSW/59/2023 - ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Gloria, MP. and seconded by Sen. Miraj Abdulahi Abdulrahman, MP, as follows-

1. Prayer;
2. Adoption of the Agenda;
3. Communication from the Chair;
4. Consideration of the Employment (Amendment) Bill, 2023 (Committee Paper No. 10);
5. Any Other Business; and
6. Adjournment/Date of the Next Meeting.

**MIN/SEN/SCLSW/60/2023 COMMUNICATION FROM THE CHAIR**

The Acting Chair, Sen. (SC) Erick Okong'o Mogeni welcomed all to the Meeting and informed the Committee that the Legal Counsel will brief the Committee on the Employment (Amendment) Bill, 2023 which had been referred to the Committee after First Reading.

**MIN/SEN/SCLSW/61/2023 CONSIDERATION OF THE EMPLOYMENT (AMENDMENT) BILL, 2023 (COMMITTEE PAPER NO. 10)**

The Committee was taken through the stages of the Bill as follows -

1. The Bill sponsored by Sen. Samson Cherarkey, MP, was published on 30<sup>th</sup> November, 2022 and Read a First Time on 16<sup>th</sup> February 2022 as an Ordinary Bill;
2. The Bill sought to strike a balance between work and private life to allow digital technology have a positive effect on workers' quality of life supported by employers by inserting a new section **27A** on the right to disconnect to provide for:
  - (a) The right to disconnect by an employee from their employer;
  - (b) The development of policies under which an employer may contact an employee during out of work hours;
  - (c) The definition of the "right to disconnect"; and
  - (d) The definition of "out of work hours".
3. The Committee was taken through a comparative analysis of countries that had similar legislature.

### **Committee Observations**

1. The Committee noted that the Bill sought to provide for the right to disconnect from work in the digital age, and therefore strike a balance between work and private life to allow digital technology have a positive effect on workers' quality of life supported by employers;
2. The Committee observed that the amendment mostly catered for the interest of the employees and did not mention the Employer's right to disconnect; and
3. The Committee observed that a notice calling for written submissions had been issued in the local dailies on Tuesday, 28th February, 2023 with the closing date for receipt of Memoranda set for Tuesday, 14th March, 2023.

### **Resolutions of the Committee**

1. That a public notice be placed on the social media platforms so as to all sectors of the Society; and
2. The Committee to meet with targeted Stakeholders including the Cabinet Secretary -Labour and Social Protection, the Federation of Kenyan Employers and Central Organization of Trade Unions on Thursday, 9<sup>th</sup> March 2023 at 10.00 am.

**MIN/SEN/SCLSW/62/2023**

### **AOB, ADJOURNMENT AND DATE OF THE NEXT MEETING**

1. The Committee resolved to meet with the Petitioners concerning the Petition concerning alleged fraud by the First Choice Recruitment and Consultancy Agency, on Tuesday 14<sup>th</sup> March, 2023;
2. The Committee resolved to meet with the Petitioners on the Petition to the Senate concerning Linda Soka- tapping into Kshs.302 billion football fund, on Thursday, 16<sup>th</sup> March, 2023;
3. The Committee deliberated on the BBC expose on sexual harassment on the John Finlay Tea Farm and the Unilever Tea Farm and resolved to visit Kericho so as to get to the bottom of the Matter. The Vice-Chair was also tasked to consult the Speaker so as to fast-track approval of the Kericho Tea Plantations visit on 2<sup>nd</sup> to 5<sup>th</sup> March, 2023 alongside the National Assembly on the follow up of BBC Documentary on Sexual Harassment in Tea plantations.

There being no other business, the meeting was adjourned at 2.50 pm and the date of the next meeting to be on notice

SIGNED.....

DATE Thursday, 30<sup>th</sup> March, 2023

(CHAIRPERSON: SEN. JULIUS MURGOR RECHA, MP)

**STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE**

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 198 (Senate Bills No. 11)*

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2022**

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**NAIROBI, 30th November, 2022**

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**THE EMPLOYMENT (AMENDMENT) BILL, 2022****A Bill for**

**AN ACT of Parliament to amend the Employment Act to provide for the right to disconnect; the right of employees to have their personal time and privacy respected and for connected purposes.**

ENACTED by the Parliament of Kenya, as follows —

**PART I—PRELIMINARY**

1. This Act may be cited as the Employment (Amendment) Act, 2022. Short title.

2. The Employment Act is amended by inserting the following new section immediately after section 27— Insertion of new section 27A.

The right to disconnect.

**27A.** (1) An employee has the right to disconnect from their employer.

(2) An employer shall, for the purposes of subsection (1) —

(a) put in place a policy regarding the—

(i) circumstances under which an employer may contact an employee during out of work hours;

(ii) use of electronic devices to send or receive information, messages or any digital work related communication during out of work hours; and

(iii) circumstances under which the right to disconnect may be waived.

(b) specify the nature of compensation for employees who work during out of work hours

(3) Where an employer has employed more than ten employees, such employer shall, in formulating a policy under subsection (2), consult the respective

employment.

“right to disconnect” means an employee’s entitlement not to be contacted by the employer during out of work hours as per the employer’s policy.

Leadership changes President's party makes changes to its leadership as it prepares to hold national elections

# Prepare to fold, Malala tells UDA partners

New party secretary-general says he will be reaching out to Kenya Kwanza affiliates to discuss the matter

BY JUSTUS OCHIENG

President William Ruto's UDA will start the process to have its affiliates in the Kenya Kwanza Alliance folded into one formidable force ahead of the 2027 elections, new party Secretary-General Cleophas Malala announced yesterday. Speaking moments after taking over from Nominated Senator Veronica Maina, Mr Malala, who defected from Prime Cabinet Secretary Musalia Mudavadi's Amani National Congress (ANC) said his vision is to ensure President Ruto leads one united team into the next election. "We shall not go into 2027 before we organise ourselves better and this is a sign that President Ruto's politics under one colour," Malala said. He said that he will spearhead efforts to reach out to all Kenya Kwanza partners and other like-minded parties to come together and support the President. "One of my mandates is to begin dialogue with our partners so



that to ensure we have one party against our opponents," Mr Malala added. "We cannot have one government and several colours, that is our position and we shall talk to others."

