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REPUBLIC OF KENYA



Pat SNA  
4/3/2020

TWELFTH PARLIAMENT – FOURTH SESSION - 2020

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE  
REPORT ON THE LABOUR RELATIONS (AMENDMENT) BILL, 2019 (NO.18 OF  
2019)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	05 MAR 2020 O.Y. THURSDAY
TABLED BY:	HON. JOYCE KOSOR (VICE CHAIRPERSON)
CLERK AT THE TABLE:	MZOFU MWALE

Directorate of Committee Services,  
Clerk's Chambers  
Parliament Buildings,  
NAIROBI

MARCH 2020

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### **LIST OF ABBREVIATIONS AND ACRONYMS**

COTU(K) Central Organization of Trade Unions Kenya

Hon Honourable

ILO International Labour Organisation

LRA Labour Relations Act

MP Member of Parliament

NA National Assembly

UK United Kingdom

USA United States of America

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### LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on the consideration of the Bill
- Annexure 2:** Adoption Schedule
- Annexure 3:** Newspaper Advert
- Annexure 4:** Memoranda from the public

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### **CHAIRPERSON'S FOREWORD**

The Labour Relations (Amendment) Bill (National Assembly Bill No. 18 of 2019), underwent First Reading on 24<sup>th</sup> April, 2019. Thereafter, the Bill was committed to the Departmental Committee on Labour and Social Welfare to review and report to the House pursuant to the provisions of Standing Order 216(5) (c).

Consequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 127 (3), invited submissions from members of the public on the above Bill via advertisements in national dailies on 9<sup>th</sup> May, 2019. The Committee held a total of five sittings and considered the submissions on the Bill from the sponsor of the Bill and key stakeholders. Thereafter, the Committee retreated to consider the submissions and deliberate on the provisions in the Bill.

May I take this opportunity to commend the Committee members for their devotion and commitment to duty in the consideration of the Bill and express gratitude to the Offices of Speaker and Clerk of the National Assembly for providing technical and logistical support.

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and duty to present to the House a report of the Committee on the Labour Relations (Amendment) Bill (National Assembly Bill No. 18).

**HON. ALI WARIO, M.P. - CHAIRPERSON**

## CHAPTER ONE

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#### 1.1 Mandate of the Committee

1. The Departmental Committee on Labour and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in S.O. 216(5) is to *inter-alia*:-
  - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
  - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.*
  - iii. *To study and review all legislation referred to it;*
  - iv. *To study, assess and analyse 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 204 (Committee on Appointments); and*
  - vii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*
2. The Committee is mandated to consider the following subjects: -
  - 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.

#### 1.2 Oversight

3. In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:
  - i. The State Department for Labour
  - ii. The State Department for Social Protection
  - iii. The State Department for Gender
  - iv. The State Department for Youth
  - v. The State Department for Arid and Semi-Arid Lands
  - vi. National Gender and Equality Commission

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### 1.3 Committee Membership

4. The Committee comprises of the following members -

The Hon. Ali Wario, MP (**Chairperson**)  
M.P for Bura Constituency  
**Jubilee Party**

The Hon. Joyce Korir, MP (**Vice Chairperson**)  
M.P for Bomet County  
**Jubilee Party**

The Hon. Gladys Wanga, MP  
M.P for Homa Bay County  
**Orange Democratic Movement (ODM)**

The Hon. Janet Marania Teyiaa, MP  
M.P for Kajajido County  
**Jubilee Party**

The Hon. Janet Nangabo Wanyama, MP  
M.P for Trans Nzoia County  
**Jubilee Party**

The Hon. Ronald Kiprotich Tunoi, MP  
M.P for Bomet Central  
**Jubilee Party**

The Hon. James Onyango Koyoo, MP  
M.P for Muhoroni Constituency  
**Orange Democratic Movement (ODM)**

The Hon. Alfred Kiptoo Keter, M.P  
M.P for Nandi Hills  
**Jubilee Party**

The Hon. Rose Museo, MP  
M.P for Makueni County  
**Wiper Democratic Movement (WDM)**

The Hon. Catherine Wambilyanga, MP  
M.P for Bungoma County  
**Ford Kenya Party**

The Hon. Omboko Milemba, MP  
M.P for Emuhaya Constituency  
**Amani National Congress Party (ANC)**

The Hon. Charles Kanyi Njagua, MP  
M.P for Starehe Constituency  
**Jubilee Party**

The Hon. Fabian Kyule Muli, MP  
M.P for Kngundo Constituency  
**Muungano Party**

The Hon. Abdi Mude Ibrahim, MP  
M.P for Lafey Constituency  
**Economic Freedom Party (EFP)**

The Hon. Michael Mwangi Muchira, MP  
M.P for Ol-Jorok Constituency  
**Jubilee Party**

The Hon. Safia Sheikh Adan, MP  
M.P for Marsabit County  
**Jubilee Party**

The Hon. Tom Odege, MP  
M.P for Nyatike Constituency

The Hon. Wilson Sossion, MP  
Nominated M.P



Orange Democratic Movement (ODM)  
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Orange Democratic Movement (ODM)

The Hon. Ole Sankok David, MP  
Nominated M.P  
Jubilee Party

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### **1.4 Committee Secretariat**

Mr. Adan Gindicha  
**Clerk Assistant I/Lead Clerk**

Mr. John Mugoma  
**Clerk Assistant II**

Ms. Fiona Masili  
**Research Officer**

Ms. Doreen Karani  
**Legal Counsel**

Abdinasir Moge  
**Fiscal Analyst**

**CHAPTER TWO:**  
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**PART A: OVERVIEW OF THE LABOUR RELATIONS (AMENDMENT) BILL  
(NATIONAL ASSEMBLY BILL NO. 18 OF 2019)**

5. The Labour Relations (Amendment) Bill, sponsored by the Hon Kimani Ichung'wa, M. P was referred to the Departmental Committee on Labour and Social Welfare for public participation.
6. The principal object of the Bill is to amend the Labour Relations Act No. 14 of 2007. The Bill sets out the requirements that must be met by a trade union prior to calling and holding a strike in any of the essential services sector. This is with a view of guarding against the interruption of essential services which would endanger the health, life and safety of the population.
7. The Bill limits the right of every worker to go on strike as enshrined in Article 41(2) (d) of the Constitution.
8. The Bill sets out the requirements that must be met by a trade union prior to calling and holding a strike in any of the essential services sector. In view of this, the Bill does not concern County Governments in terms of Article 110(1) (a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.
9. The enactment of this Bill shall not occasion additional expenditure of public funds.

**PART B: COMPARATIVE ANALYSIS ON REGULATION OF STRIKES IN  
ESSENTIAL SERVICES SECTOR**

10. The right to strike is a universally accepted principle enshrined in the 1948 Universal Declaration of Human Rights. It has been developed at international level by the International Labour Office (ILO) supervisory bodies through its resolutions and conventions ratified by member states. While there is consensus that the right to strike is an indispensable instrument for the exercise of workers' economic and social rights, there is an ongoing debate about the need to strike a balance between the protection of these rights and the need to guarantee essential public services in order to safeguard citizens and their well-being.<sup>1</sup>
11. Regulating strikes in essential services offers a comparative perspective on one of the most sensitive areas of industrial relations strike in essential services. Designing a fair, effective and acceptable regime that will reconcile public interest and the public's need for an uninterrupted flow of essential services on the one hand, while maintaining the freedom of collective bargaining on the other, is an ever more difficult public policy challenge.

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<sup>1</sup> <http://assembly.coe.int/nw/xml/XRef/X2H>

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12. Labour disputes and conflicts are inherent in all labour relations systems. They tend to occur when the collective bargaining process is reaching a breaking point and, if not resolved, often give rise to industrial action, such as strikes. The establishment of a system for the prevention and settlement of labour disputes is therefore a cornerstone of sound labour relations policy.
13. Experience from many countries shows that the centre of gravity of a State dispute settlement system should be conciliation/mediation procedures aimed at assisting the parties to reach a negotiated settlement under conditions that are as close as possible to those of the normal bargaining process. Dispute settlement systems can also reinforce collective bargaining where the agreements resulting from such procedures are accorded the same legal status as agreements concluded through collective bargaining.
14. The following outlines a brief analysis on the regulation of essential services in various comparable jurisdictions -
  - a) **SOUTH AFRICA**
  15. Despite the fact that a more liberal approach to essential services was introduced in 1995, strikes in essential services in South Africa occur frequently. In 1995 the Labour Relations Act (LRA) was enacted in recognition of the fundamental status given to the right to strike by the South African Constitution and borrowing from European countries. It introduced a framework for the self-regulation of essential services, reflecting a desire to regulate by means of consensus and tripartism.
  16. The basic premise of the South African Labour Relations Act is that strikes in essential services are prohibited and are subject to compulsory arbitration. Essential services are understood in narrow terms and are determined independently by the Essential Services Committee. Since strikes in essential services are unprotected under the law, participating employees can be dismissed for misconduct, and both unions and employees can be liable for delictual and contractual damages. The Labour Court can also interdict strikes in essential services or any act in furtherance of such strikes, which, if ignored, can potentially lead to contempt procedures.<sup>2</sup>
  - b) **ASIA-PACIFIC REGION**
  17. The Asia-Pacific region is home to around 4.46 billion people (60 percent of the world population) and is also home to five of the world's largest economies—China, Japan, India, Korea and Australia and countries such as India, Japan and China host some of the world's largest trade unions as well.<sup>3</sup>
  18. Many countries in the Asia-Pacific region have a comparatively low record of compliance of trade union rights. All unions, including those in the public sector, face significant barriers both in law and in practice. In many countries, collective bargaining is absent or restricted in scope and, where it exists; limited rights for the participation of unions or lack of enforcement procedures are common. Another problem observed in the region is the broad definition of “essential services”, which exclude workers in some cases virtually the whole public sector from exercising full trade union rights.

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<sup>2</sup> [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid)

<sup>3</sup> [http://www.world-psi.org/sites/default/files/en\\_psi\\_turs\\_ap\\_updated](http://www.world-psi.org/sites/default/files/en_psi_turs_ap_updated)

19. The most explicit restriction on the right to organize is the complete ban on public sector workers to go on strike. For instance, in **Bangladesh**, the Labour Act 2006 (which grants the right to form and join unions) does not apply to workers in the public sector. In **Cambodia**, the Labour law excludes persons appointed to a temporary or a permanent post in the public service, and therefore they do not have the right to organize as trade unions. In **Indonesia**, the specific legislation that regulates the right to organize of public servants has not been enacted. In **Japan**, a range of laws prohibit workers in firefighting services, penal institutions and the Maritime Safety Agency to organize strikes.
20. Another common problem in the region is legislation that broadly defines “essential services” and therefore restricts the right to strike in sectors where the life, personal safety, or health of the whole or part of the population is not necessarily endangered. For instance, in **Fiji**, the Employment Relations (Amendment) Act of 2015 provides for a long list of services that include, among others, electricity, lighthouse and meteorological services, the financial, telecommunications, and public utilities industry as well as the government, statutory authorities, local authorities and government commercial companies as essential services. In **India**, the Essential Services Maintenance Act limits strikes in essential services but it does not stipulate which services count. In **Malaysia**, the definition of essential services includes healthcare, education and transportation workers.
21. In **New Zealand**, the list of essential services includes, among others, the production, processing, distribution, or sale of petroleum, water transport services, the processing of milk and meat products. In **Pakistan**, employees of the state administration, government services, state enterprises such as oil and gas production, electricity generation and transmission, and state-owned airline and ports all of which are covered by the Essential Services Maintenance Act, 1952 do not have the right to strike. In **Sri Lanka**, it is reported that a broad and unrestricted definition of essential services allow the President to designate as essential any service "which is of public utility or is essential for national security or for the preservation of public order or the life of the community and includes any department of the government or branch thereof- these powers have been used in relation to utilities, ports, and oil workers in 2009.

#### c) UNITED KINGDOM

22. As the United Kingdom has no written constitution, any right to strike is not protected in any superior document but is regulated by statute and common law. In terms of fundamental rights, the most significant legal instrument is the Human Rights Act 1998.
23. English Common Law enshrines the right to strike of all workers regardless of sector. However, certain categories of employees working in enterprises considered **essential services are denied the right to strike**, e.g., the police and the army. In the event of a dispute between workers and employers, an attempt is made to resolve it voluntarily. If the dispute remains unresolved after this initial attempt, the Advisory Conciliation and Arbitration Service intervene to resolve it in order to maintain industrial harmony.<sup>4</sup>

#### d) CANADA

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<sup>4</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication)

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24. Canada has a unique public sector. In addition to the three levels of government – federal, provincial, and municipal – each with public service employees, there are also public enterprises (Crown Corporations) and public institutions such as school boards and health care institutions. The three levels of government, public enterprises, and public institutions are the principal public service employers. Also within the public sector are numerous quasi-public enterprises and institutions. The legislative framework in Canada provide for the right to freely form an association and bargain collectively. The Crown Employees Collective Bargaining Act of 1993 provides public enterprises the right to strike, and allows employers of Crown corporations to lock out employees. However, such industrial actions can only be undertaken **on condition that provision of essential services will not be affected** in the event of a strike or lockout.

### e) UNITED STATES OF AMERICA

25. The United States of America, like Canada, has three levels of governments: federal, state, and local. However, American labour relations is generally more complex, as it is governed by many statutes and legislations. In addition, there are many actors involved in labour relations, ranging from the legislature, unions, employers, independent negotiators, to citizens. Each state has a wide leverage in carrying out labour relations. Both federal and state labour laws have grey areas for the courts' intervention.

26. The American Constitution and specific labour laws in both the federal and state governments govern labour relations in the U.S.A The Federal Labour Relations Authority established by the Civil Service Reform Act of 1978 governs labour relations in the federal public sector. The rights of federal employees are governed by federal labour laws, while state and local level employees are governed by state labour laws. Approximately 33 per cent of states have legislations denying their employees the right to strike. In the few states (including Minnesota, Oregon, Pennsylvania, and Vermont) and local governments **where strikes are allowed, limitations have been put in place**. Overall disputes as measured by work stoppages have consistently declined in the U.S.A.

### CONCLUSION

27. The exercise of the right to strike in essential public services is not only a legal question but a fundamental issue that should be considered with regard to the safety and wellbeing of all. With globalization and liberalization of certain sectors, it is important to preserve what is a fundamental freedom, and at the same time guarantee real quality of life to every citizen. Unions, employers and workers alike see strikes as a sign of failure. The main effort should go toward improving industrial dialogue, which should involve users of public services, whose needs must be taken into account. The aim is to arrive at social harmony in which the freedom of some does not interfere unduly with that of others.

