

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON

LABOUR AND SOCIAL WELFARE

REPORT ON THE CONSIDERATION OF  
THE STATUE LAW (MISCELLANEOUS AMENDMENTS) (NO1) BILL, 2018

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBER  
PARLIAMENT BUILDINGS  
NAIROBI

JUNE, 2018

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## 1.0 CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendments) (No.12) Bill, 2018 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party, and it seeks to amend many other laws but the ones relevant to the Committee were:

- i) The Children Act, 2001 (No. 8 of 2001)
- ii) The Employment Act, 2007 (No. 11 of 2007)
- iii) The Labour Institutions Act, 2007 (No. 12 of 2007)
- iv) The National Social Security Fund Act, 2013 (No. 45 of 2013)
- v) The Labour Relations Act, 2007 (No. 14 of 2007)
- vi) The National Youth Council Act, 2016 (No. 4 of 2016)
- vii) The National Youth Service Act. (Cap 208)

The Committee was expected to deal with the amendments to the laws above that fell within its mandate and submit what it resolved to the Departmental Committee of Justice and Legal Affairs.

The nature of the Bill is one in which minor amendments are made which do not merit the publication of separate Bills and consolidating them into one Bill. In other words, instead of having several separate Bills seeking to make minor amendments, there would be one Bill in which all those ten are housed under one Bill.

In the Memorandum of Objects and Reasons of the Bill, the Leader of Majority Party had indicated that the Bill sought to amend the following laws for the reasons he stated below:

### **i) The Children Act, 2001 (No. 8 of 2001)**

The Bill proposes to amend the Children Act to make the Child Welfare Society of Kenya a national adoption society and to confer powers on the Cabinet Secretary in relation to charitable children institutions, and adoptions societies and for the establishment of task committees and working groups.

**ii) The Labour Institutions Act, 2007 (No. 12 of 2007)**

The Bill seeks to amend the Labour Institutions ACT, 2007 to provide for the establishment of an Export Processing Zones Wages Council. The Bill further seeks to amend the Act to make provisions relating to the Board.

**iii) The Labour Relations Act, 2007 (No. 14 of 2007)**

The Bill seeks to amend the Labour Relations Act, 2007 to make provisions for the safeguarding of essential services during provisions of industrial action.

**iv) The National Social Security Fund Act, 2013 (No. 45 of 2013)**

The Bill seeks to amend the NSSF Act to make provisions relating to the membership and meetings of the Board.

**v) The National Youth Council Act,**

The Bill proposes to amend the National Youth Council Act, 2009 to introduce new definitions of the term “Minister” and “youth” in line with the Constitution. It also seeks to change the composition of the Members of the Board and the mode of nomination in keeping with inclusivity on appointments.

**vi) The National Youth Service Act**

The Bill proposes to amend the National Youth Service Act to empower the service to undertake other activities incidental to the achievement of the functions in section 16(1), including commercial activities.

**vii) The Employment Act, 2007**

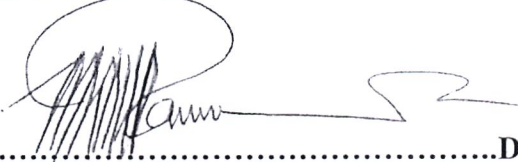
The Bill seeks to introduce amendments that will cater for deployment and redeployment of employees and reassignment and redesignation of the job title or grading to be part of the employment particulars.

The Committee considered the amendments to the Children Act, 2001 (No. 8 of 2001), the National Social Security Fund Act, 2013 (No. 45 of 2013), the Labour Institutions Act, 2007 (No. 12 of 2007), the Labour Relations Act, 2007 (No. 14 of 2007), the

Employment Act, 2007, the National Youth Council Act, 2009, the National Youth Service Act, for submission to the Departmental Committee on Justice and Legal Affairs.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sitting. Further, I wish to express my appreciation to the Committee Members for the immense contributions towards the preparation and production of the report.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Labour and Social Welfare, to submit its report on the consideration of the Statute Law (Miscellaneous Amendment) (No. 12) Bill, 2018 for consideration Pursuant to Standing Order 127.

  
Signed.....Date..... 20<sup>TH</sup> JUNE 2018  
**HON. ALI WARIO, MP**  
**CHAIRPERSON**

## **DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

### **EXECUTIVE SUMMARY**

On 18<sup>th</sup> April, 2018, the Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 was read a First Time and thereafter committed to the various Departmental Committees for consideration pursuant to Standing Order No. 127. The Departmental Committee on Labour and Social Welfare held one meeting to consider the Bill.

On 7<sup>th</sup> May, 2018, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from the Federation of Kenya Employers, Ministry of Labour and social protection state department for labour, Kenya National Union of Nurses, International Commission of jurists (ICJ) , Law society of Kenya, Central Organization of trade unions (COTU), Kenya Bankers Association, Kenya Union of special needs education teachers, the Expert/ Steering committee to review the framework for child adoption in Kenya, Association of Charitable Children Institutions, Child in Family Focus, the Change Trust, SOS Children's Villages Kenya, Plan International, World vision Kenya, Save the Children, Childfund Kenya, Mtoto news, Children of God relief institutes, Mr. Adonijah Kimanzi, Kenya Alliance for Advancement of Children, Ministry of Labour and social protection State Department for social protection, pensions and senior citizens affairs, and the association of charitable institutions of Kenya.

The Committee observed that:

- i) The proposed amendments to the Labour Relations Act, 2007, the National Social Security Funds Act, the National Youth Council Act, 2009 (No.10 of 2009), the Labour Institutions Act, 2007, (No. 12 of 2007), the Employment Act, 2007(No. 11 of 2007) had far reaching ramifications in their respective sectors. Further that the amendments were substantive in nature and required comprehensive consultations with all stakeholders. The committee therefore proposed that stand alone amendments on these Acts should be prepared and the amendments should not come vide the Statute Law miscellaneous amendments.

- ii) The Proposed amendments to the Children Act, (No. 8 of 2001), are proper amendments that should be passed as they are aimed at ensuring that the rights of children should be protected at all cost.
- iii) The Acts that fall under the purview of the Committee that the Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 seeks to amend had been in operation for a reasonable period of time hence the implementing Ministry Department and Agencies could have experienced implementation challenges. Therefore, the sought amendments were justifiable and in tandem with the need for pragmatism in implementation of legal provisions.
- iv) The Committee having considered the proposed amendments to the various Acts under its purview and the views from all the stakeholders, resolved that the amendments to the children Act, (No. 8 OF 2001) *be* passed by the House as proposed in the Statute Law (Miscellaneous Amendment) No. 12 Bill, 2018. However, it will be proposing that the other proposed amendments to the following laws should be deleted as contained in the recommendation part of this report:-

- (a) the Labour Relations Act, 2007,
- (b) the National Social Security Funds Act, t
- (c) he National Youth Council Act, 2009 (No.10 of 2009), t
- (d) he Labour Institutions Act, 2007, (No. 12 of 2007),
- (e) the Employment Act, 2007(No. 11 of 2007); and
- (f) the national Youth Service Act (Cap 208)

## **2.1 Establishment of the Committee**

The Departmental Committee Labour and Social Welfare is one of the fifteen (15) Departmental Committees of the National Assembly established under ***Standing Order 216*** whose mandates, pursuant to the ***Standing Order 216 (5,)*** are as follows:

- i) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- ii) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;

- iii) To study and review all the legislation referred to it;
- iv) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- v) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- vi) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- vii) To examine treaties, agreements and conventions;
- viii) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- ix) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- x) To examine any questions raised by Members on a matter within its mandate.

## **2.2 Mandate of the Committee**

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to:

- i) Labour,
- ii) Labour relations,
- iii) Manpower or Human resource Planning,
- iv) Gender,
- v) Youth,
- vi) Social Welfare and Security,
- vii) Children`s Welfare,
- viii) And Persons Living With Disabilities.

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i) Ministry of Labour

- ii) The State Department for Social Security and services
- iii) The State Department for Gender
- iv) The State Department for Youth

### **2.3 Committee Membership**

The Committee on Labour and Social Welfare was constituted by the House in December, 2017 and comprises of the following Members: -

- i) **The Hon. Ali Wario, M.P.** **Chairperson**
- ii) **The Hon. Joyce Korir, M.P.** **Vice Chairperson**
- iii) The Hon. Gladys Wanga, M.P.
- iv) The Hon. Janet MaraniaTeyiaa, M.P.
- v) The Hon. Janet NangaboWanyama, M.P.
- vi) The Hon. Ronald KiprotichTunoi, M.P.
- vii) The Hon. James OnyangoKoyoo, M.P.
- viii) The Hon. Rose Museo, M.P.
- ix) The Hon. Alfred KiptooKeter, M.P.
- x) The Hon. Charles KanyiNjagua, M.P.
- xi) The Hon. Catherine Wambilyanga, M.P.
- xii) The Hon. Fabian KyuleMuli, M.P.
- xiii) The Hon. Ole Sankok David, M.P.
- xiv) The Hon. AbdiMude Ibrahim, M.P.
- xv) The Hon. Michael MwangiMuchira, M.P.
- xvi) The Hon. Safia Sheikh Adan, M.P.
- xvii) The Hon. Tom Odege, M.P.
- xviii) The Hon. Wilson Sossion, M.P.
- xix) The Hon. OmbokoMilemba, M.P.

### **2.4 Committee Secretariat**

- 1. Mr. Adan Gindicha - Lead Clerk
- 2. Mr. John Mugoma - Third Clerk Assistant
- 3. Ms. Marlene Ayiro - Legal Counsel I
- 4. Mr. Said Osman - Research Officer
- 5. Ms. Yunis Amran - Fiscal Analyst III

### **3.0 BACKGROUND**

The Statute Law (Miscellaneous Amendments) (No.12) Bill, 2018 is a Bill sponsored by Hon. Aden Duale, Leader of the Majority Party, and it seeks to amend many other laws but the ones relevant to the Committee were:

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- iii) The Labour Institutions Act, 2007 (No. 12 of 2007);
- iv) The National Social Security Fund Act, 2013 (No. 45 of 2013);s
- v) The Labour Relations Act, 2007 (No. 14 of 2007)
- vi) The National Youth Council Act, 2016 (No. 4 of 2016)
- vii) The National Employment Authority Act
- viii) The National Youth Service Act

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The Bill proposes to amend the Children Act to make the Child Welfare Society of Kenya a national adoption society and to confer powers on the Cabinet Secretary in relation to charitable children institutions, and adoptions societies and for the establishment of task committees and working groups.

**ii) The Labour Institutions Act, 2007 (No. 12 of 2007)**

The Bill seeks to amend the Labour Institutions ACT, 2007 to provide for the establishment of an Export Processing Zones Wages Council. The Bill further seeks to amend the Act to make provisions relating to the Board.

**iii) The Labour Relations Act, 2007 (No. 14 of 2007)**

The Bill seeks to amend the Labour Relations Act, 2007 to make provisions for the safeguarding of essential services during provisions of industrial action.