The announcement, which could unsettle other Kenya Kwanza affiliates including Ford Ken-

ya, Maendeleo Chap Chap, and Pamoja African Alliance, came moments after President Ruto and his deputy Rigathi Gachagua chaired the UDA National Executive Council (NEC) meeting that ratified leadership changes in the party.

In the new line-up, Embu Gov-

UDA Secretary-General Cleophas Malala addresses journalists yesterday at Hustler Plaza in Nairobi. The party unveiled new officials. EVANS HABIL/NATION

One of my mandates is to begin dialogue with our partners to ensure we have one party against our opponents

Mr Cleophas Malala



ernor Cecily Mbarire was appointed national chairperson to replace Johnson Muthama who is headed to the Parliamentary Service Commission. East African Legislative Assembly MP Hassan Omar was named party vice-chairman, replacing Kipruto arap Kirwa who defected to Azimio la Umoja One Kenya ahead of last year's election.

Kitutu Chache North MP Japheth Nyakundi replaces Omingo Magara as the treasurer following the former MP's defection from UDA last year. Mwala

MP Vincent Musyoka is the new organising secretary, replacing Karisa Nzai.

The new officials will serve on interim basis ahead of national elections to be held later this year, said Ms Maina at Hustlers Plaza in Nairobi.

ANC Secretary-General Simon Gikuru was told the *Nation* yesterday that yesterday that he had "no comment" on the plans announced by Mr Malala. However, Mr Malala said that Mr Mudavadi was aware of his move.

"He (Mudavadi) allowed me to join UDA and I want you to know that we did not do anything in secret. We cannot move in this direction and keep him in the dark. Even Lamu Governor Issa Timamy, who is my acting party leader, is aware," Mr Malala said.

Mr Malala unsuccessfully contested the Kakamega governor seat on an ANC ticket.

National Assembly and Senate majority leaders Kimani Ichung'wa and Arron Cheruiyot, respectively, said Mr Malala's appointment will inject the vibrancy of youth, while Ms Mbarire's demonstrates President Ruto's commitment to empower women in leadership.

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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT  
THE SENATE

**INVITATION FOR SUBMISSION OF MEMORANDA**

At a sitting of the Senate held on Thursday, 16<sup>th</sup> February, 2023 the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145(5) of the Senate Standing Orders, the Standing Committees now invite interested members of the public to submit any representations that they may have on the Bills.

The representations may be made by way of submission of written memoranda on email to the Clerk of the Senate on the address: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before Tuesday, 14<sup>th</sup> March, 2023.

Bill	Committee Referred To	Email
a) The Prompt Payment Bill, 2022 (Senate Bills No. 8 of 2022)	Standing Committee on Finance and Budget	<a href="mailto:financebudgetcomm.senate@parliament.go.ke">financebudgetcomm.senate@parliament.go.ke</a>
b) The County Licensing (Uniform Procedure) Bill, 2022 (Senate Bills No. 9 of 2022)	Standing Committee on Trade, Industrialization and Tourism	<a href="mailto:tradeindtourism.senate@parliament.go.ke">tradeindtourism.senate@parliament.go.ke</a>
c) The Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022)	Standing Committee on Labour and Social Welfare	<a href="mailto:laboursocialwelfarecomm.senate@parliament.go.ke">laboursocialwelfarecomm.senate@parliament.go.ke</a>

The Bills may be accessed on the Parliament Website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE.**



# Mudavadi man takes charge of Ruto party

► The new officials will serve on an interim basis ahead of national elections slated later this year.

► Party says it had agreed on a raft of issues aimed at strengthening the unit.

**JACOB NG'ETICH AND GRACE NG'ANG'A, NAIROBI**



Prime CS Musalia Mudavadi



UDA Sec Gen Cleophas Malala



Embu Governor Cecily Mbarire

Prime Cabinet Secretary Musalia Mudavadi's party man yesterday took over at the helm of President William Ruto's United Democratic party.

It replaced its top senior officials ahead of the grassroots election across the country in August.

There has been intense lobbying before former Kakamega senator Cleopa Malala was picked as the secretary general of the President's

Malala who lost the Kakamega govt seat to Fernandes Barasa on an ANC National Congress (ANC) party took over from Veronica Maina who was nominated to the senate after the general election.

The decision was reached at State

House in a meeting chaired by President Ruto and Deputy Party Rigathi Gachagua.

Embu Governor Cecily Mbarire took over as the chairperson of the party while Member of the East African Legislative Council, Hassan Omar, took over as the vice chair, replacing former agriculture minister Kipruto Kirwa who resigned from the party and joined Azimio la Umoja before elections.

The party which won the presidency, majority of seats at the Senate, and National and County assembly across the country, has been operating without a chairman for two weeks and a treasurer for over a year, including other positions yet to be filled.

Other appointments were that of Kitutu Chache North Japheth

Nyakundi as the treasurer and Mwala MP Vincent Mwala as the party's organising secretary who replaces Karisa Nzai.

The new officials will serve on an interim basis ahead of national elections slated later this year.

During the August 2022 general election, the Ruto party under the Kenya Kwanza Coalition won 22 out of 47 seats in the Senate and 138 of the elected members of the National Assembly out of the 290 constituencies.

Two weeks ago, its national chairman and former Machakos senator Johnson Muthama quit the party to take up the position of a commissioner at the Parliamentary Service Commission.

Former treasurer Omingo Magara defected from the party to former

President Uhuru Kenyatta's party before the elections while on May 9, 2022, UDA vice chairman Kipruto Arap Kirwa resigned from Ruto's party and joined Azimio la Umoja-One Kenya.

Yesterday Malala said he will ensure that under his helm UDA will be the biggest party since independence.

"This is going to be a party that will accommodate all views. I ask those who supported me in ANC to move with me. We want to ensure in 2027 we will have only one colour as we face our opponents," said Malala.

Former National Chairman Senator Johnson Muthama said the party was still strong, with officials at the National Executive Council that were still doing business, including a vice chair who was conducting the issues

of the party after he resigned.

