

Paper laid by Hon  
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at 9am 25/08/11



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT



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REPORT OF

THE

DEPARTMENTAL COMMITTEE ON

LABOUR AND SOCIAL WELFARE ON THE

EMPLOYMENT AND LABOUR RELATIONS COURT BILL, 2011

Clerk's Chambers,  
Parliament Buildings,  
**NAIROBI.**

August, 2011

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## 1.0 PREFACE

**Mr. Speaker,**

The Departmental Committee on Labour and Social Welfare is a departmental committee established under Standing Order No. 198. It is mandated to:

- a) 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;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
- c) To study and review all legislation referred to it;
- d) 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;
- e) To investigate, inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to them by the House or a Minister; and,
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In executing its mandate, the Committee oversees the following Government Ministries:

- i. Ministry of Labour
- ii. Ministry of Youth Affairs and Sports
- iii. Ministry of Gender, Children and Social Development
- iv. Ministry of State for National Heritage and Culture
- v. Ministry of State for Special Programmes

The Committee is mandated to consider the following issues; Labour, Trade Union Relations National manpower policy and development, Promotion of self employment in micro and small enterprise, National Social Security Fund (NSSF), National Productivity Centre. Gender, Children and Social Development Policies Mainstreaming, Women Enterprise Development Fund, Coordination of volunteer services, Social welfare for Vulnerable Groups, Community Development Programmes, Institutions for Children's Care and Development, Culture and National Heritage, Disaster Management Policies and Programmes, Coordination of resettlement and mitigation programme for Internally Displaced Persons (IDPs), Youth Affairs and Sports among others

The following are the Members of the Committee:-

1. The Hon. Sophia Abdi Noor, M.P. - **Chairperson**
2. The Hon. Lenny Kivuti, M.P. - **Vice - Chairperson**

3. The Hon. Elijah K. Lagat, M.P.
4. The Hon. Joseph Oyugi Magwanga, M.P.
5. The Hon. Alfred B. Odhiambo, M.P.
6. The Hon. Clement Waibara, M.P.
7. The Hon. Aden Keynan, M.P.
8. The Hon. Gideon Konchella, M.P.
9. The Hon. Jackson Kiptanui, M.P.
10. The Hon. Pollyns Ochieng, M.P.
11. The Hon. Charles Keter, M.P.

**The Employment and Labour Relations Bill, 2011.**

The Employment and Labour Relations Bill, 2011 was read for the first time in the House on August 23, 2011 after which the Bill stood committed to the Departmental Committee on Labour and Social Welfare according to Standing Order no. 111 (1).

The Committee held a prior meeting and charted the way forward on the bill and resolved to call the Minister for Labour the COTU and FKE representatives to deliberate on the Bill.

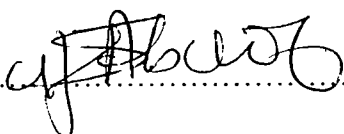
Following the consultative meetings, the Committee came up with recommendations amending some Clauses and Sub-Clauses of the Bill.

**Acknowledgement**

I wish to express my appreciation to Members of the Committee who sacrificed time to attend the meetings that were held. The Committee is grateful to the Speaker of the Kenya National Assembly and the Office of the Clerk, for facilitating the Committee meetings.

**Mr. Speaker,**

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Labour and Social Welfare to table this Report and commend it to the House for adoption pursuant to provisions of the National Assembly Standing Order 111 (2).

Signed.......... Date.....

**Hon. Sophia Abdi Noor, M.P.**

**Chairperson**

**DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

## **2.0. INTRODUCTION.**

The Employment and Labour Relations Bill, 2011 was read for the first time in the House on August 23, 2011. The Bill stood committed to the Departmental Committee on Labour and Social Welfare according to Standing Order no. 111 (1).

The Committee is therefore required to present this report in accordance with Standing Order no.111 (2) which states in part that: *'The Chairperson of the Departmental Committee or a Member designated by the Committee to which a Bill is committed shall present the Committee's report to the House within ten calendar days of such committal and upon such presentation, or if the Committee's report is not presented when it becomes due, the Bill shall be ordered to be read a Second Time on such day as the designated Minister or Member who introduced the Bill shall appoint'*

## **3.0.STAKEHOLDERS MEETING;\_THE EMPLOYMENT AND LABOUR RELATIONS BILL, 2011 DELIBERATIONS.**

The Committee met with the Minister for Labour , his officer , Cotu and FKE representatives.

