

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT  
SECOND SESSION

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THE DEPARTMENTAL COMMITTEE ON HEALTH  
REPORT ON THE STATUTE LAW MISCELLANEOUS AMENDMENT (NO. 2) BILL, 2018  
(NATIONAL ASSEMBLY BILL NO. 13 OF 2018)

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DIRECTORATE OF COMMITTEE SERVICES,  
THE NATIONAL ASSEMBLY,  
PARLIAMENT BUILDINGS,  
NAIROBI.

JUNE 2018

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## CHAIRMAN'S FOREWORD

The Statute Law (Miscellaneous Amendments) (No. 2) National Assembly Bill No. 13 of 2018 was published on 10<sup>th</sup> April, 2018 and read a first time on 18<sup>th</sup> April, 2018 and thereafter committed to the Departmental Committee on Health pursuant to Standing Order 143.

Before delving into the Bill, the Committee made some general observations that it believes if considered, will enrich the process of law making as envisioned in the Constitution;

First, the Committee notes that some of the proposed amendments are substantial and should have been brought to the House through a substantive Bill, not as Miscellaneous amendments. This is especially on proposed amendments on composition of the Board, expenses of administering the fund and the proposal to have employers match employee contributions. In essence, these three have the potential of radically altering the core mandate of the Board and should go through the rigorous process that Bills are ordinarily subjected to. It will be noted that the Committee received only two (2) written views after its call for public participation. In mitigation, the Committee however went out of its way to invite key stakeholders affected by the amendments, and engaged them on their views. Moreover, the Bill lacks transitional clauses that would have ensured a smooth transition on the proposal to ensure employers match employee contributions.

Further, the Committee found it curious that the parent Ministry disowned some of the proposed amendments. The Ministry of Health categorically stated that it was not the origin of some of the controversial amendments stated above, and was indeed caught by surprise when the same were tabled in the House. The Committee observes that Bills sponsored by the Government should have concurrence with the parent Ministry, with the Office of the Attorney General carrying recommendations of the parent Ministry, or Cabinet, as the case may be.

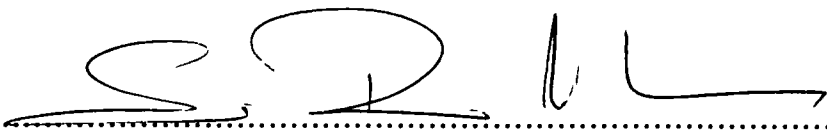
In considering the bill, the National Assembly called for submission of memoranda from the public in the major dailies on 4<sup>th</sup> May, 2018, and subsequently received written submissions from the following two (2) institutions;

- i. Kenya National Union of Teachers (KNUT)
- ii. The Institute for Social Accountability (TISA).

The Committee sincerely thanks the Offices of the Speaker and the Clerk of the National Assembly for the immense and timely technical and logistical support accorded to it in the execution of its mandate. I also thank all the Members of the Committee and the secretariat for their commitment and hard work which enabled us to complete the tasks related to the scrutiny of the proposed amendments and compilation of this report.

The Committee is also grateful to stakeholders who made submissions in relation to the Consideration of the Bill.

On behalf of the Departmental Committee on Health and pursuant to provisions of Standing Order 127, it is my pleasant privilege and honor to present the Report of the Committee on its consideration of the Statute Law (Miscellaneous Amendments) (No. 2) National Assembly Bill No. 13 of 2018.

SIGNED .....

HON. (DR.) SWARUP RANJAN MISHRA, MP

(VICE-CHAIRPERSON)

DATE..... 20/06/2018.....



## COMMITTEE MANDATE

Mr. Speaker Sir,

The Departmental Committee on Health is established pursuant to the provisions of Standing Order No. 216(5) of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament. The mandate and functions of the Committee is to;

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) Study the programme and policy objectives of the Ministries and departments and the effectiveness of the implementation;
- c) Study and review all legislation referred to it;
- d) Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;
- e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
- g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Departmental Committee is mandated to cover the functions of the Ministry of Health alongside its Semi-autonomous Government Agencies, including NHIF, who is affected by the proposed amendments contained in this Bill.

### Committee Membership

The Committee comprises the following Honourable Members;

1. Hon. Sabina Chege, MP – **Chairperson**

2. Hon. Swarup Ranjan Mishra, MP – Vice Chairperson
3. Hon. (Dr.) Eseli Simiyu, MP
4. Hon. (Dr.) James Nyikal, MP
5. Hon. Alfred Agoi Masadia, MP
6. Hon. (Dr.) James Kipkosgei Murgor, MP
7. Hon. Muriuki Njagagua, MP
8. Hon. (Dr.) Mohamed Dahir Duale, MP
9. Hon. Stephen Mule, MP
10. Hon. Chris Karan, MP
11. Hon. Esther M. Passaris, MP
12. Hon. Gladwell Jesire Cheruiyot
13. Hon. Kipsengeret Koros, MP
14. Hon. Martin Peters Owino, MP
15. Hon. Mercy Wanjiku Gakuya, MP
16. Hon. Prof. Mohamud Sheikh Mohamed, MP
17. Hon. Patrick Munene Ntwiga, MP
18. Hon. Tongoyo Gabriel Koshal, MP
19. Hon. Zachary Kwenya Thuku, MP

The Committee is supported by the following members of the Secretariat;

- |                                |   |                            |
|--------------------------------|---|----------------------------|
| 1. Mr. Victor Weke             | - | Clerk Assistant II         |
| 2. Mr. Muyodi Meldaki Emmanuel | - | Clerk Assistant III        |
| 3. Mr. Ahmed Hassan Odhwa      | - | Principal Research Officer |
| 4. Ms. Christine Odhiambo      | - | Legal Counsel II           |
| 5. Mr. Eric Kanyi              | - | Fiscal Analyst             |
| 6. Ms. Winnie Kiziah           | - | Media Officer              |

## EXECUTIVE SUMMARY

Mr. Speaker Sir,

This report details the Consideration of the Statute Law (Miscellaneous Amendments) (No. 2) National Assembly Bill No. 13 of 2018. The Bill's main objective is to amend thirty two (32) Sections of **The National Hospital Insurance Fund Act No. 4 of 1998**.

The Committee considered the amendment proposals in the Bill during four sittings beginning with a brief of the import of the proposed amendments by the legal department of the National Assembly. The Committee went further to invite stakeholders directly affected by the proposed amendments, including the Kenya National Union of Teachers (KNUT), Federation of Kenya Employers (FKE), Kenya Medical Association (KMA), Central Organization of Trade Unions (COTU) and the Ministry of Health (MOH).

The Committee received two (2) written submissions from two organizations, KNUT and TISA.

The Committee's decisions on the amendments were based on Constitutional requirements and views from the relevant stakeholders and other members of the public.

## **1.0 INTRODUCTION**

The Statute Law (Miscellaneous Amendments) (No. 2) National Assembly Bill No. 13 of 2018 was published on 10<sup>th</sup> April, 2018 and thereafter committed to the Departmental Committee on Health pursuant to Standing Order No. 127(1) that provides that; ‘a Bill having been read a First time shall stand committed to the relevant Departmental Committee without question being put.’

It is a Bill for an Act of Parliament to amend various sections of **The National Hospital Insurance Fund Act No. 4 of 1998**.

## **2.0 SITUATIONAL REVIEW**

The **National Hospital Insurance Fund Act No. 4 of 1998** is Act of Parliament to establish a National Hospital Insurance Fund; to provide for contributions to and the payment of benefits out of the Fund; to establish the National Hospital Insurance Fund Management Board and for connected purposes.

