



Approved.
SNA
21/2/24


PARLIAMENT
OF KENYA
LIBRARY

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ON THE CONSIDERATION OF THE STATUTE LAW MISCELLANEOUS
(AMENDMENTS) (NO. 2) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 68 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 FEB 2024	DAY: WED
TABLED BY:	Hon George Mungara, mp Chairperson, JLAC
CLERK-AT-THE-TABLE:	Miriam Mado

Published by:-

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

December, 2023

Table of Contents

1.0 PREFACE	4
1.1 Mandate of the Committee	4
1.2 Oversight	4
1.3 Committee Composition	7
2.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL, (NO. 68 OF 2023)	9
2.1 Background Information	9
2.2 Summary of the Bill	9
2.3 Public Participation in the Review of the Bill	9
3.0 SUBMISSIONS FROM STAKEHOLDERS	10
3.1 The Kenya Law Reform Commission	10
3.2 West Minister Consulting	11
3.3 Katiba Institute	11
4.0 COMMITTEE OBSERVATIONS	13
5.0 COMMITTEE RECOMMENDATIONS	14

LIST OF ANNEXURES

- Annexure 1: Adoption List
- Annexure 2: Newspaper Advert inviting the public to submit memoranda on the Bill
- Annexure 3: Written Submissions from various stakeholders
- Annexure 4: Minutes

PART I

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Labour was constituted on 27th October, 2022 and is established under provisions of S.O 216. Standing Order No. 216(5) grants the Committee amongst other functions 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 Ministries and departments and the effectiveness of the implementation;
- (ba) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
- 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 their 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 (Committee on Appointments);
- (fa) examine treaties, agreements and conventions;
- g) make reports and recommendations to the House as often as possible, including recommendation of propose legislation;
- h) consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) examine any questions raised by Members on a matter within its mandate.

Further, the Second Schedule to the Standing Orders mandates the Committee to consider matters relating to Labour, human capital and remuneration, trade union relations and public service.

1.2 Oversight

In line with the assigned subject matter, and in executing this mandate, the Committee oversees the following Ministries, Departments and Agencies (MDAs):

- 1) The State Department for Public Service and its Autonomous and Semi-Autonomous Government Agencies which include;
 - 1) Kenya School of Government
 - 2) Huduma Centres; and
 - 3) Institute of Human Resource Management
- 2) The State Department for Labour and Skills Development and its Autonomous and Semi-Autonomous Government Agencies which include;
 - 1) National Industrial Training Authority (NITA);
 - 2) National Productivity and Competitiveness Centre (NPCC);
 - 3) Kenya National Labour Board and the Wages Council;
 - 4) National Employment Authority (NEA);
 - 5) Migrant Workers Welfare Fund
 - 6) Department of Labour Migration Management;

- 3) Public Service Commission;
- 4) Salaries and Remuneration Commission;

CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendments) (No.2) Bill, 2023 (National Assembly Bill No. 68 of 2023) was read a first time on 15th November, 2023 and was subsequently committed to respective Departmental Committees for consideration and facilitation of public participation pursuant to Standing Order 127. The Bill seeks to amend, among other Statutes; the Industrial Training Act (Cap 237) and the Employment Act, 2007 (No. 11 of 2007).

The Clerk of the National Assembly placed advertisements in the print media on 22nd November, 2023 seeking for comments from the public on the Bills pursuant to Article 118 of the Constitution. The Committee received written memoranda from three (3) stakeholders.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee, Committee Secretariat and all those who responded to the National Assembly's advert inviting the public to present their views on the Bill.

On behalf of the Committee and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Statute Law (Miscellaneous Amendments) (No. 2) Bill,(No. 68 of 2023).

HON. ERIC MUCHANGI KAREMBA, M.P.
CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON LABOUR

1.3 Committee Composition

1. The Departmental Committee on Labour was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. Eric Muchangi Karemba, MP
Runyenjes Constituency
UDA Party

Vice-Chairperson

Hon. Fabian Kyule Muli, MP
Kangundo Constituency
GDDP

Members

Hon. James Onyango K'Oyoo, MP
Muhoroni Constituency
ODM Party

Hon. Richard Kiti Chonga, MP
Kilifi South Constituency
ODM Party

Hon. George Aladwa Omwera, MP
Makadara Constituency
ODM Party

Hon. Amina Dika Abdullahi, MP
Tana River Constituency
KANU

Hon. Patrick Simiyu Barasa, MP
Cherangany Constituency
DAP-K Party

Hon. Peter Irungu Kihungi, MP
Kangema Constituency
UDA Party

Hon. Lilian Chebet Siyoi, MP
Trans Nzoia County
UDA Party

Hon. Ernest Ogesi Kivai Kagesi, MP
Vihiga Constituency
ANC Party

Hon. Joseph Samal Lomwa, MP
Isiolo North Constituency
Jubilee Party

Hon. Catherine Wambiliaga, MP
Bungoma County
FORD-K

Hon. Dorice Aburi Donya, MP
Kisii County
WDM-K

Hon. Mangale Munga Chiforomodo, MP
Lunga Lunga Constituency
UDM Party

Hon. Leah Sopiato Sankaire, MP
Kajiado County
UDA Party

1.4 Committee Secretariat

The Committee has the following technical staff, representing the Office of the Clerk:

Ms. Rose M. Wanjohi
Senior Clerk Assistant /Head of Secretariat

Mr. Samuel Wanjiru
Clerk Assistant III

Ms. Fiona Githunguri
Legal Counsel II

Mr. Fredrick Muthengi
Deputy Director, Parliamentary Budget Office

Ms. Wambui Nyachae
Research Officer III

Mr. Timothy C. Tsungulah
Research Officer III

Ms Zainab Wario
Serjeant-At-Arms II

Ms. Rehema Koech
Audio Officer III

Mr. Alex Amwata
Hansard Officer III

Ms. Rinah Sainey
Media Relations Officer III

Mr. Alan Kituku
Serjeant-At-Arms

PART II

2.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO.2) BILL, (NO. 68 OF 2023)

2.1 Background Information

1. The Statute Law (Miscellaneous Amendments) (No. 2) Bill, (No. 68 of 2023) seeks to amend among other Statutes, the Industrial Training Act (Cap 237) and the Employment Act, 2007(No. 11 of 2007).

2.2 Summary of the Bill

2. The Bill seeks to amend the
 - i. National Industrial Training Act (Cap 237) to provide that the date for the remitting of the training levy shall be the ninth day of the month in order to harmonize it with the period within which PAYE is remitted to the Kenya Revenue Authority.
 - ii. Employment Act, 2007 (No. 11 of 2007) to exempt the National Intelligence Service from the application of the Act in the same manner as other national security organs are exempted.

Proposed amendments

Industrial Training Act (Cap 237)

3. Proposed amendment to s. 5B

To change the date of remittance of the training levy to the 9th day of the month following the month in which the levy becomes due instead of the 5th day of the month as is currently prescribed.

Employment Act No. 11 of 2007

4. Proposed amendment to s. 3- Application of the Act

To include in the list of discipline forces exempted from the Employment Act, No. 11 of 2007, the National Intelligence Service

2.3 Public Participation in the Review of the Bill

5. Article 118 (1) (b) of the Constitution of Kenya provides as follows: -

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

6. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of 22nd November, 2023 invited the public to make representations on the proposed amendments in the Bill as per annexure 2 of the report. The Committee received one (1) written submissions on the proposed amendments.

7. The following Stakeholders were requested to submit their views to the Committee:
 - a. Ministry of Labour and Social Protection (State Department for Labour and Skill Development)
 - b. The Office of Attorney General & Department of Justice
 - c. National Intelligence Service
 - d. Law Society of Kenya (LSK)
 - e. Katiba Institute
 - f. Central Organization of Trade Unions8 (COTU-K)
 - g. Federation of Kenya Employees
 - h. Kenya Law Reform Commission
8. The following stakeholders submitted their memoranda to the Committee:-
 - a. Kenya Law Reform Commission
 - b. Katiba Institute
 - c. West Minister Consulting

3.0 SUBMISSIONS FROM STAKEHOLDERS

3.1 The Kenya Law Reform Commission

9. In their written submissions, the Kenya Law Reform Commission presented that

(a) On the proposed Amendment to the Industrial Training Act (Cap 237)

10. The Bill proposes to amend the Act to align the date for remitting the training levy to the ninth day of each month. This change aims to align it with the timeline for remitting PAYE to the Kenya Revenue Authority. The Commission endorses this proposed amendment, recognizing its intention to simplify the levy's administration and resolve inconsistencies with existing tax law filing dates.

Committee Observation

11. This will simplify the process of statutory deductions for employers and consolidate the submission timelines thus reducing the overall compliance costs.

(b) On the Proposed Amendment to the Employment Act (No. 11 of 2007).

12. The Bill intends to amend the Employment Act, 2007, to exempt the National Intelligence Service (NIS) from the Act's provisions, similar to other security organs.

The Commission endorses this proposed amendment, particularly considering that the National Intelligence Service (NIS) was established as a security organ after the enactment of the Employment Act.

Committee Observation

The Committee noted that

13. Article 24 provides for limitation of rights and fundamental freedoms specifically Article 24(5) which reads “...a provision in legislation may limit the application of eth rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service—

- a. Article 31- right to privacy(homes, person or property searched or seized among others)
- b. Article 36- Freedom of association(joining or participating in activities of an association nor can they be compelled to join one)
- c. Article 37- Assembly, demonstration, picketing and petition
- d. Article 41- Labour Relations(join unions, go on strike, fair remuneration and reasonable working conditions)
- e. Article 43- Economic and Social rights(health, adequate housing, freedom from hunger, safe water, education, or not denied emergency medical treatment)
- f. Article 49- Rights of arrested persons(to know the charges, to remain silent and bail conditions)

The Kenya Defence Forces established under Article 241 consists of the Kenya Army, Kenya Air Force and Kenya Navy. The National Police Service established under Article 243 consists of the Kenya Police Service and the Administration Police. The National Intelligence Service is established under Article 242 and under the section 4(1) of the National Intelligence Service Act (No. 28 of 2012), provides that the service shall consist of disciplined civilians. The Committee therefore observed that disciplined civilians are not covered under the limitation of rights and fundamental freedoms in Article 24(5).