The Committee considered all the proposed amendments and proposes the following amendments to the members of the National Steering Committee on Female Genital Mutilation comprising of FIDA – Kenya, Maendeleo ya Wanawake, Women Empowerment Link and the KEWOPA in April 2011 at Parliament Building. During the meetings the following amendments to the Prohibition of Female Genital Mutilation Bill, 2011 were put proposed.

## **4.0 PROPOSED AMENDMENTS**

### **COMMITTEE STAGE AMENDMENTS TO THE EMPLOYMENT AND LABOUR RELATIONS COURT BILL NO. 37, 2011**

#### **TITLE**

**THAT** the Title the Bill be amended by-

Deleting the word 'The Employment and Labour Relations Bill, 2011' and insert The Title 'The Industrial Court Bill, 2011'

Where the words The Employment and Labour Relations Court appears be deleted and insert the words, 'The Industrial Court'

To

## CLAUSE 1

THAT Clause 1 of the Bill be amended by-

Deleting words The Employment and Labour Relations Court and insert the words, 'The Industrial Court

*Reason the Court name is well known*

## CLAUSE 2

THAT Clause 2 of the Bill be amended by-

- (a) Deleting the schedule appearing at the top of pg 3.

*Reason: inserted at the wrong place. The correct place to appear is on page 1137 and it is already there.*

- (b) Inserting the word "Court" between the words "relations" and "Rules" appearing on the second line of the definition of the term "Committee"

*Reason: to correct a typographical error*

- (c) Deleting the definition of the term "Federation" and substituting thereof with the following –

"Federation" means a registered federation of trade unions or employer's organization;

*Reason: to correct a typographical error and ensure that all trade unions or employer's organizations are legally registered.*

- (d) By deleting the word "an " appearing on the 1<sup>st</sup> line and third line of the definition of the term "trade union" and substitute thereof the words " a registered"

*Reason: to correct a typographical error and ensure that all trade unions are legally registered.*

## CLAUSE 3

THAT Clause 3 of the Bill be amended –

- (a) in sub-clause (1) by-

- (i) deleting the word "principle appearing on the margin and the first line and substitute therefor the word "Principal".

*Reason: to correct a typographical error*

- (ii) inserting the word “and” between the words “expeditious” and “proportionate” appearing on the second line

*Reason: to correct a typographical error*

- (ii) deleting the words “and affordable” appearing on the third line

*Reason: to correct a typographical error*

- (b) in sub-clause (2) by deleting the word “principle appearing on the third line and i substitute therefor the word “Principal”.

*Reason: to correct a typographical error*

- (c) in sub-clause (3) by deleting the word “principle appearing on the second line of) and substitute therefor the word “Principal”.

*Reason: to correct a typographical error*

#### **CLAUSE 4**

Agreed to

#### **CLAUSE 5**

**THAT** Clause 5 of the Bill be amended –

- (a) by deleting sub-clause (1) (b) and substituting therefor with the following new sub-clause-

- (iii) such number of judges as the President acting on the advice of the Judicial Service Commission may appoint from time to time

*Reason: to allow the president to appoint Judges on recommendation of the Judicial Service Commission whenever required*

- (b) in sub-clause 3 by deleting the word “less” appearing on the second line and substitute thereof with the word “exceeding”.

*Reason: to correct a typographical error*

- (c) in sub-clause 4 by deleting the word “courts” appearing on the second line and substituting therefor the word “court”.