The table below juxtaposes the current provisions of the Act vis a vis the proposed amendments;

Act	Current Provision	Proposed Amendment
<p><b>The National Hospital Insurance Fund Act No. 9 of 1998</b></p>	<p><u>Title</u></p> <p>National Hospital Insurance Fund Act.</p>	<p>Delete the word “Hospital” and substitute therefor the word “Health”.</p>
	<p><u>Long Title</u></p> <p>National Hospital Insurance Fund Act.</p>	<p>Delete the word “Hospital” wherever it appears and substitute therefor the word “Health”.</p>
	<p><u>Section 1</u></p> <p>This Act may be cited as the National Hospital Insurance Fund Act, 1998.</p>	<p>Delete the word “Hospital” and substitute therefor the word “Health”.</p>
	<p><u>Section 2</u></p> <p>Interpretation of terms</p>	<p>Delete the word “Hospital” appearing in the definition of the term “Board” and substitute therefor the word “Health”.</p> <p>Delete the word “Hospital” appearing in the definition of the term “card” and substitute therefor the word “Health”.</p> <p>Delete the word “Hospital” appearing in the definition of the term “Fund” and substitute therefor the word “Health”.</p> <p>Delete the definition of the word “Minister” and substitute therefor the following new definition-</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health.</p>
	<p><u>Section 3(1)</u></p> <p>(1) There shall be established a Fund, to be known as the National Hospital Insurance Fund which shall vest in and be operated and managed by the Board.</p>	<p>Delete the word “Hospital” and substitute therefor the word “Health”.</p>

	<p><b><u>Section 3(2)(a)</u></b></p> <p>(2) There shall be paid—</p> <p>(a) into the Fund, all contributions and other payments required by this Act to be paid into the Fund; and</p> <p>(b) out of the Fund, all benefits and other payments required by this Act to be paid out of the Fund.</p>	<p>Delete and substitute therefor the following paragraph —</p> <p>(a) into the Fund -</p> <p>(i) contributions under section 15;</p> <p>(ii) employer contributions matching the employee's contributions;</p> <p>(iii) such monies as may be appropriated by the National Assembly out of the Consolidated Fund, for persons certified by the Board to be unable to pay the contributions;</p> <p>(iv) gifts, grants or donations;</p> <p>(v) funds from the National Government, County Governments or employers for the administration of employee benefits; and</p> <p>(vi) funds from post retirement funds for provision of medical cover to retired employees, where the contributor has elected to do so.</p>
	<p><b><u>Section 4(1)</u></b></p> <p>(1) There shall be established a Board to be known as the National Hospital Insurance Fund Board of Management which shall consist of—</p>	<p>Delete the word "Hospital" and substitute therefor the word "Health".</p>
	<p><b><u>Section 4(1)(e)</u></b></p> <p>(e) the Director of Medical Services or his or her representative;</p>	<p>Delete paragraph (e) and substitute therefor the following paragraph -</p> <p>(e) one person from the public sector with knowledge and expertise in health appointed by the Cabinet Secretary taking into account diversity, gender, skills and regional balance.</p>



	<p><b><u>Section 4(1)(f)</u></b></p> <p>(f) one person nominated by the Federation of Kenya Employers;</p>	<p>Delete and substitute therefor the following new paragraph—</p> <p>“(f) five persons appointed by the Cabinet Secretary based on relevant knowledge and experience on the subject matter.”</p>
	<p><b><u>Section 4(1) paragraphs (g), (h), (i), (j)</u></b></p> <p>(g) one person nominated by the Central Organisation of Trade Unions;</p> <p>(h) one person nominated by the Kenya National Union of Teachers and the Kenya Union of Post Primary Education Teachers in such manner as may be prescribed;</p> <p>(i) one person nominated by the Kenya Medical Association;</p> <p>(j) one person nominated by faith-based healthcare organisations in such a manner as may be prescribed.</p>	<p>Delete paragraphs (g), (h), (i) and (j).</p>
	<p><b><u>Section 4(1)</u></b></p> <p><b>Insertion of a new paragraph</b></p>	<p>Insert the following paragraph immediately after paragraph (j) -</p> <p>(k) one person nominated by the Council of Governors with knowledge and experience relating to health.</p>
	<p><b><u>Section 5(1)</u></b></p> <p><b>Insertion of a new paragraph</b></p>	<p>Insert the following new paragraph immediately after paragraph (f)-</p> <p>(fa) to administer employee benefits on behalf of the national government, the county governments and employers in respect of their employees.</p>

	<p><b><u>Section 10</u></b></p> <p><b>Insertion of a new subsection</b></p>	<p>Insert the following subsection immediately after subsection (1A)-</p> <p>(1B) The Chief Executive Officer shall serve the Fund for a term prescribed by the Board and shall be eligible for reappointment for a further term, subject to satisfactory performance of assigned functions.</p>
	<p><b><u>Section 15(2)</u></b></p> <p><b>Insertion of new paragraphs</b></p>	<p>Insert the following paragraphs immediately after paragraph (b) -</p> <p>(c) in the case of a contribution by the employer, the employer to match the contribution of the employee; and</p> <p>(d) in the case of a person certified by the Board to be unable to pay the contributions, such contribution payable by the Government, as may be determined by the Board in consultation with the Cabinet Secretary.</p>
	<p><b><u>Section 16(3)(c)</u></b></p> <p>(c) to retain possession of the card issued to a person employed by him, except when that person requires the card for the purpose of obtaining any benefit or making a claim under this Act until that card is required for surrender upon the issue of a new card for the next financial year.</p>	<p>Delete.</p>
	<p><b><u>Section 16(4)</u></b></p> <p>(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that person after a stamp to the value of that sum has been affixed to a card issued to that</p>	<p>Delete and substitute therefor the following subsection -</p> <p>(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that employee, after it has been remitted to the Fund.</p>



	<p>person and duly cancelled:          Provided that nothing in this subsection shall affect the responsibility of the employer for the safe custody of that employee's card.</p>	
	<p><b><u>Section 21(5)(a)</u></b>          (a) a stamp duly affixed to a card issued to that person for that month, and duly cancelled, in accordance with the provisions of this Act;</p>	<p>Delete.</p>
	<p><b><u>Section 22(3)</u></b>          (3) Without prejudice to the provisions of sub-section (1), the benefits payable from the Fund shall be limited to expenses incurred in respect of drugs, laboratory tests and diagnostic services, surgical, dental or medical procedures or equipment; physiotherapy care and doctors' fees, food and boarding costs, subject to such limits, regulations and conditions as the Board may, in consultation with the Minister, prescribe.</p>	<p>Insert the words "and optical services" immediately after the words "boarding costs".</p>
	<p><b><u>Section 23(1)</u></b>          (1) The Board shall cause to be kept, for the Fund, a register containing the names of all contributors and there shall be entered in that register the particulars stated on every card issued to a contributor and particulars of all contributions or other payments to the Fund</p>	<p>Delete and substitute therefor the following subsection</p> <p>(1) The Board shall maintain a register of the names of all contributors, the particulars of every contributor as contained on the card issued to the contributor and particulars of all contributions or other payments to the Fund by or in respect to a contributor.</p>

	<p>made by or in respect of the contributor in so far as they are evidenced by a card surrendered or shown to an officer of the Board in accordance with subsection (2) of this section or by any receipt issued in accordance with that subsection.</p>	
	<p><b><u>Section 23(2)</u></b></p> <p>(2) A contributor or an employer shall be entitled on request—</p> <p>(a) upon the surrender of his card or cards to an officer of the Fund, to a receipt acknowledging all the payments of contributions evidenced by that card or cards;</p> <p>(b) not more than once in every three months, upon showing his card to an officer of the Board, to have entered in the register a record of all the payments evidenced by that card;</p> <p>(c) to a receipt acknowledging any payments to the Fund made by or in respect of him otherwise than by affixing a stamp to his card,</p> <p>but save as aforesaid, no person shall be required to issue any receipt to a contributor.</p>	<p>Delete.</p>
	<p><b><u>Section 24</u></b></p> <p>Stamps</p> <p>(1) There shall be offered for sale to the public in such quantities</p>	<p>Delete.</p>