**iv) The National Social Security Fund Act, 2013 (No. 45 of 2013)**

The Bill seeks to amend the NSSF Act to make provisions relating to the membership and meetings of the Board.

**v) The National Youth Council Act,**

The Bill proposes to amend the National Youth Council Act, 2009 to introduce new definitions of the term “Minister” and “youth” in line with the Constitution. It also seeks to change the composition of the Members of the Board and the mode of nomination in keeping with inclusivity on appointments.

**vi) The National Youth Service Act, (Cap. 208)**

The Bill proposes to amend the National Youth Service Act to empower the service to undertake other activities incidental to the achievement of the functions in section 16(1), including commercial activities.

**v) The Employment Act, 2007**

The Bill seeks to introduce amendments that will cater for deployment and redeployment of employees and reassignment and redesignation of the job title or grading to be part of the employment particulars.

The Committee considered the amendments to the Children Act, 2001 (No. 8 of 2001), the National Social Security Fund Act, 2013 (No. 45 of 2013), the Labour Institutions Act, 2007 (No. 12 of 2007), the Labour Relations Act, 2007 (No. 14 of 2007), The National Employment Authority Act, the Employment Act, the National Youth Council Act, the National Youth Service Act for submission to the Departmental Committee on Justice and Legal Affairs.

On 7<sup>th</sup> May, 2018, the National Assembly placed advertisements on the Local Dailies calling for views from the general public on the Bill pursuant to Article 118 of the Constitution. The Committee received submissions from the Federation of Kenya Employers, Ministry of

Labour and social protection state department for labour, Kenya National Union of Nurses, International Commission of jurists (ICJ), Law society of Kenya, Central Organization of trade unions (COTU), Kenya Bankers Association, Kenya Union of special needs education teachers, the Expert/ Steering committee to review the framework for child adoption in Kenya, Association of Charitable Children Institutions, Child in Family Focus, the Change Trust, SOS Children's Villages Kenya, Plan International, World vision Kenya, Save the Children, Childfund Kenya, Mtoto news, Children of God relief institutes, Mr. Adonijah Kimanzi, Kenya Alliance for Advancement of Children, Ministry of Labour and social protection State Department for social protection, pensions and senior citizens affairs, and the association of charitable institutions of Kenya.

#### **4.0 ANALYSIS OF THE BILL**

##### **STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL, 2018**

Laws that are to be considered for amendment by the Labour and Social Welfare Committee are as follows:-

**i) The National Youth Service Act (Cap. 208).**

The Bill proposes to amend the National Youth Service Act to empower the service to undertake other activities incidental to the achievement of the functions in section 16(1), including commercial activities.

**ii) The Children's Act, 2001 (No. 8 of 2001).**

The Bill seeks to amend the Children Act to make child welfare Society of Kenya a national adoption society and to confer powers on the Cabinet Secretary in relation to charitable children institutions, and adoption societies and for the establishment of task committees and working groups.

**iii) The Employment Act, 2007 (No. 11 of 2007).**

The Bill seeks to introduce amendments that will cater for deployment and redeployment of employees and reassignment and redesignation of the job title or grading to be part of the employment particulars.

**iv) The Labour Institutions Act, 2007 (No. 12 of 2007)**

The Bill seeks to amend the Labour Institutions Act, 2007 to provide for establishment of an Export Processing Zones Wages Council. The Bill further seeks to amend the Act to make provisions relating to the Board.

**v) The Labour Relations Act, 2007, No. 14 of 2007**

The Bill seeks to amend the Labour Relations Act, 2007 to make provisions for the safeguarding of essential services during provisions of industrial action.

**vi) The National Youth Council Act, 2009 ( No. 10 of 2009)**

The Bill proposes to amend the National Youth Council Act, 2009 to introduce new definitions of the term “Minister” and “youth” in line with the Constitution. It also seeks to change the composition of the Members of the Board and the mode of nomination in keeping with inclusivity on appointments.

**vii) The National Social Security Fund Act, 2013 ( No. 45 of 2013)**

The Bill seeks to amend the NSSF Act to make provisions relating to the membership and meetings of the Board.

In considering the amendments the Committees looks in the above aspects:-

- i) Constitutionality of the proposed amendments;
- ii) Views of key stakeholders that use the parent Acts;
- iii) Whether substantive amendments can be made vide the Statute.

## 5.0 SUBMISSION FROM THE STAKEHOLDERS (PUBLIC PARTICIPATION)

The Committee received memoranda from the following:

- i) Federation of Kenya Employers,
- ii) Ministry of Labour and social protection state department for Labour,
- iii) Kenya National Union of Nurses,
- iv) International Commission of jurists (ICJ),
- v) Council of Governors,
- vi) Law society of Kenya,
- vii) Central Organization of trade unions (COTU),
- viii) Kenya Bankers Association,
- ix) Kenya Union of special needs education teachers,
- x) the Expert/ Steering committee to review the framework for child adoption in Kenya,
- xi) Association of Charitable Children Institutions,
- xii) Child in Family Focus,
- xiii) the Change Trust,
- xiv) SOS Children's Villages Kenya,
- xv) Plan International,
- xvi) World vision Kenya,
- xvii) Save the Children,
- xviii) Child fund Kenya,
- xix) Mtoto news,
- xx) Children of God relief institutes,
- xxi) Mr. Adonijah Kimanzi,
- xxii) Kenya Alliance for Advancement of Children,
- xxiii) Ministry of Labour and social protection State Department for social protection, pensions and senior citizens affairs, and
- xxiv) the association of charitable institutions of Kenya

The following matrix indicates the proposals from the various stakeholders and our analysis.

**5.1 PROPOSED AMENDMENTS TO THE NATIONAL SOCIAL SECURITY FUND ACT,**

**THE NATIONAL SOCIAL SECURITY FUND ACT, OF 2013**

| CLAUSE PROPOSED FOR AMENDMENT | PROVISION IN THE PARENT ACT  | PROPOSED AMENDMENTS | STAKEHOLDER VIEWS   | COMMITTEE OBSERVATIONS   |
|-------------------------------|------------------------------|---------------------|---|--|
| Section 2 of the Act          | S. 6 Membership of the Board |                     | <p><b>CENTRAL ORGANIZATION OF TRADE UNIONS COTU.</b><br/>COTU States as follows—</p> <p>(a) The Proposed amendment bill will undermine the rights of Trade unions in line with the provisions of Articles 10, 36, and 41 of the constitution. ILO Convention No. 84 and 87, Article 23 paragraph 4 of the Universal Declaration of Human Rights.</p> <p>(b) The Amendments seek to make drastic changes to the architecture of Trade Unions representation to the Board of trustees. There is no clarity on</p> | The Committee observed that all the proposed amendments in the Act were substantive and required ample public participation which had not been done and therefore they should be deleted |

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|  |  |  | <p>the nature of the newly created structures and how they are to operate within the realms of Labour Rights.</p> <p>(c) There is no sufficient justification for the amendments as is required under section 3(2) of the Statutory Instrument Act and the amendments are bound to affect the country negatively.</p> <p>(d) The proposed amendments to section 6(d) and 11(2) of the NSSF Act of 2013 are substantive amendments that have the cumulative effect of negating the established nomination procedures. The Amendments require serious debate to enable stakeholders to understand the meaning and implications of the provisions</p> |  |
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|  |  |  | <p>to be amended.</p> <p>(e) The amendments fail to provide basic information need requires under the Statutory Instruments Act of 2013, which lack of information makes it difficult to have roust debates on the proposal. COTU therefore proposes that Trade Unions through their umbrella body COTU (K) and FKE and the Government, the social partners to hold tripartite discussions that will be aimed at identifying the challenges facing the sector and come up with a workable legal framework.</p> <p>(f) Finally that no public participation was carried out when these amendments with far</p> |  |
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|  |   |   | <p>reaching ramifications were being formulated, that they therefore offend the provisions of Article 118 of the Constitution.</p> <p><b>BANKING<br/>INSURANCE<br/>AND FINANCE<br/>UNION KENYA</b></p>  |   |
|  | <p>Membership of the Board The Board shall comprise—</p> <p>(a) the Chairperson appointed by the Cabinet Secretary from amongst the Trustees appointed under paragraph (d)(iii);</p> <p>(b) the Principal Secretary responsible for matters relating to finance;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for matters relating to social security;</p> <p>(d) seven persons appointed by the</p> | <p><b>S. 6</b><br/>Delete the expression “Cabinet Secretary from amongst the Trustees appointed under paragraph (d) (iii)” and substitute therefor the word “President”.</p> <p>Delete and substitute therefor the following new paragraph –</p> <p>(d) five persons, not being public officers nor employees or directors of any</p> | <p>(a) Supports the proposal to have members of the Trustee to be appointed by the President</p> <p>Retain workers and employers representatives as in currently provided for in the law due to the following reasons-</p> <p>(a) The fund is owned by private sector employers for the employees benefit upon retirement the fund cannot be left too political appointees who have no beneficial interest in the fund;</p> | <p>The Bill seeks to amend the NSSF Act to make provisions relating to the membership and meetings of the Board.</p> <p><i>The Appointment of the Chairman of the fund shall be done by the Pre</i></p> |

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|  | <p>Cabinet Secretary as follows—</p> <p>(i) two persons, one of whom shall be of opposite gender, nominated by the most representative employers' organization with knowledge and experience in matters relating to employers to represent employers in Kenya;</p> <p>(ii) two persons, one of whom shall be of opposite gender, nominated by the most representative workers organization by virtue of their knowledge and experience in matters relating to employees to represent employees in Kenya;</p> <p>(iii) three persons one of whom shall be of opposite gender, not being public</p> | <p>public company, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to administration of scheme funds, actuarial science, insurance, accounting and auditing, law or such other expertise as the appointing authority may consider relevant.</p> <p>Renumber the existing provision as subsection (1) and insert the following new subsection –</p> <p>(2) In making appointments of the members to the Board under subsection (1) (d), the Cabinet Secretary shall observe regional and gender balance.</p> | <p>(b) It's the practice world over that employees and workers representatives are in the fund.</p> <p>(c) New requirement for regional and gender balance should be applicable to workers body and employers body.</p> |  |
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|                              | <p>officers nor employees or directors of any public company, appointed by the Cabinet Secretary by virtue of their knowledge and experience in matters relating to administration of scheme funds, actuarial science, insurance, accounting and auditing or law;</p> <p>(iv) the Managing Trustee as ex officio member</p>                         |   |   |  |
| <b>Section 9 of the Act.</b> | <b>S 9.Filling of vacancy</b>   | <b>S. 9 Filling of Vacancy</b>  | <b>BANKING INSURANCE AND FINANCE UNION KENYA</b>  |  |
|                              | <p>Whenever the office of Chairperson and a Trustee appointed under section 6 (d) (i), (ii) and (iii) prematurely falls vacant, the vacancy shall be filled in the same manner specified for that office under section 6 and the person thereby appointed shall serve for the remainder of the term. 10. The powers and responsibilities of the</p> | <p>Inserting the expression “Subject to section 7(3) of the State Corporations Act,” at the beginning of the section.</p> | <p>NSSF is a private sector membership fund and non-political and any attempt to politicize the Fund is not acceptable. The government has already six representatives to the board</p> |  |

| Section 11 of the Act. | S. 11. Meetings of the Board   |  |  |  |
|------------------------|--|--|--|--|
|                        | <p>11(1) The Board shall hold not less than four meetings in every financial year for the conduct of its business and not more than four months shall elapse between</p>                     | <p>Delete and substitute therefore the following new subsection –</p> <p>(2) The quorum for the conduct of business at a meeting of the Board shall be two-thirds of the total number of members of the Board.</p> | <p><b>BANKING INSURANCE AND FINANCE UNION</b></p> <p>Retain the provision as in the Act. NSSF is not government-funded fund and removal of FKE and COTU will open the fund to corruption and mismanagement of the funds as the appointed persons will be serving their appointing authority.</p> | <p><i>Consider the tripartite nature provided for in the ILO</i></p> |
|                        | <p>(2) The quorum for the conduct of meetings of the Board shall be two-thirds of the Trustees, of whom one shall be a representative of employees and one a representative of employers</p> |  |  |  |
|                        | <p>(3) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a simple majority of the votes of</p>   |  |  |  |