*Reason: to correct a typographical error*

- (d) in sub-clause (5) by deleting the word “members” appearing on the third line and substituting thereof the word “Judges”

*Reason: to correct a typographical error. Article 165(2) provides for Judges to elect the Principal Judge and not members.*

- (e) In sub-clause 1 by inserting a new sub-clause (c) as follows:

- (d) Members of the Court appointed in accordance with this Act

*Reason: Members of the court have been sitting with Judges from the inception of the court in 1964 to reflect the tripartism and special nature of the court*

- (f) insert a new clause immediately after clause 5 as follows-

### **Appointment of Members of the Court**

17 (1) the Chief Justice shall on the advice of the National Labour Board appoint members of the court and such other additional members as may be advised by the Board for a term of not more than three years

(2) a member of the court is eligible for re-appointment for a further term of three years

3) members shall be nominated by the Central Organization of Trade Unions and the Federation of Kenya Employers in consultation with the National Labour Board

(4) A person is qualified for appointment as a member of the court if such person has considerable knowledge and experience in law and practice of employment and labour relations in Kenya.

(5) The Chief Justice may after consultation with the Judicial Service Commission, and for good cause revoke the appointment of a member provided that a member may be removed if he or she misses to sit and attend court for two consecutive days in a month without good cause or permission from the Registrar of the court.

(6) the Chief Justice in consultation with the Judicial Service Commission shall determine the remuneration of the members.

*Reason: to ensure members are with requisite qualifications to add value to court proceedings*

### **CLAUSE 6**

Agreed to

### **CLAUSE 7**



Agreed to

## CLAUSE 8

**THAT** Clause 8 of the Bill be amended by deleting clause 8 and substituting therefor with the following new clause-

Officers of the Court 8(1) The Judicial Service Commission shall appoint the following officers of the court-

- a) The Registrar of the Employment and Labour Relations Court
- b) A Senior Deputy Registrar, one or more Deputy Registrars and one or more Assistant Registrars of the Employment and Labour Relations Court as the administration of justice requires
- c) and such other officers of the Employment and Labour Relations Court as may be necessary for proper function of the Court

(2) The officers of the Labour Court shall perform the administrative functions of the court under the supervision and control of the Registrar.

(3) A Senior Deputy Registrar, a Deputy Registrar or Assistant Registrar of the Employment and Labour Relations Court may perform any of the functions of the Registrar that have been delegated generally or specifically to him or her.

(4) The Senior Deputy Registrar, a Deputy Registrar of the Employment and Labour Relations Court or if there is more than one, the most senior Deputy Registrar shall act as Registrar of the court whenever-

- a) The Registrar of the court is for any reason, temporarily unable to perform the functions of the Registrar; or
- b) The office of the Registrar of the Labour Court is vacant.

(5) The Registrar may delegate his or her administrative function to any member of the staff of the court.

*Reason: To establish the office of the Senior Deputy Registrar, Deputy Registrars, Assistant Registrars and other officers of the court. The current clause only establishes the office of the Registrar. The current provision provides duties of the Deputy Registrars and officers of the court without establishing their offices.*

## CLAUSE 9

Agreed to

## CLAUSE 10

THAT Clause 10 of the Bill be amended –

(a) by deleting sub-clause (2) and substituting therefor with the following new sub-

(2) The Registrar, the Senior Deputy Registrar, the Deputy Registrars, Assistant Registrars and other officers of the Court shall exercise such powers and perform such duties as may be conferred upon them by this Act, Court rules and any other written law.

*Reason: To subject the office of the Registrar to the Act, rules and any other written law.*

(b) by inserting the following new clause immediately after clause 10-

(1) The remuneration and benefits payable to or in respect of judges

shall be a charge on the Consolidated Fund.

(2) The administrative expenses of the Employment and Labour Relations Court and other expenses of the court in the discharge of its functions shall be paid from the Judiciary Fund established under Article 173 of the constitution.