	<p>and at such times and places as the Board may consider necessary for the implementation of this Act, National Hospital Insurance stamps at such prices as the Board may from time to time determine.</p> <p>(2) For the purposes of this section, the Board shall cause stamps to be printed of such design, which may be varied from time to time, as it may deem fit.</p>	
	<p><b><u>Section 25(2)(b)</u></b></p> <p>(b) buys, sells or offers for sale, takes or gives in exchange, or pawns or takes in pawn any card or used stamp or any receipt issued under this Act; or</p>	Delete.
	<p><b><u>Section 25(2)(c)</u></b></p> <p>(c) affixes any used stamp to any card,</p>	Delete.
	<p><b><u>Section 25(3)</u></b></p> <p>(3) Any person who prints or sells stamps in of the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.</p>	Delete.
	<p><b><u>Section 26(a)</u></b></p> <p>(a) any matters incidental to the payment and collection of any contributions under this Act, or to the issue of any stamps or to</p>	Delete and substitute therefor the following paragraph —

	the issue or replacement of any cards under this Act;	(a) any matters incidental to payment and collection of any contribution under this Act or to the issue or replacement of cards under this Act.
	<b><u>Section 30</u></b> <b>Insertion of a new subsection</b>	Insert the following new subsection immediately after subsection (1)-  (1A) The Board may negotiate and enter into contracts with overseas specialized healthcare providers for the provision of specialized treatment not available in the country.
	<b><u>Section 30(3)</u></b>  (3) The Board may, at any time, after consulting the Minister, revoke any declaration under this section.	Delete and substitute therefor the following new subsection-  (3) The Board may from time to time negotiate and enter into contracts with health service providers who qualify under subsection (4) of this section for the provision of health services to the members of the Fund.
	<b><u>Section 30</u></b> <b>Insertion of new subsections</b>	Insert the following new subsections immediately after subsection (3)-  (4) The Board shall, by notice in the Gazette and in such other manner as the Board may deem appropriate, declare the health service providers referred to in subsection (1) to be contracted health service providers for purposes of this Act.  (5) A declaration under this section shall be subject to fulfillment by the health service provider of such criteria, including meeting quality standards set by the Ministry.  (6) Every contracted health service provider shall be issued with such identification as may be prescribed by the Board and such identification shall be displayed in a conspicuous position in the health services providers premises.  (7) The Board shall terminate the contract with any health service provider where such health service



		<p>provider fails to meet the criteria prescribed under subsection (5).</p> <p>(8) Upon termination of a contract under subsection (7), the Board shall, by notice in the Gazette, revoke the declaration made under subsection (4).</p> <p>(9) Any health service provider which displays the identification referred to in subsection (6) without the authority of the Board commits an offence.</p>
	<p><b><u>Section 34(1)</u></b></p> <p>(1) All moneys in the Fund which are not immediately required to be applied for the purposes of this Act shall be invested—</p> <p>(a) in such investment in a reputable bank, being an investment in which trust funds, or part thereof, are authorised by law to be invested;</p> <p>(b) in the procurement and acquisition of essential medical equipment for provision to hospitals, on such terms and conditions as the Board may, from time to time, prescribe:</p> <p>Provided that the Board may advance money to any declared hospital for improvement of medical and health care services, subject to the Board being satisfied that such hospital is financially viable and in any underserved area, as may from time to time, be defined by the Minister.</p>	<p>Insert the following new paragraph immediately after paragraph (b) -</p> <p>(c) in quoted equities, fixed income, property, guaranteed funds, fixed deposits accounts and government securities as may be approved by the National Treasury:</p>

	<p><b><u>Section 36</u></b></p> <p>Expenses of administering the Fund</p> <p>There shall be paid out of the Fund and in such manner as the Board, in consultation with the Minister may determine, such sum as the Board may estimate to be its expenditure in respect of any financial year in accordance with the provisions of section 35.</p>	<p>Delete and substitute therefor the following new section -</p> <p>Expenses of administering the Fund.      <b>36.</b> There shall be paid out of the Fund, expenditure for administration purposes in respect of any financial year, which monies shall not exceed fifteen per centum of the total annual expenditure of the Fund.</p>
	<p><b><u>Section 43</u></b></p> <p>Where a contributor to the Fund is entitled, whether under the Workmen's Compensation Act (Cap. 236) or otherwise, to recover compensation or damages in respect of any injury or illness, he shall not, to the extent to which such compensation or damages are recoverable, be entitled to any benefits in respect of any treatment undergone by him as a result of such injury or illness, and any benefits paid in respect of such treatment, shall to the extent to which such compensation or damages have been recovered, be repaid to the Board: Provided that the payment of any benefits as aforesaid shall not preclude the right of the contributor to recover any compensation or damages.</p>	<p>Delete the words "Workmen's Compensation Act" and substitute therefor the expression "Work Injury Benefits Act (Cap. 236)".</p>

## **3.0 PUBLIC PARTICIPATION**

### **3.1 WRITTEN SUBMISSIONS**

The Committee received two (2) memoranda from the Kenya National Union of Teachers (KNUT) and The Institute for Social Accountability (TISA).

KNUT's submission was a precursor to their appearance and is discussed below, while TISA made the following submissions;

They opposed the proposed amendment removing the Director of Medical Services and the various contributors' representatives from the Board. They justified that the removal of the various employee representatives from the Board was not in line with section 5(1)(e) of the Act which provides that one of the objects and functions of the Board is to protect the interests of contributors of the Fund.

TISA further proposed that to be included a requirement for performance reports, access to information, public participation as well as public sensitization in regards to the management of the Fund. This was because the amendment providing for additional sources of funds of the Fund would lead to an increase in the amount of financial resources under NHIF, thus the need for transparent, accountable, participatory and efficient management of NHIF in the interest of the public.

They added that there should be a further amendment to section 22(3) to provide clear guidelines on the packages available under the NHIF. This was because in their view, Section 22(3) as it were was too general and posed a challenge of inadequate information on the benefits packages.

They finally proposed an amendment to section 34(1) to provide for a maximum percentage within which investment of funds may be made. They justified this by stating that investments of the funds of NHIF must be capped to guard against undermining NHIF's service provision responsibility by drawing too much resources away from service delivery.

### **3.2 MEETINGS WITH KEY STAKEHOLDERS**

In appreciation of Article 118 of the Constitution that demands engagement of the public in legislation, the Committee invited key stakeholders affected by the amendments who submitted as follows;

### 3.2.1 KENYA NATIONAL UNION OF TEACHERS (KNUT)

The Union represented by its Executive Committee appeared before the Committee on 7<sup>th</sup> June, 2018. They opposed the proposed amendments to sections seeking to change the composition of the NHIF board.

This was because KNUT and other relevant organizations represented on the Board play an important role of overseeing NHIF's activities; they also represent the interests of the workers and the service providers. They stated that their expulsion from the Board and giving the Cabinet Secretary powers to constitute the Board's membership would weaken the Fund.

They added that the teaching fraternity which was made up of over 300,000 teachers and an estimated 4 million declared dependents played a huge part in funding the NHIF; a significant contribution that should not be overlooked and therefore they deserve to be represented on the NHIF Board.

### 3.2.2 MINISTRY OF HEALTH (MOH)

The Ministry led by the Chief Administrative Secretary and the CEO, NHIF appeared before the Committee on 7<sup>th</sup> June, 2018. They stated that the Ministry not privy to the proposal to eject various stakeholders from the NHIF board to be replaced by appointees of the Cabinet Secretary, and could not explain the source of the proposed amendments.

However, they added that most of the proposals in the Bill are in keeping with the amendments that MOH and NHIF deemed important for the realization of UHC. However there are six areas that need to be readdressed:-

#### ***1. Composition of the Board.***

- a) In line with MOH policy it will be important to retain the current key stakeholders on the Boards as provided in the current Act, namely FKE, COTU, one person nominated by the KNUT and KUPPET, Kenya Medical Association, and FBO. However each organization should be requested to nominate 3 candidates from whom the Cabinet Secretary will make the appointments from the organizations to allow for adherence to the Constitutional requirement of taking into account gender, disability and regional balance.



- b) Additionally, the Bill should provide for the appointment of two persons from the public sector with knowledge and expertise in health (to replace DMS) and another person with knowledge and expertise in either finance or business management (in line with Mwongozo) appointed by the Cabinet Secretary.