"The party is in stable condition. It is a movement that continues to attract support from every corner of the country. We plan to have elections in August and this will enable the party to fill all the positions with elected officials," said Muthama.

"This is the party that was formed a year before the election and won a majority of the seats. It will continue to grow in leaps and bounds in the coming years."

In a statement sent to newsrooms, the party said it had agreed on a raft of issues aimed at strengthening the party.

NEC noted that UDA is preparing for the grassroots elections which will be conducted at polling centres across the 47 counties.

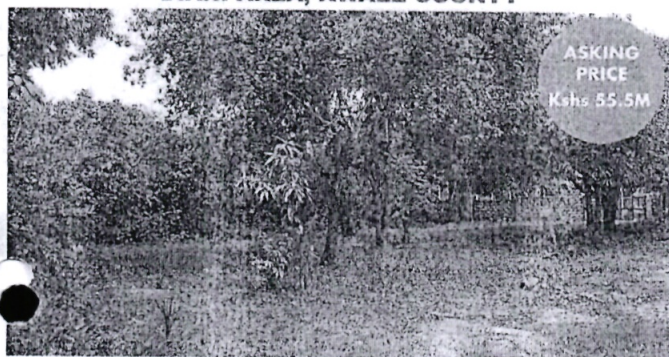
"In order to adequately prepare for this exercise, the UDA party will roll out party membership recruitment drive to enhance the registration of all those persons interested in participating in this exercise.

"The membership registration drive will run from March 1, 2023, to April 30, 2023. Online registration platform is available on <https://uda.ke/site/>."

[newsdesk@standardmedia.co.ke](mailto:newsdesk@standardmedia.co.ke)

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## REPUBLIC OF KENYA



### THIRTEENTH PARLIAMENT THE SENATE

#### INVITATION FOR SUBMISSION OF MEMORANDA

At a sitting of the Senate held on Thursday, 16<sup>th</sup> February, 2023 the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

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Bill	Committee Referred To	Email
a) The Prompt Payment Bill, 2022 (Senate Bills No. 8 of 2022)	Standing Committee on Finance and Budget	<a href="mailto:financebudgetcomm.senate@parliament.go.ke">financebudgetcomm.senate@parliament.go.ke</a>
b) The County Licensing (Uniform Procedure) Bill, 2022 (Senate Bills No. 9 of 2022)	Standing Committee on Trade, Industrialization and Tourism	<a href="mailto:tradeindtourism.senate@parliament.go.ke">tradeindtourism.senate@parliament.go.ke</a>
c) The Employment (Amendment) Bill, 2022 (Senate Bills No. 11 of 2022)	Standing Committee on Labour and Social Welfare	<a href="mailto:laboursocialwelfarecomm.senate@parliament.go.ke">laboursocialwelfarecomm.senate@parliament.go.ke</a>

The Bills may be accessed on the Parliament Website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE.**

**THE SENATE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE.**

**THE EMPLOYMENT (AMENDMENT) BILL, 2022  
(SENATE BILLS NO. 11 OF 2022)**

**PUBLIC PARTICIPATION SUBMISSIONS**

1. The Federation of Kenya Employers (FKE) and Kenya Association of Manufacturers (KAM) disagreed with the proposed Employment (Amendment) Bill, 2022 as the proposed amendments are bad to the operations and development of businesses, labour market, the economy and the industrial relations. They cited the following reasons for their rejection—
  - (a) legislating the Right to disconnect has far reaching adverse effect on employee-employer relations;
  - (b) legislating the right to disconnect has had negative implications on the countries that have attempted to;
  - (c) the proposed amendments not only present radical changes to the Employment Act 2007 but also introduces new stringent measures that will curtail the prerogative to manage enterprises by the owners;
  - (d) these changes touch on employers' administrative prerogatives that should not be curtailed by legislation;
  - (e) the changes will make it difficult to persuade the informal enterprises to join the mainstream economy for the country's general growth and decent work;
  - (f) the bill, if passed, will create two centers of managerial power and ultimately disharmony and indiscipline at workplaces;
  - (g) the bill is too prescriptive by suggesting that employers should be required to develop policies to regulate phone usage by employees outside work hours;
  - (h) overtime is already provided for in the General Order. Most CBAs provide for flexibility in management and regulation of working time;
  - (i) the Bill will have an unintended adverse consequence on employment of youths and women in this country and who are most vulnerable;

- (j) the Bill fails to recognize that the concept of Work, Workspace and work hours have changed, and we must all adapt to it;
  - (k) the Bill will make it hard for the employer and employee to effectively respond to challenges such as those presented by covid-19 pandemic;
  - (l) the engagement between employer and employee during out of work hours is a management issue and should not be legislated;
  - (m) whether the right to disconnect limited only to an employee; and
  - (n) the process of introducing the Bill is does not respect Tripartism and social dialogue: key principles in management of the Labour sector. The Bill puts the social partners in an awkward position as no consultation with the National Labour Board on the issue of the right to disconnect has been done.
2. The Council of Governors agreed with the content of the Bill.
  3. The Central Organization of Trade Unions in Kenya (COTU (K)) opposed the Bill in totality citing lack of proper and comprehensive analysis of the implication of the Bill.
  4. The County Assemblies Forum made the following submission—
    - (a) the Bill should give directions and procedures as to how out of work hours policies are to developed by providing practical guidance foe both employees and employers to assist in meeting their obligations; and
    - (b) there is need to specify the nature of compensation for employees who work during out of work hours.
  5. The Ministry of Labour made the following submissions—
    - (a) emergency should be defined in the proposed section 27A (2);
    - (b) the mode and rate for compensation should be specified under the proposed section 27A (3) (b);
    - (c) the Cabinet Secretary responsible for matters relating to labour and employment should be conferred with powers for policy development under the proposed section 27A (6);

- (d) there is need to express that an employee may not be engaged during “out of work hours” to avoid burnout and to maintain work-family life balance under the proposed section 27A (7);
- (e) there is need to provide for safeguards for employees who choose to disconnect; and
- (f) the proposed amendments should be put through due process as required under section 8 of the Labour Institutions Act, 2007 and be presented to the National Labour Board to fulfil the requirement for Tripartite engagement.