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|  | <p>the members present and voting, and in the case of an equality of votes the Chairperson or person presiding in that capacity shall have a casting vote.</p>   |  |  |  |
|  | <p>(4) The notice of a meeting of the Board shall be seven days from the date the notice is duly sent out unless three quarters of the total members of the Board otherwise agree and, a meeting of the Board or deliberations thereof or decisions or resolutions taken thereat shall not be invalid by reason only of misdirection of notice or failure by a member to receive the notice.</p> |  |  |  |
|  | <p>(5) The chairperson shall preside at every meeting of the Board but the members present shall elect one of their members to preside whenever the chairperson is absent or otherwise unable to preside and the person so elected shall have all the powers of the</p>  |  |  |  |

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|  | chairperson with respect to the conduct of that meeting and the business transacted thereat.   |  |  |  |  |
|  | (6) The Board may if it deems appropriate, invite any person to attend deliberations of the Board but such person shall have no right to vote. |  |  |  |  |
|  | (7) Subject to this Act, the Board may regulate its own procedures at their meetings.  |  |  |  |  |

**5.2 PROPOSED AMENDMENTS TO THE LABOUR RELATIONS ACT, (NO 14 OF 2007)**

| <b>CLAUSE PROPOSED FOR AMENDMENT</b> | <b>PROVISION IN THE PARENT ACT</b>  | <b>PROPOSED AMENDMENTS</b>   | <b>STAKEHOLDER PROPOSALS</b>                        | <b>COMMITTEE OBSERVATIONS</b>  |
|--------------------------------------|---|--|---|--|
| <b>Section 2 of the Act.</b>         | <b>2. Interpretation<br/>Definition of the term</b>                             |  |   | The Committee observed that the proposed amendments in this Act seek to make drastic changes to the labour industry and propose that comprehensive consultations should be carried out in a bid to amend the laws. T |
|                                      | “Minister” means the Minister for the time being responsible for Labour matters | S. 2 definition of the term ‘Minister ‘ in its proper alphabetical sequence as | <b>CENTRAL ORGANIZATION OF TRADE UNIONS (KENYA)</b> |  |

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|  |  | <p>follows—<br/> “Minister” means the<br/> Cabinet Secretary for<br/> the time being<br/> responsible for<br/> Labour.</p> | <p>COTU States as<br/> follows-</p> <p>(a) The<br/> Proposed<br/> Amendment<br/> Bill will<br/> undermine<br/> the rights of<br/> Trade<br/> Unions 10,<br/> 36, 41 Of the<br/> Constitution.<br/> ILO<br/> Convention<br/> No. 84 AND<br/> 87, Article<br/> 23 paragraph<br/> 4 of the<br/> Universal<br/> Declaration<br/> of Human<br/> Rights.</p> <p>(b) The<br/> Amendment<br/> s seek to<br/> make drastic<br/> changes to<br/> the<br/> architecture<br/> of Trade<br/> Union of<br/> calling for<br/> strikes.<br/> There is no<br/> clarity on the<br/> nature of the<br/> newly<br/> created<br/> structures<br/> and how<br/> they are to<br/> operate<br/> within the<br/> realms of</p> |  |
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|  |  |  | <p>Labour Rights.</p> <p>(c) There's no sufficient justification for the amendments as is required under section 3(2) of the statutory Instrument Act and the amendments are bound to affect the country negatively.</p> <p>(d) The proposed amendment to Sections 48, 49, 76, 81, 81A, 81B, 81C, 81D, and 81 E of the labour relations Act 2007 are substantive amendments that have a cumulative effect of negating the established freedom of association by the Trade Unions, calling for</p> |  |
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|  |  |  | <p>lawful strikes and undermining the Collective Bargain Agreements. The Amendments require serious debate to enable stakeholders to understand the meaning and implications of the provisions to be amended.</p> <p>(e) The proposed proviso to section 76 of the amendment is outrageous as it deeply infringes upon the right of Trade Unions to organize their affairs pursuant to their recognized Constitutions. Further that that the</p> |  |
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|  |  |  | <p>requirement of the proviso is not only unconstitutional in so far as it negates the right to go on strike provided under Article 41 but it is also discriminatory as the same requirement is not applicable to the employers in calling for a lock out.</p> <p>(f) Sections 81, 81A, 81B, 81C, 81D and 82 E of the proposed amendments seek to limit the right to strike enshrined in Article 36 and 41 of the Constitution, ILO Convention No. 84 and 87 Article 23 paragraph 4 of the UDHR of which Kenya</p> |  |
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|                               |  |  | <p>is a Member and are by dint of Article 2(5) of the Constitution are deemed to be part of the Kenyan Law. These amendments are substantive and they require thorough interrogation of its effects by stakeholders including Trade Unions.</p> <p>(g) Finally that no public participation was carried out when these amendments with far reaching ramifications were formulated, that they therefore offend the provisions of Article 118 of the Constitution.</p> |  |
| <b>Section 48 of the Act.</b> | <b>S. 48 Deduction of trade union dues</b> |  |  |  |

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|  |  | <p>Delete Section 48 and substitute therefor the following new section—</p> <p><b>S. 48 Deduction of trade union dues</b></p> | <p><b>INTERNATIONAL COMMISSION OF JURISTS (ICJ) KENYA</b></p> <p>ICJ(K) Supports the proposed amendment as it seeks to protect the right to life and at the same time guarantees the right to strike in a structured manner.</p> <p><b>BANKING INSURANCE AND FINANCE UNION</b></p> <p>The Union proposes that- (a) (1) be expunged as the law is not supposed to be expressed in the negative;</p> <p>(b) that S48 (2) be deleted as a “check-off agreement cannot be between union and employer as it is the union and the members who enter into a check-off agreement.</p> <p>(c) They proposes the retention of new S. 48 (3, 5, 6 and 7” as they are addressing new scenarios</p> <p>(d) they propose the deletion on the new subsection (8) of section 48 because they feel this new subsection (8) dilutes the importance of</p> |  |
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|  |  |   | <p>statutory collection of trade union dues which if it prevails will water down the gains of the 1965 Government policy on trade unions after the committee was appointed to strengthen trade union to match employers while defending their members rights</p> <p>(e) They propose that we delete sub-section (9), (10), (11) are unnecessary and propose that we retain the entire Section as is in the Act.</p> |  |
|  | <p>(1) In this Part, "Trade union dues" means a regular subscription required to be paid to a trade union by a member of the trade union as a condition of membership.</p> | <p>(1) No trade union shall claim or receive any trade union dues, unless it is registered.</p>   | <p>Amendment seeks to ensure that all trade unions are registered in order for them to collect any dues from their members</p>  |  |
|  | <p>(2) A trade Union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to—</p>  | <p>(2) An employer whose workers are members of a registered trade union shall enter into a check-off agreement with the registered trade union</p> | <p>Introduces the check-off system on employee dues</p>   |  |
|  | <p>(a) deduct trade union dues from the wages of its members; and</p>  | <p>(3) An employer shall deduct dues of a registered trade union from an</p>  | <p>There shall be a prescribed form for employees to notify employers of how</p>  |  |

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|  |   | employee's wages if that employee has authorized the employer to do so in the prescribed form.  | deductions are to be made to the unions.                         |  |  |
|  | <p>(b) pay monies so deducted—</p> <p>i) into specified account of the trade union; or</p> <p>ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.</p>   | (4) The employer shall remit the deductions to the trade union within fourteen days after the end of the month in which the deductions are made.      | Provides a 14 day period to remit deductions to the trade unions |  |  |
|  | (5) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction. | (5) An employee may revoke an authorization by giving one month notice to the employer and the trade union.   |  |  |  |
|  | (6) The Minister may vary an order issued under this section on application by the trade union  | (6) Where an employee revokes any authorization under subsection (3), the employer shall cease to make any deductions after the expiry of the notice. |  |  |  |
|  | (7) An order issued under this section, including   | (7) With each monthly   |  |  |  |

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|  | <p>an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notices is served on the employer</p>         | <p>remittance, the employer shall give a registered trade union—</p> <p>(a) A list in the prescribed form of the names of the members in respect of whom deductions are required to be made; and</p> <p>(b) A copy of any notice of revocation under subsection (3)</p>   |  |  |
|  | <p>(c) An employer may not make any deduction from an employees who has notified the employer in writing that the employee has resigned from the union.</p> | <p>(8) Where an employer refuses to enter into a check-off agreement under subsection (2), a trade union may make an application to the Labour Commissioner for an order that check-off agreement shall have effect between the trade union and the employer and, on hearing the application, the Commissioner may make such order as deemed fit.</p> |  |  |
|  | <p>(d) A notice of resignation referred to in subsection (6) takes effect from the month following the</p>  | <p>(9) Any application made under subsection (8) shall be</p>   |  |  |

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|                               | month in which it is given.   | determined by the Commissioner within thirty days of the date of receipt of the application.  |  |  |  |
|                               | (e) An employer shall forward a copy of any notice of resignation he receives to the trade union. | (10) An employer shall comply with an order made under subsection (8) within two months of the date of the Order.   |  |  |  |
|                               |   | (11) Where the trade union dues have been altered—<br>(a) The trade union shall give written notice of such alternation to the employer and;<br>(b) The employer shall deduct the amount of the trade union dues as altered from the wages earned by an employee for the month following the month in which the notice of the alternation is received by him. |  |  |  |
| <b>Section 49 of the Act.</b> | <b>S. 49 Deduction of fees from unionisable employees covered by collective agreements</b>        | <b>Clause 49 Delete and substitute therefore the following new section<br/>Deduction of agency fees from unionisable employees covered</b>  |  |  |  |