## **2. Powers of the Board**

In order to enable the Board to accommodate policy direction, guidance and oversight from the parent Ministry, it will be important to include a provision for the Board to act in accordance with any general or special directions given by the Cabinet Secretary.

## **3. Tenure of the Chief Executive Officer of the Fund**

The Ministry would like the tenure of the Chief Executive Officer of NHIF to be capped at a term of four years and renewable once, subject to their performance in accordance with current government policy.

## **4. Contributions to the Fund**

The proposal to match the contribution of the employee by the employer is concurred with; however MOH is of the opinion that the introduction to match the contribution may be abrupt and hefty on the employer. Hence the proposition is to empower the Board of NHIF to set the employer contributions and to be allowed to amend the provisions increasing the contributions progressively from time to time until a matching level of contributions is achieved between employers and employees.

## **5. Reference to Stamps in the Act**

Reference to stamps in various sections and their use as evidence of payment or as receipts upon payment need to be amended to be removed as the stamps are no longer in use. However, provision for issuance of receipts has been made as evidence of payment of contributions.

## **6. Administrative expenditure of the Fund**

The MOH recognizes that there will be need to periodically review the administrative cost of the Fund for the prudent use of finances rather than capping it at 15% of the total annual expenditure. As the fund grows this percentage is most likely to be scaled downwards as has been demonstrated by best practice and other jurisdictions globally. As such provision is being made for periodic review of the administrative costs by the Board in consultation with the Cabinet Secretary.

In conclusion the Ministry welcomed the amendment of the NHIF Act and proposed the said changes be made to the bill in support of achieving UHC.

### 3.2.3 KENYA MEDICAL ASSOCIATION (KMA)

KMA Executive Committee appeared before the Committee on 12<sup>th</sup> June, 2018.

From the outset, they stated that the amendments to the National Hospital Insurance Fund Act were so substantial that they should not have been made using a Statute Law (Miscellaneous Amendments) Bill. They added that some of the proposals fronted required significant public participation and engagement with stakeholders which was not done.

They however clarified that should the Committee proceed to scrutinize the amendments, they had the following specific proposals;

- i. **Section 4(1)(e)** to read as follows “ the Director General of Health or his designated representative, being a Specialist Medical Practitioner of good standing with at least fifteen years’ experience”

**Rationale:** As the representative of the public health service providers and with powers to implement any policy initiatives emanating from the NHIF Board, the position of the Director General of Health (currently Director of Medical Services) at the Board should be maintained.

- ii. Deletion of the proposed amendment to **Section 4(1)(f)**, and retain paragraphs f,g,h and j in the Act as they are and additionally, to amend **Section 4(1)(i)** to read as follows:

“**Section 4(1)(i)** the President of the Kenya Medical Association”

**Rationale:** NHIF Board must have representation from the stakeholders and they shouldn't be nominated solely by the Cabinet Secretary without the involvement of the stakeholders. KMA constitution required that the President of the Association represent it on the Board.

### 3.2.4 FEDERATION OF KENYA EMPLOYERS (FKE)

The FKE Chief Executive Officer appeared before the Committee on 12<sup>th</sup> June, 2018.

They were opposed to the entire Bill because there were no consultations with employers before the Bill was introduced to Parliament. Further, the proposals suggested should have

been brought through a Substantial Bill rather than being fronted using a Statute Law (Miscellaneous Amendments) Bill.

Moreover, apart from having wide ranging impact on employers, the said proposals offended the provisions of the Constitution, ILO Conventions and the fundamental tripartite arrangement anchored in the Industrial Relations Charter as demonstrated below;

- i. **Sections 2(a)** which sought to introduce provision for the employer to make contributions matching the employees' contribution to the National Hospital Insurance Fund, did not take into account the cost implications of the proposal on employers and this might make Kenya's labour market uncompetitive.
- ii. **Section 4(1)** which seeks to change the constitution of the NHIF Board would lead to alienation of the key contributors and stakeholders of the fund hence weakening the fund.

The Federation further informed the Committee that the government should have come up with alternative and innovative ways of financing Universal Health Care. For example, it should tap into the 84% of the population that is in the informal sector and ensure that the said population contributes.

Moreover, to improve the health sector the government needed to meet the Abuja Declaration target of 15% of the country's annual budget.

They concluded that there was need for a national conversation on a model of financing UHC and it should be based on an informed study.

### 3.2.5 CENTRAL ORGANIZATION OF TRADE UNIONS (COTU-K)

The COTU Secretary General appeared before the Committee on 14<sup>th</sup> June, 2018.

He submitted that the Union was opposed to the whole idea of amending the NHIF Act. He went further and questioned whether there were genuine reasons to warrant the amendment of the Act. He said that the absence of justifications as to why the Act was being amended made it harder to interrogate the Bill. Nonetheless, he went ahead and pointed out the main amendments that the Union was opposed to as follows:

- i. Proposed deletion of **Section 4(1)(f)** and substituting it thereof with the following new paragraph – “(f) five persons appointed by the Cabinet Secretary based on relevant knowledge and experience on the subject matter.”
- ii. Proposed deletion of **Section 4(1) paragraphs paragraphs (g), (h), (i) and (j)**: (g) one person nominated by the Central Organization of Trade Unions; (h) one person nominated by the Kenya National Union of Teachers and the Kenya Union of Post Primary Education Teachers in such manner as may be prescribed; (i) one person nominated by the Kenya Medical Association; (j) one person nominated by faith-based healthcare organizations in such a manner as may be prescribed.
- iii. Proposed deletion of **Section 16(3)(c)**: to retain possession of the card issued to a person employed by him, except when that person requires the card for the purpose of obtaining any benefit or making a claim under this Act until that card is required for surrender upon the issue of a new card for the next financial year.



## 4.0 COMMITTEE'S OBSERVATIONS

The Committee made the following observations;

- i) The proposed amendments were presented as miscellaneous amendments; in an effort to align the Act with current realities, and assist drive the government's Universal Health Coverage (UHC) agenda.
- ii) Some of the amendments are substantial and have the potential of fundamentally altering the nature of the Act, and should therefore come as substantive amendments bill, not as miscellaneous. These include proposed amendments to alter the composition of the board, expenses of administering the fund and the proposal to have employers match employee contributions.
- iii) The Bill lacks transitional clauses that would have smoothed the implementation of these controversial clauses, should they be adopted.
- iv) The Ministry of Health being the custodian of matters health in the country was not consulted on some of the proposed amendments. The Office of the Attorney General indicated that the controversial amendments on the composition of the board came from National Treasury in their capacity as the 'coordinator' of the Big 4 agenda.
- v) The other proposed amendments will align the Act to current realities including the Health Act 2017 and the Constitution as individually stated in the justification under each.

## 5.0 COMMITTEE'S RECOMMENDATIONS

The Committee having considered the Bill and the submissions from the stakeholders makes the following recommendations;

- i. The proposed amendments on the Title to Delete the word "Hospital" and substitute therefor the word "Health" be ADOPTED.
- ii. The proposed amendments on the long title to Delete the word "Hospital" and substitute therefor the word "Health" be ADOPTED.
- iii. The proposed amendments on Section 1 to Delete the word "Hospital" and substitute therefor the word "Health" be ADOPTED.

- iv. The proposed amendments on Section 2 to;

Delete the word "Hospital" appearing in the definition of the term "Board" and substitute therefor the word "Health".

Delete the word "Hospital" appearing in the definition of the term "card" and substitute therefor the word "Health".

Delete the word "Hospital" appearing in the definition of the term "Fund" and substitute therefor the word "Health".

Delete the definition of the word "Minister" and substitute therefor the following new definition- "Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to health

be ADOPTED.

- v. That a further amendment be inserted in section 2 by inserting the following new definition in proper alphabetic sequence- "Ministry" means the ministry for the time being responsible for matters relating to health.
- vi. The proposed amendments to Section 3 (1) to Delete the word "Hospital" and substitute therefor the word "Health" be ADOPTED.
- vii. The proposed amendment to section 3(2)(a) be further amended by deleting subparagraph (ii) of paragraph (a).