3.2 West Minister Consulting

14. The West Minister Consulting in their written submissions supports the amendment to the Industrial Training Act to harmonize the remittance dates for the training levy with the period within which PAYE is required to be remitted to the Kenya Revenue Authority. The amendment will simplify the process of statutory deductions for employers and consolidate the submission timelines, reducing the overall compliance costs. Furthermore, it streamlines enforcement procedures for government entities involved in the submission and payment processes.
15. However, they propose that the Bill makes provision for amendment of legislation to include Affordable Housing Levy as a tax deductible. The justification is that the levy is an employee benefit, therefore clarity to tax computation, it be recognized as an allowable expense for improved clarity and compliance in the tax treatment of the contribution.

Committee Observation

16. The Committee observed that the proposal to provide for legislation to include the Affordable Housing Levy as a tax-deductible is not a subject of amendment under the Statute Law (Miscellaneous Amendments) Bill, 2023(National Assembly Bills No. 68 of 2023).

3.3 Katiba Institute

Katiba Institute in their written submissions presented that

- a) **On the proposed amendment to section 3(2) of the Employment Act, No. 11 of 2007**
17. The Institute noted that the proposed amendment to section 3(2) of the Employment Act, 2007 to exempt the National Intelligence Service is, according to the Memorandum of Objects and Reasons, to exempt the National Intelligence Service in the same manner as other national security organs. However, their concern is that this does not comply with the provisions of Article 24 (5), especially on the matter of labour relations among the fundamental rights and freedoms guaranteed under the Bill of Rights. Further, although Article 24(5) states that legislation may limit the right to Labour Relations to persons serving in the Kenya Defence Forces or the National Police Service, it does not extend the exception to other security organs such as the National Intelligence Service.
18. In addition, if Parliament intends to limit labour rights by exempting the NIS from the Employment Act, it must comply with Article 24 (1)-(2). Article 24(3) requires the National Assembly to “specifically express the intention to limit the right to fair labour and the nature and extent of the limitation”. Article

24(2) provides that the National Assembly must explain why the limitation is reasonable and justifiable, the importance and purpose of the limitation and why a blanket exemption is necessary.

19. The institute presented that the proposed amendment does not meet the requirements of Article (1)-(2) and would be subject to challenge in a court of law.

Committee Observation

20. The Committee agrees that under Article 24(5) of the Constitution, that legislation that may limit the right to labour relations among others, to persons serving in the Kenya Defence Forces or National Police Service, does not extend the exception to other security organs such as the National Intelligence Service.

b) On the proposed amendment to Section 5B(3) the Industrial Training Act (Cap 237)

21. Katiba Institute considered it a minor amendment and supports the amendment.

PART III

4.0 COMMITTEE OBSERVATIONS

The Committee while considering the Bill made the following key observations;

(a) On the Proposed Amendment to the Employment Act (No. 11 of 2007)

Committee's view

22. That section 3(2) of the Employment Act 2007 provides that the Act shall not apply to— (a) the armed forces or the reserve as respectively defined in the Armed Forces Act (Cap. 199); (b) the Kenya Police, the Kenya Prisons Service or the Administration Police Force; (c) the National Youth Service; and (d) an employer and the employer's dependants where the dependants are the only employees in a family undertaking.
23. The Committee notes that Article 24 provides for limitation of rights and fundamental freedoms paragraph (5) provides: "...a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the **Kenya Defence Forces** or the **National Police Service**—
 - (a) Article 31 – Privacy;
 - (b) Article 36 – Freedom of association;
 - (c) Article 37 – Assembly, demonstration, picketing and petition;
 - (d) Article 41 – Labour relations;
 - (e) Article 43 – Economic and social rights; and
 - (f) Article 49 – Rights of arrested persons."
24. The Kenya Defence Forces is established under Article 241 of the Constitution. It consists of:
 - (a) The Kenya Army;
 - (b) The Kenya Air Force; and
 - (c) The Kenya Navy.
25. The National Police Service is established under Article 243 of the Constitution and consists of:
 - (a) The Kenya Police Service; and
 - (b) The Administration Police Service.
26. We note that the National Intelligence Service is established under Article 242 of the Constitution and section 4(1) of the National Intelligence Service Act (*No. 28 of 2012*) provides that the service shall constitute of disciplined civilians.
27. The National Intelligence Service is not exempted by Article 24(5) on the limitation of rights and fundamental freedoms. Therefore, the amendment to exempt the National Intelligence Service is inconsistent with the Constitution.

Stakeholders view

28. The Kenya Law Reform Commission agreed with the proposal.
 29. The Katiba Institute presented that the proposed amendment does not meet the requirements of Article (1)-(2) and would be subject to challenge in a court of law.
- #### **b) On the proposed Amendment to section 5B(3) of the Industrial Training Act (Cap 237)**

Committee's view

30. The Committee observed that this will simplify the process of statutory deductions for employers and combine the submission timelines thus reducing the overall compliance costs.

Stakeholders view

31. Katiba Institute considered it a minor amendment and did not oppose it.
32. West Minister Consulting agreed with the proposed amendment that it will simplify the process of statutory deductions for employers and consolidate the submission timelines, reducing the overall compliance costs. Furthermore, it streamlines enforcement procedures for government entities involved in the submission and payment processes.

5.0 COMMITTEE RECOMMENDATIONS

- c) Having considered the Bill and the views of different stakeholders, the Committee recommends–
- a. THAT, the proposed amendment to sections 5B (3) of the Industrial Training Act (Cap 237) be adopted as contained in the Statute Law (Miscellaneous Amendments) (No. 2) Bill, (No. 68 of 2023);
 - b. THAT, the proposed amendment to section 3(2) of the Employment Act (No 11 of 2007) be rejected as contained in the Statute Law (Miscellaneous Amendments) (No. 2) Bill, (No. 68 of 2023) as it is inconsistent with Article 24(3) of the Constitution on the limitation of rights and fundamental freedom and the Committee sponsors Committee Stage Amendments to incorporate proposals in the manner observed below ; and
 - c. THAT further, Section 3(2) of the Employment Act (No. 11 of 2007) be aligned with the provisions of Article 24(5) of the Constitution on the limitation of rights and fundamental freedoms on exemptions.

That the proposed amendment to Section 3(2) of the Employment Act, (No. 11 of 2007) under the Statute Law (Miscellaneous Amendment) (No. 2) Bill, 2023 be amended by deleting the amendment to section 3(2).

SIGNED.....



DATE.....

06/12/2023.

HON. ERIC MUCHANGI KAREMBA, M.P.

CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON LABOUR

Annexure 1: Adoption List



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT-SECOND SESSION -2023
DEPARTMENTAL COMMITTEE ON LABOUR

REPORT ADOPTION LIST

We, the members of the Departmental Committee on Labour, have pursuant to Standing Orders 199 and 216(5) (c), adopted this report on the Statute Law (Miscellaneous Amendments) Bill, (No. 2) (National Assembly Bills No. 68 of 2023) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

Date.....5/12/2023

	NAMES	SIGNATURE
1.	Hon. Karemba Eric Muchangi Njiru, M.P-Chair person	
2.	Hon. Muli Fabian Kyule, M.P- Vice Chairperson	
3.	Hon. K'Oyoo James Onyango, M.P.	
4.	Hon. Kagesi Kivai Ernest Ogesi, M.P.	
5.	Hon. Kiti Richard Ken Chonga, M.P.	
6.	Hon. Lomwa Joseph Samal, M.P.	
7.	Hon. Omwera George Aladwa, M. P.	
8.	Hon. Wambilianga Catherine Nanjala, MP	
9.	Hon. Abdullahi Amina Dika, M.P.	
10.	Hon. Aburi Donya Dorice, M.P.	
11.	Hon. Barasa Patrick Simiyu , M.P.	
12.	Hon. Chiforomodo Mangale Munga, M.P.	
13.	Hon. Kihungi Peter Irungu, M. P.	
14.	Hon. Sankaire Leah Sopiato, M.P.	
15.	Hon. Siyoi Lillian Chebet, M.P.	

**Annexure 2: Newspaper Advert inviting the public
to submit memoranda on the Bill**



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT-SECOND SESSION (2023)

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (No. 2) BILL (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023)

INVITATION TO SUBMIT MEMORANDA

AS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 68 of 2023) was read a First Time on Wednesday, 15th November, 2023 and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 68 of 2023) sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'uwah, MGH, MP seeks to make amendments to various statutes. It is in keeping with the practice of making various amendments that do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes—

(1) The Oaths and Statutory Declarations Act (Cap. 15)

The Bill proposes to amend the Oaths and Statutory Declarations Act to provide that an advocate who has been appointed as a commissioner for oaths shall sign the roll kept by the Chief Registrar of the Judiciary; and that the Registrar or Deputy Registrar of a superior court or subordinate court may administer an oath or affirmation or take an affidavit or statutory declaration under the Act.

(2) The Advocates Act (Cap. 16)

The Bill proposes the amendment of the Advocates Act to provide that the Registrar responsible for keeping the Roll of Advocates shall be the Chief Registrar of the Judiciary. Further, the Bill proposes to amend the Act to provide that the Council of the Society may, with the approval of the Chief Justice, make rules for the admission of advocates.

(3) The Notaries Public Act (Cap. 17)

The Bill proposes to amend the Notaries Public Act to provide that the Chief Registrar of the Judiciary shall be responsible for enrolling notaries public in the book kept for that purpose; granting new certificates to newly enrolled notaries public; and removing from the roll any person whose appointment as a notary public has expired under the Act.

(4) The Civil Procedure Act (Cap. 21)

The Bill proposes to amend the Civil Procedure Act to reduce the members nominated by the Law Society of Kenya to three to improve decision-making within the Rules Committee and reduce the cost of facilitating its work.