## **PART C: PUBLIC PARTICIPATION**

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28. Through an advertisement on 9<sup>th</sup> May, 2019 (annexure 3), the Committee invited the public to present submissions on the Labour Relations (Amendment) Bill, 2019.
29. The Committee received submissions on the Labour Relations (Amendment) Bill, 2019 from numerous stakeholders including Professor Jack Odhiambo, the Central Organisation of Trade Unions, Kenya (COTU) (K), Kenya Union of Clinical Officers (KUCO), Kenya Plantation and Agricultural Workers Union, Kenya Aviation Workers Union, among others. It was noted that, with the exception of Prof. Jack Odhiambo, all submissions were similar in terms of content in that they were word for word similar to each other. The same are practically *verbatim* copies on separate letterhead.
30. The details of the submissions are annexed to this report as annexure 4. The Committee extensively considered the contents of the submissions on the Bill and the details of the deliberations and the Committee's observations and resolutions as relates to specific clauses are contained in Part C of this Chapter.

### **2.1 Submissions by Professor Jack. Odhiambo**

31. Professor Jack Odhiambo opposes the amendments as in his view, essential services should not be paralyzed by industrial action. This is in view of the primacy of the right to life and personal integrity of each human being and the primacy of the common good of society as a whole over the good of some sector.

### **2.2 Submissions by the Central Organisation of Trade Unions and other Trade Unions**

32. As earlier indicated, the Central Organisation of Trade Unions, Kenya (COTU(K)) and other Trade Unions (most being members of COTU) made similar submissions (*in verbatim*) as follows-
- (a) In 2007, the Labour Relations Act No. 14 of 2007 was enacted into law. The Act was among the five labour related laws enacted that year, which included the Employment Act, the Labour Institutions Act, the Work Injury Benefits Act and the Occupation, Safety and Health Act.
  - (b) The Act represents the main legal foundation for collective bargaining and labour relations. It combines two earlier laws, namely the Trade Disputes Act and the Trade Unions Act and, in many respects, contained substantial improvements, particularly in creating more efficient and responsive operational procedures to promote employment relations and labour peace in the country. The Act has provided profound legal basis for dealing with any industrial dispute.
  - (c) The Labour Relations (Amendment) Bill, 2019 proposes limitation of workers' right to go on strike by deleting Section 78 (1) (f) of the Act which prevented a person engaged in the provision of an essential service from going on strike. The Bill seeks to introduce a new provision in its place that does not prevent such workers from going on strike but instead limits this right.

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- (d) Part XA of the Bill states that the right to go on strike under Article 41(2) (d) of 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.
- (e) The Trade Unions opposed to these proposed amendments since they are in total contravention of our 2010 Constitution (Article 41 (2) (d)) on the right to strike and is discriminatory in the application of the law as it applies selectively to workers where a section of workers are allowed to exercise a right while others are denied.
- (f) Besides, the International Labour Organisation, ILO Conventions 98 and 87 on the right to Collective Bargaining and freedom of Association as well as Convention 095 are clear on the rights of any worker as far as these rights are concerned and the only way to protect and achieve these rights is to compel an employer through appropriate means including withdrawing labour through strike action.
- (g) It must be noted that trade unions have always resulted to strike as a last resort to the quest for better terms and conditions of service and it must be noted that its note in the interest of trade unions to call out their members on strike but this happens because an employer has refused to come on the table and the only weapon workers remain with to compel the employer to listen to them, is to call for strike action.

### 2.3. Submissions by Richard Barno, LLB (UON), Dip. KSL. M.A ( AAU)

33. During consideration of the Bill, the Committee took cognizance of the importance of inviting an expert on Labour Relations to give his opinion of the Bill and resolved to invite Richard Barno who made the following submissions-

- (a) Industrial relations in Kenya is governed by Article 41 f the Constitution together with the Labour Relations Act No. 14 of 2007, the Employment Act,2007, the Labour Institutions Act,2007, the Work Injury Benefits Act,2007 and the Occupation, Safety and Health Act,2007.
- (b) The procedure for managing industrial disputes is provided for under sections 62 to 81 of the Labour Relations Act, 2007. Section 3 of the same Act gives key definitions such the definition of “lockout”, “strike” and “trade dispute.”
- (c) The Courts have had various opportunities to pronounce themselves on Industrial disputes. Leading cases include *Mary Chemweno Kiptui v. Kenya Pipeline Company Limited [2014] e-KLR* where the court found that fair termination must be based on the procedure prescribed under Section 41 of the Employment Act; *Teachers Service Commission v. KNUT & KUPPET [2012] e-KLR* and *P.J. Dave Flowers Limited v. KPAWU & Anor [2014] e-KLR* where the courts directed that where Employees issue strike notice, the Employers have to institute Court Proceedings declaring strike illegal or stopping the strike; and *KUDHEIHA v. Pwani University [2015] e-KLR* determining that workers’ Representatives are protected from acts prejudicial to them



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for activities carried out in their representative capacities, so long as in conformity with the law and the collective agreements but the right to strike given by the Constitution, must not be taken as a licence to engage in acts of lawlessness and gross misconduct, parties must continue to engage respectfully as demanded by the Industrial Relations Charter.

- (d) In *KUDHEIHA v. PWANI UNIVERSITY*, ( as quoted in *Mohamed yakub Athman & 29 others v Kenya Ports Authority (2016) e-KLR* ) the Court, borrowing from the South African case *EPPWAWU v. Metrofile [pty] LIMITED [2002] ZACC 30; [2004] 2 BLLR 103 [LAC]*, stated that “the purpose of a protected strike, is to enable Employees engage in a form of power play with the Employer, with a view to influencing the Employer into offering better conditions of employment....”
- (e) An employer ordinarily must have everything to do with a protected strike, and the subject matter capable of being negotiated and resolved between the Employer and the Employee. It is strange for Employees to withdraw their labour, and hold that their Employer, who pays for that labour, has nothing to do with the withdrawal. A general strike would seem to this Court, not to fit within the existing legal framework under the Labour Relations Act, and Employees engaging in such a strike, expose themselves to disciplinary sanctions.
- (f) The court in *Mohamed Yakub Athman and others* continued thus: This position is given support under Section 76 of the Labour Relations Act, which specifies that a strike action must be about terms and conditions of employment or recognition agreement. The Employer must have some power to affect the terms and conditions of employment, or recognition agreement.
- (g) Other judicial pronouncements are to be found in *Seth Panyako & 5 Ors. v. The AG & 2 Ors. [2013] e-KLR* affirming that employee’s right to among other things participate in the activities and programmes of a Trade Union are not limited under Article 24 [1] of the Constitution; *County Government of Uasin Gishu v. Kenya National Union of Nurses [2014] e-KLR* confirming that the right to strike is not absolute and can be limited under the Constitution, through Legislation; and *Kenya Engineering Workers Union v. Narcol Aluminium Rolling Mills Limited [2015] e-KLR* explaining that employees who deliberately absent themselves from their workplace, and engage in acts of violent misconduct at the workplace have no no justification in expecting reinstatement.
- (h) The principal object of the proposed Bill is to amend the Labour Relations Act, 2007. The Bill sets out the requirements that must be met by a trade union prior to calling and holding a strike in any of the essential services sector. This is with a view of guarding against the interruption of essential services which would endanger the health, life and safety of the population. The Bill limits the right of every worker to go on strike as enshrined in Article 41(2) (d) of the Constitution. The amendments assume that disruption to essential services would only be at the instance of employees; no hold out by employers are contemplated.

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- (i) In south Africa, essential services includes parliamentary and police service; and maintenance services ( one whose interruption results in material physical destruction to any working area, plant or machinery) . Essential services contained in the Fourth Schedule to the Constitution of Kenya, 2010 include Water Supply Services, Hospital Services, Air Traffic Control Services and Civil Aviation Telecommunications Services, Fire Services of the Government or Public Institutions, Posts Authority and Local Government Authorities and Ferry Services.
- (j) The proposed amendment to section 81 seeks to allow for strikes in essential services for five days. However the basis and workability of the five day time period and when time begins to run and end is unclear. There is an assumption that it is possible to survive five day disruption of services. The five day allowable strike period also goes against the stated objectives of the amendments of guarding against disruption of essential services.
- (k) In South Africa, a service or industry or any part thereof may be designated as an essential service by the Essential Services Committee (“ESC”), established in terms of section 70 of their Labour Relations Act. The ESC is tasked with designating a service, or any part of a service as an essential service, after conducting an investigation into whether or not such a designation should be made. It is critical to note that any parties who may be affected by the designation of a service as an essential service by the ESC, has the right in terms of section 71 of the Labour Relations Act (which sets out the procedure in terms of which the ESC will designate a service as an essential service), to make representations to the ESC in regard to whether or not a service should be so designated. Designated employees have limitations to the striking capacity while the employer in the essential service is similarly restricted from utilising its own bargaining power to lock employees out of the workplace to compel them to accept the employer’s terms and conditions,
- (l) The South Africal Labour Relations Act provides for a mechanism in terms of which essential service workers can legally and lawfully embark on strike action, provided that certain agreements are first put in place. Section 72 of the Labour Relations Act provides for parties in designated essential services to enter into a collective agreement, which can regulate the minimum services to be provided by workers in that essential service, in the event of a strike. If such a minimum service collective agreement is reached, it will have the effect that the minimum service levels agreed in the minimum service agreement will become the essential service; and section 74 of the Labour Relations Act which prevents essential services workers from striking will no longer apply.
- (m) This has the effect that the only employees who will be prevented from striking are that number of employees, or percentage of the workforce which is required to continue providing the minimum services. All other employees who are not required to provide the minimum service, even though they are employed in a sector or industry designated as an essential service, will be allowed to strike. The minimum service agreement can contain the following detail: whether the service is essential in its entirety or only partially essential whether the service is essential at reduced service levels the minimum number of employees required to continue working

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during a strike, either expressed as a number or a percentage of the current workforce; the type of services which must be continued during strike action; minimum service levels associated with various functions and duties to be performed during strike action; waiver of a right to engage replacement labour to provide services in excess of the minimum services.

- (n) Global Survey based on Findings of the International Organization of employers (IOE) Member Country Survey on Strike Action<sup>13</sup> provides that in Bolivia public services designated as essential services whereas Chile, Cambodia and Namibia designates the services whose interruption could engender a clear and imminent threat to the life, personal safety or health of the whole or part of the population as essential services ”
- (o) The International Labour Organization (ILO) Labor Code states that minimum services are those strictly necessary to protect corporative assets and facilities and prevent accidents, as well as to guarantee the provision of public utility services, attention to the basic needs of the population, including those related to the life, safety or health of persons, and to prevent environmental or health damage.
- (p) Japan defines essential service to include transportation, postal services, telecommunications, water, electricity and gas supply, medical and public health, designated by Parliament and such strikes are forbidden.
- (q) Mexico has no definition of essential services but strike action in public services invites state to take over provision of public services such as communications, transportation, supply of electricity and energy, cleaning services, supply of water and gas, hospitals, health services, cemetery, and food providers for basic needs.
- (r) In Pakistan, no strikes allowed in designated public services- designation by federal government. Similarly in Uruguay no suspension is permitted for essential and minimum services, designated by the executive and ministry of labour.
- (s) In Brazil, the law lists the essential services and the social partners must, by agreement, ensure the execution of those services that are essential to the needs of the community. Whereas in Canada, each province has its own definition of essential services, usually covering services that may impact the security and safety of the population. Minimum services are negotiated bilaterally by the employer and the union, and are subject to the control of the administrative tribunal.
- (t) In Peru, minimum services have to be guaranteed for essential public services, expressly enumerated by law these include health services, cleaning, supply of electricity, water and drainage, gas and fuel, cemetery and related services, prison guards, communication and telecommunication services, transport, services of a strategic nature or linked to the national defence or security, the administration of justice, the administration, operation, equipment and maintenance of terminals and docks in the country, and others that are determined by law. At the beginning of each year the providers of these services have to transmit to the unions and the Labour

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Authority the number and occupation of the workers needed to maintain the minimum service.

- (u) In New Zealand, the law defines and regulates essential services, including fuel production, energy, water supply, sewage disposal, firefighting, port operation, ferries, air transport, ambulance services, hospitals, medical services and the supply of drugs, pension and welfare institutions and dairy production. Workers involved in these services have to give the employer and the Ministry of Labour 14 days advance notice of industrial action
- (v) In summary of Global Practices relating to industrial action in essential services is that the same is prohibited to limit deleterious or harmful effect of such strikes. Industrial action in essential services is subjected to compulsory arbitration. Finally in jurisdictions where strikes in essential services is permitted by law, such countries provide for minimum service agreements to mitigate effects of such action and ensure services are still rendered to the public. Minimum services is regulated by law and such is agreed to by parties in advance and in some jurisdictions the state take over of minimum of services.
- (w) Based on the above submission the expert recommended that based on Global consensus against prohibition if the amendment is adopted it would prudent to go with the global consensus and adopt a minimum services mechanism.

PART D: CONSIDERATION OF THE BILL – COURT JURISPRUDENCE ON STRIKES AND LOCKOUTS IN ESSENTIAL SERVICES

34. During consideration of the Bill, the Committee took cognizance of the following court jurisprudence-

a) in the matter of *Okiya Omtatah Okoiti v. the Hon Attorney General and Others (Petition No. 70 of 2014)* the Petitioner had sought a declaration that the impugned pending strike by members of the Kenya National Union of Nurses and a declaration be issued that there is need for the state to enact a legal and policy framework to secure the rights of workers in essential services, and to ensure the amicable resolution of Labour disputes without disrupting service delivery

The court specifically found that-

- (i) Workers in Kenya have a right to go on strike as provided under Article 41(2)(d) of the Constitution. This right is limited by Section 76 and Section 81 of the Labour Relations Act (which was enacted before the Constitution of Kenya, 2010). Article 24 of the Constitution sets out the manner of limitation of rights or fundamental freedom in the Bill of Rights.
- (ii) The right to go on strike is adequately limited under Section 76 of the Labour Relations Act 2007 with regard to the cause for the strike, which must be a demand with respect to terms and conditions of service or the recognition of a trade union and the procedure to be followed before the workers engage in the strike. This limitation do not derogate from the core or essential content of the right to strike.
- (iii) Section 78 (1) under (a) (b) (c) (d) (e) & (h) sets out circumstances under which a strike is automatically illegal and prohibits participation in such a strike. These limitations conform to Article 24 of the Constitution and constitute adequate control of the right to go on strike.
- (iv) The limitation on the right to call a strike in the essential service under section 78(1)(f) and section 81(3) purports to nullify the right to strike under Article 41(2)(d) of the Constitution and therefore does not meet the legal standards set under Article 24 (2)(c), as read with Section 41 (2) (d) of the Constitution. **The legislature needs to relook these provisions in light of the Constitution of Kenya, 2010 with a view to remove the apparent conflict between the Constitutional provision and the statutory law.**
- (v) limitation, through legislation, of the right to strike by the trade union in the health services pursuant to Article 24 of the Constitution was adequately done under section 76 and 78(1) (a) (b) (c) (d) (e) & (h) of the Labour Relations Act, 2007.
- (vi) Employees in the essential services only need to conclude a collective bargaining agreement which provides an effective frame work for expedient dispute resolution where the employer delays in conclusion of a Collective Bargaining Agreement. Otherwise, the Labour Relations Act, 2007, provides sufficient dispute resolution mechanisms which include, mandatory conciliation before the matter is escalated for adjudication in Court.