**Justification:** An introduction of the requirement of the employer to match the contribution of the employee may be abrupt and cause an unforeseen economic

burden on the part of the employer. Moreover Treasury had submitted before the House proposals to levy an additional tax of 2% on cellular money transfer to fund Universal Health Coverage.

viii. The proposed amendments to Section 4(1) to Delete the word “Hospital” and substitute therefor the word “Health” be ADOPTED.

ix. The proposed amendment to section 4(1)(e) be deleted and substituted therefor the following new paragraph- “(e) the Director General for health or his or her representative”

**Justification:** this is to align the Act with the recently enacted Health Act No. 21 of 2017, which establishes the office of the Director General for health, who shall be the technical advisor to the Government on all matters relating to health within the health sector.

x. Proposed amendments to Sections 4 (1) (f) (g), (h), (i) and (j) be DROPPED.

**Justification:** The Committee finds the retainment of these stakeholders in the board as good for representation, diversity and oversight. These representatives represent those who majorly fund the board. The proposed amendments also contradicts Section 5 (1)(e) of the Act which provides that one of the objects and functions of the Board is to protect the interests of contributors of the fund. Moreover, having a Board whose majority of members are appointed by the Cabinet Secretary would weaken the independence and oversight mandate of the Board.

xi. Proposed insertion of a new Section 4 (1) (k) reading “one person nominated by the Council of Governors with knowledge and experience relating to health” be ADOPTED.

xii. The proposed amendments to Section 5(1) to Insert the following new paragraph immediately after paragraph (f)- “(fa) to administer employee benefits on behalf of the national government, the county governments and employers in respect of their employees” be further amended by inserting the words “as provided under section 22(3) of this Act” immediately after the word “benefits”.

**Justification:** It is important to expressly state in clear terms that the benefits provided for under the new paragraph are those contemplated under section 22(3) of the Act, so as to avoid ambiguity.

- xiii. The proposed amendment to section 10 be further amended to provide that the Chief Executive Officer shall serve for a term of three years renewable for one further term of three years.

**Justification:** Leaving it upon the Board to prescribe the term of the Chief Executive Officer may lead to unforeseen abuse. It is therefore imperative to set a clear tenure of the Chief Executive Officer expressly in the Act.

- xiv. The proposed amendment to section 15(2) be further amended by DELETING the proposed new paragraph (c).

**Justification:** This amendment lacks consideration of cost implications to employers and would therefore impose unforeseen financial burden on employers. In mitigation, Treasury submitted before the House that it would levy an additional 2% tax on cellular money transfers to fund Universal Health Coverage.

- xv. The proposed Deletion of Section 16 (3) (c) be ADOPTED.

- xvi. The proposed amendments to Section 16 (4) by deleting and substituting thereof with the following subsection – “(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that employee, after it has been remitted to the Fund” be ADOPTED.

- xvii. The proposed Deletion of Section 21 (5) (a) be ADOPTED.

Further, that section 21 (1) be amended by deleting the word “Hospital” and substituting therefor the word “Health”.

**Justification:** This amendment serves to bring this section in line with the amendments proposed in the Bill, so as to change the name of the card from the National Hospital Insurance Card to the National Health Insurance Card.



- xviii. The proposed amendment of section 22(3) be ADOPTED.  
Further, section 22 be amended in subsection (3) by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.  
**Justification:** This amendment serves to eliminate the word “Minister” which is no longer in use and substitute it with the constitutionally recognized term of “Cabinet Secretary”.
- xix. The proposed amendments to Section 23 (1) be further amended by deleting the word “maintain” and substituting therefor the words “cause to be kept”.  
**Justification:** The amendment is necessary as the function of keeping and maintaining registers is performed by the officers of the Board on behalf of the Board.
- xx. The proposed Deletion of Section 23 (2) be ADOPTED.
- xxi. The proposed Deletion of Section 24 be ADOPTED.
- xxii. The proposed Deletion of Section 25 (2) (b) and (c) be ADOPTED.
- xxiii. The proposed deletion of section 25(3) be ADOPTED.  
Further that the deleted section 25(3) be substituted by a new subsection creating the offence of printing or manufacturing a fake or illegal NHIF card as below-

“(3) Any person who-

- (a) prints, manufactures or issues the National Health Insurance cards in circumstances other than as contemplated in this Act;
- (b) misuses the card for purposes not contemplated in this Act;
- (c) fraudulently obtains or uses a card to obtain benefits; or
- (d) misrepresents himself or herself in relation to the cards,

commits an offence and is liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.”

**Justification:** There is need to have a provision creating the offence of printing or manufacturing fake NHIF cards, as well as imposing a penalty for the same. There should not be a vacuum in the law in respect to the offence.

- xxiv. The proposed amendments to Section 26 (a) by deleting and substituting thereof with the following subsection – “(a) any matters incidental to payment and collection of any contribution under this Act or to the issue or replacement of cards under this Act” be ADOPTED.

Further, that section 26 be further amended in the opening sentence by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

**Justification:** the amendment serves to delete the word “Minister” which is no longer in use and to substitute therefor the term “Cabinet Secretary” as provided in the Constitution.

- xxv. That a new amendment be introduced to section 29(1) by inserting a new paragraph to provide for regulations prescribing the manner and procedure of entering into contracts between the Board and health service providers as below-

“(d) prescribing the manner and procedure of entering into contracts between the Board and the health service providers”

**Justification:** the Board should enter into contracts with health service providers as provided for in the regulations, but this power shall be exercised in consultation with the Cabinet Secretary.

- xxvi. The proposed amendment in section 30 to insert a new subsection immediately after subsection (1) be **DROPPED**.

**Justification:** Giving the NHIF Board the power to enter contracts with foreign health service providers may lead to abuse during the negotiation process.

- xxvii. The proposed amendments to Section 30 (3) be further amended by deleting the proposed new subsection (3) and substituting therefor the following new subsection- “The Board shall use the regulations prescribed under section 29(1) (d) of this Act to enter into contracts with health service providers.”

**Justification:** This amendment retains the power of the Board to enter into contracts with health service providers, but such contracts shall only be entered into in terms of the regulations prescribed by the Board in consultation with the Cabinet Secretary.

xxviii. The proposed amendments to Section 30 by insertion of new sub-sections Insert the following new subsections immediately after subsection (3)-

(4) The Board shall, by notice in the Gazette and in such other manner as the Board may deem appropriate, declare the health service providers referred to in subsection (1) to be contracted health service providers for purposes of this Act.

(5) A declaration under this section shall be subject to fulfillment by the health service provider of such criteria, including meeting quality standards set by the Ministry.

(6) Every contracted health service provider shall be issued with such identification as may be prescribed by the Board and such identification shall be displayed in a conspicuous position in the health services providers premises.

(7) The Board shall terminate the contract with any health service provider where such health service provider fails to meet the criteria prescribed under subsection (5).

(8) Upon termination of a contract under subsection (7), the Board shall, by notice in the Gazette, revoke the declaration made under subsection (4).

be ADOPTED.

xxix. The proposed amendment to section 30 to insert a new subsection (9) be further amended to provide for a fine of five hundred thousand shillings for the offence of displaying an identification without the authority of the Board.

**Justification:** the proposed new subsection (9) as contained in the Bill creates an offence without prescribing a penalty. In the absence of a penalty under this subsection, the general penalty in section 45 of the Act of a fine not exceeding fifty thousand shillings may be too lenient to impose on a health service provider which does not comply with the requirements prescribed by the Board.

xxx. The proposed amendment to section 34(1) be further amended by deleting the words "in quoted equities, fixed income, property, guaranteed funds, fixed deposit accounts and".

**Justification:** The Fund requires liquid assets to respond to its core mandate, and investment in some of these options may not always allow for convenient access to the funds as and when it may be needed by the Fund to discharge its mandate.

xxxi. The proposed amendment to section 36 be ADOPTED.

xxxii. The proposed amendments to Section 43 to Delete the words “Workmen’s Compensation Act” and substitute therefor the expression “Work Injury Benefits Act (Cap. 236)” be ADOPTED.

Further, that the section be amended by deleting the expression “(Cap. 236) and substituting therefor the expression “No. 13 of 2007”.