(5) The Public Holidays Act (Cap. 110)

The Bill proposes to amend the Public Holidays Act to remove *Utamaduni Day* as a public holiday.

(6) The Trustees (Perpetual Succession) Act (Cap. 164)

The Bill proposes to amend the Trustees (Perpetual Succession) Act to empower the Registrar of Companies to register trusts and issue of Certificates of Incorporation; process applications for incorporation; prescribe the form of an application; keep and maintain a register; conduct searches; and prescribe Regulations.

(7) The Industrial Training Act (Cap. 237)

The Bill proposes to amend the Industrial Training Act to harmonize the date for remitting the training levy with the period within which PAYE is required to be remitted to the Kenya Revenue Authority.

(8) The Traffic Act (Cap. 403)

The Bill proposes to amend the Traffic Act to incorporate the use of technology in the management of minor traffic offences and to enhance the maximum fine that may be imposed for failure to attend court pursuant to a notification; unauthorized removal of a notification affixed on a motor vehicle; and failure to report to a police station in relation to a defaced notification.

(9) The Sexual Offences Act, 2006 (No. 3 of 2006)

The Bill proposes to amend the Sexual Offences Act, 2006, to replace the Registrar of the High Court with the Chief Registrar of the Judiciary as the custodian of the register of convicted sexual offenders.

(10) The Employment Act, 2007 (No. 11 of 2007)

The Bill proposes to amend the Employment Act, 2007, to exempt the National Intelligence Service from the application of the Act in the same manner as other national security organs.

(11) The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)

The Bill proposes to amend the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 to make minor corrections to the provisions relating to the definition of "animal", "animal resource industry", "annual license", "private practice", "register" and "veterinary medicine" and grammatical errors in other provisions of the Act.

(12) The Public Finance Management Act, 2012 (No. 18 of 2012)

The Bill proposes to amend the Public Finance Management, 2012 to delete an inconsistency in the Act relating to the submission of the legislative proposal containing revenue raising measures for the national government. Section 39A of the Act already exhaustively provides for the manner of the introduction, consideration and passage of the legislative proposal.

(13) The Universities Act, 2012 (No. 42 of 2012)

The Bill proposes to amend the Universities Act, 2012 to provide for the declaration of technical universities under section 25(1) of the Act in respect of public institutions that are or were national polytechnics and possess the facilities and human resource necessary to operate as a technical university. It further proposes to amend section 56(1) of the Act to require the Board of the Kenya Universities and Colleges Central Placement Service to place both privately sponsored and government sponsored students in universities and colleges.

(14) The Office of the Attorney-General Act, 2012 (No. 49 of 2012)

The Bill proposes to amend the Office of the Attorney-General Act, 2012 to remove inconsistencies in the operational framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney General as an independent office.

(15) The Civil Aviation Act, 2013 (No. 21 of 2013)

The Bill proposes to amend the Civil Aviation Act, 2013, to include aviation information circulars in the definition of "publication"; and to increase the period within which the Director-General is required to submit an annual report to within six months after the end of the financial year.

(16) The Value Added Tax Act, 2013 (No. 35 of 2013)

The Bill proposes to amend the Value Added Tax Act, 2013 to re-classify the supply of gas meters under tariff number 9028.10.00 and the supply of denatured ethanol under tariff number 2207.20.00 as exempt and zero-rated, respectively.

(17) The Privatization Act, 2023 (No. 11 of 2023)

The Bill proposes to amend the Privatization Act, 2023 to delete the preparation of a long-term divestiture sequence plan as a role of the Privatisation Authority. This cures an inconsistency between the role of the Authority and the Cabinet Secretary.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill for consideration by the respective Departmental Committees of the National Assembly set out in the schedule below—

ACT PROPOSED FOR AMENDMENT	COMMITTEE
1. The Oaths and Statutory Declarations Act (Cap. 15)	Justice and Legal Affairs
2. The Trustees (Perpetual Succession) Act (Cap. 164)	
3. The Advocates Act (Cap. 16)	
4. The Notaries Public Act (Cap. 17)	
5. The Civil Procedure Act (Cap. 21)	
6. The Sexual Offences Act, 2006 (No. 3 of 2006)	
7. The Office of the Attorney-General Act, 2012 (No. 49 of 2012)	
1. The Public Finance Management Act, 2012 (No. 18 of 2012)	Finance and National Planning
2. The Value Added Tax Act, 2013 (No. 35 of 2013)	
3. The Privatization Act, 2023 (No. 11 of 2023)	
1. The Traffic Act (Cap. 403)	Transport and Infrastructure
2. The Civil Aviation Act, 2013 (No. 21 of 2013)	
The Public Holidays Act (Cap. 110)	Administration and Internal Security
The Industrial Training Act (Cap. 237)	Trade, Industry and Cooperatives
The Employment Act, 2007 (No. 11 of 2007)	Labour
The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)	Health
The Universities Act, 2012 (No. 42 of 2012)	Education

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke to be received on or before Friday, 1st December, 2023 at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
22nd November, 2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT- SECOND SESSION (2023)
IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION
AND

IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (No. 2) BILL (NATIONAL ASSEMBLY BILLS NO. 68 OF 2023)

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

AND WHEREAS, the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 68 of 2023) was read a First Time on Wednesday, 15th November, 2023 and thereafter referred to the relevant Departmental Committees for consideration and reporting to the House;

IT IS NOTIFIED that the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bills No. 68 of 2023) sponsored by the Leader of the Majority Party, the Hon. Kimani Ichung'wah, MGH, MP seeks to make amendments to various statutes. It is in keeping with the practice of making various amendments that do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes—

(1) The Oaths and Statutory Declarations Act (Cap. 15)

The Bill proposes to amend the Oaths and Statutory Declarations Act to provide that an advocate who has been appointed as a commissioner for oaths shall sign the roll kept by the Chief Registrar of the Judiciary; and that the Registrar or Deputy Registrar of a superior court or subordinate court may administer an oath or affirmation or take an affidavit or statutory declaration under the Act.

(2) The Advocates Act (Cap. 16)

The Bill proposes the amendment of the Advocates Act to provide that the Registrar responsible for keeping the Roll of Advocates shall be the Chief Registrar of the Judiciary. Further, the Bill proposes to amend the Act to provide that the Council of the Society may, with the approval of the Chief Justice, make rules for the admission of advocates.

(3) The Notaries Public Act (Cap. 17)

The Bill proposes to amend the Notaries Public Act to provide that the Chief Registrar of the Judiciary shall be responsible for enrolling notaries public in the book kept for that purpose; granting new certificates to newly enrolled notaries public; and removing from the roll any person whose appointment as a notary public has been revoked under the Act.

The Civil Procedure Act (Cap. 21)

Bill proposes to amend the Civil Procedure Act to reduce the members nominated by the Law Society of Kenya to three to improve decision-making within the Rules Committee and reduce the cost of facilitating its work.

(5) The Public Holidays Act (Cap. 110)

The Bill proposes to amend the Public Holidays Act to remove *Utamaduni Day* as a public holiday.

(6) The Trustees (Perpetual Succession) Act (Cap. 164)

The Bill proposes to amend the Trustees (Perpetual Succession) Act to empower the Registrar of Companies to register trusts and issue Certificates of Incorporation; process applications for incorporation; prescribe the form of an application; keep and maintain a register; conduct searches; and prescribe Regulations.

(7) The Industrial Training Act (Cap. 237)

The Bill proposes to amend the Industrial Training Act to harmonize the date for remitting the training levy with the period within which PAYE is required to be remitted to the Kenya Revenue Authority.

(8) The Traffic Act (Cap. 403)

The Bill proposes to amend the Traffic Act to incorporate the use of technology in the management of minor traffic offences and to enhance the maximum fine that may be imposed for failure to attend court pursuant to a notification; unauthorized removal of a notification affixed on a motor vehicle; and failure to report to a police station in relation to a defaced notification.

(9) The Sexual Offences Act, 2006 (No. 3 of 2006)

The Bill proposes to amend the Sexual Offences Act, 2006, to replace the Registrar of the High Court with the Chief Registrar of the Judiciary as the custodian of the register of convicted sexual offenders.

(10) The Employment Act, 2007 (No. 11 of 2007)

The Bill proposes to amend the Employment Act, 2007, to exempt the National Intelligence Service from the application of the Act in the same manner as other national security organs.

(11) The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)

The Bill proposes to amend the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 to make minor corrections to the provisions relating to the definition of "animal", "animal resource industry", "annual license", "private practice", "register" and "veterinary medicine" and grammatical errors in other provisions of the Act.

(12) The Public Finance Management Act, 2012 (No. 18 of 2012)

The Bill proposes to amend the Public Finance Management Act, 2012 to delete an inconsistency in the Act relating to the submission of the legislative proposal containing revenue raising measures for the national government. Section 39A of the Act already exhaustively provides for the manner of the introduction, consideration and passage of the legislative proposal.

(13) The Universities Act, 2012 (No. 42 of 2012)

The Bill proposes to amend the Universities Act, 2012 to provide for the declaration of technical universities under section 25(1) of the Act in respect of public institutions that are or were national polytechnics and possess the facilities and human resource necessary to operate as a technical university. It further proposes to amend section 56(1) of the Act to require the Board of the Kenya Universities and Colleges Central Placement Service to place both privately sponsored and government sponsored students in universities and colleges.

(14) The Office of the Attorney-General Act, 2012 (No. 49 of 2012)

The Bill proposes to amend the Office of the Attorney-General Act, 2012 to remove inconsistencies in the operational framework of the Office of the Attorney-General in line with Article 156 of the Constitution that establishes the Office of the Attorney-General as an independent office.

(15) The Civil Aviation Act, 2013 (No. 21 of 2013)

The Bill proposes to amend the Civil Aviation Act, 2013, to include aviation information circulars in the definition of "publication"; and to increase the period within which the Director-General is required to submit an annual report to within six months after the end of the financial year.