**b Federation of Women Lawyers (FIDA) Kenya v Kenya National Union of Nurses & 4 others [2018] eKLR (Petition 67 of 2017)**

The Court in this case reaffirmed the findings in the Okiya Omtatah case above and held that the limitations to a strike by essential service under sections 76 and 78(1)(a)(b)(c)(d)(e) & (h) are adequate regulatory and prohibitory provisions to the right to go on strike provided under Article 41(2) (d) of the Constitution of Kenya 2010. However, the Court found that section 78(1)(f) and section 81(3) of the Labour Relations Act, 2007 derogate from the core content of the right to strike provided under article 41(2)(d) of the Constitution.

**35. From the aforementioned two court pronouncements, the Committee observed that-**

- a.** Article 25 of the Constitution stipulates the following as fundamental rights and freedoms that may not be limited-
  - (i) freedom from torture and cruel inhuman and degrading treatment or punishment;
  - (ii) freedom from servitude or slavery;
  - (ii) the right to fair hearing; and
  - (iv) the right to an order of *habeas corpus*.
- b.** The right to strike can therefore be limited as it does not fall under the rights that may not be limited as set out under Article 25 of the Constitution
- c.** Article 24 of the Constitution speaks to the manner in which a right or fundamental freedom in the Bill of Rights may be limited. In particular, Article 24(2) (c) states that a provision in legislation limiting a right or fundamental freedom shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.
- d.** the Court has on two occasions found that the complete ban on strikes by workers in the essential services sector as set out under section 78 (1) (f) and 81(3) of the Labour Relations Act derogates from the core or essential content of the right to strike. The court has both times advised the Legislature to review the provisions of sections 78 (1) (f) and 81(3) which are in apparent conflict Article 41(2)((d) of the Constitution.

**PART E: CONSIDERATION OF THE BILL – CLAUSE BY CLAUSE**  
**CONSIDERATION**

36. This part deals with the clause by clause consideration of the Bill by the Committee after taking into consideration the court pronouncements on the subject of strikes in the essential services sector, comparative study and the views of the aforementioned stakeholders.

- **CLAUSE 2- AMENDMENT OF SECTION 76 OF THE LABOUR RELATIONS ACT**

37. Clause 2 provides –

*2. The Labour Relations Act hereinafter referred to as “the principal Act” is amended in section 76 by inserting the words “Except as provided in section 81A” immediately before the words “A person” appearing in the opening paragraph.*

- **Stakeholder views**

38. The COTU and other Trade Unions opposed to the amendments in this section as, in their view, is aimed at discriminating workers against certain provisions of the Law and is against our Constitution under the bill of rights section 41 (2)( c) & (d) that gives every worker the right to strike. This will require a referendum to amend.

- **Committee observations and recommendation on clause 2**

39. **The Committee observed that-**

- a. the intention of the amendment is to create an exception to section 76 with respect to the procedure to be followed in order to call for a strike or lock-out by an employee or employees engaged in essential services sector;
- b. the right to strike may be limited by legislation in the manner stipulated under Article 24 of the Constitution. In the matter of *Okiya Omtatah Okiiti v. The AG and others*, the Court found no fault in the law placing a procedural limitation of the right to go strike under Article 41(2)(d) of the Constitution;
- c. it is apparent that the word “except” is erroneously typed out as “expect” and requires to be rectified

40. **The Committee recommends that Clause 2 not be agreed to.**

- **CLAUSE 3- AMENDMENT OF SECTION 78 OF THE LABOUR RELATIONS ACT**

41. Clause 3 provides –

*3. Section 78 of the principal Act is amended in sub-section (1) by deleting paragraph (f).*

- **Stakeholder Views**

42. The COTU and other Trade Unions opposed to these amendments in Section 78 because, in their view, it is unconstitutional as it denies a worker a right to strike under the Bill of Rights, Section 41 of our Constitution. Equally, world over people have moved away from the issue of declaring certain services as essential.

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### ▪ Committee observations and recommendation on clause 3

#### 43. The Committee observed that-

- a. Section 78(1)(f) places an absolute ban on a strike or lock-out by an employee or employees engaged in an essential service;
- b. Section 78(1)(f) purports to nullify the right to go on strike hence the core content of the right to strike under Article 41(2)(d) of the Constitution;
- c. The proposal to delete the provision is aimed at removing the apparent conflict between the Labour Relations Act and Constitution. In the matter of *Okiya Omtatah Okiiti v. The AG and others*, the Court found that section 78(1) (f) derogates from the core content of the right to go strike under Article 41(2)(d) of the Constitution.
- d. The proposed amendment to section section 78 (1)(f) read together with the amendment to 81(3) seeks to allow for strikes in essential services for five days. However the basis and workability of the five day time period and when time begins to run and end is unclear including safeguards to ensure against disruption of essential services.
- e.

#### 44. The Committee recommends that clause 3 not be agreed to.

### ▪ **CLAUSE 4 - AMENDMENT OF SECTION 81 OF THE LABOUR RELATIONS ACT**

#### 45. Clause 4 provides –

4. *Section 81 of the principal Act is amended by inserting the words “for more than five days” immediately after the words “essential service” appearing in sub-section (3).*

### ▪ Stakeholder views

46. The COTU and other Trade Unions opposed to these amendments in Section 81 because, in their view, it is unconstitutional as it denies a worker a right to strike under the Bill of Rights, Section 41 of our Constitution. Equally, world over people have moved away from the issue of declaring certain services as essential.

### Committee observations and recommendation on clause 4

#### 47. The Committee observed that-

- a. As it stands, Section 81(3) places an absolute ban on a strike or lock-out in an essential service;
- b. Section 81(3) therefore purports to nullify the right to go on strike hence the core content of the right to strike under Article 41(2)(d) of the Constitution;
- c. The amendment seeks to qualify the current provision by allowing for strikes in essential services for a maximum of five days. This is aimed at removing the apparent conflict between the Constitution and the Labour Relations Act (which currently completely nullifies strikes in the essential services).
- d. The proposed amendment seeks to allow for strikes in essential services for five days. However the basis and workability of the five day time period that is when the time begins to run and end is unclear including safeguards to ensure against disruption of essential services.



Public interest in this regard would be jeopardized in the event that strikes are allowed in the essential services sector such as aviation, fire services and even hospital services.

- e. Global practice relating to industrial action in essential services generally prohibits such action in order to limit deleterious or harmful effect of such strikes, in jurisdiction where such strikes are allowed there are safeguards to ensure delivery of key services such a minimum survive agreements. The changes proposed are simplistic and would not fully address the challenges facing the labour sector in the country. As the same does not create a balance between the rights of the employer, employees vis-à-vis the rights of citizenry to access essential service in the five days it proposes to permit strikes.

48. The Committee recommends that Clause 4 not be agreed to.

#### CLAUSE 5 – INSERTION OF NEW SECTIONS 81A, 81B AND 81C INTO THE LABOUR RELATIONS ACT

49. Clause 5 provides –

*The principal Act is amended by inserting the following new sections immediately after section 81-*

*Limitation on the right of every worker to go on strike in essential services.*

**81A.** (1) Pursuant to Article 24 of the Constitution, the right of every worker to go on strike as enshrined under Article 41(2) (d) of the Constitution is limited in respect of workers who provide essential services contained in the Fourth Schedule.

(2) The limitation of this right is necessary to avoid interruption of essential services which would endanger the health, life and safety of the population or any part of the population.

*Procedure for protected strikes in essential services sector.*

**81B.** (1) A trade union intending to call for a strike by workers who provide essential services shall take a ballot vote prior to issuing a notice of intention to hold strike.

(2) A strike shall be approved to be held by a trade union in any of the essential service if it has been approved by not less than fifty percent of the members eligible to vote under section 33 of this Act.

(3) The ballot vote shall be valid for a period of two months from the date the vote is taken and if no strike is held within such period, a trade union shall take a fresh ballot vote for approval to call for a new strike.

(4) If upon the expiry of the five days period referred to in section 81, the trade dispute relating to the strike shall not have been resolved, the dispute shall be referred to the industrial court for adjudication.

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Strike in essential services not in compliance with the Act. **81C. (1)** *An employee who continues to take part in a strike relating to the essential service upon the expiry of the five days period and following the referral of the trade dispute to the industrial court, commits an offence and shall be liable upon conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both.*

*(2) An official of a trade union who fails to call to an end a strike upon the expiry of the five days period and upon referral of the dispute to the industrial court, commits an offence and shall be liable upon conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both.*

### ▪ Stakeholder views

50. The COTU and other Trade Unions proposed that-

- a) the new 81A(d) proposed deletion of “Industrial Court” and substitute therefore with “Employment and Labour Relations Court”;
- b) deletion of the proposed new section 81B as it does not only limit but interfere with the right of workers to strike under Article 41(2) (d) of the Constitution. Further it was opposed as the amendment will require a two third majority vote by members before a strike action.
- c)

### Committee observations and recommendation on clause 5

51. The Committee observed that-

- a. The new clauses seek to limit the right of workers in essential services contained in the Fourth Schedule to go on strike. The limitation of this right is necessary to avoid interruption of essential services which would endanger the health, life and safety of the population or any part of the population;
- b. The amendment under the proposed new 81B(1) proposes that trade union intending to call for a strike by workers who provide essential services shall take a ballot vote prior to issuing a notice of intention to hold strike. The intention is to ensure that members of the trade union are notified of the intention to call for a strike and require the decision to go on strike to be put to a vote and not left to discretion by a person;
- c. The amendment under the proposed new section 81B(2) seeks to require that a strike shall be approved to be held by a trade union in any essential service if it has been approved by not less than fifty percent of the members eligible to vote under section 33 of the Labour Relations Act. Upon consideration of this provision, the Committee was of the view that the vote to call for strike should be put to the elected officials of the trade union. This is because calling for and undertaking nationwide elections for all members of the trade union to decide whether a strike be called upon may not only prove cumbersome but also expensive. Further, once elected, the officials of the trade union

exercise mandate of representation of their electors and thus voting on their behalf would be in exercise of that authority.

- d. The amendment under the proposed new section 81B(3) proposes that a ballot vote shall be valid for a period of two months from the date the vote is taken and if no strike is held within such period, a trade union shall take a fresh ballot vote for approval to call for a new strike. The Committee was of the view that the requirement is too prohibitive and that once a vote to go on strike is taken it need not be repeated every two months.
- e. The Bill makes reference to the “industrial court” which is an obsolete term to reference the court responsible for resolution of trade disputes and the terminology is “Employment and Labour Relations Court”.
- f. The amendment under the proposed new section 81C(1) proposes to make it an offence for an employee to continue to take part in a strike relating to the essential service upon the expiry of the five days period and following the referral of the labour dispute to the industrial court. The proposed penalty is a fine of not less than five million shillings or a jail term of not less than five years or to both. The committee observed that there is need to have in place a penalty to deter disobedience of the law but also noted that the proposed penalty was too punitive and not commensurate to the offence committed. The Committee therefore proposed reduction of the fine to five hundred shillings and the jail term to three months which it viewed as more reasonable.
- g. The amendment under the proposed new section 81C (2) proposes to make it an offence for an official of a trade union to fail to call to an end a strike upon the expiry of the five days period and upon referral of the dispute to the court. The proposed penalty is a fine of not less than five million shillings or a jail term of not less than five years or to both. Akin to the above, the committee observed that there is need to have in place a penalty to deter disobedience of the law but also noted that the proposed penalty was too punitive and not commensurate to the offence committed since trade union officials exercise the mandate of their electors (the trade union members).

**52. The Committee recommends that Clause 5 not be agreed to.**

**CHAPTER THREE:**

**COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS**

**3.1 COMMITTEE'S OBSERVATIONS**

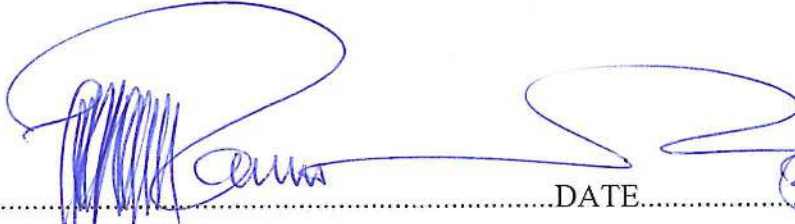
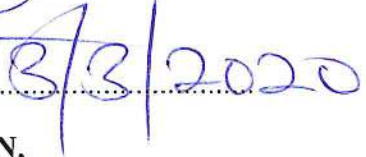
**53.** As relating to the Bill, the Committee observed that-

- (a) From an analysis of comparable jurisdictions, essential services bear numerous definitions but are mainly those services which if interrupted would endanger the property or life of a person or health of the population. In many jurisdictions such as those in Asia-Pacific region, strikes or lockouts by employees in essential services are prohibited. In the United Kingdom, certain categories of employees working in enterprises considered essential services are denied the right to strike, e.g., the police and the army. In other countries like Canada such industrial actions can only be undertaken on condition that provision of essential services will not be affected in the event of a strike or lock-out; in such jurisdictions dispute resolution mechanisms are more preferred.
- (b) In Kenya, the right to strike is enshrined in the Bill of rights under Article 41(2) (d) of the Constitution. The right to strike does not fall under the rights that may not be limited as set out under Article 25 of the Constitution. Accordingly, it is a right that may be limited by legislation in the manner set out under Article 24 of the Constitution; In particular, Article 24(2) (c) states that a provision in legislation limiting a right or fundamental freedom shall not limit the right or fundamental freedom so far as to derogate from its core or essential content;
- (c) The Court has on two occasions in the matters of *Federation of Women Lawyers (FIDA) Kenya v Kenya National Union of Nurses & 4 others [2018] eKLR (Petition 67 of 2017)* and *Okiya Omtatah Okioti v. the Hon. Attorney General and Others (Petition No. 70 of 2014)* ruled that the complete ban on strikes by workers in the essential services sector as set out under section 78 (1) (f) and 81(3) of the Labour Relations Act derogates from the core or essential content of the right to strike contrary to Article 24(2)(c) of the Constitution. The court has both times advised the legislature to review the provisions of sections 78 (1) (f) and 81(3) which are in apparent conflict with Article 41(2)(d) of the Constitution;
- (d) Sections 78(1)(f) and 81(3) of the Labour Relations Act place an absolute ban on a strike or lock-out by an employee or employees engaged in an essential service. The proposal to delete and amend 78(1)(f) and 81(3) respectively is aimed at removing the apparent conflict between the Labour Relations Act and Constitution. The intention of the amendment is to create an exception to section 76 of the Labour Relations Act with respect to the procedure to be followed in order to call for a strike or lock-out by an employee or employees engaged in essential services sector. The proposed amendment to section 81(3) seeks to allow for strikes in essential services for five days. However the basis and workability of the five day time period that is when time begins to run and end is unclear, including safeguards to ensure against disruption of essential services.