*Reason: to ensure the court is funded by Judiciary: an arm of government that the court belongs to.*

## CLAUSE 11

THAT Clause 11 of the Bill be amended in sub-clause (3) (vii) by deleting the word 'two years' and inserting the word 'three years'

*Reason: to allow the court to determine conditions and circumstances of reinstatement*

## CLAUSE 12

Agreed to

## CLAUSE 13

Agreed to

## CLAUSE 14

THAT Clause 14 of the Bill be amended by deleting sub-clause (5) and inserting the following new sub-clause

In exercise of its power under this Act, the court shall be bound by the national wage guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued from time to time to the court by the minister responsible for finance

**Reason:** to protect the workers, employers and the economy

#### **CLAUSE 15**

Agreed to

#### **CLAUSE 16**

(a) By inserting a new sub-clause 2 as follows:

“Appeals from a judgment, award, decision, decree or order of the court shall lie on matters of law only

**Reason:** To avoid re-opening of matters that have been fully heard by the Employment and Labour Relations Court to the Court of Appeal

#### **CLAUSE 17**

Agreed on

#### **CLAUSE 18**

Agreed on

#### **CLAUSE 19**

Clause 19 of the Bill is amended by importing the current provision (section 24(3) (4), (5), (6), (7), and (8) of the Labour Institutions Act, 2007) on General Powers of the Court by inserting the following new sub-clauses-

(4) For the purpose of dealing with any matter before it, the Court may by order in writing signed by or on behalf of the Court require any person to-

- (a) furnish in writing or otherwise, such particulars in relation to such matter as it may require;
- (b) attend before it;
- (c) give evidence on oath or otherwise; and
- (d) Produce any relevant documents.

(5) An order made under subsection (2) may include a requirement as to the date on which or the time within which the order is to be complied with.

(6) An order purporting to be signed by or under the authority of the judge, chairman or other person conducting the proceedings of the Court or committee of inquiry shall be presumed, until the contrary is proved, to have been given by the Court or committee of inquiry as the case may be.

(7) A person who –

- (a) without reasonable cause fails to comply with an order duly given under subsection 4;  
or
- (b) is required by an order made under subsection 4 to furnish information, to make any statement or furnish any information which the person knows, or has reasonable cause to believe, to be false or misleading in material particular,

Commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(8) If an order made under subsection (4) is directed to a –

- (a) firm or to a body corporate, every partner of the firm, and every director and officer of the body corporate shall comply with the order;
- (b) trade union, employers' organisation or federation, every official or officer of the trade union, employers' organisation or federation shall comply with the order.

(9) Where an offence is committed in respect of any order made under subsection (4), every partner, director, officer or official concerned shall be guilty of the offence unless they prove that

- (a) the offence was committed without their consent or connivance; and
- (b) they exercised all due diligence to prevent the commission of the offence.

**Reason:** in line with Article 35 of the Constitution that provides for access to information

#### **CLAUSE 20**

Clause 20 of the Bill is amended by removing the full stop and inserting the words “and two members of the court, one from the most representative employers organization and one from the most representative employees organization

**Reason:** to provide for members and equitable representation

#### **CLAUSE 21**

**THAT** Clause 21 of the Bill be amended –

- (a) By deleting clause 21 and substitute thereof the following new clause-

Representation

Before the Court

21. In any civil proceedings before Employment and Labour Relations Court or Subordinate Employment and Labour Relations Court, a party to the proceedings may act in person or be represented by a legal practitioner, an office bearer or official of that party’s trade union or employers’ organization and, if the party is a juristic person, by a director or an employee.

**Reason:** to eliminate people or organizations that are not legally registered or qualified to appear before the court

#### **CLAUSE 22**

Agreed to

#### **CLAUSE 23**

Clause 23 is amended-

(a) in sub-clause (b) iv and v by deleting the word “one” appearing in each and replacing with two

Reason: for equitable representation and to be at par with the government

(b) in sub-clause (b) iv and v by deleting the words “with national Character” appearing on last lines

Reason: National Character is difficult to be defined

#### **CLAUSE 24**

Clause 24 is amended in sub-clause (1) by deleting the word “five” and replacing with “seven”

**Reason:** because of the additional two members by employers and employees organizations

#### **CLAUSE 25**

**THAT** Clause 25 of the Bill be amended by inserting the following new clause immediately after clause 25-

#### **Functions and Powers of the Employment and Labour Relations Rules Committee**

26. Subject to the provisions of this Act, the Employment and Labour Relations Rules Committee in consultation with the Chief Justice shall make rules to regulate the conduct of proceedings in the Court and the subordinate labour and Employment Relations Court, including, but not limited to-

(a) The process by which proceedings are to be brought before the court and the content of that process

(b) The period and process for noting appeals

(c) The taxation for bill of costs

(d) After consulting with the chief justice, the fees payable and costs and expenses allowable in respect of the services or execution of any process of the court and the tariff of costs and expenses that may be allowed in respect of execution and

(e) All other matters incidental to performing the functions of the courts , including any matters not expressly mentioned in this subsection that are similar to matters about which the Rules Committee of the Judiciary may make.