(16) The Value Added Tax Act, 2013 (No. 35 of 2013)

The Bill proposes to amend the Value Added Tax Act, 2013 to re-classify the supply of gas meters under tariff number 9028.10.00 and the supply of denatured ethanol under tariff number 2207.20.00 as exempt and zero-rated, respectively.

(17) The Privatization Act, 2023 (No. 11 of 2023)

The Bill proposes to amend the Privatization Act, 2023 to delete the preparation of a long-term divestiture sequence plan as a role of the Privatisation Authority. This cures an inconsistency between the role of the Authority and the Cabinet Secretary.

NOW THEREFORE, in compliance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill for consideration by the respective Departmental Committees of the National Assembly set out in the schedule below—

ACT PROPOSED FOR AMENDMENT	COMMITTEE
1. The Oaths and Statutory Declarations Act (Cap. 15)	Justice and Legal Affairs
2. The Trustees (Perpetual Succession) Act (Cap. 164)	
3. The Advocates Act (Cap. 16)	
4. The Notaries Public Act (Cap. 17)	
5. The Civil Procedure Act (Cap. 21)	
6. The Sexual Offences Act, 2006 (No. 3 of 2006)	
7. The Office of the Attorney-General Act, 2012 (No. 49 of 2012)	
1. The Public Finance Management Act, 2012 (No. 18 of 2012)	Finance and National Planning
2. The Value Added Tax Act, 2013 (No. 35 of 2013)	
3. The Privatization Act, 2023 (No. 11 of 2023)	
1. The Traffic Act (Cap. 403)	Transport and Infrastructure
2. The Civil Aviation Act, 2013 (No. 21 of 2013)	
The Public Holidays Act (Cap. 110)	Administration and Internal Security
The Industrial Training Act (Cap. 237)	Trade, Industry and Cooperatives
The Employment Act, 2007 (No. 11 of 2007)	Labour
The Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 (No. 29 of 2011)	Health
The Universities Act, 2012 (No. 42 of 2012)	Education

Copies of the Bills are available at the National Assembly Table Office, Main Parliament Buildings and on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke to be received on or before Friday, 1st December, 2023 at 5.00 p.m.

S. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
22nd November, 2023

Annexure 3:

**Written Submissions from various
stakeholders**



December 4, 2023

REVIEW OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2023

(a) Comment on the Proposed Amendment to the Industrial Training Act (Cap 237)

The Bill proposes to amend the Act to align the date for remitting the training levy to the ninth day of each month. This change aims to align it with the timeline for remitting PAYE to the Kenya Revenue Authority.

The Commission endorses this proposed amendment, recognizing its intention to simplify the levy's administration and resolve inconsistencies with existing tax law filing dates.

(b) Comment on the Proposed Amendment to the Employment Act (No. 11 of 2007).

The Bill intends to amend the Employment Act, 2007, to exempt the National Intelligence Service (NIS) from the Act's provisions, similar to other security organs.

The Commission endorses this proposed amendment, particularly considering that the NIS was established as a security organ after the enactment of the Employment Act.

(c) Comment on the Proposed Amendments to the National Employment Authority Act, 2016

The Bill seeks to amend the National Employment Authority Act, 2016, to rectify inconsistencies and errors within the Act.

The Commission had reviewed the proposed changes and notes they are consistent with the principal Act and contribute to legislative clarity and precision.

COTU(K) MEMORANDUM ON THE AMENDMENT THE NATIONAL EMPLOYMENT AUTHORITY

ACT NO. 3 OF 2016

PRESENTED TO

THE NATIONAL ASSEMBLY

AND SUBMITTED TO

THE CLERK OF THE NATIONAL ASSEMBLY

ON

30TH NOVEMBER, 2023

SUBMITTED BY:

CENTRAL ORGANIZATION OF TRADE UNIONS (KENYA)

SOLIDARITY BUILDING

DIGO ROAD

P.O BOX 1300 CODE 00200

NAIROBI – KENYA

TELEPHONE: +254-20-2383368/6761375/7

info@cotu-kenya.org

PROPOSAL

Inclusion of Central Organization of Trade Unions (Kenya) in the Board of the National Employment Authority to reflect tripartism.

1. INTRODUCTION

The Central Organization of Trade Unions (Kenya) under the ILO Convention no. 144 is bases its operations on the principle of tripartism; (dialogue and cooperation between government, employers, and workers in the formulation of standards and policies dealing with labour matters). International labour standards are created and supervised through a tripartite structure. The tripartite approach to adopting standards ensures that they have broad support from all ILO constituents. Tripartism with regard to ILO standards is important at the national level and its through regular

tripartite consultations that the government can ensure that ILO standards are formulated, applied and supervised with the participation of employers and workers.

ILO standards on tripartite consultation set forth the framework for effective national tripartite consultations. Such consultations can ensure greater cooperation among the social partners and stronger awareness and participation in matters relating to international labour standards, and can lead to better governance and a greater culture of social dialogue on wider social and economic issues.

2. ISSUES IN THE BILL

The Bill should seek to amend the National Employment Authority Act, 2016 to cure inconsistencies and gaps in the Act and align it with national laws governing matters of Employment with respect to the critical role of social partners. Kenya is a signatory to International Labour standards; ILO C 144 (Tripartite Consultations) in force since 6th June, 1990; ILO C 081 (Labour Inspection Convention) in force since 13th January, 1964; ILO C 002 (Unemployment Convention) in force since 13th January, 1964.

PART II — ESTABLISHMENT AND COMPOSITION OF THE AUTHORITY

2.1 CLAUSE 10 The Board of the Authority

2.2 Clause 10 (1) Composition of the board of the Authority

2.3 Clause 10 (h) a person appointed by the Cabinet Secretary from the largest representative association of employers;

Observation: The composition of the Board does not reflect tripartism. Most representative Federation of Trade unions has been excluded from the composition of this board; relative to discrimination and a violation of ILO Convention 111 which is a Fundamental Convention to which Kenya is a signatory and has remained in force since 7th May, 2001.

The Employers representatives form part of the board of The National Employment Authority; **whereas representatives of workers** have been deliberately excluded.

Proposal: Two (2) persons nominated by the Central Organization of Trade Unions (Kenya).

CONCLUSION

COTU(K) has considered the above Clauses acknowledging that Employment matters require consultative dialogue with the social partners (Workers, Employers and Government) on all matters of Labour and Employment. With relent amendments COTU-K shall be part of the Composition of the board of The National Employment Authority as a requirement by the international labour standards and national statues. We threfore belief that our proposals will be taken into account as we take a deliberate and meaningful enactment of the National Employment Authority Act, 2016

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

SECRETARY GENERAL



Our Ref: WCL/012/2023/HS/LO

27th November 2023

The Clerk of the National Assembly,
Office of the Clerk,
Main Parliament Building,
Nairobi.

Dear Sir,

Submission of Memoranda

**The Statute Law (Miscellaneous Amendments) (No. 2) Bill,
National Assembly Bill No.68 of 2023**

We are writing in response to your invitation for public participation and submission of memoranda, as outlined in your advertisement in the print media on November 22, 2023. We appreciate the opportunity to contribute our perspective with regards to the below mentioned provisions and provide additional recommendations with regards to various legislation relevant to the Acts to be amended.

Specifically, we:

1. Support the amendment to the Industrial Training Act to harmonize the remittance dates for the training levy with the period within which PAYE is required to be remitted to the Kenya Revenue Authority (KRA). With regards to streamlining employee deductions and providing seamless deduction and accounting of the same, we also propose that the Bill make provision for amendment of legislation to include Affordable Housing Levy as a tax deductible.
2. Support amendment of the Public Finance Management Act, 2012 (No 18 of 2012), deleting sections 40 (3) and (4). We further propose an amendment to the Act to have East African Community (EAC) tariff measures tabled before parliament for approval before they are presented at the EAC regional level.
3. Endorse the proposed amendments of reclassification of the Supply of Gas Meters under tariff Number 9028.10.00 as exempt under the Value Added Tax Act (VAT), 2013 (No 35 of 2013).
4. Recommend the reclassification of the Supply of Denatured Ethanol under the Value Added Tax Act (VAT), 2013 (No 35 of 2013), under Tariff Number 2207.20.00 as zero-rated to be only on locally manufactured ethanol to support the local sugar millers who have ethanol distilleries and are affected by unfair imports.



Hereafter, please find our business case detailing the rationale behind our support for these proposed amendments.

Harmonization of Remittance of the Training Levy with the period within which PAYE is remitted to Kenya Revenue Authority

We endorse the proposal for the harmonization of the remittance period for the Training Levy with the timeline for PAYE submission to the Kenya Revenue Authority. This amendment not only simplifies the process of statutory deductions for employers but also consolidates the submission timeline, reducing the overall compliance costs. Furthermore, it streamlines enforcement procedures for government entities involved in the submission and payment processes.

While acknowledging the positive steps taken to enhance compliance, concerns arise regarding the Affordable Housing Levy, the recently introduced statutory deduction, and its tax treatment. We raise this concern here as the deduction is also submitted and paid within the PAYE cycle. Notably, the legislation is silent on whether employers' contributions to this levy will be considered an allowable deduction for Income Tax computation, given its status as an employee benefit. Given the absence of explicit guidance on the same, whether the employee is taxed as a benefit or whether the taxation is on the employer, many companies seek legal clarity to prevent non-compliance and ensure accurate accounting practices before the next budget cycle. This is considering that observance with tax provision will require accurate payment of balance of taxes and submission of returns before the next budget cycle. Consequently, we propose that the levy be recognized as an allowable expense for improved clarity and compliance in the tax treatment of this contribution.

Public Finance Management Act

The proposed amendment to the Public Finance Management Act, specifically targeting the removal of sections 40(3) and 40(4), is a welcomed move as it marks a pivotal step toward enhancing the efficiency of the legislative process concerning the introduction of the finance bill before parliament. The elimination of these sections signals a commitment to streamlining statutory frameworks, thereby facilitating a more straightforward and accessible approach to financial legislation. By simplifying the process, these amendments demonstrate a keen understanding of the need for clarity and precision in the governance of public finances.