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|  |   | <b>by collective agreements</b>  |   |  |
|  | <p>49. (1) A trade union that has concluded collective agreement registered by the Industrial Court with an employer, group of employers' organization, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union</p> | <p>49. (1) Where a check-off agreement and a collective agreement are in force, a registered trade union may enter into an agreement with an employer for the deduction of an agency fee from the wages of employee in a bargaining unit who are not members of the trade union.</p> | <p><b>BANKING INSURANCE AND FINANCE UNION</b></p> <p>The union is opposed to the entire new sub-section (1) as it dilutes the check-off collection.</p>                                     |  |
|  | <p>(2) A request in accordance with sub-section (1) shall—</p> <p>(a) be signed by the authorized representatives of the trade union and employer, group of employers or employers' organization;</p> <p>(b) supply a list of all employees prepared by the employer in respect of whom a deduction shall be made;</p> <p>(c) specify the amount of the agency fee, which may not exceed the applicable trade union dues; and</p>   | <p>(2) A deduction under subsection (1) shall be made if the employee consents thereto in writing.</p>   | <p>The union opposes the introduction of this new section 49(2) as it is not possible as an employee who enjoys services from a trade without paying will be happy to continue that way</p> |  |

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|  | (d) specify the trade union account into which the dues shall be paid  |  |  |  |  |
|  | (3) An employer in respect of whom the Minister has issued an order as specifies in subsection (1) shall commence deducting agency fees from the employees named in the Minister's notice within thirty days of receiving the Minister's notice. | (3) The amount of the agency fees shall not exceed the applicable trade union dues |  |  |  |
|  | (4) The Minister may vary an order issued under this section on application by the trade union and the employer, group of employers or employers' organization concerned.  |  |  |  |  |
|  | (5) A member of trade union covered by a collective agreement contemplated by subsection (1) who resigns from the union, is immediately liable to have an agency fee deducted from his wages in accordance with this section                     |  |  |  |  |
|  | (6) If a collective agreement is implemented retrospectively after registration by the Industrial Court, the agency fee shall be deducted and paid to the trade union for the period of retrospective implementation in accordance with this     |  |  |  |  |

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| <b>Section 50 of the Act.</b> | <b>Section 50 General provisions applicable to deductions</b>   |   |   |  |
|                               | <b>S. 50 (1)</b> Any amount deducted in accordance with the provisions of this Part shall be paid into the designated trade union, or employers' organization account within ten days of the deduction being made.  |   |   |  |
|                               | <p><b>(2)</b> The Minister may revoke or suspend a notice issued in accordance with the provisions of this Part if the Minister has reason to believe that—</p> <p><b>(a)</b> The order was obtained by misrepresentation or fraud;</p> <p><b>(b)</b> The money is not being paid into the designated account;</p> <p><b>(c)</b> The money is being used for a purpose other than the lawful trade union or federation activities</p> | <b>S. 50 (2)</b> Delete the word "notice" and substitute therefor the expression "check-off agreement" under subsection (2) | <b>BANKING INSURANCE AND FINANCE UNION</b><br>Proposes that Section (50) be retained as is in the act as it serves the right purpose. |  |
|                               | <b>(3)</b> No amount deducted from the wages of an employee in accordance of this Part may be recovered from the employer by that employee.   |   |   |  |
|                               | <b>(4)</b> Any amount deducted from the wages of a member of a trade union by the member's employer in accordance with this section discharges the liability of   |   |   |  |

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|  | the member to pay trade union dues.  |  |   |  |  |
|  | (5) An employer may set off against any sum payable to a trade union in accordance with this section, the amount of any money over paid by the employer into the account designated by the Minister. | Delete the words “into the account designated by the minister” and substitute therefor the expression “to a registered trade union”. | <b>KENYA NATIONAL UNION OF NURSES</b><br>The Union of Nurses proposes that—<br>In section 50(5) the term “ <b>minister</b> ” appearing at the end of the Clause should be deleted and be substituted therefore by the terms “ <b>trade Union</b> ”<br><br>The Rationale being that the deletion is in line with the amendments proposed in Section 48 where the minister shall no longer designate accounts for trade unions. |  |  |
|  | (6) No employer shall make a deduction from the wages of an employee for the purposes of making a payment to any trade union, except in accordance with the provisions of this Part.                 |  |   |  |  |
|  | (7) A trade union or a trade union federation shall acknowledge receipt of any monies paid to it within fourteen days of receiving the money.  |  |   |  |  |
|  | (8) No employer shall—<br>(i) Fail to comply with an order or a notice issued  |  |   |  |  |

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|                               | <p>under this Part;</p> <p>(ii) Deduct any money and not pay into the account designated in the notice issued by the Minister;</p> <p>or</p> <p>(iii) pay money into an account other than the account designated in the notice issued by the Minister</p>   |  |   |  |
|                               | <p>(9) No person shall—</p> <p>(i) Request an employer to pay money deducted in accordance with this section into an account other than the account designated by the Minister in the notice; or</p> <p>(ii) Use any money deducted in accordance with this section for any purpose other than the lawful activities of a trade union or trade union federation.</p> | Delete subparagraph (i)  |   |  |
|                               | <p>(10) An employer or any person who contravenes the provisions of this section commits an offence.</p>   |  |   |  |
| <b>Section 76 of the Act.</b> | <b>S. 76 Protected strikes and lock-outs</b>   |  |   |  |
|                               | <p>76. A person may participate in a strike or lock-out if—</p> <p>(a) the trade dispute that forms the subject of the strike or lock-out concerns terms and conditions of employment or the recognition of a trade union;</p> <p>(b) the trade dispute is unresolved after conciliation—</p>  | <p>Delete the word ‘seven’ and substituting therefor the expression ‘twenty-one’ under paragraph (c).<br/>Inserting the following proviso –<br/><br/>Provided that the Notice issued under this section is</p> | <p><b>BANKING INSUARANCE AND FINANCE UNION</b><br/>Proposes that this section should be left as it is provided for in the Act, as this is a very high threshold and demeans the power of the union officials to take such action.</p> |  |

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|                               | <p>(i) under this Act; or</p> <p>(ii) as specified in a registered collective agreement that provides for the private conciliation of disputes; and</p> <p>(c) Seven days written notice of the strike or lock-out has been given to the other parties and to the Minister by the authorized representative of—</p> <p>(i) the trade union, in the case of a strike;</p> <p>(ii) the employer, group of employers or employers' organization, in the case of a lock-out.</p>   | supported by a two third majority members of the union. |  |  |  |
| <b>Section 78 of the Act.</b> | <b>S. 78 Prohibited strikes or lock-outs</b>   |   |  |  |  |
|                               | <p>(1) No person shall take part in a strike or lock-out or in any conduct in contemplation of a strike or lock-out if—</p> <p>a) any law, court award or a collective agreement or recognition agreement binding on that person prohibits a strike or lock-out in respect of the issue in dispute;</p> <p>b) the subject matter of the strike or lock-out is regulated by a collective agreement or recognition agreement binding on the parties to the dispute;</p> <p>c) the parties have agreed to refer the trade dispute to the Industrial Court or to</p> | Delete paragraph (f)                                    |  |  |  |

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|  | <p>arbitration;</p> <p>d) in the case of a dispute concerning the recognition of a trade union, the trade union has referred the matter to the Industrial Court;</p> <p>e) the trade dispute was not referred for conciliation in terms of—</p> <p>(i) this Act; or</p> <p>(ii) a collective agreement providing for conciliation;</p> <p>f) the employer and employees are engaged in an essential service;</p> <p>(g) the strike or lock-out is not in furtherance of a trade dispute; or</p> <p>(h) the strike or lock-out constitutes a sympathetic strike or lock-out.</p> |  |  |  |
|  | <p>(2) For the purposes of this section—</p> <p>(a) an employee engages in a sympathetic strike if the employee participates in a strike in support of a trade dispute in respect of which the employee’s employer—</p> <p>(i) is not a party to the dispute; or No. 14 of 2007 [Rev. 2012] Labour Relations [Issue 1] 42</p> <p>(ii) is not represented by an employer’s organization that</p>   |  |  |  |

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|                               | <p>is a party to that dispute; or<br/> (b) an employer engages in a sympathetic lock-out if the employer locks-out an employee in support of a trade dispute— (i) to which the employer is not a party;<br/> or<br/> (iii) in respect of which the employer is not represented by an employer’s organization that is a party to dispute.</p> |                                    |   |  |
| <b>Section 81 of the Act.</b> | <p><b>Essential services</b><br/> (1) In this Part “essential services” means a service the interruption of which would probably endanger the life of a person or health of the population or any part of the population</p>   | Proposed amendment to delete S. 81 | <p><b>INTERNATIONAL COMMISSION OF JURISTS (ICJ) KENYA</b><br/> ICJ(K) Supports the proposed amendment as it seeks to protect the right to life and at the same time guarantees the right to strike in a structured manner.</p> <p><b>BANKING INSURANCE AND FINANCE UNION (KENYA)</b><br/> They propose as follows-<br/> delete the words “<b>industrial Court</b>” and substitute therefore the words “<b>Employment and Labour Relations Court</b>” wherever it appears.</p> |  |
|                               | 2) The Minister, after consultation with the   |                                    |   |  |

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|   | <p>Board—</p> <p>(a) shall from time to time, amend the list of essential services contained in the Fourth Schedule; and</p> <p>(b) may declare any other service an “essential service” for the purpose of this section if a strike or lock-out is so prolonged as to endanger the life, person or health of the population or any part of the population.</p> |   |   |  |
|   | <p>(3) There shall be no strike or lock-out in an essential service. (4) Any trade dispute in a service that is listed as or is declared to be an essential service may be adjudicated upon by the Industrial Court. (5) A collective agreement may provide that any service may be deemed to be an essential service.</p>                                      |   |   |  |
| <p><b>New Clause after Section 81 of the Act.</b></p> |   | <p><b>Insert the following new Part immediately after Part X –</b></p> <p><b>PART XA- PROTECTION OF ESSENTIAL SERVICES, LIFE AND PROPERTY</b></p> |   |  |
|   |   | <p>Limitation of right to strike and lock-out.</p>  | <p>81. The right to go on strike under Article 41(2) (d) of</p> |  |

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|  |  |                                | <p>the Constitution shall be limited as set out in this Part for the purpose of ensuring the continuation of essential services for the preservation of the life and health of the population and of property.</p>   |  |  |
|  |  | <p>Interpretation of Part.</p> | <p>81A. (1). In this Part-</p> <p>"break" means, in relation to an employee's contract of service, commit any act or make any omission which amounts to a breach of the contract of service under which he is employed;</p> <p>"contract of service" means any contract whether entered into orally or in writing, whether expressed or implied, to employ or to serve as an employee for any period of time, and whether it is a contract of service or apprenticeship or learnership, or a contract personally to execute any work or labour;</p> <p>"essential service" means any of the services specified in the Fourth Schedule, the interruption of</p> |  |  |