#### **LIST OF STAKE HOLDERS**

1. The Federation of Kenya Employers (FKE)
2. Kenya Association of Manufacturers
3. COTU (K)
4. The Council of Governors
5. The Ministry of Labour
6. Annabel Monthe



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

Telephone: +254(0)20-2729800  
Website: www.laboursp.go.ke  
E-mail: cs@labour.go.ke  
When replying, please quote

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

**Ref. ML/LD/ADM/82**

**Date: 17<sup>th</sup> March, 2023**

**Jeremiah M. Nyegenye, CBS**  
Clerk of the Senate  
P.O. Box 41842 -00100  
Parliament Buildings  
**NAIROBI**

Dear *Mr. Nyegenye*

**SUBMISSIONS TO THE SENATE COMMITTEE ON LABOUR AND WELFARE IN REGARDS TO STAKEHOLDER ENGAGEMENT ON THE EMPLOYMENT (AMENDMENT BILL) BILL, 2022 (SENATE BILL NO. 11 OF 2022)**

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Reference is made to your letter Ref. SEN/DSEC/SCLSW/2023/25 dated 8<sup>th</sup> March, 2023 on the above subject matter.

Forwarded herewith, please find attached our response to the proposed Amendment to Employment (Amendment) Bill, 2022 (Senate Bill No. 11 of 2022).

Yours

**Hon. Florence K. Bore**  
**CABINET SECRETARY**

# **SUBMISSIONS TO THE SENATE COMMITTEE ON LABOUR AND WELFARE IN REGARDS TO STAKEHOLDER ENGAGEMENT ON THE EMPLOYMENT (AMENDMENT BILL) BILL, 2022 (SENATE BILL NO. 11 OF 2022)**

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## **1.0 INTRODUCTION**

Employment Act, 2007 defines the fundamental rights of employees and employers and the proposal to have the right to disconnect is rightly placed and timely. The need to protect workers in the digital age is important given that work environment has dramatically changed precipitated by the advancement in the use of technology and COVID -19. The law did not anticipate the current changes and the Future of Work, thus the proposal is welcome.

The National Labour Board (NLB) is created under the Labour Institution Act 2007 and is mandated to advice in any legislations affecting employment and labour.

## **2.0 SUBMISSION ON THE EMPLOYMENT (AMENDMENT) BILL, 2022**

The Ministry notes that the Bill aims at amending Section 27 of Employment Act, 2007 by creating Section 27 A which proposes to provide for the rights to disconnect; the rights of employees to have their personal time and privacy respected and for connected purposes.

It is further observed that:-

- a) **Section 27 (2):-** Definition of the word **Emergency** is necessary however therefore should be an elaboration of the circumstances that may be deemed to be an emergency for clarity.
- b) **Section 27 (3) (b):-** The mode and rate of compensation is not specified between employers and employees. This should be specified in the Act or in regulations.
- c) **Section 27 (6):-**The Cabinet Secretary responsible for labour and employment matters should be conferred with powers to provide guidelines for development of the policy, which may cover specific details e.g. definitions and procedures.
- d) **Section 27 (7):-**There is need to expressively specify “**Out of Work Hours**” that an employee may be engaged to avoid burn out and to maintain work-family life balance. This may also include providing a list of mutually agreed hours that may be included in the policy.

The Amendment Bill if adopted will be useful in bridging the existing gap in the current Labour Law, however in its current form the Bill if adopted may pose some challenges towards fostering harmonious relations.

For instance, employees could be exposed to victimization and mistreatment at work whenever they disconnect. An employee may be discriminated in assignment of work, promotions, benefits and privileges. Employees with family responsibilities such as young mothers, those caring for the sick or old and other vulnerable groups may easily fall victims and should be shielded in law.

Employers must provide technical and material support to the employees to facilitate a smooth delivery of services during the “Out of Work” hours. For example, airtime, internet –connectivity, transport, security in view of the new work environment – “Work from home”, the “New Normal” organization of work.

## **2.0 RECOMMENDATION**

### **2.1 Incorporate Proposal in a Comprehensive and Intergraded Law Review Process**

The Ministry proposes that in order to comprehensively address the changes currently being experienced in the World of Work, it is recommended that this proposed amendment be considered alongside other numerous proposals for amendment of the Core Labour Laws; that is Employment Act, 2007, Labour Relations Act, 2007, Labour Institution Act, 2007, Work Injury Benefit Act, 2007 and Occupation Health and Safety Act, 2007 to avoid contradictions in outcomes and to save cost.

The review process should also incorporate other concerns that have been brought about the “New Normal” such as measurement of work, occupation safety while working from home, digital workers’ rights and employee obligations etc.

### **2.2 Due Process in Review of the Employment Act**

The proposed amendment should be put through due process as required under the Labour Institution Act Section 8 and be presented to the National Labour Board to fulfil the requirement for Tripartite engagement.

It should also be put through public participation to allow wider stakeholder engagement as is the requirement of the Kenya Constitution, 2010 under Article 118.



**Hon. Florence Bore**

**CABINET SECRETARY**



## COUNTY ASSEMBLIES FORUM (CAF)

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Flamingo Towers, 5th Floor Wing B, Mara Road, Upper Hill P.o Box 73552- 00200 Nairobi Kenya Tel: 0701 046 933  
Email:communication@countyassembliesforum.org www.countyassembliesforum.org

### CAF MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL, 2021

(SENATE BILL NO. 11 OF 2022)

**TO:** Mr. Jeremiah Nyegenye, CBS

Clerk of the Senate, Parliament of Kenya.