However, amidst this positive momentum, it is imperative to address a critical and glaring omission that reverberates within the very foundations of legislative drafting in Kenya. To delve into this matter, a closer examination of Articles 94 and 210 of the Constitution of Kenya is indispensable. The aforementioned provisions emphasize and define the role of parliament and imbues it with the power to impose taxes. Needless to say, these constitutional provisions underscore the paramount role of Parliament in the formulation of laws that directly impact the lives of Kenyan citizens. The



doctrine of separation of powers, a cornerstone of constitutional governance, assigns Parliament the exclusive responsibility of introducing laws that shape the legal landscape within the country.

The doctrine of separation of powers is a foundational principle in political philosophy and constitutional governance, advocating for the division of governmental authority among distinct branches to prevent the concentration of power in any single entity. Typically structured as an arrangement involving the executive, legislative, and judicial branches, this doctrine establishes a system of checks and balances. The executive branch is responsible for implementing and enforcing laws, the legislative branch for lawmaking, and the judicial branch for interpreting and ensuring the constitutionality of laws. By distributing powers and functions across these branches, the doctrine seeks to safeguard against potential abuses of power, promote accountability, and preserve individual freedoms within democratic systems.

Yet, a disconcerting deviation from this principle emerges at the East African Community (EAC) regional level. The EAC, a collaborative platform and customs union comprising of a number East African nations, currently operates without parliamentary oversight in the approval and tabling of 'stay of applications' that are unique to a specific partner state such as Kenya. These applications, which temporarily suspend tariff measures, circumvent the crucial scrutiny of the Kenyan Parliament. This deviation raises fundamental concerns about the adherence to the doctrine of separation of powers and the protection of Kenya's legislative autonomy within the broader regional context.

In light of these observations, it is incumbent upon us to propose a critical amendment to the bill. This proposed amendment advocates for a robust safeguard to ensure that tariff measures unique to Kenya undergo thorough parliamentary scrutiny before their presentation at the EAC regional level. This strategic addition seeks not only to fortify the integrity of the legislative process but also to safeguard Kenya's sovereign interests within the collaborative framework of the EAC. By asserting parliamentary authority over matters that impact the nation's economic landscape, this amendment aims to strike a balance between regional cooperation and the preservation of Kenya's autonomy in legislative decision-making.

Reclassification of Supply of Gas Meters under tariff Number 9028.10.00 as exempt

Overview of Cooking Fuel and Amendments in the Finance Act 2023:

In Kenya, households utilize a range of energy alternatives to liquefied petroleum gas (LPG) based on factors such as location, affordability, and cultural practices. In rural areas, biogas derived from organic waste serves as a renewable and environmentally friendly cooking fuel. Urban regions with reliable electricity access see the use of electric stoves, while charcoal remains a prevalent option in areas where LPG is less accessible. Traditional firewood is commonly used in rural settings, and solar cookers offer a sustainable solution in sun-rich regions. The decline of kerosene usage reflects safety



concerns, and the overall energy landscape in Kenya is shaped by a dynamic interplay of economic, cultural, and environmental factors, as well as government policies promoting cleaner and more sustainable cooking technologies.

The prevalent use of traditional cookstoves, poses severe health risks and environmental threats. Smoke from these stoves causes approximately 4 million premature deaths globally each year, with 21,650 deaths reported annually in Kenya. Women and young children are disproportionately affected, and the reliance on solid fuels contributes to chronic illnesses and environmental degradation.

In a commendable effort to address these challenges, the government introduced zero-rating of Value Added Tax (VAT) on LPG Gas, effective July 1, 2023. This initiative aimed to make cleaner energy alternatives more affordable and accessible.

Challenges with Smart Meters and VAT:

However, a critical challenge has emerged in the form of smart meters (HS Code: 9028.10.00), an essential component in the supply chain. While these smart meters play a pivotal role in facilitating clean, convenient cooking experiences, their importation incurs a standard VAT rate of 16%, creating financial burdens for companies operating in the LPG sector.

Smart Meter Benefits:

Smart meters play a pivotal role in optimizing the distribution and utilization of Liquefied Petroleum Gas (LPG), offering a plethora of benefits that enhance safety, efficiency, and overall convenience. Firstly, smart meters facilitate accurate monitoring and billing by providing real-time insights into LPG consumption, eliminating the need for estimated bills and ensuring customers are billed based on actual usage. Additionally, the capability for remote monitoring allows suppliers and consumers to efficiently track gas levels without physical inspections, thereby streamlining operations and reducing the reliance on manual meter readings. This protects both consumer and supplier rights.

Furthermore, smart meters come equipped with sensors for leak detection, automatically shutting off gas supply in the event of a leak to minimize the risk of accidents and bolster safety. The meters also serve as safety alerts systems, notifying users of concerns such as low gas levels or potential leaks, enabling timely intervention. Advanced security features in smart meters reduce susceptibility to tampering, mitigating the risk of unauthorized access, theft, or misuse. For suppliers, these meters contribute to enhanced efficiency in the supply chain by streamlining inventory management and distribution through real-time data on gas levels and demand, ultimately reducing operational costs and minimizing the likelihood of shortages or overstock.

Beyond operational benefits, smart meters empower consumers by providing insights into usage patterns, enabling informed decisions about consumption habits. Supporting various payment



methods, including online payments and mobile apps, these meters offer convenient payment options for users, facilitating easier management of gas expenses. Moreover, by enabling precise monitoring and control of LPG usage, smart meters contribute to environmental sustainability by potentially reducing emissions and promoting a smaller carbon footprint. Additionally, when integrated into energy management systems, smart meters enable users to track and optimize overall energy usage, fostering energy efficiency and aligning with broader environmental goals.

Financial Implications and the Way Forward:

This discrepancy in VAT rates has resulted in cash flow constraints, posing a severe threat to the existence of companies in the LPG sector. The uncertainty regarding the reimbursement timeframe for VAT credits, coupled with current revenue restrictions at the Government Treasury, intensifies the challenges faced by these companies.

To ensure the viability of companies providing this essential commodity, we strongly advocate for the VAT exemption of smart meters. This exemption is crucial in alleviating financial burdens on these companies, providing liquidity during the importation of smart meters. Aligned with the government's commitment to expanding access to clean energy, this exemption would contribute significantly to realizing this ambitious goal. Moreover, the proposed amendment holds particular importance for rural areas, especially in improving access to Liquefied Petroleum Gas (LPG), as smart meters offer a more accessible option for purchasing smaller quantities. Representing a pivotal step towards inclusivity and affordability in rural communities, this flexibility allows consumers to align their LPG purchases with budgetary constraints, eliminating the need to buy entire gas cylinders, which may be economically impractical for many households.

Consequently, the amendment acts as a catalyst for economic empowerment in rural areas, enabling a transition to cleaner and more efficient cooking methods without imposing a substantial upfront cost. This shift not only encourages the adoption of LPG but also aligns with broader sustainability goals by promoting the use of cleaner fuels, thereby contributing to improved health outcomes and environmental conservation in rural regions. In summary, the passing of this amendment not only facilitates financial inclusivity but also generates positive socio-economic and environmental impacts for rural areas. It symbolizes a significant stride towards a more equitable energy landscape, where cleaner cooking alternatives become accessible to a broader demographic, thereby fostering the overall well-being and progress of rural communities.

Reclassification of Supply of Denatured Ethanol under Tariff Number 2207.20.00 as zero rated

The Kenya Kwanza government has undertaken extensive efforts to rejuvenate the sugar sector, with implications reaching beyond sugar production to other industries along the value chain dependant on the by-products of sugar. Molasses, accounting for the largest percentage of by-products, serves



as a crucial raw material for ethanol production, a versatile substance utilized across various industries in the country. Several Kenyan sugar factories have strategically diversified into ethanol production, not only as an additional revenue stream but also to enhance the overall profitability of their operations. This symbiotic relationship between the ethanol and sugar sectors has yielded positive outcomes, creating additional employment opportunities and contributing significantly to the economic well-being of Kenyans.

However, this interdependence also exposes both sectors to shared challenges. Challenges within the sugar industry, such as a diminished molasses supply, have direct repercussions on the ethanol sector. Conversely, obstacles within the ethanol industry raise uncertainties about the sugar industry's ability to diversify and fortify its income sustainably.

Despite the ban on molasses exports, illegal smuggling persists, depleting the country of this critical raw material and resulting in tax evasion. The ensuing local shortage has had a profound impact on ethanol production by local distillers. Furthermore, local manufacturers face unfair competition from imported ethanol due to practical and viable alternatives for industries relying on ethanol for manufacturing.

The tax regime, especially in relation to the production and supply of denatured ethanol, underwent significant changes with the enactment of the Finance Act 2023. Prior to these changes, the regime provided local manufacturers with a somewhat favourable environment, offering a competitive advantage over importers of similar products. However, the recent provisions, while well-intentioned to safeguard local manufacturers, inadvertently created an unfavourable environment due to the preferential importation of the commodity.

Specifically, the exemption of denatured ethanol from VAT, as per paragraph 138 of the First Schedule, has unintentionally disadvantaged local ethanol producers. Although the government's intention to exempt the supply of denatured ethanol from VAT is commendable, it places local ethanol producers at a disadvantage. Inputs used in the production of exempt goods cannot be claimed, thereby burdening manufacturers with the full production costs and inevitably influencing the pricing of the product. Consequently, any VAT paid on purchases made by local ethanol manufacturers, such as raw materials, equipment, or services directly related to the production of exempt denatured ethanol, cannot be recovered. As a result, the costs incurred during ethanol production are solely shouldered by the distillers, leading to additional expenses for their businesses and subsequently influencing the pricing of the product.

This exemption is also granted to importers who, having minimal additional expenses, can set more competitive prices compared to local manufacturers. Importers do not incur costs from the countries of origin due to export subsidies and incentives provided for the export of denatured ethanol in those countries.