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|  |  |                                     | <p>which would probably endanger the life of a person or health of the population or any part of the population, or property.</p> <p>(2) The Minister, after consultation with the Board —</p> <p>(a) may from time to time, by Order in the Gazette amend the Fourth Schedule; and</p> <p>(b) may declare any other service an “essential service” for the purpose of this section if a strike or lock-out is so prolonged as to endanger the life or health of a person or property.</p> <p>(3) Any trade dispute in a service that is listed as or is declared to be an essential service may be adjudicated upon by the Industrial court</p> |  |
|  |  | Collective Bargaining agreement for | 81B. (1) A collective bargaining   |  |

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|  |  | essential services. | <p>agreement for employees involved in the provision of essential services shall in addition to the requirements of section 57, contain a dispute resolution mechanism and such other matters as the Minister may prescribe, and shall be accompanied by a minimum service agreement in a format to be prescribed by the Minister.</p> <p>(2) A minimum services agreement under subsection (1) shall indicate-</p> <ul style="list-style-type: none"> <li>(a) the minimum number of employees required to continue working during a strike, either expressed as a number or a percentage of the current workforce;</li> <li>(b) the type of services which must be continued during strike action, which shall be expressed by job function</li> </ul> |  |
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|  |  |   | <p>and not by individual employees;</p> <p>(c) the minimum service levels associated with various functions and duties to be performed during strike action;</p> <p>(d) the manner in which the essential services shall be provided during the strike;</p> <p>(e) the process of responding to emergencies during the strike or lock-out; and</p> <p>(f) a waiver of the right of the employer to engage replacement labour to provide services in excess of the minimum services.</p> |  |
|  |  | Reporting of trade dispute to Minister. | 81C. (1) A trade dispute in an essential service shall be reported by the concerned trade union or by the employer to the Minister by notice in   |  |

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|  |  |   | <p>writing indicating-</p> <ul style="list-style-type: none"> <li>(a) the nature of the dispute, and</li> <li>(b) seeking the intervention of the Minister in resolving the dispute.</li> </ul> <p>(2) Where a period of twenty-one days elapses before the resolution of the trade dispute reported under subsection (1), the trade union or employer, as the case may be, shall serve the Minister a seven-day strike or lock-out notice which shall be accompanied by a minimum service agreement in accordance with section 81B.</p> |  |
|  |  | <p>Breach of employee's contract not unlawful in certain circumstances.</p> | <p>81D. An employee in an essential service shall not be deemed to have committed an offence if such employee breaks his contract of service after the expiration of the period of twenty-one seven days and seven days respectively as provided under section 81C.</p>  |  |

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|  |  | <p>Penalty for breach of contract of service.</p> | <p>81E (1) Any person who-</p> <ul style="list-style-type: none"> <li>(a) procures or counsels any employee, whether an employee in an essential service or not, to break his contract of service, or</li> <li>(b) being an employee, whether in an essential service or not, breaks his contract of service,</li> </ul> <p>knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, are to endanger human life or public health, or to cause serious bodily injury to any person, or to expose valuable property to the risk of destruction, loss or serious injury, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand</p> |  |
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|                 |   |   | shillings or to imprisonment for a term not exceeding three months.   |  |  |
| Fourth Schedule | <b>FOURTH SCHEDULE (S81) ESSENTIAL SERVICES</b> | <b>DELETE THE FOURTH SCHEDULE AND SUBSTITUTE THEREFORE THE FOLLOWING NEW SCHEDULE</b> | <p><b>INTERNATIONAL COMMISSION OF JURISTS (ICJ) KENYA</b></p> <p>ICJ(K) Supports the proposed amendment as it seeks to protect the right to life and at the same time guarantees the right to strike in a structured manner.</p> <p><b>BANKING INSURANCE AND FINANCE UNION</b></p> <p>Opposes the new schedule for the reasons that the current schedule in the Act was negotiated between social partners and other stakeholders during an ILO funded stakeholder meeting between 2001 and 2004.</p> |  |  |

**FURTHER PROPOSALS FOR AMENDMENTS THAT ARE NOT IN THE STATUTE  
LAW MISCELLANEOUS**

**1. Kenya union of Nurses**

i) The Kenya Union of Nurses seeks a further amendment to section 37 of the Act as follows-

a. Delete Clause (2)

**RATIONALE:**

It is interference in trade unions affairs for the Cabinet Secretary to transfer properties of a trade union. The provision on property acquisition and disposal is properly dealt with in Section 21 of the Act as well as Constitutions of trade unions. It violates the Constitution of Kenya Article 41(4)

**2. Kenya Union of Special Needs Education Teachers**

i) Section 54 of the Labour relations Act as follows-

“delete subsection (1) and (2) as follows-

54(1) An employer , including an employer in the public sector, shall recognize a trade Union for the purpose of collective bargaining if that trade Union is registered to represent unionisable Employees; and

54(2) A group of employers, or an employer’s including an organization of employees in the public sectors shall recognize a trade union for the purpose of collective bargaining if the trade Union is registered to represent unionisable employees employed by the group of employers who are members of the employer’s organization within the sector.

5.4 THE CHILDREN'S ACT, 2001

| <b>BRIEF ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)</b> |  |   |                           |  |   |
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| <b>BILL 2018</b>   |  |   |                           |  |   |
| <b>CLAUSE IN THE BILL</b>                                  | <b>SECTION IN THE ACT</b>              | <b>PROVISION IN THE ACT</b>   | <b>PROPOSED AMENDMENT</b> | <b>STAKEHOLDER COMMENTS</b>  | <b>COMMITTEE OBSERVATION</b>  |
| The Children Act<br>(No. 13 of 2001)                       | S. 2<br><b>Interpretation of terms</b> | In the definition of the term <b>“authorized officer”</b><br><br>By inserting the words “ an officer of the national adoption society” immediately after the words “ labour officer”<br><br>By inserting the following new definition in proper alphabetical sequence—<br><br>“ national adoption society” means the Child Welfare Society of Kenya Established by the Child Welfare Society of Kenya Order, 2014 |                           | <b>Kenya Alliance for Advancement of children on behalf of NGO child rights Committee</b><br><br>Kenya Alliance proposes that the Committee Rejects the proposed amendment to status quo in the act be maintained pending the enactment of a new Children Act<br><br><b>Association of charitable Children Institutions of Kenya</b><br>Delete all the proposed amendments to the Children Act 2001<br><b>The Expert/Steering Committee</b><br>The expert steering Committee | The committee observed that the amendment sought to entrench Child Welfare Society as the National Adoption Society in the Country. The committee opined that peacemal amendments to the Children Act were not good for the nation and were of the view that a comprehensive amendment to the Children Act should be done as soon as possible |

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|  |  |  |  | <p>advises the Executive to fast-track the finalization of the draft new children Bill and submits to Parliament.</p> <p><b>The Council of Governors</b><br/>Reject the amendments</p> <p><b>Law Society of Kenya</b></p> <p>The proposal fetters the discretion of the National Adoption Committee.</p> <p>The amendments go against the principles of public participation set out in the constitution.</p> <p>Therefore the Committee should withdraw the proposed amendments.</p> <p><b>Ministry of Labour and Social Protection.</b></p> |  |
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|                           |      |  |  | The Ministry support the proposed amendments as the same will address some of the gaps identified in law in enforcing the right of the Child |
| S. 59 of the Children Act | s.59 | <p><b>S. 59</b>Exceptions (of what charitable institutions shall not include)<br/>A charitable children’s institution shall not include—</p> <p>(a) A rehabilitation school established by the Minister under section 47;</p> <p>(b) a school within the meaning of the Education Act (Cap. 211);</p> <p>(c) a boarding institution;</p> | <p><b>S. 59</b> be amended by inserting the following new paragraph immediately after paragraph (e)—</p> <p>“(f) a temporary place of safety established under regulations made under this Act</p> |  |

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|                         |   | <p>(d) any health institution;</p> <p>(e) a children's day care center, nursery or other similar establishment;</p> <p>Provided that nothing in this section prevent a charitable children's institution from providing medical care, education or training from children accommodated therein, if the provision of such services has been approved by the Council</p> |  |  |  |
| <b>New Clause 72Ass</b> | <b>Insertion of a new section after section 72 of the Act</b> |  | <b>Powers of the Cabinet Secretary over charitable institutions</b><br>72 A (1)<br>Notwithstanding any other provisions of this Part, the Cabinet Secretary may direct the Council to cancel the registration of, or |  |  |

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|  |  |  | <p>to close down a charitable children institution when—</p> <ul style="list-style-type: none"> <li>(a) the lives of children in such institution are in danger or where their continued stay is likely to endanger their wellbeing;</li> <li>(b) the institution or a person involved in the management of such institution is unfit to provide care or protection to the children;</li> <li>(c) it has been established that the institution does not serve the best interest of the Children therein; or</li> <li>(d) such institution is in contravention of the Constitution. The Convention on Rights of the Child, the African Charter on the rights and welfare of the Child or another law or international treaties or convention to which Kenya is a party.</li> </ul> |  |  |
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|                        |   |  | (2) The Cabinet Secretary may pursuant to subsection (1) order the suspension of the registration of new charitable children institutions.  |   |  |  |
| <b>New Clause 72 B</b> | <b>Insertion of a new section 72B after the proposed section 72A of the Act</b> | <b>Caretaker Committee</b>   | Caretaker Committee.  | <b>72B.</b> Where the Cabinet Secretary makes a directive under section 72A (1), the Cabinet Secretary shall appoint a Committee of suitably qualified persons to oversee the process of closure and the relocation of the children in the concerned inst |  |  |
| <b>Section 147</b>     | <b>Conditions for foster care placement</b>                                     | 147. (1) Where a child has, by virtue of a care order, been committed to a rehabilitation school or to a charitable children's institution, the Director in conjunction with the manager of the institution may place the child with a foster parent, for such period as the Director may from time to | Insert the following new subsection immediately after subsection (4) -<br>“(5) Notwithstanding any other provision of this Act, the national adoption society may place any child it finds to be in need of care and protection in foster care under this Act.” |   |  |  |

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|                    |  | time authorize.  |  |  |  |
| <b>Section 155</b> | <b>Establishment of Adoption Committee</b> |  |  |  |  |
|                    |  | <p>155. (1) The Minister shall establish a committee to be known as the Adoption Committee which shall comprise the members set out in the Ninth Schedule.</p> <p>(2) The functions of the Committee shall be –</p> <p>(a) formulating the governing policy in matters of adoption;</p> <p>(b) effecting liaison between adoption societies, the Government and Non-Governmental Organizations;</p> <p>(c) considering and proposing names of officers who may serve as guardians ad litem;</p> <p>(d) monitoring adoption</p> |  |  |  |

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|                               |                            | <p>activities in the country; and</p> <p>(e) such other functions as are conferred on the Committee by this Act</p> <p>(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand shillings or to both.</p> |   |  |  |
| <b>Section 163 of the Act</b> | <b>Powers of the court</b> | <p>(1) The court before making an adoption order shall be satisfied-</p> <p>(a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application</p>   | Delete the words “a registered adoption society in Kenya” and substitute therefore the words “an adoption society”. |  |  |