**Justification:** This amendment is necessary for purposes of correct referencing of the Act.

xxxiii. The proposed amendments to First Schedule Paragraph 1 to the word” Hospital” appearing in the definition of the term “appointed day” and substitute therefor the word “Health”, and to Delete the word “Hospital” appearing in the definition of the term “Fund” and substitute therefor the word “Health”, be ADOPTED.

MINUTES OF THE FOURTY FOURTH (44<sup>TH</sup>) SITTING OF THE  
DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 14<sup>TH</sup>  
JUNE, 2018 IN BOARD ROOM, 2<sup>ND</sup> FLOOR, PROTECTION HOUSE,  
PARLIAMENT BUILDINGS, AT 10.00 AM

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**PRESENT**

1. Hon. (Dr.) Swarup Ranjan Mishra, MP – Vice Chairperson
2. Hon. (Dr.) James Nyikal, MP
3. Hon. (Dr.) James Kipkosgei Murgor, MP
4. Hon. (Dr.) Mohamed Dahir Duale, MP
5. Hon. Martin Peters Owino, MP
6. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
7. Hon. Tongoyo Gabriel Koshal, MP
8. Hon. Muriuki Njagagua, MP
9. Hon. Alfred Agoi Masadia, MP
10. Hon. Chris Karan, MP
11. Hon. Mercy Wanjiku Gakuya, MP
12. Hon. Kipsengeret Koros, MP
13. Hon. Zachary Kwenya Thuku, MP

**ABSENT WITH APOLOGIES**

1. Hon. Sabina Chege, MP – Chairperson
2. Hon. (Dr.) Eseli Simiyu, MP
3. Hon. Patrick Munene Ntwiga, MP
4. Hon. Esther M. Passaris, MP
5. Hon. Stephen Mule, MP
6. Hon. Gladwell Jesire Cheruiyot, MP

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

- |                           |   |                     |
|---------------------------|---|---------------------|
| 1. Mr. Victor Weke        | - | Clerk Assistant II  |
| 2. Mr. Muyodi Emmanuel    | - | Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - | Legal Counsel       |
| 4. Ms. Fatuma Abdi        | - | Audio Officer       |

**CENTRAL ORGANIZATION OF TRADE UNIONS (COTU-K)**

- |                       |   |  |
|-----------------------|---|--|
| 1. Mr. Francis Atwoli | - | Secretary General                              |
| 2. Mr. Barasa Adams   | - | International Adviser to the Secretary General |

**MIN. NO. 167/2018: PRELIMINARIES**

The Vice-Chairperson called the meeting to order at 10.15 am and said a prayer. The agenda was adopted as proposed by Hon. (Dr.) James Nyikal, MP and seconded by Hon. Martin Peters Owino, MP.

**MIN. NO. 168/2018: CONSIDERATION OF STATUTE LAW MISC. AMENDMENTS  
BILL NO. 2 OF 2018 (NATIONAL ASSEMBLY BILL NO. 13 OF  
2018)(NHIF ACT (No. 4 of 1998)**

**CENTRAL ORGANIZATION OF TRADE UNIONS:**

The Secretary General of COTU gave a brief history of NHIF and the role COTU (K) played in its establishment. He informed the Committee that COTU (K) has one slot at the NHIF Board and it boasts of 2.5 million membership in the Fund.

The Secretary General informed the meeting that the Union was opposed to the whole idea of amending the NHIF Act. He went further and questioned whether there were genuine reasons to warrant the amendment of the Act. He said that the absence of justifications as to why the Act was being amended made it harder to interrogate the Bill. Nonetheless, he went a head and pointed out the main amendments that the Union was opposed to as follows:

- i. Deletion of Section 4(1)(f) and substituting it thereof with the following new paragraph – “(f) five persons appointed by the Cabinet Secretary based on relevant knowledge and experience on the subject matter.”
- ii. Deletion of Section 4(1) paragraphs paragraphs (g), (h), (i) and (j): (g) one person nominated by the Central Organisation of Trade Unions; (h) one person nominated by the Kenya National Union of Teachers and the Kenya Union of Post Primary Education Teachers in such manner as may be prescribed; (i) one person nominated by the Kenya Medical Association; (j) one person nominated by faith-based healthcare organisations in such a manner as may be prescribed.
- iii. Deletion of Section 16(3)(c): to retain possession of the card issued to a person employed by him, except when that person requires the card for the purpose of obtaining any benefit or making a claim under this Act until that card is required for surrender upon the issue of a new card for the next financial year.

**MIN.NO. 169/2018: ANY OTHER BUSINESS**

The secretariat informed Members that the report on the Statute Law Misc. Amendments Bill No. 2 of 2018 was to be forwarded to the Trade, Industry and Cooperatives

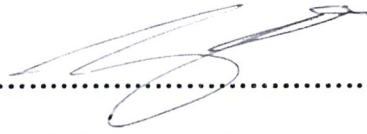
Committee latest Monday 18<sup>th</sup> June, 2018 for purposes of tabling the consolidated report on Thursday 21<sup>st</sup> June, 2018.

However, the Committee noted that the period was short and that there were several amendments that were of particular concern to the country's health sector and could have far reaching consequences if not well deliberated, and that the Committee needed a significant amount of time to look at them before making a report to the House.

The Committee therefore, resolved to reschedule the already planned report writing retreat pending feedback from the Vice-Chairperson who was to engage with the Majority Leader immediately after the meeting, with a view of seeking extension of time for the Committee to dispense with the Bill, before forwarding its report to the lead Committee.

MIN. NO. 170/2018:      ADJOURNMENT

There being no other business, the meeting adjourned at 1.57 pm. Next sitting would be on Tuesday 19<sup>th</sup> June, 2018.

Sign.......... Date.....19/6/18.....  
(Chairperson)

MINUTES OF THE FOURTY THIRD (43<sup>RD</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 12<sup>TH</sup> JUNE, 2018 IN BOARD ROOM, 2<sup>ND</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS, AT 11.00 AM

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PRESENT

1. Hon. Sabina Chege, MP – Chairperson
2. Hon. (Dr.) James Nyikal, MP
3. Hon. (Dr.) Eseli Simiyu, MP
4. Hon. (Dr.) James Kipkosgei Murgor, MP
5. Hon. (Dr.) Mohamed Dahir Duale, MP
6. Hon. Muriuki Njagagua, MP
7. Hon. Tongoyo Gabriel Koshal, MP
8. Hon. Patrick Munene Ntwiga, MP
9. Hon. Kipsengeret Koros, MP
10. Hon. Martin Peters Owino, MP

ABSENT WITH APOLOGIES

1. Hon. (Dr.) Swarup Ranjan Mishra, MP – Vice Chairperson
2. Hon. Alfred Agoi Masadia, MP
3. Hon. Stephen Mule, MP
4. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
5. Hon. Chris Karan, MP
6. Hon. Esther M. Passaris, MP
7. Hon. Gladwell Jesire Cheruiyot, MP
8. Hon. Mercy Wanjiku Gakuya, MP
9. Hon. Zachary Kwenya Thuku, MP

IN-ATTENDANCE

NATIONAL ASSEMBLY

- |                           |   |                     |
|---------------------------|---|---------------------|
| 1. Mr. Victor Weke        | - | Clerk Assistant II  |
| 2. Mr. Muyodi Emmanuel    | - | Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - | Legal Counsel       |
| 4. Ms. Fatuma Abdi        | - | Audio Officer       |
| 5. Mr. Manuel Leparachao  | - | Sergeant-At-Arm     |

KENYA MEDICAL ASSOCIATION (KMA)

- |                            |   |                |
|----------------------------|---|----------------|
| 1. Dr. Jacqueline Kitulu   | - | President      |
| 2. Prof. Dr. Lukoye Atwoli | - | Vice-President |



- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 3. Dr. Simon M. Kigundu | - | Secretary General           |
| 4. Dr. Joy Mugambi      | - | Assistant Secretary General |

**FEDERATION OF KENYA EMPLOYERS (FKE)**

- |                        |   |   |
|------------------------|---|---|
| 1. Ms. Jacqueline Mugo | - | Chief Executive Director                |
| 2. Mr. Stephen Obiro   | - | Manager Research and Policy<br>Advocacy |
| 3. Mr. Grace Kanyiri   | - | Head of Legal Services                  |
| 4. Mr. Luke Anami      | - | Head of Communications                  |

**MIN. NO. 162/2018: PRELIMINARIES**

The Chairperson called the meeting to order at 11.10 am and said a prayer. The agenda was adopted as proposed by Hon. (Dr.) James Kipkosgei Murgor, MP and seconded by Hon. Martin Peters Owino, MP.