In the report of the Joint Committee of the Departmental Committees on Finance and National Planning, and that on Agriculture and Livestock, on the consideration of the Treasury memorandum on Action Plans to Revive and Commercialize the State-Owned Sugar Companies, the committee stresses the importance of enhancing product diversification through co-generation and ethanol production as a way to revive the sector and protect targeted investors. Protecting the profitability of the sector is thus important in attracting the desperately needed private investors in the government-proposed leasing model.

In light of the above, we support the amendment to zero-rate denatured ethanol of tariff Number 2207.20.00 and recommend that the zero rating be restricted to locally manufactured denatured ethanol. We further propose an amendment to item 138 of the First Schedule exempting denatured ethanol by restricting it to imported denatured ethanol. This will give local manufacturers a competitive advantage over imports and in addition increase earnings for the sugar millers eventually benefitting the sugar farmers.

Thank you for considering our input, we trust that you will find our submission both comprehensive and compelling and we look forward to any further opportunities for engagement on this matter.

Yours Sincerely,

For: Westminster Consulting Limited

Hadi Sheikh
Partner

To: The National Assembly Office of the Clerk
From: Katiba Institute
Date: 01 December 2023
Re: Comments on the Statute Law (Miscellaneous Amendments) Bills (National Assembly Bill Nos 67 and 68 of 2023) to the Departmental Committee on Labour

Introduction

Katiba Institute (KI)¹ received two requests for comment on the Statute Law (Miscellaneous Amendments) Bills 2023 (National Assembly Bills 67 and 68 of 2023). Although the Bills propose amendments to many laws, the Departmental Committee on Labour has requested that we comment on proposed amendments to the following Acts:

- The Employment Act
- The Industrial Training Act
- The National Employment Authority Act

Discussion

The Employment Act

The proposed amendment to section 3(2) of the Employment Act would exempt the National Intelligence Service from complying with the Act. The Memorandum of Objects and Reasons states that the proposed amendment exempts the National Intelligence Service 'in the same manner as other national security organs.'

Our primary concern is that the proposed amendment may not comply with the requirements for limiting a fundamental right or freedom under Article 24 of the Constitution. 'Labour Relations' are among the fundamental rights and freedoms guaranteed under the Bill of Rights. According to Article 41:

- (1) Every person has the right to fair labour practices.

¹ Katiba Institute (KI) is a research and litigation institution established in 2011 with the mission of supporting the implementation of Kenya's 2010 Constitution, helping to resist efforts to undermine that Constitution, and to assist in developing a culture of constitutionalism in Kenya.

- (2) Every worker has the right---
 - (a) to fair remuneration;
 - (b) to reasonable working conditions;
 - (c) to form, join or participate in the activities and programmes of a trade union; and
 - (d) to go on strike.
- (3) Every employer has the right—
 - (a) to form and join an employers organisation; and
 - (b) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers' organisation has the right—
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

Although Article 24(5) states that legislation may limit the right to Labour Relations to persons serving in the Kenya Defence Forces or the National Police Service, it does extend the exception to other national security organs such as the National Intelligence Service.

As a result, if the National Assembly intends to limit labour rights by exempting the National Intelligence Service from the Employment Act, it must comply with Articles 24(1)-(2). Article 24(3) requires the National Assembly to 'specifically express the intention to limit that right [to Fair Labour] and the nature and extent of the limitation'. According to Article 24(2), the National Assembly must explain why the limitation is:

- reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
- (a) the nature of the right or fundamental freedom;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
 - (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

We are concerned that the proposed amendment has not met the requirements under Article 24. The Bill does not explain why exempting the National Intelligence Service is reasonable and justifiable, does not explain the importance and purpose of the limitation, and does not explain why a blanket exemption (as opposed to exemption from specific requirements of the Act) is necessary.

As a result, we believe that the proposed amendment to the Employment Act would be subject to challenge. The most effective way to avoid a legal challenge would be to ensure that the requirements of Article 24 are fully satisfied. That may require a closer look at the exemption, explaining why it is necessary, and determining whether there is a less restrictive means of achieving the intended goals.

The Industrial Training Act

The proposed amendment to the Industrial Training Act would change the date an employer must pay a training levee from the fifth day of the month following the month the levy becomes due to the ninth day of the month.

We do not have any substantive comments on this minor amendment.

The National Employment Authority Act

The Statute Law (Miscellaneous Amendments) Bill, 2023 proposes significant changes to the National Employment Authority Act 'to cure inconsistencies in the Act and align it with the National Employment Authority Human Resources Policy and Procedures Manual.

We do not have a copy of that manual, so it is unclear what the inconsistencies are or why a law passed by Parliament must be amended to be consistent with a policy and procedures manual. Without knowing more, we are concerned that this is a situation where the tail is wagging the dog; policies and procedures should be amended to comply with the law, not the other way around. If there is a compelling, substantive reason to amend the law, then we respectfully submit that those reasons should be included in the Memorandum of Objects and Reasons.

There are other concerns with the Act outside the thin justification for the amendments. First, section 3(a) of the Act states that one of its purposes is to 'give effect to Articles 55(c) and 56(c) of the Constitution'. Articles 55(c) and 56(c) require the State to give the youth and marginalized and minority communities employment opportunities.

The Act, as it is now, focuses significantly on the youth. However, the proposed amendments to sections 2, 30(1), 30(3), 33(3), and 42 delete the word youth from those sections. If these amendments are passed, the purpose of promoting youth employment under section 3(a) will be all but eliminated. It is unclear to us why conforming with a policies and procedures manual would require abandoning one of the essential purposes

of the Act. We would need more information about what is in the policy and procedures manual to understand why the Act no longer gives effect to Article 56(c) of the Constitution.

As regards the amendment to section 4 of the Act – limiting the Act’s application to employers with ten or more employees – there may be a sound reason for imposing such a limit, but compliance with a policy and procedures manual is not one of them. We believe it is incumbent on the National Assembly to provide a more substantive rationale for this amendment.

Including Section 4(aa), which makes the Act applicable to ‘each county government’, will likely require the National Assembly to consult with the Senate. Articles 110-113 and Section 2 of the Sixth Schedule to the Constitution require the National Assembly to consult with the Senate on any bills affecting counties.

Including each county government in the proposed Section 4(aa) without incorporating counties into other sections of the Act may not be sufficient to ensure that the Act binds county governments. For instance, section 28 of the Act requires that the Authority be notified when a vacancy occurs at a ‘public or State office at the national government level’. Including each county in Section 4(aa) would not obligate them to comply with Section 28. To avoid any potential for litigation, it is incumbent that the amendments look at the language through the Act to ensure consistency.

Analysis of Proposed Amendments

The Employment Act

No	Ref	Comments	Recommendations
1.	Insert a new paragraph immediately after paragraph (ba)- (bb)the National Intelligence Service	Section 3 of No. 11 of 2007, which it is proposed to amend, provides that (2) This Act shall not apply to (a)the Kenya Defence Forces or the reserve as respectively defined in the Kenya Defence Forces Act, 2012; (b)the Kenya Police, the Kenya Prisons	This amendment may not comply with the requirements for limiting a fundamental right or freedom under Article 24 of the Constitution, considering that labour relations are among the fundamental rights and freedoms guaranteed under the Bill of Rights. Article 24(5) of the Constitution provides that legislation may limit the right to labour relations to persons serving in the Kenya Defence Forces or the National Police Service; it does not extend the exception to other

		<p>Service or the Administration Police Force; (ba) the Kenya Coast Guard Service; (c) the National Youth Service; and (d) an employer and the employer's dependants where the dependants are the only employees in a family undertaking. The proposed amendment would exempt the National Intelligence Service from complying with the Act.</p>	<p>national security organs such as the National Intelligence Services. -We recommend that if the National intends to limit labour rights by exempting the National Intelligence Service from the Employment Act, it must comply with Articles 24(1)-(2). Article 24(3) requires the National Assembly to specifically express the intention to limit that right and the nature and extent of the limitation. The proposed amendment has not met the requirement and would be subject to challenge in a court of law.</p>
--	--	--	---

The Industrial Training Act

No	Ref	Comments	Recommendations
1		No substantive comments	No recommendations

The National Employment Authority Act

No	Ref	Comments	Recommendations
1	Clause 2 In the definition of 'Authority', delete the word 'Youth'	<p>Section 3(a) of the Act states that one of its purposes is to 'give effect to Articles 55(c) and 56(c) of the Constitution'. Articles 55(c) and 56(c) require the State to give the youth and marginalized and minority communities employment opportunities.</p>	<p>It is unclear to us why conforming with a policies and procedures manual would require abandoning one of the essential purposes of the Act. We would need more information about what is in the policy and procedures manual to understand why the Act</p>

		The Act, as it is now, focuses significantly on the youth. If these amendments are passed, the purpose of promoting youth employment under section 3(a) will be all but eliminated.	no longer gives effect to Article 56(c) of the Constitution.
2	<p>Clause 17(2) It is proposed to delete paragraph (c) and substitute it with a new paragraph and then delete paragraph 17(2) (d).</p> <p>Paragraph (c) now reads- 'A person shall be qualified to be appointed as a Director-General if that person has at least 10 years' experience, five of which shall be in a management level.</p> <p>Paragraph 17(2)(d), proposed to be deleted, provides that 'a person shall be qualified to be appointed as a Director-General of the Authority if the person has not attained the age of thirty-five years at the time of appointment.'</p>	<p>These proposals will ultimately exclude the youth from holding the position of the Director-General, which was not the intent of Parliament when you read Section 17(2) (c) and (d) together, as well as the purpose of the Act.</p> <p>The Director-General is subject to the direction of the Board and is responsible for the day-to-day management of the Authority.</p> <p>Any other necessary experience intended to be drawn from the proposed extra management level experience can be drawn from the board membership the DG works with. It is unnecessary to depart from the Act's initial intent of providing opportunities for the youth.</p>	We propose that Section 17 (2) (c) and (d) qualifications be retained as they are.