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|  |  | <p>is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; (b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child; (c) that the applicant has not received or agreed to receive, and that <del>no person had</del> made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;</p> |  |  |  |  |
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|  |  | <p>(d) that any person whose consent is dispensed with on the International adoptions. Powers of the court. <a href="http://www.kenyalaw.org">www.kenyalaw.org</a> Rev. 2007] Children Act No. 8 of 2001 83 grounds of incapacity is still incapable of giving consent at the date of making the order;</p> <p>(e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and</p> <p>(f) that both the applicant and the child have been assessed and evaluated by a registered</p> |  |  |  |
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|  |  | <p>adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court(2) The court may impose such terms and conditions as it may think fit and without prejudice to the generality of the foregoing it may –</p> <p>(a) require the adopter by bond or otherwise to make for the child such provision as in the opinion of the court just and expedient;</p> <p>(b) order that the child shall not be removed from the jurisdiction of the court without the consent of the court for such period as the court may specify;</p> <p>(c) require the adopter to accept</p> |  |  |  |
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|  |  | <p>supervision by and advice from an adoption society specified by the court for such period as the court may specify;</p> <p>(d) where the consent to the making of an adoption order is conditioned upon the child being brought up in a particular religious persuasion, require the infant to be brought up in that persuasion;</p> <p>(e) require the adopter to furnish such security by bond or otherwise as the court may think fit for the due performance of any condition that the court may impose;</p> <p>(f) where the adopter is not a resident of Kenya or a citizen of Kenya, require him to avail such periodical reports from a</p> |  |  |  |
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|                                |   | court or competent authority in the adopter's country of residence for such period as the court may specify.   |  |  |  |  |
| <b>Section 177 of the Act.</b> | <b>S. 177<br/>Restriction on making arrangements for adoption</b> | 177. (1) No body of persons shall make any arrangement for the adoption of a child under the provisions of this Act unless that body is registered as an adoption society under this Part. |  |  |  |  |
|                                |   | (2) An application for registration of an adoption society under this Act shall be made to the Director in the manner prescribed by this Act.  |  |  |  |  |
|                                |   | (3) Where an application is made, the Director shall refer the matter to the Adoption Committee which may –<br><br>(a) accept the application for  |  |  |  |  |

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|  |  | <p>registration;</p> <p>(b) refuse the application for registration on the ground that;</p> <p>(i) a person taking part in the management or control of the society or a member of the society has been convicted of an offence under this Part, or of a breach of any regulations made under this Part;</p> <p>(ii) it would not be in the public interest to approve the same, having regard to the number of adoption societies already approved and functioning in the particular locality.</p> |  |  |  |
|  |  | <p>(4) Where an application for registration is refused, no further application for registration of the adoption society may be made under this</p>   |  |  |  |

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|  |  | section within a period of six months beginning with the date when the applicant is notified of such refusal.  |  |  |  |  |
|  |  | 5) Where the Adoption Committee approves and accepts the registration of an adoption society, it shall issue a Certificate of Registration in the prescribed form and shall at the end of the period of twelve months beginning with the date of registration and annually thereafter, review the registration of the adoption society for the purpose of determining whether the registration should continue being in force or be cancelled. |  |  |  |  |
|  |  | 6) An appeal against the decision of the   |  |  |  |  |

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|  |  | <p>Adoption Committee in refusing or cancelling the registration of an adoption society shall be made in the prescribed manner to the Minister whose decision upon the hearing and determination of the appeal shall be final.</p>  |  |  |  |
|  |  | <p>(7) The functions of an adoption society shall be –</p> <p>(a) to make such inquiries and investigations and to cause such reports as shall be prescribed or as the court may direct, to be obtained for the purpose of ensuring so far as may be possible, the suitability of a child for adoption.</p> <p>(b) to examine and interview any prospective applicant for an adoption order</p> |  |  |  |

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|  |  | <p>and to make such inquiries and investigations Restriction on making arrangements for adoption. www.kenyalaw.org Rev. 2007] Children Act No. 8 of 2001 91 and to cause such reports as shall be prescribed to be obtained or as the court may direct; for the purpose of ensuring so far as may be possible, the suitability of the applicant for the making of an adoption.</p> <p>(c) to ensure that the parent or guardian of the child concerned understands the effect in relation to his rights as a parent or guardian, of the making of an adoption order in respect of the child, and in this regard and whenever possible to</p> |  |  |  |
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procure any consents to the adoption from the persons specified under section 158 (4);

(d) where the child in respect of whom arrangements for adoption are to be made appears to have been abandoned, to ensure that as far as possible all necessary steps are taken to trace the parents or relatives of the child;

(e) subject to its having the facilities to do so, to take care and possession of any child whose parent or guardian is desirous of causing the child to be adopted, pending arrangements for adoption;

(f) when appointed by the court to act as guardian ad litem in any adoption

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|  |  | <p>proceedings to nominate a member or officer of the society to so act;</p> <p>(g) in so far as the funds at its disposal permit, to make provision for the care and supervision of children who have been placed by their parents or guardians at the disposition of the society;</p> <p>(h) to maintain a register and records in respect of all or any children in respect of whom arrangements for adoption have been made by the society, and the names and particulars of any applicants for adoption or of the adopters; and</p> <p>(i) to perform such other duties as may be prescribed(9)<br/>Any corporate body of persons</p> |  |  |  |
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or any person who takes part in the management or control of an unregistered body of persons, which makes arrangements for the adoption of a child in contravention of subsection (1) commits an offence

(9) Any corporate body of persons or any person who takes part in the management or control of an unregistered body of persons, which makes arrangements for the adoption of a child in contravention of subsection (1) commits an offence

(10) Any corporate body which commits an offence under this section shall be liable on conviction to a fine not exceeding one hundred thousand

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|  |  | shillings.   |  |  |  |
|  |  | (11) Any person who takes part in the management or control of a corporate body of persons which is guilty of an offence under this section shall be liable to imprisonment for a term not exceeding one year, or to a fine not exceeding one hundred thousand shillings or to both. |  |  |  |
|  |  | (12) In any proceedings under this section, proof of the things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a   |  |  |  |

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|                       |  | body of persons, or in making arrangements for the adoption of children on behalf of the body, shall be admissible as evidence of the purpose for which that body exists   |  |  |  |
| S.179 (2) of the Act. | <b>S 179<br/>Prohibition<br/>of certain<br/>payments</b> | 179.(1) Subject to subsection (2)<br><br>(a) any adopter or any parent or guardian of a child who receives any payment or other reward in consideration of the adoption<br>Information to be confidential<br>Prohibition of certain payments.<br>www.kenyalaw.org Rev. 2007] Children Act No. 8 of 2001<br>93 of a child under this Act;<br>or<br><br>(b) any person who –<br>(i) makes or gives or agrees to give to any adopter or any parent or |  |  |  |

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|  |  | <p>guardian of the child any payment or other reward in consideration of the adoption of any child under this Act; or</p> <p>(ii) makes arrangement for the adoption of a child and receives or makes or gives any payment or other reward in connection with the making of the arrangements commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, or a fine not exceeding one hundred thousand shillings, or to both</p> |  |  |  |
|  |  | <p>(2) Subsection (1) shall not apply –</p> <p>(a) to any payment the making or receipt of which is sanctioned by the court to which an</p>  |  |  |  |

application for an adoption order in respect of a child is made; or

(b) to any payment made by or on behalf of an adoption society in respect of the maintenance of a child who has been placed at the disposition of the society; or

(c) to any payment made to an adoption society by the parent or guardian of a child or by any other person in respect of the maintenance of the child, so long as the child is not in care and possession of a person who has adopted or proposes to adopt him, whether under an adoption order or some other order; or

(d) to any payment made to an advocate who acts for any party in or in

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|  |  | <p>connection with an application for an adoption order, being payments made in respect of such application; or</p> <p>(e) to any voluntary contribution made by any adopter or any parent or guardian to an adoption society; or</p> <p>(f) to any fee prescribed by the Minister to be payable to an adoption society in the conduct of any functions under this Act.</p> |      |  |  |
| <b>New clause after clause 197 of the Act.</b> |  |   | New. | Insert the following new section<br>197 -<br>Committee | <b>197A.</b> The Cabin from time to time by Gazette, establish and such committees or v may be necessary for performance of any f be performed under t |

**5.5 PROPOSED AMENDMENTS TO THE EMPLOYMENT ACT, 2007 (NO. 11 OF 2007)**

| PROPOSED SECTION FOR AMENDMENT | PROVISION IN THE PARENT ACT   | PROPOSED AMENDMENTS   | STAKE HOLDER SUBMISSIONS  | JUSTIFICATIONS  | COMMITTEE OBSERVATIONS   |
|--------------------------------|---|---|---|---|--|
| Section 10 (3)                 | <b>Employment particulars S.10</b>  |   | <b>BANKING INSURANCE AND FINANCE UNION KENYA</b>  |   | The Committee noted that the particulars of redesignation of employees were to be placed in the employment contract and not in legislation to allow employers and employees space to negotiate on the evolving terms of employment |
|                                | (1) A written contract of service specified in section 9 shall state particulars of employment which may, subject to subsection (3), be given in installments and shall be given not later than two months after the beginning of the employment. | Insert the following new paragraph immediately after paragraph (e) of section 10(3)—<br>“(ea) deployment and redeployment of the employee, and the reassignment and designation of the job title or grading.” | The aforesighted union proposes that the amendments be further amended by inserting the following proviso after paragraph (ea) as follows—<br><br>Provided that the reassignment and designation of the job title or grading does not contravene the rights of the employee in terms of status and terms of employment.<br><br><b>FEDERATION OF KENYA EMPLOYEES (FKE)</b> states as follows—<br><br>The provision | <i>The issue of deployment and designation of employees had not been catered for in the employment particulars yet it is a fundamental aspect</i> |  |

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|  |  |  | <p>interferes with the managerial prerogatives of the employer offering terms and conditions of employment and further dictates the insertion of presumptuous and futuristic provisions in the employment contract.</p> <p><b>MINISTRY OF LABOUR AND SOCIAL PROTECTION</b></p> <p>—</p> <p>The Ministry stated that it supports the proposal to amend section 10(3) but does not provide justifications</p> |  |  |
|  | <p>(2) A written contract of service shall state—</p> <p>(a) the name, age, permanent address and sex of the employee;</p> <p>(b) the name of the employer;</p> <p>(c) the job description of the employment;</p> <p>(d) the date of commencement of the employment;</p> <p>(e) the form and duration of the contract;</p> <p>(f) the place of work;</p> <p>(g) the hours of work;</p> |  |   |  |  |

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|  | <p>(h) the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits;</p> <p>(i) the intervals at which remuneration is paid; and</p> <p>(j) the date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period; and</p> <p>(k) any other prescribed matter.</p> |  |  |  |  |
|  | <p>(3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the installment containing them, is given of—</p> <p>(a) any terms and conditions relating to any of the following—</p> <p>(i) entitlement to annual leave,</p>   |  |  |  |  |