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- (e) The Committee also observed that public interest would be jeopardized in the event that strikes are allowed in the essential services sector such as aviation, fire services and even hospital services. Moreover global practice relating to industrial action in essential services generally prohibits such action in order to limit deleterious or harmful effect of such strikes, in jurisdiction where such strikes are allowed there are safeguards to ensure delivery of key services such a minimum survive agreements. The Committee is of the view that the changes proposed in the Bill are simplistic and would not be a panacea to the challenges facing the labour sector in the country. As the same does not create a balance between the rights of the employer, employees vis-à-vis the rights of citizenry to access essential service in the five days it proposes to permit strikes.
  - (f) The new clauses seek to limit the right of workers in essential services contained in the Fourth Schedule to go on strike. The limitation of this right is necessary to avoid interruption of essential services which would endanger the health, life and safety of the population or any part of the population
  - (g) The amendment under the proposed new section 81B(2) seeks to require that a strike be approved by not less than half of the members of a trade union entitled to vote. The Committee was of the view that the proposal is cumbersome and impractical in terms of implementation especially in instances where a union has large membership and spread widely across the country.
  - (h) The Bill makes reference to the “industrial court” which is an obsolete term to reference the court responsible for resolution of trade disputes.
  - (i) The penalty proposed to apply to offences committed by an employee or trade union official is a fine of not less than five million shillings or a jail term of not less than five years or to both. The Committee is of the view that the proposed penalty is too harsh and unfair in a country where the minimum wage is on average about Kshs. 10,000.
  - (j) The Committee observed that labour relations are essentially tripartite in nature and that any changes to the laws governing the sector would require a tripartite approach and concurrence. In this instance all the tripartite partners including the Government through the Ministry of Labour, the employers representatives, through the Federation of Kenya Employers (FKE), and the workers through the Central Organization of Trade Unions (COTU) are opposed to the amendment.
  - (k) The Committee further observed that all the laws governing the labour sector were enacted prior to the enactment of the Constitution of Kenya, 2010 and hence are not in conformity with the current constitution. Consequently, the Committee is of the view that a more comprehensive review of the laws is required as opposed to piece- meal review of the laws.

**3.2 COMMITTEE'S RECOMMENDATIONS**

54. The Committee, having considered the Labour Relations (Amendment) Bill clause by clause and taking into consideration views and recommendation of the public pursuant to Standing Order 127(3A), **rejects the Bill in totality.**

SIGNED..........DATE.....

**HON. ALI WARIO, M.P. CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE.**

**ANNEXURE 1.** PDF Compressor Free Version

**MINUTES OF COMMITTEE SITTINGS  
ON THE CONSIDERATION OF THE BILL**

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**MINUTES OF THE 9<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON TUESDAY 3<sup>RD</sup> MARCH, 2020 AT 9.40  
AM AT THE CPA ROOM, MAIN PARLIAMENT BUILDING**

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**PRESENT**

1. **The Hon. Ali Wario, MP** - Chairperson
2. The Hon. Janet Nangabo, MP
3. The Hon. Ronald Tonui, MP
4. The Hon. James Onyango K'Oyoo, M.P
5. The Hon. Abdi Ibrahim Mude, M.P
6. The Hon. Michael Mwangi Muchira, MP
7. The Hon. Tom Odege, MP
8. The Hon. Safia Sheikh Adan, MP
9. The Hon. Catherine Wambilianga, MP
10. The Hon. Omboko Milemba, MP
11. The Hon. David Ole Sankok, MP
12. The Hon. Wilson Sossion, MP

**APOLOGY**

1. **The Hon Joyce Korir, MP** - Vice- Chairperson
2. The Hon. Alfred K. Keter
3. The Hon. Rose Museo Mumo, MP
4. The Hon. Gladys Wanga, MP
5. The Hon. Janet Marania Teyiaa, MP
6. The Hon. Fabian Muli, MP
7. The Hon. Charles Kanyi Njagua, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. John Mugoma -Clerk Assistant II
2. Ms. Lynette Otieno - Legal Counsel

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### **AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson/ Opening remarks
  - iii. Confirmation of Minutes of previous Sittings
  - iv. Matters Arising
3. **Adoption of Reports on the following Bills:-**
  - i. **Care and Protection of Older Members of Society Senate Bill No. 17 of 2018**
  - ii. **Labour Relations (Amendment) Bill, 2019**
4. Any Other Business
5. Adjournment/Date of the next Sitting

### **MIN.NO. DC/LSW/047/2020:- PRELIMINARIES**

The meeting was called to order at 9.40 am followed by a word of prayer.

The Chairperson thanked Hon. Members for participating in the fact finding visit in Busia and Vihiga Counties regarding the Cash Transfer (Inua Jamii) Program.

Further, the Chairperson informed Members that the main agenda was to adopt the two reports on Bills which members deliberated on in previous Committee meetings.

### **MIN.NO. DC/LSW/048/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

Minutes of the 1<sup>st</sup> , 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> sittings were read and confirmed as true record of the proceedings as shown below: -

- I. Minutes of the 1<sup>st</sup> sitting held on Friday 24<sup>th</sup> February, 2020 in the morning were confirmed as a true record of deliberations having been proposed by Hon. David Ole Sankok, MP and seconded by Hon. Tom Odege, MP.
- II. Minutes of the 2<sup>nd</sup> sitting held on Friday 24<sup>th</sup> February, 2020 in the afternoon were confirmed as a true record of deliberations having been proposed by Hon. Catherine Wambilianga, MP and seconded by Hon. David Ole Sankok, MP.
- III. Minutes of the 3<sup>rd</sup> sitting held on Saturday 25<sup>th</sup> February, 2020 in the morning were confirmed as a true record of deliberations having been proposed by Hon. Michael Muchira, MP and seconded by Hon. Janet Nangabo, MP.

IV. ~~Minutes of the 4<sup>th</sup> sitting held on Saturday 25<sup>th</sup> February, 2020 in the afternoon were confirmed as a true record of deliberations having been proposed by Hon. James K'Oyoo, MP and seconded by Hon. Safia Sheikh Adan, MP.~~ **PDF Compressor Free Version**

**MIN.NO. DC/LSW/049/2020: MATTER ARISING**

No Matters Arose

**MIN.NO. DC/LSW/050/2020: ADOPTION OF THE REPORT ON THE CARE AND PROTECTION OF THE OLDER MEMBERS OF SOCIETY BILL, SENATE BILL NO. 17 OF 2018**

The Committee adopted the report on the Care and Protection of Older Members of Society Bill with the following observations and recommendations having been proposed and seconded by the Hon. Tom Odege, M.P and the Hon. Safia Sheikh Adan, M.P respectively.

**Committee Observations**

1. The Bill seeks to provide a framework for the care of older members of society, to establish a framework for the empowerment and protection of the elderly and the maintenance of their well-being, safety and security. It will ensure that the national government formulates and adopts a comprehensive national strategy and plan of action and policies promoting the realization of the rights of older members of society;
2. The Bill specifically provides for the establishment and implementation of community and home based care programmes for older members of society by county governments. The community based programmes include, economic empowerment, delivery of spiritual, cultural, medical, civic and social services, promotion of the health of older members of society through the provision of nutritious food and basic health services and promotion of their skills and capacity. These provisions are an enhancement on the Social Assistance Act,2013 which mandates the National Social Assistance Authority to provide social assistance to persons in need who include poor elderly persons, without providing a clear guidelines on specific assistance or care to be given to older members of society.
3. The Social Assistance Act, 2013 makes provision for social assistance to only poor elderly persons; however the proposed Bill has no such distinction and generally seeks to provide care to all older members of society. Indeed for a long time, older members of society have often been neglected and are unable to carry on living decent lives and the proposed Bill seeks to fill the legislative gaps so as to ensure the rights of older members of society are adequately addressed.

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4. The proposed Bill seeks to further prohibit the abuse of older members of society and defines the acts that constitute abuse. It also sets out the procedure for reporting the cases of abuse and details the action to be taken thereafter. This provision will help to reduce the rampant cases of abuse against older members of society;
5. The Bill outlines obligations of the national government with respect to the rights of older members of society. Functions of the national government under the Bill are largely conferred on the National Social Assistance Authority (the Authority) as established under section 3 of the Social Assistance Act, 2013. The Authority is further mandated to carry out monitoring and evaluation, assess the impact of programmes implemented by county governments, assess viability of programmes relating to older persons and put in place mechanisms for accountability and transparency;
6. The Committee finally notes that the Bill is obligating an Authority whose sources of funds currently don't include such moneys that maybe appropriated by Parliament. It is therefore imperative that an amendment to the Social Assistance Act, 2013 be expedited to enable Parliament to provide funds to the Authority to ensure that the Authority is able to implement its obligations as enumerated in the proposed Bill;
7. There needs to be provide a criteria for a person to benefit once he or she attains the age of sixty years; and
8. The Bill has no Schedule as referred to in Clause 30 (5).

### **Committee Recommendations**

The Committee, having considered the Bill clause by clause proposes that the Care and Protection of Older Members of the Society Senate Bill No.17 of 2018 be agreed to subject to the following amendments-

#### **CLAUSE 30**

THAT, clause 30 (5) of the Bill be amended by deleting the word "the Schedule" and substituting therefor the word "this Act".

### **MIN.NO. DC/LSW/051/2020: ADOPTION OF THE REPORT ON LABOUR RELATIONS (AMENDMENT) BILL, 2019**

The Committee adopted the report on the Labour Relations Amendment Bill with the following observations and recommendations having been proposed and seconded by the Hon. Catherine Wambilianga, M.P and the Hon. Tom Odege, M.P respectively.

- (a) From an analysis of comparable jurisdictions, essential services bear numerous definitions but are mainly those services which if interrupted would endanger the property or life of a person or health of the population. In many jurisdictions such as those in Asia-Pacific region, strikes or lockouts by employees in essential services are prohibited. In the United Kingdom, certain categories of employees working in enterprises considered essential services are denied the right to strike, e.g., the police and the army. In other countries like Canada such industrial actions can only be undertaken on condition that provision of essential services will not be affected in the event of a strike or lock-out; in such jurisdictions dispute resolution mechanisms are more preferred.
- (b) In Kenya, the right to strike is enshrined in the Bill of rights under Article 41(2) (d) of the Constitution. The right to strike does not fall under the rights that may not be limited as set out under Article 25 of the Constitution. Accordingly, it is a right that may be limited by legislation in the manner set out under Article 24 of the Constitution; In particular, Article 24(2) (c) states that a provision in legislation limiting a right or fundamental freedom shall not limit the right or fundamental freedom so far as to derogate from its core or essential content;
- (c) The Court has on two occasions in the matters of *Federation of Women Lawyers (FIDA) Kenya v Kenya National Union of Nurses & 4 others [2018] eKLR (Petition 67 of 2017)* and *Okiya Omtatah Okoiti v. the Hon. Attorney General and Others (Petition No. 70 of 2014)* ruled that the complete ban on strikes by workers in the essential services sector as set out under section 78 (1) (f) and 81(3) of the Labour Relations Act derogates from the core or essential content of the right to strike contrary to Article 24(2)(c) of the Constitution. The court has both times advised the legislature to review the provisions of sections 78 (1) (f) and 81(3) which are in apparent conflict with Article 41(2)(d) of the Constitution;
- (d) Sections 78(1)(f) and 81(3) of the Labour Relations Act place an absolute ban on a strike or lock-out by an employee or employees engaged in an essential service. The proposal to delete and amend 78(1)(f) and 81(3) respectively is aimed at removing the apparent conflict between the Labour Relations Act and Constitution. The intention of the amendment is to create an exception to section 76 of the Labour Relations Act with respect to the procedure to be followed in order to call for a strike or lock-out by an employee or employees engaged in essential services sector. The proposed amendment to section 81(3) seeks to allow for strikes in essential services for five days. However the basis and workability of the five day time period that is when time begins to run and end is unclear, including safeguards to ensure against disruption of essential services.
- (e) The Committee also observed that public interest would be jeopardized in the event that strikes are allowed in the essential services sector such as aviation, fire services and even

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hospital services. Moreover global practice relating to industrial action in essential services generally prohibits such action in order to limit deleterious or harmful effect of such strikes, in jurisdiction where such strikes are allowed there are safeguards to ensure delivery of key services such a minimum survive agreements. The Committee is of the view that the changes proposed in the Bill are simplistic and would not be a panacea to the challenges facing the labour sector in the country. As the same does not create a balance between the rights of the employer, employees vis-à-vis the rights of citizenry to access essential service in the five days it proposes to permit strikes.

- (f) The new clauses seek to limit the right of workers in essential services contained in the Fourth Schedule to go on strike. The limitation of this right is necessary to avoid interruption of essential services which would endanger the health, life and safety of the population or any part of the population
- (g) The amendment under the proposed new section 81B(2) seeks to require that a strike be approved by not less than half of the members of a trade union entitled to vote. The Committee was of the view that the proposal is cumbersome and impractical in terms of implementation especially in instances where a union has large membership and spread widely across the country.
- (h) The Bill makes reference to the “industrial court” which is an obsolete term to reference the court responsible for resolution of trade disputes.
- (i) The penalty proposed to apply to offences committed by an employee or trade union official is a fine of not less than five million shillings or a jail term of not less than five years or to both. The Committee is of the view that the proposed penalty is too harsh and unfair in a country where the minimum wage is on average about Kshs. 10,000.
- (j) The Committee observed that labour relations are essentially tripartite in nature and that any changes to the laws governing the sector would require a tripartite approach and concurrence. In this instance all the tripartite partners including the Government through the Ministry of Labour, the employers representatives, through the Federation of Kenya Employers (FKE), and the workers through the Central Organization of Trade Unions (COTU) are opposed to the amendment.
- (k) The Committee further observed that all the laws governing the labour sector were enacted prior to the enactment of the Constitution of Kenya, 2010 and hence are not in conformity with the current constitution. Consequently, the Committee is of the view that a more comprehensive review of the laws is required as opposed to piece- meal review of the laws.