**MIN. NO. 163/2018: CONFIRMATION OF MINUTES OF PREVIOUS SITTING**

The agenda item was deferred to the next sitting. There were thus no matters arising.

**MIN. NO. 164/2018: CONSIDERATION OF STATUTE LAW MISC. AMENDMENTS  
BILL NO. 2 OF 2018 (NATIONAL ASSEMBLY BILL NO. 13 OF  
2018); NHIF ACT (No. 4 of 1998)**

**KENYA MEDICAL ASSOCIATION (KMA):**

The National Executive Office of KAM appeared before the Committee and stated that the amendments to the National Hospital Insurance Fund Act were so substantial that they should not have been made using a Statute Law (Miscellaneous Amendments) Bill. They added that some of the proposals fronted required significant public participation and engagement with stakeholders which was not done.

Nonetheless, they pointed out their proposals as follows;

- i. Section 4(1)(e) to read as follows “ the Director General of Health or his designated representative, being a Specialist Medical Practitioner of good standing with at least fifteen years experience”

**Rationale:** As the representative of the public health service providers and with powers to implement any policy initiatives emanating from the NHIF Board, the position of the the Director General of Health (currently Director of Medical Services) at the Board should be maintained.

- ii. Deletion of the proposed amendment to Section 4(1)(f), and retain paragraphs f,g,h and j in the Act as they are and additionally, to amend Section 4(1)(i) to read as follows:

“Section 4(1)(i) the President of the Kenya Medical Association”

**Rationale:** NHIF Board must have representation from the stakeholders and they shouldn't be nominated solely by the Cabinet Secretary without the involvement of the stakeholders. KMA procedures requires that the President of the Association represents it on the Board.

#### **FEDERATION OF KENYA EMPLOYERS (FKE):**

The Federation stated reasons as to why they were opposed to some of the proposed amendments to the National Hospital Insurance Fund as follows;

There were no consultations with the Employers before the Bill was introduced to Parliament. Further, the proposals suggested should have been brought through a Substantial Bill rather than being fronted using a Statute Law (Miscellaneous Amendments) Bill.

Moreover, apart from having wide ranging impact on employers, the said proposals offended the provisions of the CoK, ILO Conventions and the fundamental tripartite anchored in the Industrial Relations Charter as demonstrated below;

- i. Sections 2(a) which sought to introduce provision for the employer to make contributions matching the employees' contribution to the National Hospital Insurance Fund, did not take into account the cost implications of the proposal on employers and this might make Kenya's labour market uncompetitive.
- ii. Section 4(1) which seeks to change the constitution of the NHIF Board would lead to alienation of the key contributors and stakeholders of the fund hence weakening the fund.

The Federation further, informed the Committee that the government should have come up with alternative and innovative ways of financing Universal Health Care. For example, it should tap into the 84% of the population that is in the informal sector and ensure that the said population contributes.

Moreover, to improve the health sector the government needed to meet the Abuja Declaration target of 15% of the country's annual budget.


They concluded that there was need for a national conversation on a model of financing UHC and it should be based on an informed study.

**MIN.NO. 165/2018:      ANY OTHER BUSINESS**

The Committee was informed that a one day report writing retreat in Nairobi has been scheduled for Monday 18<sup>th</sup> June, 2018. The Committee will check-in at the venue on Sunday 19<sup>th</sup> June, 2018. The venue of the retreat will be communicated in due course.

**MIN. NO. 166/2018:      ADJOURNMENT**

There being no other business, the meeting adjourned at 2.05 pm.

Sign.......... Date.....17/6/18.....

(Chairperson)

MINUTES OF THE FOURTY FIRST (41<sup>ST</sup>) SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 7<sup>TH</sup> JUNE, 2018 IN BOARD ROOM, 2<sup>ND</sup> FLOOR, PROTECTION HOUSE, MAIN PARLIAMENT BUILDINGS, AT 9.30 AM

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**PRESENT**

1. Hon. (Dr.) Swarup Ranjan Mishra, MP – Vice Chairperson
2. Hon. (Dr.) James Nyikal, MP
3. Hon. (Dr.) James Kipkosgei Murgor, MP
4. Hon. (Dr.) Mohamed Dahir Duale, MP
5. Hon. Alfred Agoi Masadia, MP
6. Hon. Muriuki Njagagua, MP
7. Hon. (Prof.) Mohamud Sheikh Mohamed, MP
8. Hon. Zachary Kwenya Thuku, MP
9. Hon. Chris Karan, MP
10. Hon. Esther M. Passaris, MP
11. Hon. Martin Peters Owino, MP
12. Hon. Patrick Munene Ntwiga, MP
13. Hon. Kipsengeret Koros, MP

**ABSENT WITH APOLOGIES**

1. Hon. Sabina Chege, MP – Chairperson
2. Hon. (Dr.) Eseli Simiyu, MP
3. Hon. Stephen Mule, MP
4. Hon. Gladwell Jesire Cheruiyot, MP
5. Hon. Tongoyo Gabriel Koshal, MP
6. Hon. Mercy Wanjiku Gakuya, MP

**IN-ATTENDANCE**

**NATIONAL ASSEMBLY**

- |                           |   |                     |
|---------------------------|---|---------------------|
| 1. Mr. Victor Weke        | - | Clerk Assistant II  |
| 2. Mr. Muyodi Emmanuel    | - | Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - | Legal Counsel       |
| 4. Ms. Fatuma Abdi        | - | Audio Officer       |

**MINISTRY OF HEALTH**

- |                       |   |  |
|-----------------------|---|--|
| 1. Dr. Rashid A. Aman | - | Chief Administrative Secretary           |
| 2. Mr. Ibrahim Maalim | - | D.A                                      |
| 3. Dr. Mary Wangai    | - | Head Division Legislation and Regulation |
| 4. Mr. Ibrahim Abdi   | - | Administration/ Parliamentary Liaison    |

- |                        |   |                               |
|------------------------|---|-------------------------------|
| 5. Mr. Geoffrey Mwangi | - | Chief Executive Officer, NHIF |
| 6. Grace Kimani        | - | Legal Counsel, NHIF           |

**KENYA NATIONAL UNION OF TEACHERS**

- |                          |   |  |
|--------------------------|---|--|
| 1. Mr. Wycliffe Omucheyy | - | 2 <sup>nd</sup> Vice-National Chairman |
| 2. Mr. Hesbon Otieno     | - | Deputy Secretary General               |
| 3. Mr. Matiangi John     | - | National Treasurer                     |
| 4. Mr. John Machio       | - | Secretary General's Personal Assistant |

**MIN. NO. 156/2018: PRELIMINARIES**

The Vice - Chairperson called the meeting to order at 9.45 am and said a prayer.

**MIN. NO. 157/2018: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

**39<sup>th</sup> sitting**

Minutes of the 39<sup>th</sup> sitting held on 5<sup>th</sup> June, 2018 were confirmed as a true record of proceedings. They were proposed by Hon. (Dr.) James Murgor, MP and seconded by Hon. Martin Peters Owino, MP.

**40<sup>th</sup> sitting**

Minutes of the 40<sup>th</sup> sitting held on 6<sup>th</sup> May, 2018 were confirmed as a true record of proceedings. They were proposed by Hon. Martin Peters Owino, MP and seconded by Hon. (Dr.) Dahir Duale, MP.