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|  | <p>including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);</p> <p>(ii) incapacity to work due to sickness or injury, including any provision for sick pay; and [Rev. 2012] CAP. 226 Employment 15 [Issue 1]</p> <p>(iii) pensions and pension schemes;</p> <p>(b) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;</p> <p>(c) where the employment is not intended to be for an</p> |  |  |  |  |
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indefinite period, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;

(d) either the place of work or, where the employee is required or permitted to work at various places, an indication of that place of work and of the address of the employer;

(e) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the person by whom they were made; and

(f) where the employee is required to work outside Kenya for a period of more than one month—

(i) the period for which that employee is to work outside

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|  | <p>Kenya;</p> <p>(ii) the currency in which remuneration is to be paid while that employee is working outside Kenya;</p> <p>(iii) any additional remuneration payable to the employee, and any benefits due to the employee by reason of the employee working outside Kenya; and</p> <p>(iv) any terms and conditions relating to the employee's return to Kenya</p> |  |  |  |  |
|  | <p>(4) Subsection (3)(a)(iii) does not apply to an employee of a body or authority if—</p> <p>(a) the employee's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act; and</p> <p>(b) any such provision requires the body or</p>  |  |  |  |  |

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|  | <p>authority to give to a new employee information concerning the employee's pension rights or the determination of questions affecting those rights.</p>  |  |  |  |  |
|  | <p>(5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.</p> |  |  |  |  |
|  | <p>(6) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.</p>  |  |  |  |  |
|  | <p>(7) If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of</p>                |  |  |  |  |

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|  | employment stipulated in the contract shall be on the employer. |  |  |  |  |  |
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**5.6 PROPOSED AMENDMENTS TO THE NATIONAL YOUTH SERVICE ACT  
(CAP. 208)**

| PROPOSED SECTION FOR AMENDMENT | PROVISION IN THE PARENT ACT  | PROPOSED AMENDMENTS  | STAKEHOLDER SUBMISSIONS.  | COMMITTEE OBSERVATIONS   |
|--------------------------------|--|--|---|--|
| Section 16                     | 16. Functions of Service   |  |   |  |
|                                | <p>The functions of the Service shall be training of young citizens to serve the nation, and the employment of its members in tasks of national importance and otherwise in the service of the nation.</p> | <p>Renumbering the existing provision as subsection (1) and inserting the following new subsection—</p> <p>“(2) The Service may undertake such activities, including activities of commercial nature as may be necessary for the achievement of its objectives and the effective performance of its functions under subsection (1)</p> | <p><b>MATATU WELFARE ASSOCIATION</b></p> <p>The MWA states as follows—</p> <p>(a) Public transport operations globally are a complex and dynamic business and that none of the government system should attempt to venture in them.</p> <p>(b) Government’s position of introducing NYS buses is strange and peculiar and that the state corporation should not compete with its citizens PSV operators. MWA therefore <b>DOES NOT SUPPORT</b> the amendments</p> <p><b>FEDERATION OF PUBLIC SERVICE VEHICLES OPERATORS</b></p> | <p>The Committee observed that the National Youth Service was experiencing a lot of upheavals and adding it additional functions of a commercial nature was not prudent.</p> |

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|  |  |  | <p>The federation states as follows—</p> <p>(a) NYS was created to serve the function of training young citizens to serve the nation and the employment of its members in tasks of national importance.</p> <p>(b) Use of tax payers' money to buy buses for commercial purposes is a threat to investors who continue to carry the burden of providing public transport without any subsidy from the government. The base rate at which the NYS buses are carrying passengers is too low and threatens to impact negatively on other players in the sector.</p> <p>(c) NYS has been involved in various scandals where public funds have been lost and without proper accounting structures of how the revenue</p> |  |
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|  |  |  | <p>collected will be utilised this may just perpetuate corruption.</p> <p>(d) NYS lacks the legal basis to engage in public transport system</p> <p>The federation of public Service Vehicle Operators <b>DOES NOT SUPPORT</b> the proposed amendments</p> |  |
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**5.7 PROPOSED AMENDMENTS TO THE NATIONAL YOUTH COUNCIL ACT,  
(NO. 10 OF 2009)**

| SCHEDULE  | PROVISION IN THE PARENT ACT              | PROPOSED AMENDMENTS   | STAKEHOLDER MEMORANDUM | JUSTIFICATIONS   | COMMITTEE OBSERVATIONS   |
|---|--|---|------------------------|--|--|
| The National Youth Council Act (No. 10 of 2009) | <b>Section 2 interpretation of terms</b> |   |                        | The Bill proposes to amend the National Youth Council Act, 2009, to introduce new definitions of “Minister” and “youth” in line with the Constitution. It also seeks to change the composition of the members of the Board and the mode of nomination in keeping with inclusivity on appointments. | The Committee noted that the Ministry was not in support of the proposed amendments and noted that there was need to have a total overhaul of the Act. |
|   | Definition of the term “Minister”        | Delete the definition of the word “Minister” and substitute therefor the following new definition -<br><br>“Minister” means the Cabinet Secretary for the time being responsible for youth affairs. | <i>(a)</i>             | Seeks to be consistent with the spirit and language of the Constitution  |  |
|   | Definition of the term “Youth”           | Delete the definition of the word “youth” and   |                        | Amendment seeks to enhance the   |  |

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|  |   | <p>substitute therefor the following new definition-</p> <p>“youth” means the collectively of all individuals in Kenya who have attained the age of eighteen years but have not attained the age of thirty-five years.</p> |  | <p>definition of the term “youth”</p>   |  |
|  | <p><b>Functions of the Council</b></p>  |  |  |   |  |
|  | <p>S. 4. The functions of the Council shall be to—</p> <p>(a) regulate and co-ordinate activities and initiatives relating to the youth being undertaken by youth groups, youth focused community based organizations, non-governmental organizations, civil society movements and other organizations;</p> <p>(b) promote and popularize the national youth policy and other policies that affect the youth;</p> <p>(c) facilitate the periodic review of the national youth policy in line with other government policy statements;</p> | <p>Delete paragraph (o) and substitute therefor the following new paragraph-</p> <p>(o) promote and popularize programmes, initiatives and development of affirmative action funds targeting the youth.</p>                |  | <p>The Previous provision only sought to popularize the YDF but this proposal seeks to promote and popularize more programs and initiatives targeting the youth</p> |  |

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|  | <p>(d) mobilize resources to support and fund youth programmes and initiatives;</p> <p>(e) lobby for legislation on issues affecting the youth;</p> <p>(f) liaise with other organizations to ensure that the youth gain access to resources and services appropriate to their needs;</p> <p>(g) promote relations between youth organizations and other bodies both nationally and internationally with similar objectives or interests;</p> <p>(h) inspire and promote the spirit of unity, patriotism, volunteerism and service among the youth;</p> <p>(i) formulate operational guidelines that protect the youth against any form of abuse or manipulation;</p> <p>(j) mobilize and sensitize relevant stakeholders on</p> |  |  |  |  |
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|  | <p>the concept of community youth service;</p> <p>(k) act as a voice and bridge to ensure that the Government and other policy makers are kept informed of the views and aspirations of the youth;</p> <p>(l) promote research, collation and analysis of data on youth issues;</p> <p>(m) promote the inclusion of youth agenda in the formulation of policy by public institutions and organizations;</p> <p>(n) promote the inclusion of youths in decision-making bodies, boards, agencies and other public institutions and organizations;</p> <p>(o) promote and popularize the Youth Enterprise Development Fund and such other devolved funds targeting the youth as may be established from time to time;</p> <p>(p) perform any</p> |  |  |  |  |
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|  | other function that may directly or indirectly contribute to the attainment of the foregoing.   |  |  |   |  |  |
|  | <b>Composition of the Council</b>   |  |  |   |  |  |
|  | <p>5.(1) The Council shall consist of—</p> <p>(a) a Chairperson nominated by the Council and appointed by the Minister;</p> <p>(b) the Permanent Secretary in the Ministry for the time being responsible for youth affairs or his or her representative appointed in writing; [Rev. 2012] No. 10 of 2009 National Youth Council 7 [Issue 1]</p> <p>(c) the Permanent Secretary in the Ministry for the time being responsible for finance or his or her representative appointed in writing;</p> <p>(d) the Attorney-General or his or her representative appointed in writing;</p> <p>(e) the Permanent Secretary in the Ministry for the</p> | <p>Delete and substitute therefor the following new subsection-</p> <p>(1) The Council shall consist of -</p> <p>(a) a chairperson appointed by the President from among the persons appointed under paragraph (g);</p> <p>(b) the Principal Secretary in the Ministry for the time being responsible for youth affairs or a representative designated in writing;</p> <p>(c) the Principal Secretary in the Ministry for the time being responsible for finance or a representative designated in writing;</p> <p>(d) the Principal Secretary in the Ministry for the time being responsible for education or a representative designated in writing;</p> | <p><b>KEVIN NJIHIA</b></p> <p>He proposes the following amendments in section 5-</p> <p>Deleting the terms “ <b>permanent Secretary</b>” wherever it appears in this section and substituting therefore the term “ <b>Principal Secretary</b>”</p> | <p>What is the mischief being cured by vesting the appointing powers of the Chairperson of the Council in the President?</p> <p>There is a remarkable reduction in the number of members of the council, this is laudable as it complies with the provisions in the Mwongozo guidelines on have lean boards and councils. Seeks to be consistent with the spirit and language of the Constitution</p> |  |  |

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|  | <p>time being responsible for education or his or her representative appointed in writing;</p> <p>(f) the Permanent Secretary in the Ministry for the time being responsible for internal security and provincial administration or his or her representative appointed in writing;</p> <p>(g) eight youths elected by the youth in such manner as may be prescribed, and appointed by the Minister;</p> <p>(h) not more than eight other youths, of whom at least three shall be of the female gender and one shall be a youth with disability, nominated by the National Youth Congress in such manner as may be prescribed and appointed by the Minister;</p> <p>(h) the Secretary, appointed under section 10.</p> | <p>(e) the Principal Secretary in the Ministry for the time being responsible for the Interior and Co-ordination of National Government or a representative designated in writing;</p> <p>(f) the Attorney-General or a representative designated in writing;</p> <p>(g) ten youths to represent the Nairobi, Central, Nyanza, Western, South Rift, North Rift, Upper Eastern, Lower Eastern, North-Eastern and Coast regions nominated in accordance with subsection (1A); and</p> <p>(h) the Secretary appointed under section 10.</p> |  |  |  |
|  |  | <p>Insert the following new</p>  |  |  |  |