**FROM:** The County Assemblies Forum.

**DATE:** 13<sup>th</sup> March 2023.

**SUBJECT:** CAF Memorandum on the Employment (Amendment) Bill, 2021 (Senate Bill NO. 11 of 2022)





## **1.0. INTRODUCTION**

- 1.1. The County Assemblies Forum (CAF) is the coordinating body of the 47 County Assemblies in Kenya. The primary mandate of CAF is to promote networking and synergy among the 47 County Assemblies, coordinate intergovernmental relations and enhance good practice in legislative development. Our Mission is to provide effective leadership and coordination of the 47 County Assemblies and through policy and legislative action, promote a conducive working environment for all its members, and in that way deliver quality services to the people.
- 1.2. As one of the pillars of the devolved government system, CAF is committed to engage in processes that lead to the further strengthening of Constitutional Bodies such the IEBC and ORPP.

## **2.0. BACKGROUND**

- 2.1. The Bill seeks to amend the Employment Act 2011 to provide for the right to disconnect in the digital age. The bill seeks to address increased employee burnout. Digital connectivity has also been noted to be slowly eroding leisure time for employees hence affecting their work life balance. The Bill therefore seeks to strike a balance between work and private life to allow digital technology to have a positive effect on workers quality of life supported by employers.
- 2.2. The proposed Bill concerns county governments in terms of Article 110(1) (a) of the Constitution as it contains provisions that affect the functions and powers of the county governments with respect to implementation of national labour standards and employment policy in the counties. Further since majority of employees are from the counties, the Bill will have a huge impact on the provision of skilled labour in the counties.



3.0. GENERAL COMMENTS.

- 3.1. CAF appreciates parliament in developing this bill which will help to reduce employee burnout by providing for the right to disconnect in the digital era.
- 3.2. The Forum recommends that although the rights of the employees have been provided under the Employment Act 2007, there is need in the future to provide framework for online working to ensure the private life of every employee is respected by introducing the right to disconnect.
- 3.3. There are inconsistencies in the Bill that need to be addressed or in future this bill might be contentious to the point it ends up in litigation.
- 3.4. CAF appreciates the opportunity to contribute to this Bill and on the basis of the foregoing proposes the following amendments:

**4.0 SUMMARY MATRIX OF THE PROPOSED AMENDMENTS.**

<p>1.</p>	<p>Clause 27 (A)3          “An employer shall for the purposes of subsection (1)-          (i) Circumstances under which an employer may contact an employee during out of work hours           (ii) Use of electronic devices to send or receive information, messages or any digital work-related communication during out of work hours; and           (iii) Circumstances under which the right to disconnect may be</p>	<p>Amend the clause to capture all that should be considered in a drafting of a work policy.</p>	<p>The Forum is of the view that the clause is limited as to what the policy guidelines should entail. The Clause leaves it to the employer to come up with the policies. As a result, it also ought to give directions and procedures as to how these policies are developed by providing practical guidance for both employees and employers to assist in meeting their obligations.</p>
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	waived.”		
2.	<p>Clause 27(A) (3) (b) of the Bill.</p> <p>“Specify the nature of compensation for employees who work during out of work hours.”</p>	<p>Amend the Clause to include the percentage of compensation out of work hours.</p>	<p>The clause ought to have fixed a rate as well as provide a formula of how the same is to be fixed. It would also be important to highlight who fixes the rate of the compensation pay.</p>

Thank you.  
Yours sincerely,



**HON. PHILEMON K. SABULEI,**  
**CHAIRPERSON CAF**



**COUNCIL OF GOVERNORS**

Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way.  
P.O. BOX 40401-00100,  
Nairobi.

Tel: (020) 2403314, 2403313  
E-mail: info@cog.go.ke

Our Ref No: COG/6/10 Vol. 12 (7)

10<sup>th</sup> March, 2023

**Jeremiah M. Nyegenye, CBS**  
Clerk of the Senate  
**NAIROBI**

① DSEC  
DAG

Dear Mr. Ngegenye

Kindly deal.

**WRITTEN SUBMISSION OF A MEMORANDA ON THE EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE BILLS NO. 11 OF 2022)**

EP

The above subject matter refers.

Reference is made to your letter SEN/DSEC/SCLSW/2023/28 dated 8<sup>th</sup> March, 2022 requesting the Council to submit a memoranda on the aforementioned Bill.

13/03/23

We have perused the bill and we note that it;

② HOD - Ms. Kibaki  
Kindly deal

1. Seeks to expand the protection of employees from burnout as espoused in section 10 (2) (g) of the Employment Act
2. Requires an institution with more than 10 employees to develop policy to actualize the provisions, within their context
3. Does not apply to the provision of essential services specified under section 81 of the Labour Relations Act.

14/3/2023

In this regard the Council supports the amendments and we look forward to implementation of the same once the bill is passed.

Please be assured of our highest esteem and consideration.

Yours sincerely,

**Mary Mwiti**  
**Chief Executive Officer**



Copy:

- All Excellency Governors
- All County Executive Committee Members for Public service
- All County Secretaries
- All County Public Service Boards

③ SCA, Labour (Htee)  
CMS. Mwanate  
Kindly deal.  
Wobohi  
14/03/2023

# Central Organization of Trade Unions (Kenya)

All correspondence should be addressed to the Secretary General

Chairman - General

Rajabu W. Mwondi, MBS

Secretary - General

Dr. Francis Atwoli, NOM (DZA), EBS, MBS

Treasurer - General

Rebecca Nyathogora



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& +254-20-6761375/7  
Email: info@cotu-kenya.org  
website: www.cotu-kenya.org

Our Ref: **COTU/ADM3/12/129**.....

10<sup>th</sup> March 2023

J M Nyegenye, CBS,  
Clerk of the Senate  
Parliament Building  
P.O Box 41842-00100  
NAIROBI

13 MAR 2023

① DSEC  
DLG  
② Hon. Njirai  
Kindly deal  
14/3/2023  
Kindly deal  
13/03/23

E-mail: [mwanate.shaban@parliament.go.ke](mailto:mwanate.shaban@parliament.go.ke)

Dear Sir,

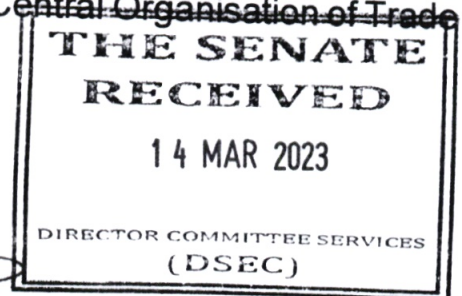
**RE-SUBMISSION OF MEMORANDUM: - THE EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE BILLS NO. 11 OF 2022)**

The Central Organization of Trade Unions in Kenya COTU (K) acknowledge your letter dated 8<sup>th</sup> March 2023 referenced SN/DSE/SCLSW/2023/30 on stakeholder engagement on the above-mentioned bill.

