

1.0 INTRODUCTION

The National Social Security Fund (Amendment) Bill, 2021 ('the Bill') was read for the first time on 29th September, 2021 in accordance with Rule 128, and referred to the Committee on Gender, Labour and Social Development for consideration in line with Rule 129 of the Rules of Procedure of Parliament and report to the House. The Committee considered the Bill and hereby reports.

2.0 BACKGROUND

On 17th February, 2021, Parliament passed the National Social Security Fund (Amendment) Bill, 2019 ('the 2019 Bill') and sent the same to His Excellency the President for assent in line with Article 91 (2) of the Constitution of the Republic of Uganda, 1995. H. E. the President did not assent to the Bill and both his term and that of Parliament, lapsed. On 16th September, 2021, the Speaker guided that all business of the 10th Parliament that had lapsed, including Bills, had to be re-introduced and processed afresh. On 26th August, 2021, H. E. the President returned the 2019 Bill to Parliament for reconsideration and wrote to the Speaker highlighting a number of areas for reconsideration. H. E. President's letter returning the Bill, dated 26th August, 2021, is hereto attached Marked **Appendix A**.

The Bill that was laid on 29th September, 2021, therefore, contains the areas highlighted by H. E. the President.

3.0 POLICY AND PRINCIPLES OF THE BILL

The policy behind the Bill is to expand social security coverage by making contributions to the National Social Security Fund mandatory for all workers in the formal sector and also allowing workers in the formal and informal sectors to make voluntary contributions to the fund. In addition, the Bill seeks to enhance the

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The Committee also received written memoranda from:

- i. The Federation of Uganda Employers
- ii. The Institute of Certified Public Accountants of Uganda
- iii. Expanding Social Protection Unit in the Ministry of Gender, Labour & Social Development

4.2 Document review

The Committee made reference to a number of documents including:

- i. The Constitution of the Republic of Uganda, 1995
- ii. The National Social Security Fund Act, Cap. 222
- iii. The Uganda Retirements Benefits Regulatory Authority Act, 2011
- iv. The Companies Act, 2012
- v. The Contracts' Act, 2010
- vi. The Public Finance and Management Act, 2015
- vii. The Persons with Disability Act, 2020
- viii. The National Social Protection Policy, 2015
- ix. The Constitution of the International Labour Organisation (ILO)
- x. The 2030 Agenda for Sustainable Development Goals
- xi. The Third National Development Plan (NDP III)
- xii. The National Social Protection Policy, 2015

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5.0 GENERAL OBSERVATIONS

5.1 Compliance of the Bill with the provisions of the Constitution of the Republic of Uganda, 1995

The Committee observes that the Bill, through its principles where it seeks to expand social security through mandatory contributions for all workers in the formal sector and allowing for workers in the formal and informal sectors to make voluntary contributions, reflects Objective XIV of the National Objectives and Directive Principles of State Policy under the Constitution.

5.2 Compliance with UN 2030 Agenda for Sustainable Development

The UN 2030 Agenda containing the Sustainable Development Goals (SDGs) is a plan of action for people, planet and prosperity which seeks to strengthen universal peace and freedom. The UN 2030 Agenda, under SDG 1:3, urges all countries to implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.

The Committee observes that social protection is a key pillar in attaining development for all, as all development starts with the wellbeing of individuals. The Bill speaks to the UN Agenda 2030 and the Sustainable Development Goals, especially by providing for mandatory contribution by all workers regardless of the size of the enterprise or number of employees including workers in the informal sector, and making provision for an expanded scope of social security coverage and benefits.

5.3 Compliance with the third National Development Plan (NDP III) and the National Social Protection Policy, 2015

The Bill, through the policy of expanding social protection, falls within the ambit of the NDP III under Development Strategy XVI of increasing access to social protection.

The Bill also falls within the objectives of the National Social Protection Policy, 2015

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which are to: increase access to social security; enhance care, protection, and support for vulnerable people; and strengthen the institutional framework for social protection service delivery.

5. 4 Compliance with Gender and Equity

The Committee appreciates the call by the UN Agenda 2030 that no one is left behind. In this regard, it is critical to espouse values of fairness, and create platforms that ensure that those that have been negatively affected by circumstances from history and those that face risks and vulnerabilities are catered for. The Bill takes cognisance of this and ensures gender and equity. The Minister is obliged, for example, to ensure that there is a balance of gender, skills and experience among the members of the board. The provisions of the Bill that provide for the expansion of social security protection ensure equity by providing that those in the informal sector are eligible to make contributions to the fund.