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|  |  | <p>subsections immediately after subsection (1) -</p> <p>(1A) The persons referred to in subsection (1) (g) shall be nominated through a competitive process by a panel convened by the Director responsible for the youth affairs in the counties comprising the respective regions and appointed by the Minister.</p> <p>(1B) The panel referred to in subsection (1A) shall consist of two representatives each from -</p> <p>(a) the office of the county youth director; and</p> <p>(b) organisations serving the youth in the respective regions.</p> |  |  |  |  |
|  |  | Delete the expression “(a), (g) and (h)” and substitute therefor the expression “(a) and (g)”.  |  |  |  |  |
|  |  | Delete paragraph (1) (f).   |  | The paragraph to be deleted here is paragraph “(h) and not (f) |  |  |
|  |  | Insert the  |  | Creation of  |  |  |

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|  |   | <p>following new subsection immediately after subsection (1) -</p> <p>(1A) The Council may establish such branches as it may deem necessary for the effective and proper discharge of its functions under this Act to ensure access to its services in all parts of the country in accordance with Article 6(3) of the Constitution.</p> |  | <p>branches of the fund. To Allow for inclusivity of the youth all over the country</p>                                     |  |
|  | <p><b>Section 9<br/>Remuneration of members of the Council</b></p>  |  |  |   |  |
|  | <p>The members of the Council shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Minister for the time being responsible for finance, on the recommendation of the Council.</p> | <p>Delete the words “on the recommendation of the Council” and substitute therefor the words “on the recommendation of the Salaries and Remuneration Commission”.</p>  |  | <p>Mandate of SRC to determine salaries so the amendment is seeking to bestow this task to the right government agency.</p> |  |
|  | <p><b>S. 10 Secretary</b></p>   |  |  |   |  |
|  | <p>(1) There shall be a Secretary who shall be a youth appointed by the Council.</p>  | <p>Delete and substitute therefor the following new subsection-</p> <p>(2) The Secretary shall be a person who is a youth at the time of appointment and shall hold</p>  |  | <p>This amendment covers the current subsection (1) and (2) of the Act. There is a therefore to delete subsection (2)</p>   |  |

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|  |  | office for a period not exceeding five years on such terms and conditions as the Council may determine. |   | of the Act  |  |  |
|  | (2) The Secretary shall hold office for a period not exceeding five years, or until he or she attains the age of thirty-five years, whichever is the earlier, on such terms and conditions of service as the Council may, from time to time determine. |   |   |   |  |  |
|  | (4) The Secretary shall be the chief executive officer of the Council and shall, subject to the direction of the Council, be responsible for the day to day management of the Council.   |   |   |   |  |  |
|  | <b>S. 16 Establishment of the Board (1)</b> There is hereby established a Board to be known as the Youth Advisory Board. (2) The Board shall be an unincorporated body comprising of— (a) a Chairperson appointed by the President; (b) the            |   | <b>KEVIN NJIHIA PROPOSES an amendment to section 16 (2) (b)-</b><br><br>Delete the terms “Permanent Secretary” and substitute therefore the term “ principal secretary” | Seeks to be consistent with the spirit and language of the Constitution |  |  |

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|  | <p>Permanent Secretary in the Ministry for the time being responsible for youth affairs or his representative; (c) [Deleted by Act No 18 of 2014] (d) one person each nominated by the following bodies respectively, and appointed by the Cabinet Secretary— (i) the Kenya Private Sector Alliance; (ii) the Kenya National Council for person with disabilities working in the youth sector; (iii) Non-Governmental Organization working in the youth sector; (iv) the public universities; (v) the National Agency for the Campaign Against Drug Abuse: Provided that at least one-third of the persons appointed under paragraph (d) shall be of opposite gender and shall reflect Kenya's ethnic, cultural and religious diversity. (3) [Deleted by Act No. 18 of 2014]</p> |  |  |  |  |
|  | <p><b>S. 23<br/>Establishment of branches.</b></p>   |  |  |  |  |

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|  | The Council may establish such branches or organs as it may deem necessary for the effective and proper discharge of its functions under this Act. | Delete |  | This is being deleted as the same provision has already been catered for in the insertion of subsection (1A) above |  |
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5.8 PROPOSED AMENDMENTS TO THE LABOUR INSTITUTIONS ACT (CAP. 234)

| PROPOSED AMENDMENT    | PROVISION IN THE PARENT ACT  | PROPOSED AMENDMENTS  | STAKEHOLDER SUBMISSIONS   | JUSTIFICATIONS   | COMMITTEE OBSERVATIONS   |
|-----------------------|--|--|---|--|--|
| Section 43 of the Act | <b>Establishment of wages councils.</b>  |  |   |  |  |
|                       | (1) The Minister, shall establish— (a) a General Wages Council; and (b) an Agricultural Wages Council. | S. 43(1) Insert the following paragraphs immediately after paragraph (b)— an Export Processing Zones Wages Council | <p><b>BANKING INSURANCE AND FINANCE UNION</b><br/>The aforesighted union <b>SUPPORTS</b> the amendments</p> <p><b>MINISTRY OF LABOUR AD SOCIAL PROTECTION</b><br/>The states that it Ministry <b>SUPPORTS</b> the amendment(Doesn't provide justifications)</p> <p><b>FEDERATION OF KENYA EMPLOYEES</b><br/>State as follows—</p> <p>(a) Wages councils are established for a specific economic unit with specific roles to play.</p> <p>(b) The EPZ is not a sector on its own to necessitate the establishment of a wages council</p> <p>(c) There is already an existing</p> | The Bill Seeks to provide for the establishment of the export processing zones Wages Council to care of a huge percentage of employees who work in the EPZ'S | The Committee supported this amendment as there was a need to provide a wages council for the Export Processing Zones. |

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|  |  |  | <p>Regulation (tailoring, garment making and Associated Trades ) order which serves the same purpose and is in use by the sector</p> <p>(d) There were no consultations with affected social partners and stakeholders before bringing up the proposed amendment.</p> |  |  |
|  | <p>(2) The Minister may, after consultation with the Board, in addition to the General Wages Council established under subsection (1), establish a Sectoral Wages Council if the Minister is of the opinion that—</p> <p>(a) the remuneration and other conditions of employment of any category of employees in any sector is not adequately regulated by collective agreements; and</p> <p>(b) it may be expedient to set minimum wages and other conditions of employment in respect of employees in those sectors.</p> |  |   |  |  |
|  | (3) The terms of   |  |   |  |  |

reference of a wages council appointed under subsection (2) may be in respect of—

(a) employees in a sector, or part of a sector, either nationally or within a specific area; or

(b) one or more specified categories of employees, either nationally or within specific sectors or areas.

(4) The Minister shall establish a wages council by notice in the Gazette—

(a) specifying the terms of reference of the wages council;

(b) the names of persons appointed as members of the wages council;

(c) stipulating the period in which the wages council is required to investigate and prepare a report for the Minister; and

(d) Inviting representations from interested parties.

## 6.0 COMMITTEE OBSERVATIONS

While the Committee deliberated on the Bill, it made the following general observations:-

- (i) The proposed amendments to the Labour Relations Act, 2007, the National Social Security Funds Act, the National Youth Council Act, 2009 (No.10 of 2009), the Labour Institutions Act, 2007, (No. 12 of 2007), the Employment Act, 2007(No. 11 of 2007) had far reaching ramifications in their respective sectors. Further that the amendments were substantive in nature and required comprehensive consultations with all stakeholders. The committee therefore proposed that stand alone amendments on these Acts should be prepared and the amendments should not come vide the Statute Law miscellaneous amendments.
- (ii) The Proposed amendments to the Children Act, (No. 8 of 2001), are proper amendments that should be passed as they are aimed at ensuring that the rights of children should be protected at all cost.
- (iii)The Acts that fall under the purview of the Committee that the Statute Law (Miscellaneous Amendments) (No. 12) Bill, 2018 seeks to amend had been in operation for a reasonable period of time hence the implementing Ministry Department and Agencies could have experienced implementation challenges. Therefore, the sought amendments were justifiable and in tandem with the need for pragmatism in implementation of legal provisions.
- (iv)The Committee having considered the proposed amendments to the various Acts under its purview and the views from all the stakeholders, resolved that the amendments to the children Act, (No. 8 OF 2001) *be* passed by the House as proposed in the Statute Law (Miscellaneous Amendment) No. 12 Bill, 2018. However, it will be proposing that the other proposed amendments to the following laws should be deeted-
  - (a) the Labour Relations Act, 2007,
  - (b) the National Social Security Funds Act,
  - (c) the National Youth Council Act, 2009 (No.10 of 2009),
  - (d) the Labour Institutions Act, 2007, (No. 12 of 2007),

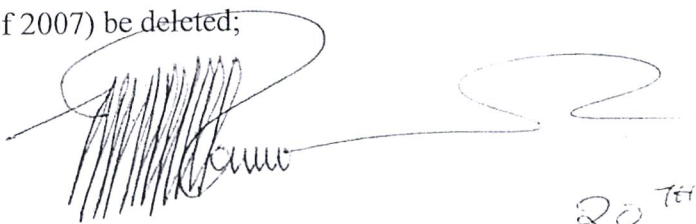
- (e) the Employment Act, 2007(No. 11 of 2007) ; and
- (f) the national Youth Service Act (Cap 208)

## **7.0 COMMITTEE RECOMMENDATIONS**

Having considered the Bill, the Committee recommends that:-

- i) The proposed amendment to section 16 of the National Youth service Act (Cap 408) be deleted;
- ii) The proposed amendment to section 10(3) of the employment Act, 2007 (No. 11 of 2007) be deleted;
- iii) The proposed amendment to section 2 of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- iv) The proposed amendment to section 48 of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- v) The proposed amendment to section 49 of the Labour relations Act, 2007 (No. 12 of 2007) be deleted;
- vi) The proposed amendment to section 50 (2) of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- vii) The proposed amendment to section 76 (2) of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- viii) The proposed amendment to section 78 (1) (f) of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- ix) The proposed amendment to section 81 of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- x) The proposed new section 81A of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- xi) The proposed new section 81B of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- xii) The proposed new section 81C of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;

- xiii) The proposed new section 81D of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- xiv) The proposed new section 81E of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- xv) The proposed amendment to delete the fourth Schedule of the Labour Relations Act, 2007 (No. 12 of 2007) be deleted;
- xvi) The proposed amendment to section 2 of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xvii) The proposed amendment to section 4 of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xviii) The proposed amendment to section 5 (1) of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xix) The proposed amendment to section 5 (3) of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xx) The proposed amendment to section 9 of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xxi) The proposed amendment to section 10(2) of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xxii) The proposed amendment to section 23 of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xxiii) The proposed amendment to the first Schedule of the National Youth Council Act, 2009 (No. 10 of 2009) be deleted;
- xxiv) The proposed amendment to section 6(a) of the National Social Security Fund Act, 2013 (No. 45 of 2013) be deleted;
- xxv) The proposed amendment to section 9 of the National Social Security Fund Act, 2013 (No. 45 of 2013) be deleted;
- xxvi) The proposed amendment to section 11(2) of the National Social Security Fund Act, 2013 (No. 45 of 2013) be deleted;
- xxvii) The proposed amendments to section 43(1) of the Labour Institutions Act, 2007 (No. 12 of 2007) be deleted;



20<sup>TH</sup> JUNE 2018