**Committee Recommendations**  
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The Committee, having considered the Labour Relations (Amendment) Bill clause by clause and taking into consideration views and recommendation of the public pursuant to Standing Order 127(3A), **rejected the Bill in totality.**

**MIN.NO. DC/LSW/052/2020: ANY OTHER BUSINESS**

**Consideration of Sessional Papers before the Committee**

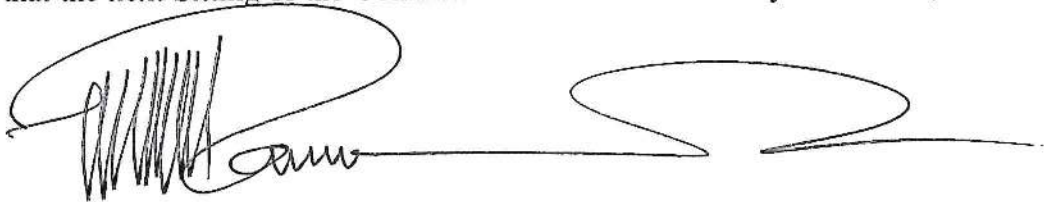
It was resolved that Sessional Paper No.2 of 2019 on National Policy on Gender and Development and Sessional Paper No. 3 of 2019 on National Policy for eradication of FGM be considered in a retreat to be held in Mombasa on 13<sup>th</sup> and 14<sup>th</sup> March, 2020

**MIN.NO. DC/LSW/053/2020: ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.00am.

**MIN.NO. DC/LSW/054/2020: DATE FOR THE NEXT SITTING**

It was resolved that the next Sitting of the Committee be held on **Thursday 5<sup>th</sup> March, 2020 at 9.30 am**



SIGNED: .....

**The Hon. Ali Wario, M.P**

**(Chairperson)**

DATE: ..... **3/3/2020** .....

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**MINUTES OF THE 1<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON FRIDAY 14<sup>TH</sup> FEBRUARY, 2020 AT  
10.30AM IN SALAMA BEACH HOTEL, KIKAMBALA, KILIFI COUNTY**

---

**PRESENT**

1. **The Hon Joyce Korir, M.P** - Vice- Chairperson
2. The Hon. Janet Nangabo, M.P
3. The Hon. Ronald Tonui, M.P
4. The Hon. Gladys Wanga, M.P
5. The Hon. Michael Mwangi Muchira, M.P
6. The Hon. Tom Odege, M.P
7. The Hon. Safia Sheikh Adan, M.P
8. The Hon. Catherine Wambilianga, M.P
9. The Hon. Fabian Muli, M.P
10. The Hon. Omboko Milemba, M.P
11. The Hon. David Ole Sankok, M.P
12. The Hon. Wilson Sossion, M.P

**APOLOGY**

1. **The Hon. Ali Wario, MP** - Chairperson
2. The Hon. Alfred K. Keter, M.P
3. The Hon. James Onyango K'Oyoo, M.P
4. The Hon. Rose Museo Mumo, M.P
5. The Hon. Janet Marania Teyiaa, M.P
6. The Hon. Charles Kanyi Njagua, M.P
7. The Hon. Ibrahim Mude, M.P

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mrs. Florence Abonyo - Director, Committees
2. Mr. Adan Sora Gindicha -Senior Clerk Assistant
3. Ms. Lynette Otieno - Legal Counsel
4. Mr. Nickson Kibet -Audio Officer

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson/ Opening remarks
  - iii. Confirmation of Minutes of previous Sittings

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- iv. Matters Arising
3. **Consideration of the Report on Labour Relations Amendment Bill, 2019**
4. Any Other Business
5. Adjournment/Date of the next Sitting

### **MIN.NO. DC/LSW/001/2020:- PRELIMINARIES**

The Vice Chairperson called the meeting to order at 10.45 am and welcomed the Members to the First Part of the Fourth of the 12<sup>th</sup> Parliament. She informed Members that the Committee had a busy schedule with a number of Bills, Legislative Proposals, Petitions and Questions lined up for consideration. She urged Members to continue with the dedication they showed during the Third Session noting that the business before Committee have far reaching consequences on the lives of Kenyans.

In her remarks, the Director Committee Services said that the current Session is normally the busiest in the Parliamentary Calendar with the onset of the Budget cycle signalled by the tabling of the Budget Policy Statement on Thursday 13<sup>th</sup> February 2020.

### **MIN.NO. DC/LSW/002/2020: CONSIDERATION OF THE REPORT ON LABOUR RELATIONS AMENDMENT BILL, 2019**

The Committee considered the Report and made the following observations:

- (a) From an analysis of comparable jurisdictions, essential services bear numerous definitions but are mainly those services which if interrupted would endanger the property or life of a person or health of the population. In many jurisdictions such as those in Asia-Pacific region, strikes or lockouts by employees in essential services are prohibited. In the United Kingdom, certain categories of employees working in enterprises considered essential services are denied the right to strike, e.g., the police and the army. In other countries like Canada such industrial actions can only be undertaken on condition that provision of essential services will not be affected in the event of a strike or lock-out; in such jurisdictions dispute resolution mechanisms are more preferred.
- (b) In Kenya, the right to strike is enshrined in the Bill of rights under Article 41(2) (d) of the Constitution. The right to strike does not fall under the rights that may not be limited as set out under Article 25 of the Constitution. Accordingly, it is a right that may be limited by legislation in the manner set out under Article 24 of the Constitution; In particular, Article 24(2) (c) states that a provision in legislation limiting a right or fundamental

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freedom shall not limit the right to fundamental freedom so far as to derogate from its core or essential content;

- (c) The Court has on two occasions in the matters of *Federation of Women Lawyers (FIDA) Kenya v Kenya National Union of Nurses & 4 others [2018] eKLR (Petition 67 of 2017)* and *Okiya Omtatah Okoiti v. the Hon. Attorney General and Others (Petition No. 70 of 2014)* ruled that the complete ban on strikes by workers in the essential services sector as set out under section 78 (1) (f) and 81(3) of the Labour Relations Act derogates from the core or essential content of the right to strike contrary to Article 24(2)(c) of the Constitution. The court has both times advised the legislature to review the provisions of sections 78 (1) (f) and 81(3) which are in apparent conflict with Article 41(2)(d) of the Constitution;
- (d) Sections 78(1)(f) and 81(3) of the Labour Relations Act place an absolute ban on a strike or lock-out by an employee or employees engaged in an essential service. The proposal to delete and amend 78(1)(f) and 81(3) respectively is aimed at removing the apparent conflict between the Labour Relations Act and Constitution. The intention of the amendment is to create an exception to section 76 of the Labour Relations Act with respect to the procedure to be followed in order to call for a strike or lock-out by an employee or employees engaged in essential services sector. The proposed amendment to section 81(3) seeks to allow for strikes in essential services for five days. However the basis and workability of the five day time period and when time begins to run and end is unclear including safeguards to ensure against disruption of essential services.
- (e) The Committee also observed that public interest would be jeopardized in the event that strikes are allowed in the essential services sector such as aviation, fire services and even hospital services. Moreover global practice relating to industrial action in essential services generally prohibits such action in order to limit deleterious or harmful effect of such strikes, in jurisdiction where such strikes are allowed there are safeguards to ensure delivery of key services such a minimum survive agreements. The Committee is of the view that the changes proposed in the Bill are simplistic and would not be a panacea to the challenges facing the labour sector in the country. As the same does not create a balance

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between the rights of the employer, employee's vis-à-vis the rights of citizenry to access essential service in the five days it proposes to permit strikes.

- (f) The new clauses seek to limit the right of workers in essential services contained in the Fourth Schedule to go on strike. The limitation of this right is necessary to avoid interruption of essential services which would endanger the health, life and safety of the population or any part of the population
- (g) The amendment under the proposed new section 81B(2) seeks to require that a strike be approved by not less than half of the members of a trade union entitled to vote. The Committee was of the view that the proposal is cumbersome and impractical in terms of implementation especially in instances where a union has large membership and spread widely across the country.
- (h) The Bill makes reference to the "industrial court" which is an obsolete term to reference the court responsible for resolution of trade disputes.
- (i) The penalty proposed to apply to offences committed by an employee or trade union official is a fine of not less than five million shillings or a jail term of not less than five years or to both. The Committee is of the view that the proposed penalty is too harsh and unfair in a country where the minimum wage is on average about Kshs. 10,000.
- (j) The Committee observed that labour relations are essentially tripartite in nature and that any changes to the laws governing the sector would require a tripartite approach and concurrence. In this instance all the tripartite partners including the Government through the Ministry of Labour, the employers representatives, through the Federation of Kenya Employers (FKE), and the workers through the Central Organization of Trade Unions (COTU) are opposed to the amendment.
- (k) The Committee further observed that all the laws governing the labour sector were enacted prior to the enactment of the Constitution of Kenya, 2010 and hence are not in conformity with the current constitution. Consequently, the Committee is of the view that

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A more comprehensive review of the laws is required as opposed to piece-meal review of the laws.

MIN.NO. DC/LSW/003/2020: ANY OTHER BUSINESS

No other Business arose

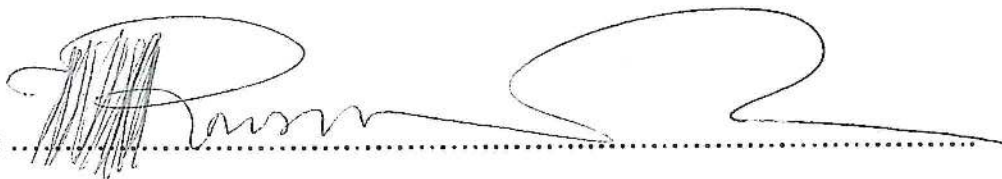
MIN.NO. DC/LSW/004/2020: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.00pm

MIN.NO.DC/LSW/005/2020: DATE FOR THE NEXT SITTING

It was resolved that the next Sitting of the Committee be held on Friday 14<sup>th</sup> February at 2.30 pm

SIGNED: .....



The Hon. Ali Wario, M.P

(Chairperson)

DATE: .....

3/3/2020

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MINUTES OF THE 40<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 25<sup>TH</sup> JULY, 2019 AT  
9.30AM IN THE CPA ROOM, MAIN PARLIAMENT BUILDING.

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**PRESENT**

1. The Hon. Ali Wario, MP - Chairperson
2. The Hon. Gladys Atieno Wanga, MP
3. The Hon. Janet Marania Teyiaa, MP
4. The Hon. James Onyango K'Oyoo, MP
5. The Hon. Ronald Kiprotich Tunoi, MP
6. The Hon. Omboko Milemba, MP
7. The Hon. Tom Mboya Odege, MP
8. The Hon. Abdi Mude Ibrahim, MP
9. The Hon. Michael Mwangi Muchira, MP
10. The Hon. Fabian Kyule Muli, MP
11. The Hon. Safia Sheikh Adan, MP

**APOLOGY**

1. The Hon. Joyce Korir, MP - Vice Chairperson
2. The Hon. Alfred K. Keter, MP
3. The Hon. Rose Museo Mumo, MP
4. The Hon. Janet Nangabo, MP
5. The Hon. Catherine Wambilianga, MP
6. The Hon. Charles Kanyi Njagua, MP
7. The Hon. David Ole Sankok, MP
8. The Hon. Wilson Sossion, MP

**IN ATTENDANCE**

**Friends of the Committee**

1. The Hon. Kimani Ichung'wa, MP

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Clerk Assistant 1
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani -Legal Counsel
4. Ms. Sheila Chebotibin -Sergeant-At-Arms
5. Mr. Robert Rop -Audio Officer

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions

- ii. Communication from the Chairperson
- iii. Confirmation of Minutes of previous Sittings
- iv. Matters Arising
3. **Adoption of the Report on the National Drought Management Authority (Amendment) Bill, 2019**
4. **Meeting with the Hon. Kimani Ichungwa, M.P regarding the Labour Relations (Amendment) Bill, 2018**
5. **Consideration and adoption of the report on the National Youth Council (Amendment) Bill, 2019**
6. Any Other Business
7. Adjournment/Date of the next Sitting

#### **MIN.NO. DC/LSW/198/2019:- PRELIMINARIES**

The Chairperson called the meeting to order at 9.40am and thereafter a prayer was said.

The Chairperson welcomed the Hon. Members to the meeting and informed the Committee that the NDMA (Amendment) Bill, 2019 was in the Order Paper and as such there was need for the Committee to consider and adopt the report on the Bill and table it in the House before the Bill proceeds for Second Reading.

Further, the Chairperson reminded Members that the Committee had already considered the Labour Relations (Amendment) Bill. However; it was considered opinion of Members that the sponsor of the Bill be called upon to clarify on contentious clauses on limitation on right of every worker to go to strike on essential services and procedure of protected strikes in essential services sector.

#### **MIN.NO. DC/LSW/199/2019: ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Hon. Ronald Kiprotich Tunoi, M.P and seconded by Hon. Safia Sheikh Adan, M.P respectively.

#### **MIN.NO. DC/LSW/200/2019: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

#### **MIN.NO. DC/LSW/201/2019: ADOPTION OF THE REPORT ON THE NATIONAL DROUGHT MANAGEMENT AUTHORITY (AMENDMENT) BILL, 2019**

The Committee deliberated on the report and adopted it with the following observations and recommendations:-

##### **Observations**

- (a) The PFM Act is the principal law guiding the administration, management and oversight of public funds including the establishment of national public funds. To this end, Section



6 (e) of the PFM Act, 2012 provides that the PFM Act shall prevail in case of any inconsistency in establishment, administration and management of any public Fund.

Further, Section 24 (4) of the PFM Act assigns powers to establish national public funds to the Cabinet Secretary for the National Treasury & Planning with the approval of the National Assembly;

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- (b) The Ministry of Devolution and Arid and ASALs had developed the draft Public Finance Management (National Drought Emergency Fund) Regulations which seek to improve effectiveness and efficiency of the drought risk management systems in the country, facilitate resilience building, preparedness and timely response to drought during its different stages in order to mitigate the negative effects of droughts and provide a common basket emergency fund in order to facilitate faster transparent, predictable and accountable release of funds for drought risk management as well as receive financial resources from development partners who support government on drought risk management interventions.
  - (c) It was necessary to amend the NDMA Act to delete the National Drought Emergency Fund from the NDMA Act to avoid duplication of laws and inconsistency with the PFM Act;
  - (d) The amendments would enable the operationalization of the proposed Public Finance Management (National Drought Emergency Fund) Regulations;
  - (e) The Cabinet Secretary responsible for matters relating to drought would be responsible for the National Drought Emergency Fund and for policy direction of the Fund. As it stands this responsibility is assigned to the Cabinet Secretary, Ministry of Devolution and the ASALs;
  - (f) The regulations provide for proper fund oversight mechanisms that are attuned to the provisions of the PFM Act;
  - (g) The amendments are in order as the retention of one coordination framework will ensure ease of policy guidance by NDMA by having one centre of command. Further, the Draft Public Finance Management (National Drought Emergency Fund) Regulations make alternative arrangements for oversight of the Fund in line with the provisions of the PFM

Act. The regulations also provide for establishment of a steering committee being a consultative forum (like the IBEC) to allow involvement of County Governments and coordination of various activities and different roles as performed by each of the two arms of governments.