**Reason:** to provide for the function of the Employment and Labour Relations Rules Committee

## CLAUSE 26

**THAT** Clause 26 of the Bill be deleted and be substituted with the following new clause-

Power of  
the Chief Justice

- 26 (1) The Chief Justice in consultation with the Committee may make rules for regulating the practice and procedure of the court.
- (2) without prejudice to the generality of subsection (1), such rules may provide for –
- (a) regulating the sittings of the Court and the selection of judges for any purpose;
  - (b) prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;
  - (c) prescribing the time within which any requirement of the rules is to be complied with ;and
  - (d) any other matter required under this Act or any other written law

**Reason:** To enable the Chief Justice make rules for effective implementation of the Act

## CLAUSE 28

**THAT** Clause 28 of the Bill be amended-

- (a) in sub-clause (2) by inserting the words “Industrial” between the words ‘Judge’ and “for” appearing on the second line
- (b) by inserting a new sub-clause (3) as follows-
  - (3) the Chief Justice may, by Notice in the Gazette, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country;
- (c) by inserting a new sub-clause (4) as follows-
  - (4)subject to Article 169(2) (a) of the constitution, the magistrates appointed under sub section 3 shall have jurisdiction and powers to handle-
    - (i) disputes relating to offences defined in any Act of Parliament dealing with employment and labour relations
    - (ii) any other dispute as may be designated in a gazette notice by the Chief Justice on the advice of the Principal Judge.
- (d) By inserting a new sub-clause (3) as follows-
  - (3) Appeals on matters relating to employment and labour relations from the designated magistrate’s courts shall lie with the Industrial Court.

**Reason:** *the current clause is unconstitutional as per Article 165(5) (b) which prohibits the High Court to have jurisdiction over employment and labour relations matters*

### CLAUSE 31

**THAT** Clause 31 of the Bill be deleted.

*Reason the words the Employment and Labour Relations Court have been deleted, making the Clause 31 redundant*

### CLAUSE 32

**THAT** Clause 32 of the Bill be amended-

(a) by inserting a new sub-clause (1) as follows-

- (1) the persons who at the commencement of this Act are Judges of the Industrial Court shall be deemed to have been appointed under this Act .
- (2) the persons who at the commencement of this Act are members of the Industrial Court shall be deemed to have been appointed under this Act.

(b) by inserting a new sub-clause (2) as follows-

- (3) Every person who at the commencement of this Act is an employee of the Industrial Court not being under notice of dismissal or resignation shall on that day and subject to this Act be deemed to be an employee of the Employment and Labour Relations Court.

**Reason:** to transit the current Judges, Members and officers of the Industrial Court and ensure institutional memory and continuity as per section 31(1) of the constitution( the provision on transition)

### CLAUSE 33

**THAT** Clause 33 of the Bill be deleted

*Reason the Employment and Labour Relations Court have been deleted, making the Clause 33 redundant*

### SCHEDULE (s.24)

Schedule s. 24 is amended-

- (a) in paragraph 1 (3) by deleting the full stop and inserting the words “for reasons given in paragraph 2(b)

**Reason:** to align with sub-paragraph (2) (b) of paragraph 24



(b) in paragraph 2(3) by deleting the word "five" appearing on the second line and inserting the word "seven"

*Reason: to harmonize with the increased number of the Rules Committee*

(c) in paragraph 3 by inserting a proviso immediately after sub-paragraph (3) as follows  
"provided that one member from the most representative employers organization and one representative of the most representative employees organization is present to form the  
the quorum

*Reason: for equitable representation*

**THAT** all clauses and sub clauses be re-numbered to be consistent with the amendments.