In response find attached the Memorandum from the Central Organisation of Trade Unions, COTU (K) for your kind attention.

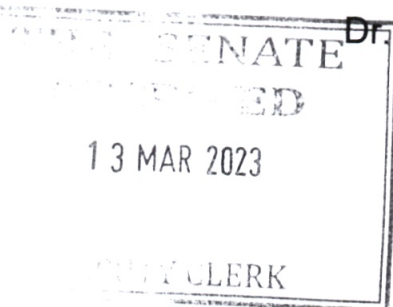
Thank you.

Yours sincerely,



Dr. Francis Atwoli, NOM (DZA) EBS, MBS  
**SECRETARY GENERAL**

③ SCA, Labour & (MS. Mwanate)  
Kindly deal.  
Koboi  
14/03/2023



Deputy Secretary General: Benson Okwaro  
1st Vice Chairman: Rev. Joel Chebii, OGW  
2nd Vice Chairman: Francis Murage

1st Assistant Secretary General: Ernest N. Nadome  
2nd Assistant Secretary General: Carolyn Rutto  
Deputy Treasurer General: Bro. Washington O. Oduor

## **COTU(K) Memorandum on The Employment (Amendments) Bill, 2022**

### **Introduction**

In 2007, the Employment Act of 2007 was enacted into law. The Act was among the five labour related laws enacted that year, which included the Labour Relations Act, Labour Institutions Act, the Work Injury Benefits Act and the Occupation, Safety and Health Act.

The Act represents the main legal foundation for terms and conditions for the provision of services and compensation among other responsibilities of employers.

To amend This Act, The Employment (Amendment) Bill 2022 proposes the establishment of workers' right to disconnect, the right to protection of personal time and privacy, but on the other hand the proposed bill limits this right of workers for compensation of overtime for workers

The Central Organization of Trade Unions Kenya recommends inclusion of clauses to caution workers by compelling employers to provide relevant devices for digital work and to have workers included in the tripartite role of determining compensation for workers who work during out of work hours.

The proposed amendments shield workers from the abuse of digital platforms and qualifies the work undertaken during personal time for compensation as overtime by employers as per the provisions of our 2010 Constitution Article 41 (a) to fair remuneration and (b) to reasonable working conditions. However, the amendments should adhere to the International Labour Organisation, ILO Conventions 155 and 187 on Occupational Safety and Health for workers.

PART V—RIGHTS AND DUTIES IN EMPLOYMENT

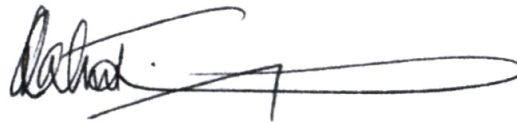
SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
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27		<p>27. (1) An employer shall regulate the working hours of each employee in accordance with the provisions of this Act and any other written law. (2) Notwithstanding subsection (1), an employee shall be entitled to at least one rest day in every period of seven days</p>	<p>Additional Clause 27A (2) An Employer shall, for the purposes of subsection (1)- (a) put in place a policy regarding the -</p>	<p>We acknowledge the tripartite role in developing evidence-based policies and the Provision under A118 on Public participation. We call for the introduction of: <b>In consultation with the Union officials</b> An Employer shall in consultation with union officials, for the purposes of subsection (1)- (a) put in place a policy regarding the – Further, make provision for a Policy Implementation Committee for efficient and effective implementation</p>
			<p>(ii) Circumstances under which an employer may contact an employee during out of work hours (ii) use of electronic devices too send</p>	<p>Include a clause that will mandate the employer <b>to provide the digital devices.</b> COTU (K) opposes leaving this clause open as employers may fail to provide electronic devices for their employees <b>(iii) The Employer shall provide the necessary electronic devices for use by the employee</b></p>



SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
---------	----------------	---------------------------------	----------------

			or receive or receive information , messages or any digital work related communication during out of work hours ; and	
		27 A. (2) (b)	Specify the nature of compensation for employees who work during out of work hours	COTU (K) demands a specification of compensation. Further, inclusion of digital work as Overtime Inclusion of digital work compensations in collectively bargained agreements, CBAs

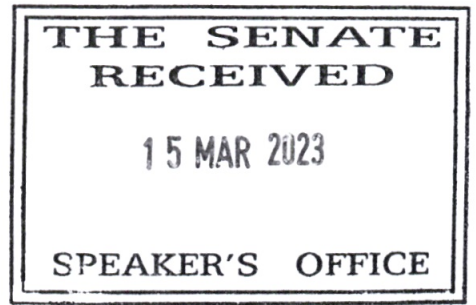


Dr. Francis Atwoli, NOM (DZA) EBS, MBS

**SECRETARY GENERAL**

① Clerk  
Kindly deal.  
15/3/23

15 MAR 2023



13<sup>th</sup> March 2023

TO: SPEAKER, SENATE  
FROM: THE FEDERATION OF KENYA EMPLOYERS (FKE)

**FKE MEMORANDUM ON THE EMPLOYMENT (AMENDMENT) BILL, 2022 (SENATE BILLS NO. 11 OF 2022)**

**1. BACKGROUND**

The Federation of Kenya Employers (FKE) is the most representative employers' organization in Kenya. The Federation members employ a total of 1.35 million wage employees in Kenya. This represents 61% of the formal private sector employment in Kenya. The role of the Federation is to improve the business environment for employers in Kenya through advocacy, effective representation, social dialogue, and provision of value-add services. In addition to representing employers in Kenya at local level, the Federation also represents employers at regional and international level including at East Africa Employers Organization, Business Africa Employers Confederation, International Organization of Employers (IOE), and International Labour Organization (ILO).