- (h) Article 110(3) of the Constitution stipulates that before either House considers a Bill, the Speakers of the National Assembly and Senate jointly resolve any question as to whether a Bill is a Bill concerning County Governments and whether it is a special Bill or ordinary Bill. Accordingly, the Constitution adequately stipulates the manner of resolution of the issue of whether the NDMA (amendment) Bill concerns County Governments or not.

### **Recommendations**

Having considered the Bill and agreeing to all clauses, the Committee proposed that the Bill be agreed to without amendments.

### **MIN.NO. DC/LSW/202/2019: SUBMISSION BY HON. KIMANI ICHUNGWA, M.P REGARDING THE LABOUR RELATIONS (AMENDMENT) BILL, 2018**

The Sponsor of the Bill submitted that-

1. The Bill aims at setting out the requirement that must be met by a trade union prior to calling and holding a strike in any of the essential services sector.
2. It aims at guarding against the interruption of essential services which would endanger the health, life and safety of the population.
3. The Bill limits the rights of every worker to go on strike as enshrined in Article 41(2)(d) of the Constitution.
4. Similar provisions or laws are applied in the United Kingdom.
5. The law guarantees Kenyans that essential services shall not be interrupted with anytime.
6. Pursuant to Article 24 of the Constitution, the right of every worker to go on strike as enshrined under Article 41 (2)(d) of the Constitution is limited in respect of workers who provide essential services contained in the fourth schedule.

### **Committee Observations and Recommendations**

1. There is need to safeguard the rights of workers.

2. Limitation of the striking days amounts to banning strikes hence making it unconstitutional.
3. Penalties provided for in Sec 81(c) are high and need to be revised.  
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4. The Labour Relations Act should be overhauled in entirety.
5. Union officials are elected and as such, they have mandate to make decisions on behalf of the Members. Cost and mechanism of getting 50% signatures is punitive and may not be achievable.
6. Comprehensive amendments should be proposed to the Bill

### Way Forward

It was resolved that further consultation be made with key stakeholders including the Ministry of Labour and a comparative over view of other jurisdiction be availed to the Committee, before the Committee report is prepared. The Secretariat was tasked to organize a retreat on the same and include any pending Committee business.

### MIN.NO. DC/LSW/203/2019: CONSIDERATION AND ADOPTION OF THE REPORT ON THE NATIONAL YOUTH COUNCIL (AMENDMENT) BILL, 2019

The above agenda was deferred to the next sitting.

### MIN.NO. DC/LSW/204/2019: ANY OTHER BUSINESS

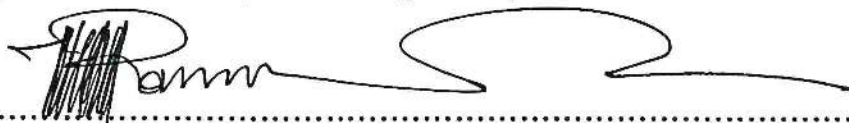
#### Committee Schedule of Activities

The Committee directed that the Secretariat should in consultation with the Chairperson prepare a schedule of Committee activities for the month of August and September. That in preparing the schedule, the Secretariat should consider and factor in the long recess that is scheduled to begin on 9<sup>th</sup> August to 9<sup>th</sup> September.

### MIN.NO. DC/LSW/205/2019: ADJOURNMENT

There being no other business, the meeting was adjourned 11.45am

SIGNED: .....



The Hon. Ali Wario, M.P  
(Chairperson)

DATE: .....

06.08.19

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MINUTES OF THE 53<sup>RD</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 26<sup>TH</sup> SEPTEMBER, 2019  
AT 11.30AM AT THE MEDIA CENTRE, MAIN PARLIAMENT BUILDING

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**PRESENT**

1. **The Hon. Ali Wario, MP** - Chairperson
2. The Hon. Ronald Kiprotich Tonui, MP
3. The Hon. Tom Mboya Odege, MP
4. The Hon. Michael Mwangi Muchira, MP
5. The Hon. Omboko Milemba, MP
6. The Hon. Safia Sheikh Adan, MP
7. The Hon. Abdi Mude Ibrahim, MP
8. The Hon. Wilson Sossion, MP
9. The Hon. David Ole Sankok, MP

**APOLOGY**

1. **The Hon. Joyce Korir, MP** - Vice Chairperson
2. The Hon. James Onyango K'Oyoo, MP
3. The Hon. Janet Nangabo, MP
4. The Hon. Alfred K. Keter, MP
5. The Hon. Rose Museo Mumo, MP
6. The Hon. Gladys Atieno Wanga, MP
7. The Hon. Janet Marania Teyiaa, MP
8. The Hon. Catherine Wambilianga, MP
9. The Hon. Charles Kanyi Njagua, MP
10. The Hon. Fabian Kyule Muli, MP

**IN ATTENDANCE**

**The National Assembly Secretariat**

1. Mr. Adan Sora Gindicha -Clerk Assistant 1
2. Mr. John Mugoma -Clerk Assistant II
3. Ms. Doreen Karani -Legal Counsel
4. Mr. Robert Rop -Audio Officer

**AGENDA**

1. Prayers
2. Preliminaries
  - i. Introductions
  - ii. Communication from the Chairperson
  - iii. Confirmation of Minutes of previous Sitzings

- iv. Matters Arising
3. **PDF Compressor Free Version**  
3. Consideration and Adoption of Committee Reports on Labour Relations Amendment Bill and the National Youth Council Amendment Bill.
4. Any Other Business
5. Adjournment/Date of the next Sitting

#### **MIN.NO. DC/LSW/270/2019:- PRELIMINARIES**

The Chairperson called the meeting to order at 10.45am and thereafter a prayer was said.

The Chairperson then welcomed the Hon. Members back from recess and informed the Committee that the main agenda of the meeting was to consider and adopt the reports on Labour Relations Amendment Bill and the National Youth Council Amendment Bill.

The Chairperson further informed Hon. Members that the Committee received a report from Child Welfare Society of Kenya on the alleged mismanagement of resources at the CWSK. That the Committee will on Tuesday 1<sup>st</sup> September, 2019 consider the report and thereafter inspect the following centres:-

- i. Joska Foster Home;
- ii. Mama Ngina in South C; and
- iii. Waithaka Special Needs Centre

#### **MIN.NO. DC/LSW/271/2019: CONFIRMATION OF THE MINUTES FROM THE PREVIOUS SITTINGS**

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

#### **MIN.NO. DC/LSW/272/2019: CONSIDERATION AND ADOPTION OF COMMITTEE REPORTS ON LABOUR RELATIONS**

The Legal Counsel took Members through the draft report highlighting the following key areas:-

1. Overview of the Bill;
2. Comparative Analysis on regulation of strikes in essential services sector;
3. Public Participation (Submissions by Prof. Jack Odhiambo, COTU and other Trade Unions)
4. Court jurisprudence on strikes and lockouts in essential services.
5. Clause by Clause consideration.

#### **Committee Observations**

The Committee observed the following:-

1. The best and appropriate bench marks for right of workers are the ILO Resolutions and the Article 41 of the Constitution.
2. The Courts have powers to declare any part of the law unconstitutional; such sections therefore ceases to be operational.

3. Democratically, Kenya was more advanced than some of the Country cited in the comparative analysis of the Bill. Most of the Countries in Asia-Pacific region do appear before the Committee of Standards in ILO and therefore are condemned and not the best to borrow from.
4. The amendments should be progressive and shouldn't go against the Constitution of Kenya.
5. The main object of the Bill should be to deal with the process of reaching the strike and delete the Clauses allowing for strikes in essential services for a maximum of five days.

#### Way Forward

The Committee resolved to postponed consideration of Clauses Four (4) and Five (5) to Thursday 3<sup>rd</sup> September, 2019 to allow Members more time to deliberate and give their objective opinion on the two Clauses.

#### MIN.NO. DC/LSW/273/2019: CONSIDERATION AND ADOPTION OF COMMITTEE REPORTS ON NATIONAL YOUTH COUNCIL AMENDMENT BILL

Due to constrain of time, the Agenda was deferred to a later date.

#### MIN.NO. DC/LSW/274/2019: ANY OTHER BUSINESS

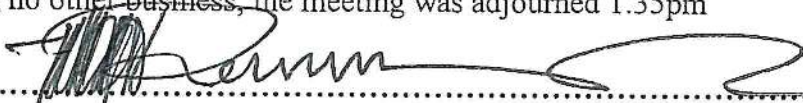
#### Visit to the State of Qatar

The Committee resolved that due to delay in getting the Visas, the fact finding visit be rescheduled to 20<sup>th</sup> Oct, 2019.

#### MIN.NO. DC/LSW/275/2019: ADJOURNMENT

There being no other business, the meeting was adjourned 1.35pm

SIGNED: .....

  
The Hon. Ali Wario, M.P  
(Chairperson)

DATE: .....

29<sup>TH</sup> OCT, 2019.

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**ANNEXURE 2:** PDF Compressor Free Version

# **ADOPTION SCHEDULE**

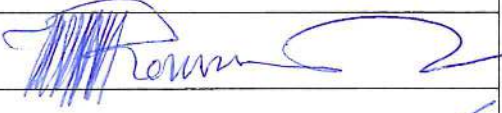

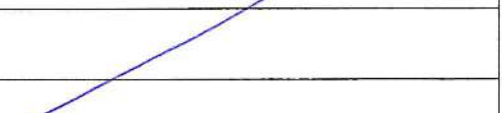
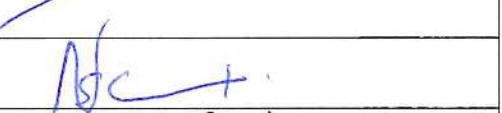

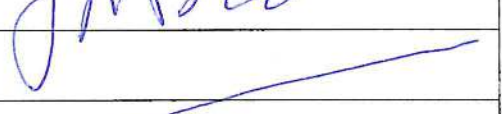

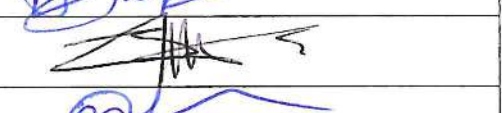
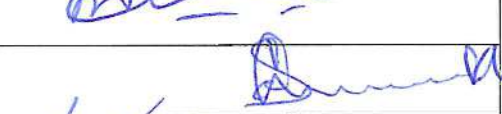

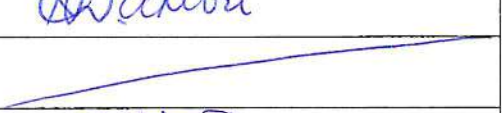

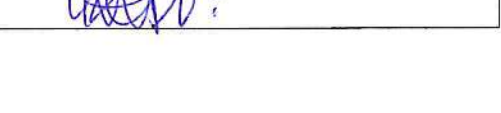



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**KENYA NATIONAL ASSEMBLY – 12<sup>TH</sup> PARLIAMENT  
DEPARTMENTAL COMMITTEE ON LABOUR & SOCIAL WELFARE  
REPORT ADOPTION SCHEDULE**

**PDF Compressor Free Version**

**REPORT ON LABOUR RELATIONS (AMENDMENT) BILL, 2019**

**DATE:** 3<sup>RD</sup> MARCH, 2020

No.	NAME	SIGNATURE
1.	The Hon. Ali Wario, MP – Chairperson	
2.	The Hon. Joyce Korir Chepkoech, MP – Vice Chairperson	
3.	The Hon. Gladys Wanga, MP	
4.	The Hon. Janet Marania Teyiaa, MP	
5.	The Hon. Alfred Kiptoo Keter, MP	
6.	The Hon. Janet Nangabo Wanyama, MP	
7.	The Hon. Ronald Kiprotich Tonui, MP	
8.	The Hon. James Onyango K'Oyoo, MP	
9.	The Hon. Rose Museo, MP	
10.	The Hon. Fabian Kyule Muli, MP	
11.	The Hon. Ole Sankok David, MP	
12.	The Hon. Abdi Mude Ibrahim, MP	
13.	The Hon. Michael Mwangi Muchira, MP	
14.	The Hon. Safia Sheikh Adan, MP	
15.	The Hon. Tom Mboya Odege, MP	
16.	The Hon. Catherine Wambilianga, MP	
17.	The Hon. Charles Kanyi Njagua, MP	
18.	The Hon. Omboko Milemba, MP	
19.	The Hon. Wilson Sossion, MP	

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**REPUBLIC OF KENYA**

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**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No. 17 of 2019)
2. The Public Service Commission (Amendment) Bill (National Assembly Bill No. 27 of 2019)

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No. 26 of 2019) seeks to amend the Public Service (Values and Principles) Act to require all state organs in the National and County Governments and State Corporations to submit annual reports on details of the human resource in Constitutional Commissions, Independent Offices, County Public Service Boards and County Assembly Service Boards.

The Public Service Commission (Amendment) Bill (National Assembly Bill No. 27 of 2019) seeks to amend the Public Service Act 2017 to prescribe the mandatory retirement age of sixty years in the Act. The Public Service Act, 2017 provides that the mandatory age is to be prescribed in the regulations.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Administration and National Security for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Wednesday, 15<sup>th</sup> May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

**REPUBLIC OF KENYA**



**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The Labour Relations (Amendment) Bill (National Assembly) Bill, 2019
2. The National Drought Management Authority (Amendment) Bill (National Assembly) Bill, 2019

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Labour Relations (Amendment) Bill (National Assembly) Bill, 2019 seeks to amend the Labour Relations Act, 2007 in order to set out the requirements that must be met by a trade union prior to calling and holding a strike in any essential services sector.

The National Drought Management Authority (Amendment) Bill (National Assembly) Bill, 2019 seeks to amend the National Drought Management Act, 2016 by amending the sections providing for the establishment of the coordinating committees and establishment of the management of the National Drought Emergencies Fund in the Act in order to enable the enactment of the National Drought Emergency Fund, Regulations under the Public Finance Management Act, 2012.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Labour and Social Welfare for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Wednesday, 15<sup>th</sup> May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

**REPUBLIC OF KENYA**



**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 5 of 2019)
2. The Kenya Food and Drugs Authority Bill (National Assembly Bill No. 31 of 2019)

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The National Hospital Insurance Fund (Amendment) Bill (National Assembly Bill No. 5 of 2019) seeks to amend the National Hospital Insurance Fund Act (Cap 255) to provide an opportunity for persons who have retired from employment to continue standard contribution to the Board, equivalent to the contribution the person was paying immediately before retirement.

The Kenya Food and Drugs Authority Bill (National Assembly Bill No. 31 of 2019) seeks to establish the Kenya Food and Drugs Authority to provide for the regulation and management of food, drugs and chemical substances; to provide for the regulation of medical devices and other health technologies; to give effect to the principles and objects of devolved government in food safety regulation and for connected purposes.