3	<p>Clause 28(2)</p> <p>It is proposed that Section 28(2) of the Act be deleted. Section 28(2) states that ‘Whenever a vacancy occurs, the appointing office shall give priority to the job seekers registered by the Authority who possess the qualifications or skills sought.’</p>	<p>Section 20 and 24 of the Act provides that a person seeking employment may register with the Authority, and the Authority shall keep and maintain an up-to-date register of all job seekers seeking employment.</p> <p>The assumption is that the Authority shall prioritise persons registered and pre-vetted for vacancies. Deleting this Section undermines the utility of the proceeding provisions while, more importantly, removing transparency and accountability from the Authority regarding the persons considered for vacancies.</p>	<p>We propose that this Section be retained unless there is another system of considering persons registered with the Authority for vacancies in the regulations, which are yet to be shared with stakeholders for review.</p>
4	<p>Delete the word ‘youth’ and substitute the word with jobseeker in Sections 30(1), (2), (3),33(3), and 42</p>	<p>The Act, as it is now, focuses significantly on the youth. If these amendments are passed, the purpose of promoting youth employment under section 3(a) will be all but eliminated.</p> <p>Article 260 does not prescribe an interpretation of ‘minorities’ but provides interpretations of ‘youth’ and marginalised groups.</p> <p>‘Marginalised groups’ means a group of people who, because of laws or practices before, on, or after the effective date,</p>	<p>We propose the Sections be retained as they are. It is also necessary that the Act have regulations to provide clarity on the interpretation of a ‘jobseeker’ in the context of this specific Act to ensure the preservation of the purpose of the Act if the proposed amendments on substituting ‘youth’ with jobseeker is to cater for marginalised groups and minorities, which groups the Act was purposed for as well. Sections 24 and 25 use the word ‘jobseeker’, and there</p>

		were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4).	is a need to harmonise the meaning of jobseeker in the context of the Act.
5	Delete Section 37 (2) and substitute with a new subsection that states that 'The Authority shall establish incentives to reward a private institution that employs Kenyans within six months after completing their certificate or undergraduate studies, and who do not possess more than five years' experience.'	The incentive scheme/regulations to reward private institutions must be set out beforehand and be subjected to public participation. The incentives must be applied in an open manner that espouses the national values and principles of governance under Article 10.	Requires regulations.

Conclusion

Thank you for the opportunity to comment on the proposed amendments. Please let us know if you want to discuss these issues further. We would be happy to participate in any way we can

Sincerely,



Chris Kerkering
Eileen Imbosa
Ray Odanga

Annexure 4: Minutes

MINUTES OF THE 76TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LABOUR HELD ON TUESDAY 5TH DECEMBER 2023 IN THE COMMITTEE ROOM, 4TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12:00 PM.

PRESENT

1. The Hon. Karemba Eric Muchangi Njiru, M.P. - Chairperson
2. The Hon. Muli Fabian Kyule, M.P. - Vice Chairperson
3. The Hon. K'Oyoo James Onyango, M.P.
4. The Hon. Kagesi Kivai Ernest Ogesi, M.P.
5. The Hon. Abdullahi Amina Dika, M.P.
6. The Hon. Chiforomodo Mangale Munga, M.P.
7. The Hon. Kihungi Peter Irungu, M.P.
8. The Hon. Siyoi Lillian Chebet, M.P.

APPOLOGIES

1. The Hon. Kiti Richard Ken Chonga, M.P.
2. The Hon. Lomwa Joseph Samal, M.P.
3. The Hon. Omwera George Aladwa, M.P.
4. The Hon. Wambilianga Catherine Nanjala, M.P.
5. The Hon. Aburi Donya Dorice, M.P.
6. The Hon. Barasa Patrick Simiyu, M.P.
7. The Hon. Sankaire Leah Sopiato, M.P.

COMMITTEE SECRETARIAT

1. Ms. Rose M. Wanjohi - Senior Clerk Assistant
2. Mr. Samuel Wanjiru - Clerk Assistant III
3. Ms. Fiona Gitlununguri - Legal Counsel II
4. Mr. Timothy Chikiko - Research Officer III
5. Ms. Rehema Koech - Audio Officer III
6. Ms. Rinha Sainey - Media Relations Officer III
7. Ms. Zainabu Wariro - Serjeant at Arms

AGENDA

1. Prayers
2. Preliminaries.
3. Confirmation of Minutes.
4. Matters Arising;
5. Pending Business (*enclosed*);
6. Briefing and consideration of submissions on:
 - i. The Statute Law (Miscellaneous Amendments) (No. 2) (National Assembly Bill No 68. of 2023)
 - ii. The Statute Law (Miscellaneous Amendments) (National Assembly Bill No. 67 of 2023)
7. Any Other Business.
8. Adjournment.

MIN. NO.572 NA/LABOUR/2023: PRELIMINARIES.

The Chairperson called the meeting to order at thirty minutes to one o'clock. This was followed by a prayer by The Hon. Abdullahi Amina Dika, M.P. Thereafter, self-introductions were made.

MIN.NO.573 NA/LABOUR/2023: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING.

This Agenda was deferred.

MIN.NO.574 NA/LABOUR/2023: MATTERS ARSISING.

No matter arose.

MIN.NO.575 NA/LABOUR/2023: PENDING BUSINESS BEFORE THE COMMITTEE

The following business has been committed to the committee;

1. The Employment (Amendment) Bill (Senate Bill No. 11 of 2022). The Bill, sponsored by Sen. Samson Cherarkey, seeks to provide for the right to disconnect in the digital age. This 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. This 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.

Status:

The bill was read for the first time on 17th August 2023. The advert requesting memoranda from the public was placed in the dailies on 25th August 2023. The Committee received views from stakeholders and met the sponsor of the Bill and key stakeholders on Tuesday 17th October 2023. The Committee met with the National Council of NGOs on Tuesday 14th November 2023. The Draft report was considered and adopted on 30th November 2023 for tabling in the House.

2. The Statute Law (Miscellaneous Amendments) (No. 2) (National Assembly Bill No. 68 of 2023). The Bill, sponsored by the Leader of Majority, seeks to make various amendments to various statutes including-
 - i. The Industrial Training Act (Cap. 237). The Bill seeks to amend the Industrial Training Act to provide that the date for remitting the training levy shall be the ninth day of the month in order to harmonize it with the period within which PAYE is remitted to the Kenya Revenue Authority
 - ii. The Employment Act, 2007 (No. 11 of 2007). The Bill seeks to amend the Employment Act, 2007, to exempt the National Intelligence Service from the application of the Act in the same manner as other security organs are exempted.

Status

The Bill was read for the first time on Wednesday, 15th November 2023. Advert requesting for Memoranda placed in the newspapers on 22nd November 2023. Committee has also written key to stakeholders for submission of views. The Committee considered the Bill and the submissions of the stakeholders and adopted the draft report on 5th December 2023.

3. The Statute Law (Miscellaneous Amendments) (National Assembly Bill No. 67 of 2023). The Bill, sponsored by the Leader of Majority, seeks to make various amendments to various amendments to various statutes including the National Employment Authority Act (No. 3 of 2016). The Bill seeks to amend the National Employment Authority Act, 2016, to cure inconsistencies in the Act and align it with the National Authority Human Resources Policy and Procedures Manual.

Status

The Bill was read for the first time on Wednesday, 15th November 2023. Advert requesting for Memoranda placed in the newspapers on 17th November 2023. Committee has also written to stakeholders for the submission of views. The Committee considered the Bill and the submissions of the stakeholders and adopted the draft the report on 5th December 2023.

4. The Employment (Amendment) Bill, (National Assembly Bill No. 62 of 2023 by Hon. Didmus Wekesa Barasa, MP. The Bill seeks to amend the provisions of the Employment Act, 2007, to regulate the transfer of employees by employers from one place of work to another.

Status

The Bill was read a first time on 22nd November 2023. The committee placed the advert in the dailies on 27th November 2023 and has written to stakeholders for submission of memoranda.

5. The National Employment Authority (Amendment) Bill, 2023 (Senate Bills No 48 of 2023). The Bill, sponsored by Sen. Crystal Asige, seeks to introduce provisions that seek to protect the rights, welfare and well-being of Kenyans working overseas.

Status

The Bill was referred to the Joint Committee on Labour and Diaspora Affairs and Migrant Workers for processing on 27th November 2023 by the Hon. Speaker. Committee to place an advert in the dailies and write to stakeholders for submission of memoranda.

6. The Proposed Salaries and Remuneration Commission (Amendment), 2023 by Hon Didmus Barasa Wekesa, MP seeks to amend the Salaries and Remuneration Commission Act to provide that the chairperson and members other than those appointed under Article 230 (2) (d) of the Constitution, shall serve on a part time basis for a non-renewable term of six years. The bill also caps the meetings of the Commission at fifteen.

Status

The Committee wrote to the Kenya Law Reform Commission and the Attorney General for comments and recommendations.

The Committee met the Sponsor of the Legislative proposal on Tuesday 21st November 2023. The draft report was considered and adopted on 30th November 2023 for transmittal to the Hon. Speaker.

7. The Proposed Industrial Training (Amendment) Bill, 2023 sponsored by Hon. Joshua Odongo Oron, M.P. was referred to the Committee on 29th November 2023. The legislative proposal seeks to amend the provisions of the Industrial Training Act, (Cap.237), in order to recognize prior learning as a framework that acknowledges the skills, knowledge, performance outcomes and learning achieved, through informal and non-formal learning pathways.

Status

The Committee has written to the Kenya Law Reform Commission and the Attorney General for comments and recommendations.

8. Sessional Paper No. 5 on the National Policy on Labour Migration. The main objective of the National Policy on Labour Migration is to promote inclusive and sustainable development of the country through safe, orderly and productive labour migration. The paper was laid on the table of the House on 14th September 2023.

Status:

The Joint Committee on Labour and Diaspora Affairs and Migrant Workers met the Cabinet Secretary, Ministry of Labour and Social Protection on Thursday 9th November 2023 to deliberate on the Policy. The Sitting proposed a retreat from 23rd to 26th November 2023 to further deliberate on the policy but it was postponed and new dates and place will be communicated in due time.