In taking a policy position, FKE is guided with the need to ensure a balanced and trusted policy positions that promote:

- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair labour practices
- Resilient and competitive employers
- Harmonious industrial relation.
- Social justice
- Feasibility and affordability of the costs associated with implementation of the policy

② DC (EG)  
Please deal.  
15/03/23

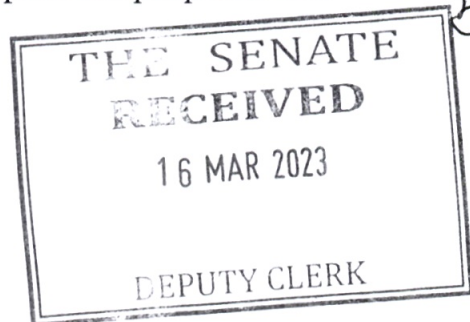
③ HOD - Ms. Kibati  
Kindly deal

**2. FKE POSITION ON THE PROPOSED AMENDMENTS**

**FKE Position**

The Federation of Kenya Employers (FKE) does not agree with the proposed amendments in the Employment (amendment) Bill, 2022 (Senate Bills No. 11 of 2022) and therefore requests the Senate to not pass the proposed bill.

③ DSECO  
DHS  
Kindly deal.  
Eg 16/03/23



16.03.2023  
④ SCA, SCHW  
CNS - Mwanata  
Kindly deal  
16/03/2023

### **3. REASONS FOR THE STATED FKE POSITION.**

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**a) Legislating the Right to disconnect has far reaching adverse effect on employee-employer relations**

The right to disconnect remains a controversial issue in the management of employment relation. Respecting an employee's personal time is clearly the right thing to do. Even the most zealous managers would agree that forcing their team to work unpaid overtime is unreasonable. But legislating this commonsense approach is a big move, and one that has far reaching adverse implications on industrial relations, employee working and workplace management.

Prodoscore, a PSG equity backed company, has done extensive data analysis on the impact of Legislating the right to disconnect. The data has provided the following insights on some of the cons for the right to disconnect legislation:

**i) Legislation as a band-aid, not a cultural shift**

Mandating the right to disconnect shifts the focus from companies to government - legislating an area that may be better dealt with at the employer level. A more grassroots approach would involve encouraging and promoting better company culture by introducing changes across the board, rather than singling out just one aspect of employee wellness.

**ii) Removes employee choice**

Post covid-19 pandemic, one particular aspect of workplace culture has come to the forefront - flexibility. Workers want the ability to manage their own time and the right to disconnect laws threaten that freedom.

People work differently. Some prefer to take breaks during the day to spend time with family and recoup that time later when there are less distractions. Others are early birds, who like to get a few hours in before the rest of the team come online. Mandating when employees can and can't plug into the office strips them of that choice.

**iii) The right to disconnect is too broad & ill-defined**

As an example, Ontario introduced this law and one of the most compelling criticisms of the Ontario law is that it's too vague to be of much use. There are still many unanswered questions such as, what if there is an after-hours emergency? What constitutes work-related activity? How is it enforced?

If the legislation is going to work as intended, it needs to be clearly defined so everyone knows where they stand.

**b) Legislating the right to disconnect has had negative implications on the countries that have attempted to.**

A research by Capital GES, an employment company in European the market, observed that the right to disconnect legislation has only yielded positive outcome in remote employment model or civil service work. Where it has been applied in a blanket way, it has been more of a grief to the economies than a pleasant thing. Below, is a highlight of the right to disconnect legislation some European countries and Ontario have in place.

i) France

France was the first European country to introduce legislation on the right to disconnect. Since January 2017, France has legally required employers to negotiate agreements with unions for a right to disconnect from technology after working hours.

ii) Italy

After the French legislation was published, Italy was the next country to introduce a right to disconnect in 2017. The legislation states that only remote workers have the right to disconnect from technological devices and from online platforms without suffering any consequences with regard to their employment status or compensation. There are also sectoral and company-level collective agreements that provide for the right to disconnect.

iii) Spain

The next country to adopt the right to disconnect legislation was Spain. In 2018, along with the transposing the GDPR into Spanish law, a new set of digital rights was introduced. Workers in both the private and public sectors were given the right to disconnect to maintain their work life balance.

iv) Belgium

Belgium was the next country to introduce some legislation. In 2018, the law made it mandatory for employers with more than 50 employees to discuss the issue of disconnection and the use of digital tools with the workplace health and safety committee. However, employees in Belgium thus have a right to discuss issues of disconnection with their employers, but they do not have a right to disconnect. In 2022, a new law passed in Belgium, which allows civil servants to switch off work emails, texts and phone calls received out of hours, without fear of reprisals. Plans are being discussed to extend the new laws to employees in the private sector.

v) Ireland

In April 2021, the Irish government announced the new code of practice that all employees officially had the right to disconnect from work to have a better work life balance. The new code ensured that employees had the right to switch off from work outside of normal working hours, including the right to not respond immediately to emails, telephone calls or other messages.

The code also stated that the employee should not have to routinely perform work outside their normal working hours, and have the right not to be penalised for refusing to attend to work matters outside of normal working hours and that there is a duty to respect another person's right to disconnect (for example: by not routinely emailing or calling outside normal working hours).

vi) Portugal

In December 2021, the Portuguese parliament introduced new legislation surrounding remote work. One of the pieces of legislation that went into effect in January 2022 was the right to privacy. The Labour Code now stipulates those employers must refrain from contacting employees during their rest period, except in case of force majeure. Companies that breach this right could face fines of up to €4,080. It has become a serious offense for employers to violate the employee's privacy.

vii) North America

In the North America, it is only Ontario that has introduced the right to disconnect. Ontario's right to disconnect law, which came into effect in June as part of the Working for Workers Act. The Act requires companies with over 25 employees to have a written policy that gives staff the ability to ignore work outside of office hours. Already, the legislation has ignited controversy, with some legal commentators calling it "procedural rigmarole" and suggesting that it's purely a bureaucratic exercise without any real substance.