The above mentioned Bills have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Health for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the Committee invites interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Wednesday, 15<sup>th</sup> May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

**REPUBLIC OF KENYA**



**THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT - THIRD SESSION**

In the matters of consideration by the National Assembly:-

1. The Public Finance Management (Amendment) Bill (National Assembly) Bill, 2019
2. The Sectional Properties Bill (National Assembly) Bill, 2019

**SUBMISSION OF MEMORANDA**

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Public Finance Management (Amendment) Bill, 2019 seeks to provide that a public entity may only deposit funds and invest surplus funds in government owned banks or a bank owned by the public through cooperative societies. The Bill further defines a government owned bank as bank in which the government owned or holds at least twenty percent of the Bank's share capital. The Bill also prohibits the practice of banks paying compensation to agents for procuring the deposit of funds from public bodies.

The Sectional Properties Bill, 2019 seeks to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property.

The Public Finance Management (Amendment) Bill, 2019 and the Sectional Properties Bill, 2019 have undergone First Reading pursuant to Standing Order 127(3) and stands committed to the Departmental Committee on Finance & National Planning and Departmental Committee on Lands respectively, for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127, the respective Committees invite interested members of the public to submit any representations they may have on the said Bills. The Submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before Wednesday, 15<sup>th</sup> May, 2019 at 5.00 pm.

MICHAEL R. SIALAI, EBS  
CLERK OF THE NATIONAL ASSEMBLY

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**ANNEXURE 4.** PDF Compressor Free Version

# MEMORANDA FROM THE PUBLIC

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# KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS AND HOSPITAL WORKERS (KUDHEIHA WORKERS)

531

Chairman: Joseph Ole Keiyua  
Secretary General: Albert Njeru  
Treasurer: Michael K. Yaa



HEAD OFFICE  
Sonlux House, 4th Floor  
Moi Avenue,  
P.O. Box 41763-00100 NBI  
Tel: +254 20-2241509  
Cell: +254 713 464 006  
Email: info@kudheiha.org  
www.kudheiha.org

Our Ref: **51/ADM/LR/AB/NA/2019**

Your Ref: .....

All Correspondence to be addressed to the Secretary General

Date: **13<sup>th</sup> May, 2019**

AFFILIATED TO

Mr. Michael Sialai, EBS  
Clerk of National Assembly  
Parliament Building  
P.O. Box 41842-00100  
NAIROBI

E-mail; [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

(COUNCIL (KENYA)

Dear Sir,

**RE-SUBMISSION OF MEMORANDUM: - THE LABOUR RELATIONS (AMENDMENTS) BILL, (NATIONAL ASSEMBLY) BILL, 2019**

ET (BRUSSELS)

Your newspaper advertisement carried in the local dailies particularly in the Daily Nation of Thursday 9<sup>th</sup> May, 2019 refers and in response find attached the Memorandum from the KUDHEIHA Workers Union for your kind attention.

Thank you.

Yours sincerely,

PSI (CEDEX FRANCE)

Albert Njeru  
Secretary General

IUF (GENEVA)



UNI (GENEVA)

①

*Dleoms*  
*Please deal*  
*24/5/19*

② *Aweho*  
*For consideration*  
*by the committee*  
*27/5/19*

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## Kudheinha Workers Union Memorandum on The Labour Relations (Amendments) Bill, (National Assembly) Bill, 2019

### Introduction

In 2007, the Labour Relations Act No. 14 of 2007 was enacted into law. The Act was among the five labour related laws enacted that year, which included the Employment Act, the Labour Institutions Act, the Work Injury Benefits Act and the Occupation, Safety and Health Act.

The Act represents the main legal foundation for collective bargaining and labour relations. It combines two earlier laws, namely the Trade Disputes Act and the Trade Unions Act and, in many respects, contained substantial improvements, particularly in creating more efficient and responsive operational procedures to promote employment relations and labour peace in the country. The Act has provided profound legal basis for dealing with any industrial dispute.

To amend This Act, The Labour Relations (Amendment) Bill, 2019 proposes limitation of workers' right to go on strike by deleting Section 78 (1) (f) of the Act which prevented a person engaged in the provision of an essential service from going on strike. The Bill seeks to introduce a new provision in its place that does not prevent such workers from going on strike but instead limits this right.

Part XA of the Bill states that the right to go on strike under Article 41(2) (d) of 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.

The **Kudheinha Workers Unions** is opposed to these proposed amendments since they are in total contravention of our 2010 Constitution Article 41 (2) (d) on the right to strike as well as is discriminatory in the application of the Law as it applies selectively to Workers where a section of workers are allowed to exercise a right while others are denied.

Besides, the International Labour Organisation, ILO Conventions 98 and 87 on the right to Collective Bargaining and Freedom of Association as well as Convention 095 are clear on the rights of any worker as far as these rights are concerned and the only way to protect and achieve these rights is to compel an Employer through appropriate means including withdrawing Labour through strike action.

It must be noted that trade unions have always resulted to strike as a last result to the quest for better terms and conditions of service and it must be noted that its not in the interest of trade unions to call out their members on strike but this happens because an employer has refused to come on the table and the only weapon workers remain with to compel the employer to listen to them, is to call for strike action.

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## SECTION

## CURRENT STATUS

PROPOSED AMENDMENTS IN  
THE BILL

## KUDHEIHA Workers VIEWS

S. 76	a person may participate in a strike or lock-out if –	Except as provided in section 81 A, a person may participate in a strike or lock-out if –	We are opposed to the amendments in this Section that is aimed at discriminating workers against certain provisions of the Law and is against our National Constitution under the bill of rights section 41 (2)(c) & (d) that gives every worker the right to strike. This will require a referendum to amend.
S. 78(1)(f)  <b>PDF Compressor Free Version</b>	(f) the employer and employees are engaged in an essential service;	Delete	We are opposed to these amendments in Section 78 and 81 because it is unconstitutional as it denies a worker a right to strike under the Bill of Rights, Section 41 of our Constitution.  Equally, world over people have moved away from the issue of declaring certain services as essential.

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	KUDHEIHA Workers VIEWS
S.81  S.81 A (1) (Limitation of right to strike and lock-out)	(3) There shall be no strike or lock-out in essential services.  NEW	(3) There shall be no strike or lock-out in essential services for <b>more than five days</b>  81. The right to go on strike under Article 41(2) (d) of 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.	Opposed on the same grounds of being not in conformity with the Constitution and on discrimination grounds
S.81 A (2) (interpretation of Part)	NEW	81 A. (1). In this Part - "break" means, in relation to an employees 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;	"contract of service" means any contract whether entered

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SECTION

CURRENT STATUS

PROPOSED AMENDMENTS IN  
THE BILL

KUDHEIHA Workers VIEWS

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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;

"essential service" means any of the services specified in the Fourth Schedule, the interruption of which would probably endanger the life of a person or health of the population or any part of the population, or property.

(2) The Minister, after consultation with the Board may from time to time, by Order in the Gazette amend the Fourth Schedule; and may declare any

Delete "Industrial Court" and

SECTION CURRENT STATUS PROPOSED AMENDMENTS IN THE BILL KUDHEIHA Workers VIEWS

<p>Fourth</p>	<p>FOURTH SCHEDULE (S 81)</p>	<p>Delete and substitute therefor the</p>	
<p>S.81B (Procedure for protected strikes in essential services sector)</p>	<p>NEW</p>	<p>81B. (1) A trade union intending to call for strike by workers who provide essential services shall take a ballot vote prior to issuing a notice of intention to hold strike.</p>	<p>Strongly oppose move as it does not only limit but interfere with the right of workers to strike under Article 41(2) (d) of the Constitution. Further we are opposed to the amendments in this Section that requires a two third majority vote by members before a strike action.</p>
		<p>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 orProperty. (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>	<p>substitute therefore with "Employment and Labour Relations Court"</p>

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## SECTION

## CURRENT STATUS

PROPOSED AMENDMENTS IN  
THE BILL

## KUDHEIHA Workers VIEWS

schedule	ESSENTIAL SERVICES	following new Schedule –	
	<ol style="list-style-type: none"> <li>1. Water Supply Services</li> <li>2. Hospital Services</li> <li>3. Air Traffic Control Services and Civil Aviation</li> <li>Telecommunications Services</li> <li>4. Fire Services of the Government or Public Institutions</li> <li>5. Posts Authority and Local Government Authorities</li> <li>6. Ferry Services</li> </ol>	<p>FOURTH SCHEDULE (section 81 A(2)(a))</p> <p>ESSENTIAL SERVICES</p> <ol style="list-style-type: none"> <li>1. Water services.</li> <li>2. Electricity services.</li> <li>3. Health care services.</li> <li>4. Hospital services.</li> <li>5. Sanitary services.</li> <li>6. Air navigational services.</li> <li>7. Meteorological services.</li> <li>8. Fire services.</li> <li>9. Supply and distribution of fuel, petrol, oil, power and lighting services;</li> <li>10. Telecommunications services;</li> <li>11. Marine and port navigational services.</li> </ol>	<p>Delete new schedules Nos. 2, 3, 5, 7, 9, 10 as for the schedule was negotiated between social partners and other stakeholders during the ILO funded exercise in 2001-2004.</p>

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Kenya Union of Commercial, Food and Allied Workers



FOOD AND ALLIED WORKERS

INTERNATIONAL UNION OF FOOD WORKERS UNION (KUCFAW)  
PUBLIC SERVICE INTERNATIONAL UNION (PSIU)

ALL CORRESPONDENCE TO THE SECRETARY GENERAL

NATIONAL OFFICE  
MAURICE MUMBI

SECRETARY GENERAL  
BONIFACE M. KAVUVI

TREASURER GENERAL  
REBECCA NYATHOGORA

COMFOOD BUILDING  
KILOME ROAD  
P.O. BOX 46418 00100  
TEL: 020-2774406  
0700-059219

NY 12312  
NAIROBI, KENYA  
Email: nyathogora@kcu.org.ke  
nyathogora@gmail.com

Reference: ADM/1/2019/08

13<sup>th</sup> May, 2019

Mr. Michael Sialai, EBS  
Clerk of National Assembly  
Parliament Building  
P.O Box 41842-00100  
NAIROBI

E-mail: [c!erk@parliament.go.ke](mailto:c!erk@parliament.go.ke)

001c-1001  
8  
1615

Dear Sir,

RE-SUBMISSION OF MEMORANDUM: - THE LABOUR RELATIONS  
(AMENDMENTS) BILL; (NATIONAL ASSEMBLY) BILL, 2019

Your newspaper advertisement carried in the local dailies particularly in the Daily Nation of Thursday 9<sup>th</sup> May, 2019 refers and in response find attached the Memorandum from the Kenya Union of Commercial, Food and Allied Workers (KUCFAW) for your kind attention

Thank you.

Yours faithfully,

② CUNDFICAW  
pls deaf  
FA  
17/5/19

BONIFACE M. KAVUVI  
SECRETARY GENERAL

⑤ EMERSON  
pls note  
FA  
17/5/19

SECRETARY GENERAL  
MAURICE MUMBI  
SECRETARY GENERAL  
BONIFACE M. KAVUVI  
TREASURER GENERAL  
REBECCA NYATHOGORA  
NATIONAL OFFICE  
MAURICE MUMBI  
COMFOOD BUILDING  
KILOME ROAD  
P.O. BOX 46418 00100  
TEL: 020-2774406  
0700-059219  
NY 12312  
NAIROBI, KENYA  
Email: nyathogora@kcu.org.ke  
nyathogora@gmail.com

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## KUCFAW Memorandum on The Labour Relations (Amendments) Bill, (National Assembly) Bill, 2019

### Introduction

In 2007, the Labour Relations Act No. 14 of 2007 was enacted into law. The Act was among the five labour related laws enacted that year, which included the Employment Act, the Labour Institutions Act, the Work Injury Benefits Act and the Occupation, Safety and Health Act.

The Act represents the main legal foundation for collective bargaining and labour relations. It combines two earlier laws, namely the Trade Disputes Act and the Trade Unions Act and, in many respects, contained substantial improvements, particularly in creating more efficient and responsive operational procedures to promote employment relations and labour peace in the country. The Act has provided profound legal basis for dealing with any industrial dispute.

To amend This the Act, The Labour Relations (Amendment) Bill, 2019 proposes limitation of workers' right to go on strike by deleting Section 78 (1) (f) of the Act which prevented a person engaged in the provision of an essential service from going on strike. The Bill seeks to introduce a new provision in its place that does not prevent such workers from going on strike but instead limits this right.

Part XA of the Bill states that the right to go on strike under Article 41(2) (d) of 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.

The Kenya Union of Commercial, Food and Allied Workers is opposed to these proposed amendments since they are in total contravention of our 2010 Constitution Article 41 (2) (d) on the right to strike as well as is discriminatory in the application of the Law as it applies selectively to Workers where a section of workers are allowed to exercise a right while others are denied.

Besides, the International Labour Organisation, ILO Conventions 98 and 87 on the right to Collective Bargaining and freedom of Association as well as Convention 095 are clear on the rights of any worker as far as these rights are concerned and the only way to protect and achieve these rights is to compel an Employer through appropriate means including withdrawing Labour through strike action.

It must be noted that trade unions have always resulted to strike as a last resort to the quest for better terms and conditions of service and it must be noted that its note in the interest of trade unions to call out their members on strike but this happens because an employer has refused to come on the table and the only weapon workers remain with to compel the employer to listen to them, is to call for strike action.

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
S. 76	a person may participate in a strike or lock-out if –	Except as provided in section 81 A, a person may participate in a strike or lock-out if –	We are opposed to the amendments in this Section that is aimed at discriminating workers against certain provisions of the Law and is against our National Constitution under the bill of rights section 41 (2)( c) & (d) that gives every worker the right to strike. This will require a referendum to amend.
S. 78(1)(f)	(f) the employer and employees are engaged in an essential service;	Delete	We are opposed to these amendments in Section 78 and 81 because it is unconstitutional as it denies a worker a right to strike under the Bill of Rights, Section 41 of our Constitution.  Equally, world over people have moved away from the issue of declaring certain services as essential.