That said, however, the Committee observes that while the Bill takes care of gender, it does not take care of disability in some respects. The Committee takes note of the various disadvantages that persons with disabilities face, especially regarding employment.

The Committee recommends that Clause 3 of the Bill be amended in Clause 6(b) by inserting immediately after the word “experience”, the words “and consideration of persons with disability.”

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5.5 The Low number of Members of NSSF

The Committee notes with concern that while the fund and its finances have increased over the years, the number of members is still low compared to the population of the country. Uganda’s population is in excess of 40 million but membership of the fund stands at only about 2.12 million according to figures from NSSF. Out of the total members’ contributions of UGX 15.3 trillion, contributions of members aged 35 years and under account for only 32.9%, which is worrying, given

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that the bulk of Uganda's population is overwhelmingly young. Out of an estimated 15 million workers in Uganda, the figure of 2.12 is really low. . By NSSF's own admission when they met with the Committee, there is need for re-organisation to address this challenges. There is, therefore, need to increase the membership of the fund.

It is also important to note that the informal sector plays a vital role in the economy, but is difficult to map and, as the law currently stands, not represented in terms of membership of the fund. Increasing the uptake of the fund among the informal sector should go a long way in increasing the size of the fund, and by extension, positively impacting the economy, given the role that the fund plays in the economy. In this regard, the Committee is pleased with the introduction of voluntary contributions and the removal of the restriction on the number of employees in an enterprise for membership and hopes that this will increase membership of the fund, expand social security coverage which is vital for all, and lead to the attainment of the UN 2030 Agenda where no one is left behind.

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6.0 SPECIFIC OBSERVATIONS AND RECOMMENDATIONS

6.1 Clause 1: Commencement

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Clause 1 of the Bill provides that *The Act shall come into force upon publication in the Gazette, except Section 24A, which shall come into force on a date to be appointed by the Minister by statutory instrument on the advice of the Board.*

The Committee is alive to the fact that the National Social Security Fund operates on the basis that members make contributions and get their money when they are eligible, which is predictable and can be planned for, and that mid-term access requires the fund to make preparations to be able to provide for mid-term access. At the same time, however, the Committee is concerned that without a specified timeline provided within which the statutory instrument is to be made, Section 24A may not meet the need for which it is meant, which is to enable members have interim access to their savings before attaining the age prescribed by law.

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During engagements with various stakeholders in considering the Bill, the Committee noted that the majority were in agreement that a timeline was necessary.

The Committee therefore recommends that Section 24A shall come into force within sixty days of the publication of the Act in the Gazette.

6.2 Supervision of the National Social Security Fund: Clause 2(e)

Under Clause 2(2) (e) of the Bill, *Minister means the Minister responsible for finance.*

The Committee observes that the object of NSSF is social security. The Committee also observes that finance is an integral part in the management and operation of social security and that the finances and investment of NSSF should be prudently managed for the benefit of contributors.

Ensuring that the aspect of social security and/or protection is taken care of also involves ensuring that there is compliance by both employers and employees, and this is best handled by the Ministry responsible for social security. Moreover, the National Social Protection Policy, 2015 hands the Ministry of Gender, Labour & Social Development vital responsibilities including: spearheading the implementation of the policy; providing technical guidance and leadership on social protection; initiating and/or reviewing policies and laws on social protection; establishing mechanisms for delivery of social protection services; and monitoring and coordinating the implementation of social protection interventions, among others.

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The Committee has also had the benefit of comparing situations elsewhere -both in the region and beyond -and established that in all jurisdictions, the Ministry responsible for Labour or social security is responsible for the supervision of social security or provident funds. This is the case in Kenya and Tanzania. In other countries, such as Ghana, there is dual responsibility for this role where investments are handled by the Ministry responsible for finance, but matters regarding social security are handled by the Ministry responsible for labour or social security.

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The Committee is also mindful of the fact that the Constitution of the International Labour Organisation, which Uganda ratified in 1963, requires every member state, under Article 22, to periodically report on measures taken to give effect to the provisions of Conventions to which it is party. Uganda reports through the Minister of Gender, Labour & Social Development whom the Government of Uganda submitted as the country's contact at the ILO.

The Committee notes that the Permanent Secretary of the Ministry of Finance, Planning and Economic Development is a member of the board of NSSF with voting rights, and that, under Section 8 of the Uganda Retirement Benefits Regulatory Authority Act, the Minister of Finance, Planning & Economic Development appoints the board of directors of the Uganda Retirements Benefits Regulatory Authority which gives both supervisory and regulatory directives to the authority and regulates the entire retirement benefits sector and all the players thereunder, including NSSF.