**MIN. NO. 158/2018: MATTERS ARISING**

**39<sup>th</sup> sitting**

The Committee resolved that the Ministry immediately stops the implementation of the MES and HCIT programme, pending discussions with the Committee with a view of resolving some of the contentious issues touching on the project, and ascertaining its success. This would therefore also affect the variation to a further 21 hospitals.

Members resolved that the Committee should write to the Auditor-General to request for special audit report on the MES project.

The secretariat was tasked to draft communications on the same to the Ministry and Auditor General and share with the Committee for final ratification before dispatch.



**KENYA NATIONAL UNION OF TEACHERS (KNUT):**

The Executive Office of KNUT appeared before the Committee and stated that they were opposed to the proposed amendments to the NHIF act seeking to change the composition of the NHIF board.

This was because KNUT and other relevant organizations represented on the Board play an important role of overseeing NHIF's activities, they also represent the interests of the workers and the service providers. Their expulsion from the Board and giving the Cabinet Secretary powers to constitute the Board's membership would weaken the Fund.

They added that the teaching fraternity which was made up of over 300,000 teachers and an estimated 4 million declared dependants played a huge part in funding the NHIF, it is a significant contribution that should not be overlooked and therefore they deserve to be represented on the NHIF Board.

**Committee Resolution**

The Committee requested that KNUT provides a comprehensive report of its role in the Board, its contribution to the betterment of the Fund and concrete reasons as to why their representation at the Board should be maintained, by Tuesday 12<sup>th</sup> June, 2018. The report will guide the Committee when making the final decision on the matter.

**MINISTRY OF HEALTH:**

Dr. Rashid A. Aman - Chief Administrative Secretary informed the Committee that the Ministry of Health was the originator of the Statute Law Misc. Amendments Bill No. 2 Of 2018. However, he observed that some of the proposed amendments were controversial and strange to the Ministry and they were unaware as to where they came from. He clarified that the Ministry was not in support of the proposal that sought to change the composition of the NHIF Board by expelling: KNUT, COTU, FKE and KMA. However the Ministry sought to have these bodies nominate three representatives each, for selection by the Cabinet Secretary to ensure balance.

Thereafter, he took the Committee through their proposals in all sections of the Bill.

**Committee observations**

The Committee found it strange that a Ministry was disowning amendments brought before the House as government sponsored. The Committee would however listen to stakeholder views on the same and make a decision.

In the interim, the Committee made the following observations during its engagement with the Ministry as regards various sections of the Bill;

Section 4(1)(e), which seeks to remove the Director of Medical Services from the Board of Management of the NHIF and instead replace the Director with a person from the public sector.

The Committee did not agree with the amendment and it noted that the Director of Medical Services position requires a person with technical skills and especially one oriented on health matters.

Section 4(1)(f) and Section 4(1) paragraphs (g), (h), (i), (j) which seeks to remove from the NHIF Board persons nominated by the FKE, COTU, KNUT, KMA and the faith-based healthcare organisations.

The Committee noted that these organizations play an important role of overseeing the NHIF activities. The Committee resolved that it would engage with the said organizations before making a decision on the said amendments.


Section 6 “Power of the Board” – The Committee noted that addition of a new sub-clause requiring the Board to act in accordance with directives from the Cabinet Secretary was in fact donating powers to the Cabinet Secretary while diminishing that of the Board.

MIN.NO. 160/2018:            ANY OTHER BUSINESS

The Committee was reminded of invitation to a breakfast meeting by KNCHR on 12<sup>th</sup> June, 2018 at the Sarova Panafric between 8- 10 am. Members were urged to attend the meeting.

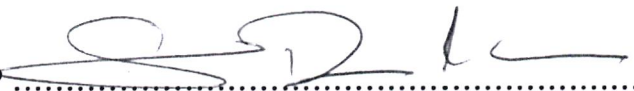
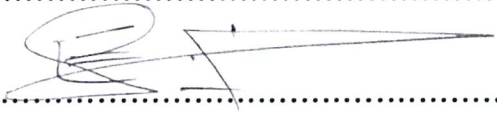
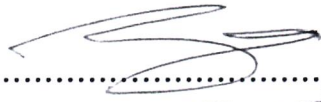
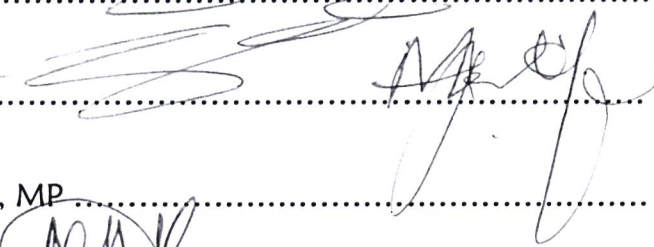
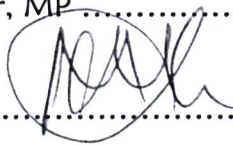


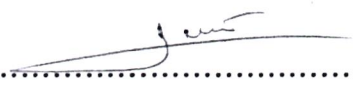
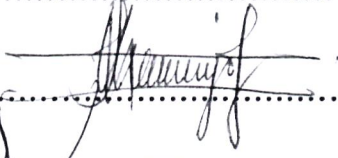
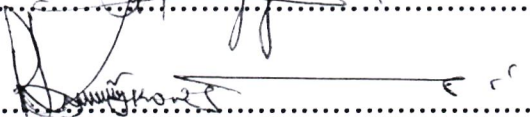
MIN. NO. 161/2018:            ADJOURNMENT

There being no other business, the meeting adjourned at 1.43 pm. Next sitting would be on Tuesday 12<sup>th</sup> June, 2018.

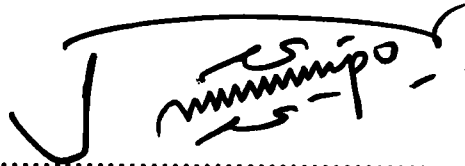
Sign.......... Date..... 19/6/18.....  
(Chairperson)

**ADOPTION OF REPORT ON THE STATUTE LAW MISCELLANEOUS AMENDMENT  
(NO. 2) BILL, 2018 (NATIONAL ASSEMBLY BILL NO. 13 OF 2018)**

The Honourable Members of the Departmental Committee on Health, do hereby affix their signatures to this Report On The Statute Law Miscellaneous Amendment (No. 2) Bill, 2018 (National Assembly Bill No. 13 Of 2018) ,to affirm their approval and confirm its accuracy, validity and authenticity;

1. Hon. Sabina Chege, MP .....
2. Hon. Swarup Ranjan Mishra, MP  .....
3. Hon. (Dr.) Eseli Simiyu, MP  .....
4. Hon. (Dr.) James Nyikal, MP  .....
5. Hon. Alfred Agoi Masadia, MP  .....
6. Hon. (Dr.) James Kipkosgei Murgor, MP  .....
7. Hon. Muriuki Njagagua, MP  .....
8. Hon. (Dr.) Mohamed Dahir Duale, MP  .....
9. Hon. Stephen Mule, MP.....
10. Hon. Chris Karan, MP  .....
11. Hon. Esther M. Passaris, MP .....
12. Hon. Gladwell Jesire Cheruiyot  .....
13. Hon. Kipsengeret Koros, MP  .....

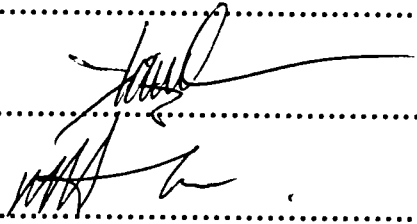




14. Hon. Martin Peters Owino, MP .....

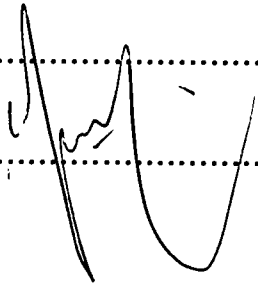
15. Hon. Mercy Wanjiku Gakuya, MP .....

16. Hon. Prof. Mohamud Sheikh Mohamed, MP .....



17. Hon. Patrick Munene Ntwiga, MP .....

18. Hon. Tongoyo Gabriel Koshal, MP .....



19. Hon. Zachary Kwenya Thuku, MP .....