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
S.81	(3) There shall be no strike or lock-out in essential services.	(3) There shall be no strike or lock-out in essential services for <b>more than five days</b>	Opposed on the same grounds of being not in conformity with the Constitution and on discrimination grounds
S.81 A (1) (Limitation of right to strike and lock-out)	NEW	81. The right to go on strike under Article 41(2) (d) of 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.	
S.81A (2) (interpretation of part)	NEW	81 A. (1). In this Part - "break" means, in relation to an employees 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;  "contract of service" means any contract whether entered	

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
		<p>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 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 may from time to time, by Order in the Gazette amend the Fourth Sched and may declare any</p>	<p>Delete "Industrial Court" and</p>



SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
		<p>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>	<p>substitute therefore with "Employment and Labour Relations Court"</p>
<p>S.81B (Procedure for protected strikes in essential services sector)</p>	<p>NEW</p>	<p>81B. (1) A trade union intending to call for strike by workers who provide essential services shall take a ballot vote prior to issuing a notice of intention to hold strike.</p>	<p>Strongly oppose move as it does not only limit but interfere with the right of workers to strike under Article 41(2) (d) of the Constitution.</p> <p>Further we are opposed to the amendments in this Section that requires a two third majority vote by members before a strike action.</p>
<p>Fourth</p>	<p>FOURTH SCHEDULE (S 81)</p>	<p>Delete and substitute therefor the</p>	

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
<p>schedule</p>	<p>ESSENTIAL SERVICES</p> <ol style="list-style-type: none"> <li>1. Water Supply Services</li> <li>2. Hospital Services</li> <li>3. Air Traffic Control Services and Civil Aviation Telecommunications Services</li> <li>4. Fire Services of the Government or Public Institutions</li> <li>5. Posts Authority and Local Government Authorities</li> <li>6. Ferry Services</li> </ol>	<p>following new Schedule –</p> <p>FOURTH SCHEDULE (section 81 A(2)(a))</p> <p>ESSENTIAL SERVICES</p> <ol style="list-style-type: none"> <li>1. Water services.</li> <li>2. Electricity services.</li> <li>3. Health care services.</li> <li>4. Hospital services.</li> <li>5. Sanitary services.</li> <li>6. Air navigational services.</li> <li>7. Meteorological services.</li> <li>8. Fire services.</li> <li>9. Supply and distribution of fuel, petrol, oil, power and lighting services;</li> <li>10. Telecommunications services;</li> <li>11. Marine and port navigational services.</li> </ol>	<p>Delete new schedules Nos. 2, 3, 5, 7, 9, 10 as for the schedule was negotiated between social partners and other stakeholders during the ILO funded exercise in 2001-2004.</p>



BONIFACE M. KAVUMI

SECRETARY GENERAL

469

# SEAFARERS UNION OF KENYA

P. O. Box 85878-80100 G.P.O. Mombasa, Kenya

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Affiliated to C.O.T.U. & I.T.F

① DI cont...  
S.B.S

② Announcements  
pls deaf  
FA 17/5/19

Seafarers/ADM.3/12/120

13<sup>th</sup> May, 2019

③ Emergen  
pls note  
FA  
17/5/19

Mr. Michael Sialai, EBS  
Clerk of National Assembly  
Parliament Building  
P.O Box 41842-00100  
NAIROBI  
E-mail; [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)



Dear Sir,

**RE-SUBMISSION OF MEMORANDUM: - THE LABOUR RELATIONS (AMENDMENTS) BILL, (NATIONAL ASSEMBLY) BILL, 2019**

Your newspaper advertisement carried in the local dailies particularly in the Daily Nation of Thursday 9th May, 2019 refers and in response find attached the Memorandum from the Seafarers Union Of Kenya (SUK) for your kind attention.

Thank you.

Yours sincerely,

Stephen Owaki.  
Secretary General.



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## **COTU(K) Memorandum on The Labour Relations (Amendments) Bill, (National Assembly) Bill, 2019**

### **Introduction**

In 2007, the Labour Relations Act No. 14 of 2007 was enacted into law. The Act was among the five labour related laws enacted that year, which included the Employment Act, the Labour Institutions Act, the Work Injury Benefits Act and the Occupation, Safety and Health Act.

The Act represents the main legal foundation for collective bargaining and labour relations. It combines two earlier laws, namely the Trade Disputes Act and the Trade Unions Act and, in many respects, contained substantial improvements, particularly in creating more efficient and responsive operational procedures to promote employment relations and labour peace in the country. The Act has provided profound legal basis for dealing with any industrial dispute.

To amend This the Act, The Labour Relations (Amendment) Bill, 2019 proposes limitation of workers' right to go on strike by deleting Section 78 (1) (f) of the Act which prevented a person engaged in the provision of an essential service from going on strike. The Bill seeks to introduce a new provision in its place that does not prevent such workers from going on strike but instead limits this right.

Part XA of the Bill states that the right to go on strike under Article 41(2) (d) of 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.

The Central Organization of Trade Unions Kenya is opposed to these proposed amendments since they are in total contravention of our 2010 Constitution Article 41 (2) (d) on the right to strike as well as its discriminatory in the application of the Law as it applies selectively to Workers where a section of workers are allowed to exercise a right while others are denied.

Besides, the International Labour Organisation, ILO Conventions 98 and 87 on the right to Collective Bargaining and freedom of Association as well as Convention 095 are clear on the rights of any worker as far as these rights are concerned and the only way to protect and achieve these rights is to compel an Employer through appropriate means including withdrawing Labour through strike action.

It must be noted that trade unions have always resorted to strike as a last resort to the quest for better terms and conditions of service and it must be noted that its note in the interest of trade unions to call out their members on strike but this happens because an employer has refused to come on the table and the only weapon workers remain with to compel the employer to listen to them, is  call for strike action.

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
S. 76	a person may participate in a strike or lock-out if –	Except as provided in section 81 A, a person may participate in a strike or lock-out if –	We are opposed to the amendments in this Section that is aimed at discriminating workers against certain provisions of the Law and is against our National Constitution under the bill of rights section 41 (2)( c) & (d) that gives every worker the right to strike. This will require a referendum to amend.
S. 78(1)(f)	(f) the employer and employees are engaged in an essential service;	Delete	We are opposed to these amendments in Section 78 and 81 because it is unconstitutional as it denies a worker a right to strike under the Bill of Rights, Section 41 of our Constitution.  Equally, world over people have moved away from the issue of declaring certain services as essential.

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
S.81  S.81 A (1) (Limitation of right to strike and lock-out)	(3) There shall be no strike or lock-out in essential services.  NEW	(3) There shall be no strike or lock-out in essential services for <b>more than five days</b>  81. The right to go on strike under Article 41(2) (d) of 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.	Opposed on the same grounds of being not in conformity with the Constitution and on discrimination grounds
S.81A (2) (interpretation of part)	NEW	81 A. (1). In this Part -  "break" means, in relation to an employees 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;	
		"contract of service" means any contract whether entered	

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
		<p>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 which would</p> <p>0 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 may from time to time, by Order in the Gazette amend the Fourth Schedule; and may declare any</p>	<p>Delete "Industrial Court" and</p>



SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
S.81B (Procedure for protected strikes in essential services sector)	NEW	<p>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>	<p>Substitute therefore with "Employment and Labour Relations Court"</p> <p>Strongly oppose move as it does not only limit but interfere with the right of workers to strike under Article 41(2) (d) of the Constitution.</p> <p>Further we are opposed to the amendments in this Section that requires a two third majority vote by members before a strike action.</p>
Fourth	FOURTH SCHEDULE (S 81)	Delete and substitute therefor the	

SECTION	CURRENT STATUS	PROPOSED AMENDMENTS IN THE BILL	COTU (K) VIEWS
schedule	<p><b>ESSENTIAL SERVICES</b></p> <ol style="list-style-type: none"> <li>1. Water Supply Services</li> <li>2. Hospital Services</li> <li>3. Air Traffic Control Services and Civil Aviation</li> <li>Telecommunications Services</li> <li>4. Fire Services of the Government or Public Institutions</li> <li>5. Posts Authority and Local Government Authorities</li> <li>6. Ferry Services</li> </ol>	<p>following new Schedule –</p> <p><b>FOURTH SCHEDULE</b></p> <p>(section 81 A(2)(a))</p> <p><b>ESSENTIAL SERVICES</b></p> <ol style="list-style-type: none"> <li>1. Water services.</li> <li>2. Electricity services.</li> <li>3. Health care services.</li> <li>4. Hospital services.</li> <li>5. Sanitary services.</li> <li>6. Air navigational services.</li> <li>7. Meteorological services.</li> <li>8. Fire services.</li> <li>9. Supply and distribution of fuel, petrol, oil, power and lighting services;</li> <li>10. Telecommunications services;</li> <li>11. Marine and port navigational services.</li> </ol>	<p><b>Delete new schedules Nos. 2, 3, 5, 7, 9, 10 as for the schedule was negotiated between social partners and other stakeholders during the ILO funded exercise in 2001-2004.</b></p>

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

471

**COMMUNICATION WORKERS UNION OF KENYA**  
**AFFILIATED TO: CENTRAL ORGANISATION OF TRADE UNIONS (KENYA)**

**UNION NETWORK INTERNATIONAL GENEVA**

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*All correspondence should be addressed to the General Secretary*

Telephone : 254-20-2219345/6  
Fax : 020-2219347  
National Chairman: Emmanuel K. Kanda  
General Secretary : Benson O. Okwaro  
General Treasurer : Joseph Rwanjau



Hermes House  
Tom Mboya Street  
P.O. Box 48155 - 00100  
Nairobi  
e-mail: [info@cowukenya.or.ke](mailto:info@cowukenya.or.ke)

Our Ref: COWU-CLNA-05-001-2019

Date: 15<sup>th</sup> May, 2019

Mr. Michael Sialai, EBS  
Clerk of National Assembly  
Parliament Building  
P.O Box 41842-00100  
NAIROBI

① DI (c-100)  
8  
1615

E-mail; [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

Dear Sir,

**RE-SUBMISSION OF MEMORANDUM: - THE LABOUR RELATIONS  
(AMENDMENTS) BILL, (NATIONAL ASSEMBLY) BILL, 2019**

Your newspaper advertisement carried in the local dailies particularly in the Daily Nation of Thursday 9<sup>th</sup> May, 2019 refers and in response find attached the Memorandum from the Communication Workers Union of Kenya for your kind attention.

Thank you.

Yours sincerely,

  
**BENSON O. OKWARO**  
**GENERAL SECRETARY**

② Concurrence  
pls deal  
FA  
17/5/19

③ Emmanuel  
pls note  
FA  
17/5/19

Vice National Chairman - Wellington Omenda  
1<sup>st</sup> Asst. Gen. Secretary - Gilbert Rop  
2<sup>nd</sup> Asst. General Secretary - Johnson Okoto  
**OUR MOTTO: BREAD, PEACE AND PROSPERITY**

Deputy Gen. Secretary - Elisha Odera  
Asst. National Treasurer - Evans Nyaga

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### COTU (K) Memorandum on the Labour Relations (Amendments) Bill, (National Assembly) Bill, 2019

#### Introduction

In 2007, the Labour Relations Act No. 14 of 2007 was enacted into law. The Act was among the five labour related laws enacted that year, which included the Employment Act, the Labour Institutions Act, the Work Injury Benefits Act and the Occupation, Safety and Health Act.

The Act represents the main legal foundation for collective bargaining and labour relations. It combines two earlier laws, namely the Trade Disputes Act and the Trade Unions Act and, in many respects, contained substantial improvements, particularly in creating more efficient and responsive operational procedures to promote employment relations and labour peace in the country. The Act has provided profound legal basis for dealing with any industrial dispute.

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Part XA of the Bill states that the right to go on strike under Article 41(2) (d) of 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.

The Central Organization of Trade Unions Kenya is opposed to these proposed amendments since they are in total contravention of our 2010 Constitution Article 41 (2) (d) on the right to strike as well as is discriminatory in the application of the Law as it applies selectively to Workers where a section of workers are allowed to exercise a right while others are denied.

Besides, the International Labour Organisation, ILO Conventions 98 and 87 on the right to Collective Bargaining and freedom of Association as well as Convention 095 are clear on the rights of any worker as far as these rights are concerned and the only way to protect and achieve these rights is to compel an Employer through appropriate means including withdrawing Labour through strike action.

It must be noted that trade unions have always resulted to strike as a last resort to the quest for better terms and conditions of service and it must be noted that its note in the interest of trade unions to call out their members on strike but this happens because an employer has refused to come on the table and the only weapon workers remain with to compel the employer to listen to them, is to call for strike action.

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S. 76	a person may participate in a strike or lock-out if –	Except as provided in section 81 A, a person may participate in a strike or lock-out if –	We are opposed to the amendments in this Section that is aimed at discriminating workers against certain provisions of the Law and is against our National Constitution under the bill of rights section 41 (2)( c) & (d) that gives every worker the right to strike. This will require a referendum to amend.
S. 78(1)(f)	(f) the employer and employees are engaged in an essential service;	Delete	We are opposed to these amendments in Section 78 and 81 because it is unconstitutional as it denies a worker a right to strike under the Bill of Rights, Section 41 of our Constitution.  Equally, world over people have moved away from the issue of declaring certain services as essential.

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S.81 A (1) (Limitation of right to strike and lock-out)	NEW	81. The right to go on strike under Article 41(2) (d) of 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.	
S.81A (2) (interpretation of part)	NEW	81 A. (1). In this Part -  "break" means, in relation to an employees 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;  "contract of service" means any contract whether entered	

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<p>S.81B (Procedure for protected strikes in essential services sector)</p>	<p>NEW</p>	<p>81B. (1) A trade union intending to call for strike by workers who provide essential services shall take a ballot vote prior to issuing a notice of intention to hold strike.</p>	<p>Strongly oppose move as it does not only limit but interfere with the right of workers to strike under Article 41(2) (d) of the Constitution.</p> <p>Further we are opposed to the amendments in this Section that requires a two third majority vote by members before a strike action.</p>
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# KUHABWO

KENYA UNION OF HAIR AND BEAUTY WORKERS

H&B

LIGG  
① Director  
8/17/05

Office: Suraj Plaza, 1<sup>st</sup> Floor, Suite F3  
Limuru Road, Nairobi  
P.O. Box 73620-00200 Nairobi

Tel: 0722255335  
0722776147  
Email: [kuhabwo2009@gmail.com](mailto:kuhabwo2009@gmail.com)

OUR REF: KUHABWO/GS/ADM/10/2019

Date: 13<sup>th</sup> May, 2019

Mr. Michael Sialai, EBS  
Clerk of National Assembly  
Parliament Building  
P.O Box 41842-00100  
NAIROBI

② Completed  
pls check  
FA  
17/5/19

E-mail; [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

Dear Sir,

RE-SUBMISSION OF MEMORANDUM: - THE LABOUR RELATIONS  
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Thank you.

Yours Sincerely,

Cecily Mwangi  
General Secretary  
KUHABWO



③ EMER  
pls note  
FA  
17/5/19

Cc  
Bro. Francis Atwoli  
Secretary General  
Cotu (K)  
Nairobi

## PDF Compressor Free Version

### Kenya Union of Hair & Beauty Workers (KUHABWO) Memorandum on The Labour Relations (Amendments) Bill, (National Assembly) Bill, 2019

#### Introduction

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**PDF Compressor Free Version**

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