**What is the lesson from the mentioned countries?**

The legislation of the right to connect is in a few developed countries in Europe. The right to disconnect legislation varies in each country. One country has chosen to focus on legislation for public workers, others have focused on employee numbers. Other countries such as Portugal have introduced fines while others have not. Since the explosion of working from home during the pandemic, governments in European countries have focused on bringing in new policies to reflect the new world of work. Other EU member states are still in discussion about national legislation. While the EU parliament itself has also had some discussion surrounding legal framework of right to disconnect, nothing further has been introduced. But in all the countries the underlying factor is dealing with the remote working arrangements and not onsite work.

- c) The proposed amendments not only present radical changes to the Employment Act 2007 but also introduces new stringent measures that will curtail the prerogative to manage enterprises by the owners. This will automatically pose a challenge to Industrial Relations in Kenya. The changes

proposed negates the very essence of managing enterprises freely to meet the demands and challenges posed by the market.

- d) These changes touch on employers' administrative prerogatives that should not be curtailed by legislation. These changes, in our view, infringe on the employer's right to manage the enterprise on day-to-day basis.
- e) With the concept of formalizing the informal economy, this bill introduces changes that will make it difficult to persuade the informal enterprises to join the mainstream economy for the country's general growth and decent work. Decent work agenda country programme if properly implemented will increase formalization of the informal hence increase in revenue collection for the Government to meet its needs.
- f) The Bill fails to meet the simple threshold of the ILO conventions. The bill, if passed, will create two centers of managerial power and ultimately disharmony and indiscipline at workplaces. ILO has provided instruments which have been successful in managing working hours. Some of them include
  - i. Hours of Work (Industry) Convention, 1919 (No. 1)
  - ii. Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)

Under hours of work (Commerce & Offices) convention, 1930, there is a provision for temporary exceptions which may be granted in the following cases:

- (a) in case of accident, actual or threatened, force majeure, or urgent work to machinery or plant, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment;
  - (b) in order to prevent the loss of perishable goods or avoid endangering the technical results of the work;
  - (c) in order to allow for special work such as stocktaking and the preparation of balance sheets, settlement days, liquidations, and the balancing and closing of accounts;
  - (d) in order to enable establishments to deal with cases of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures.
- g) The bill is too prescriptive by suggesting that employers should be required to develop policies to regulate phone usage by employees outside work hours. An employee has the right to keep their phone on or off if it is a personal phone. If the phone is an official one, then the employee is under obligation to use it as required by the enterprise. If the nature of the business requires

such shift system or extension of working time to meet the business demands, then such prescriptive nature will kill enterprises.

- h) **Overtime** is already provided for in the General Order. Most CBAs provide for flexibility in management and regulation of working time. So far, to our knowledge, no Union or employee has raised such concerns.
- i) The bill will have an unintended adverse consequence on employment of youths and women in this country and who are most vulnerable. The sectors and nature of work to be highly impacted on by this bill are the low to middle level skilled and service sector operations. These areas predominantly employ youth and women. Does senate want to aggravate the employment situation of youth and women in Kenya?
- j) The Bill fails to recognize that the concept of Work, Workspace and work hours have changed, and we must all adapt to it. It is a Bill stuck in the past against the reality of the New Normal! This is not cured by passing impractical amendments to an already onerous Employment Act.
- k) Flexibility is important for the Labour sector to thrive in the new normal following the covid-19 pandemic outbreak. The emerging new normal emphasizes more on results (output). The employer and the employee should be allowed to agree among themselves what arrangements work for them. This bill will make it hard for the employer and employee to effectively respond to challenges such as those presented by covid-19 pandemic.
- l) The engagement between employer and employee during out of work hours is a management issue and should not be legislated. This should be left as it is addressed in the current practices through the Collective Bargaining Agreements (CBAs) and the Human Resource Manuals at workplaces.
- m) Is the right to disconnect limited only to an employee or does the employer have it also? There are rights both ways, a right for employees to disconnect from the employer should also be accompanied by a right by the employer to also disconnect from the employee. That in the same breath the employees should also not seek to reach the employer in any way after the working hours. If that was to be the case, how do they expect employers to handle things like hospital admissions or discharges, emergencies or other approvals and interventions that require employer representatives to attend to the employees outside working hours. It would basically take us back to archaic and mechanical way of working, taking us away from the modern co-creative collaborative relationship between the employer and employees. Am sure that isn't what we want.

- n) The process of introducing the bill is does not respect Tripartism and social dialogue: key principles in management of the Labour sector.

The bill puts the social partners in an awkward position as no consultation with the National Labour Board on the issue of the right to disconnect has been done. It is important that the institutions of labour administration especially the National Labour Board that advises on matters of employment, labour relations and social policy development be given the opportunity to exercise their mandate. Introducing the bill without regard to the tripartite social dialogue institutions only leads to chaos and inefficiency in the management of the labour market in Kenya

#### **4. RIGHT TO DISCONNECT AND ITS RAMIFICATIONS IN LABOUR SECTOR: COMMENTS ON SPECIFIC SECTIONS**

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Section 27(A) of the proposed bill shift the managerial prerogative from the employer to the workforce. This is contrary to the theory of managerial prerogative. This negates the competing interest of capital and labour. Currently the law is sufficient and there is no crisis to be cured.

To address the fears the Proposed bill is introducing in the Labour market, the general order has provided for overtime and the formular to calculate the compensation. An employee who for not more than 52 hours a week is not entitled to compensation. Any hour worked over and above 52 hours shall be compensated. This is regardless of online or physical.

Section 27(B) is a contradiction of the provisions of general order on overtime payment. The number of employees cannot be used to create rights at workplaces and therefore discriminatory.

The right to discipline seems to be taken away under the proposed bill. This is again contrary to what the obligations of an employer under section 41 of the Employment Act.

#### **5. THE WAY FORWARD**

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The Federation of Kenya Employers (FKE) humbly prays the Senate to not pass the Employment (amendment) Bill, 2022 (Senate Bill no. 11 of 2022). The proposed amendments are bad to the development and operations of the enterprises, the Labour market, the economy, and the Industrial Relations in Kenya.

**Federation of Kenya Employers (FKE)**

13<sup>th</sup> March 2023