9. Request for a statement regarding unfair treatment of employees of Ashton Apparel (EPZ) Ltd and Mombasa Apparel (EPZ) Ltd by Hon. Shimbwa Omar Mwinyi, M.P.

Status:

The Committee met on Tuesday 21st November 2023 with the Cabinet Secretary, Labour and Social Protection. The Cabinet requested more time to investigate the matter and submitted a detailed response on Monday, 27th November 2023. However, the Honourable Member was not satisfied with the response. The Committee proposed a fact-finding visit to the two mentioned companies in Mombasa from 7th to 10th December 2023, which is awaiting approval.

10. Report on the status of Budget implementation FY 2022/23 for MDAs under the purview of the Committee.

Status:

The Committee met with the MDAs and independent Commissions on 9th and 10th August. Committee to consider the draft report on Wednesday 6th December 2023.

MIN. NO.576 NA/LABOUR/2023: BRIEFING AND CONSIDERATION OF SUBMISSIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, (NATIONAL ASSEMBLY BILL NO 67. OF 2023)

Ms. Fiona Wanjiru, Legal Counsel, briefed the Committee on the Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No. 67 of 2023) as follows;

The Statute Law (Miscellaneous Amendments) Bill, 2023(National Assembly Bills No. 67) is a Bill sponsored by the Leader of Majority Party which seeks to make various amendments to various statutes including to the National Employment Authority Act (No. 3 of 2016).

The Bill seeks to amend the National Employment Authority Act, 2016, to cure inconsistencies in the Act and align it with the National Authority Human Resources Policy and Procedures Manual.

The Committee was guided through the proposed amendments as follows;

- i. The Bill seeks to amend to Section 2 in the definition of "Authority", to delete the word "Youth".

The Committee observed that the Object of the Act under section 3(a), is to give effect to Article 55(c) and 56(c) of the Constitution.

The Committee agreed with the amendment as it seeks to align the name of the National Employment Authority, "the Authority" to its object and purpose as provided in Section 3 of the Act.

- ii. The Bill seeks to amend Section 4 in the opening statement to insert the words -
"*an employer who employs ten or more employees including*" immediately after the words "*applies to*"; and to insert a new paragraph immediately after paragraph (a)—
"*(aa) each county government.*",

The Committee observed that amendment to section 4(a) seeks to define the scope of application of the Act to apply to employers who employ ten or more employees and to provide for the County government in line with the objects and purpose of the Act.

The Committee agreed with the proposed amendment.

- iii. On the proposed amendment to Section 9(c) to delete the word “function” and substitute therefor the word “*functions*”, the Committee observed that the amendment seeks to cure a grammatical error as the National Employment Authority performs multiple functions as is provided for under section 8 of the Act.

The Committee agreed with the proposed amendment.

- iv. The Bill proposes to amend section 17(2) to delete paragraph (c) and substitute therefor the following new paragraph—
“(c) *has at least ten years’ experience, five of which shall be in a management level.*” and to delete paragraph (d).

The Committee observed that the amendment to change the number of years of experience required of a person desiring to serve as the Director General is in line with the recommended requirements for Chief Executive Officers as per the Mwongozo Code of Governance of State Corporations.

The Amendment to delete the requirement that the person should not have attained the age of thirty-five years at the time of appointment is in line with the constitutional provision on the right to equality and freedom from discrimination on grounds such as age.

The Committee agreed with the amendment.

- v. The Bill proposes to delete Section 28(2) on information on vacancies.

The Committee observed that amendment seeks to align the Act to national values and principles of governance such as equity, equality, inclusiveness, non-discrimination, protection of the marginalized, transparency and accountability as provided for under Article of the constitution.

The Committee agreed with the amendment.

- vi. On the Proposed amendment to Sections 30(1), (2) and (3) (1) to delete the word “youth” and substitute therefor the word “jobseeker”, the Committee observed that the amendment seeks to align the Act to its object and purpose as provided for under section 3 of the Act, where it covers other groups other than the youth.

However, Section 30(2), does not contain the word “youth” and should therefore be exempted in this amendment.

The Committee agreed with the amendment with a further amendment to sub-clause 30(2) to be deleted.

- vii. On the proposed amendment to Section 33(1) and (3) to delete the words “private companies” and substitute therefor the word “prospective employers” and to delete the word “youth” and substitute therefor the word “jobseeker”, the Committee observed that amendment seeks to align the provisions of the Act to its object and purpose under section 3.

The Committee agreed with the amendment.

- viii. The Bill seeks to amend Section 34 to delete the words “*through community initiatives and similar fora*”. The Committee observed that the amendment seeks to widen the scope of the National Employment Authority in the facilitation of training on any matter relating to employment to Kenyans seeking employment.

The Committee agreed with the amendment.

- ix. The Bills seeks to amend Section 36(1), (3) and (4) to:
- (1). (a) Delete the word “students” and substitute therefor the word “trainees.”
 - (b) Delete the words “or attachment during and”.
 - (3) Delete the word “students” and substitute therefor the word “trainees.”
 - (4) Delete the word “students” wherever it appears and substitute therefor the word “trainees.”

The Committee observed that the amendment seeks to align the provisions of the Act to its object and purpose under section 3.

The Committee agreed with the amendment.

- x. On the proposed amendment to section 37(a) and (b), the Committee observed that the amendment seeks to align the provisions of the Act to its object and purpose under section 3.

The amendment deletes the word “state” and replaces it with the word “Authority” as the body that is to encourage private and public institutions to employ all Kenyans.

The Committee agreed with the amendment.

- xi. On the proposed amendment to Section 42 to delete the word “youth” wherever it appears and substitute therefor the word “jobseekers”, the Committee observed that the amendment seeks to align the provisions of the Act to its object and purpose under section 3.

The Committee agreed with the amendment.

The Committee was further briefed on the Stakeholder submission on the Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No. 67 of 2023).

The Kenya Law Reform Commission acknowledged that the amendments seek to rectify inconsistencies and errors within the Act to ensure consistency with the principal Act and contribute to legislative clarity and precision.

In addition, the Central Organization of Trade Unions (COTU(K)) proposed an amendment to Section 10 on the Composition of the Board. However, the amendment is not a subject of amendment under the Statute Law (Miscellaneous Amendments) Bill, 2023 (National Assembly Bills no. 67 of 2023).

Having considered the Bill and the submissions from the stakeholders, the Committee **unanimously** adopted the report on Statute Law (Miscellaneous Amendments) Bill, 2023 (National Assembly Bills no. 67 of 2023), having been proposed by the Hon. Muli Fabian Kyule, M.P. and seconded by Hon. Kagesi Kivai Ernest Ogesi, M.P.

MIN. NO. 577 NA/LABOUR/2023: BRIEFING AND CONSIDERATION OF SUBMISSIONS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, (NO.2) (NATIONAL ASSEMBLY BILL NO 68. OF 2023)

Ms. Fiona Wanjiru, Legal Counsel, briefed the Committee on the Statute Law (Miscellaneous Amendments) Bill, (No. 2) (National Assembly Bill No. 68 of 2023) as follows;

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, (National Assembly Bill No. 68 of 2023) is a Bill sponsored by the Leader of Majority Party which seeks to make various amendments to various statutes.

The Bill proposes amendments to the Industrial Training Act (Cap. 237) and the Employment Act (No. 11 of 2007).

The Committee was briefed on the proposed amendments and submissions from the stakeholders as follows:

- i. On the proposed amendment to Section 5B (3) of the Industrial Training Act (Cap. 237) to delete the words "*fifth day*" and substitute therefor the words "*ninth day*", the Committee noted that the amendment seeks to change the period for remittance of the training levy to on or before the ninth day of the following month in order to align it with the period within which PAYE deductions are remitted to the Kenya Revenue Authority.

In addition, the Kenya Law Reform Commission endorsed the proposed amendment, recognizing its intention to simplify the levy's administration and resolve inconsistencies with existing tax law filing dates.

The Committee agreed with the amendment.

- ii. Further, the Bill seeks to amend Section 3(2) of the Employment Act (No. 11 of 2007) to insert a new paragraph immediately after paragraph (ba)—
"*(bb) the National Intelligence Service.*"

The amendment seeks to exempt the National Intelligence Service from the scope of application of the Employment Act (No. 11 of 2007).

The Kenya Law Reform Commission endorsed the proposed amendment, considering that the National Intelligence Service is established under article 242 of the Constitution and section 4(1) of the National Intelligence Service Act was established as a security organ after the enactment of the Employment Act.

However, the Committee proposed that amendments to the Employment Act (No 11 of 2007) be rejected.

The justification is that Article 24 provides for limitation of rights and fundamental freedoms. Paragraph (5) provides:

"...a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the **Kenya Defence Forces** or the **National Police Service**—

- (a) Article 31 – Privacy;
- (b) Article 36 – Freedom of association;
- (c) Article 37 – Assembly, demonstration, picketing and petition;
- (d) Article 41 – Labour relations;
- (e) Article 43 – Economic and social rights; and
- (f) Article 49 – Rights of arrested persons."

In addition, the National Intelligence Service is established under article 242 of the Constitution and section 4(1) of the National Intelligence Service Act (No. 28 of 2012) provides that the service shall constitute of disciplined civilians.

The disciplined civilians are not covered under the limitation of rights and fundamental freedoms in article 24(5).

Therefore, there is a need to review section 3(2) and align it to the Constitution of Kenya, 2010.

Having considered the Bill and the submissions from the stakeholders, the Committee **unanimously** adopted the report on Statute Law (Miscellaneous Amendments) (No.2) Bill, (National Assembly Bills no. 68 of 2023), having been proposed by the Hon. Muli Fabian Kyule, M.P. and seconded by Hon. Kagesi Kivai Ernest Ogesi, M.P.

MIN. NO. 578 NA/LABOUR/2023: ANY OTHER BUSINESS

No other business arose.

MIN. NO. 579 NA/LABOUR/2023: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at twenty seven minutes to three o'clock. The next meeting will be held on notice.

SIGNED..... DATE

(CHAIRPERSON)