It is the observation of the Committee that the Ministry of Finance is ably represented on the board of directors of NSSF and the entire retirement benefits sector and has a say in how the finances and investments of NSSF are handled. Placing social security under the supervision of the Ministry of Finance would compromise the effective running of the scheme. The Committee is confident that the fund will continue to grow even when placed under the Ministry of Gender, Labour & Social Development.

The Committee further observes that the mandate of the Ministry of Finance, Planning & Economic Development is limited to matters of finances, while that of the Ministry of Gender, Labour & Social Development includes, among others, mobilising and empowering communities to harness their potential while protecting the rights of vulnerable population groups and promoting issues of labour productivity and employment, social protection, gender equality & equity, human rights, culture and empowerment.

Further, there is need to implement the obligations in the National Tripartite Charter on Labour Relations signed between the government of Uganda and the Federation

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of Ugandan Employers, NOTU and COFTU which obligates the state to, among others, create a vibrant social sector that provides for the welfare of workers, retired persons, the unemployed, orphans, the sick, persons with disabilities, youth and other disadvantaged, and to promote good governance and compliance with the national laws and ratified regional and international treaties such as the ILO. The Ministry of Gender, Labour and Social Development is directly responsible for the creation of a vibrant social sector, as well as securing workers' retirement through their contributions in NSSF.

The Committee recommends that supervision of NSSF be under the Ministry responsible for Social Security.

6.3 Clause 3: Board of Directors

Clause 3(1) (f) of the Bill provides that *The Managing Director shall be an ex-officio member of the Board with the right to vote.*

The Board of directors is responsible for the management and operations of the fund under Section 4 of the Principal Act. The superiority of the Board of directors over the managing director is recognised by Clause 14 of the Bill which provides for his/her appointment by the Minister on the recommendation of the Board.

The Committee is concerned that giving the managing director a right to vote will create a fertile ground for conflict of interest, for he/she would be part of the organ that recommends for his/her appointment and to which he/she accounts. During the interaction of the Committee with NSSF, it was submitted that the managing director is a person who heads the day to day running of the fund, and who has technical expertise in matters relevant to the fund, and that a number of times he/she could be the only member of the board with the requisite technical expertise.

The Committee observes that as the person in charge of the day to day running of the fund, the managing director should be a person vested with the right skill, but that this in itself should not be a basis for granting him/her with voting rights. Even

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then, the Bill presents a cure for this, through Clause 3(6)(b) by mandating the Minister to ensure a balance of, skills and experience among the members of the board. This way, the people appointed on the Board should possess the right skills.

The Committee further observes that there is need for consistency with other laws and best practices of corporate governance where ex-officio members do not have voting rights, starting with the Constitution under Article 78 (1) (d).

The Committee therefore recommends that the managing director should be an ex-officio member of the Board with no right to vote.

6.4 Clause 7: Voluntary Contributions

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The Committee appreciates the provision for voluntary contributions as an avenue to increase social security coverage and promote a saving culture. The Committee also welcomes the introduction of penalties for employers who deduct voluntary contributions on behalf of their employees and fail to remit the same to the fund. This is a deterrent, builds trust and should encourage more workers to join the fund.

The Committee is concerned, however, that while the Bill provides for fines, there is no provision obliging the defaulting employer to remit the deducted contributions of the employee to the fund. In this way, the employee will still stand to lose.

The Committee notes that while the Bill grants powers to the Minister to perform a variety of functions in consultation with the Board in other provisions, in Clause 7 under the proposed Section 13A (7), the power to make regulations prescribing the procedure for making voluntary contributions and benefits is granted to the Board. This is a departure from the rest of the Bill.

The Committee recommends that:

Clause 7 be amended in the proposed Section 13 A:

a) by providing, under the proposed Section 13A (6), an obligation to an employer who deducts a voluntary contribution and fails to remit the

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same to the fund, to remit to the fund any outstanding contribution due to the employee on top of the fine, imprisonment or both; and

b) by granting the Minister, under Section 13A (7), power to prescribe by regulations & in consultation with the board, the procedure for making voluntary contributions and benefits.

6.5 Recovering from a 3rd Party: Clauses 8 & 20

Clauses 8 and 20 of the Bill seek to amend Section 14 and 48 of the Principal Act respectively by providing for recovery of any contribution and any other sum together with interest from a third party who owes money to a defaulting contributing employer.

While the Committee supports the need to expand avenues to increase social protection, it is concerned that NSSF engaging with third parties will expose members' contributions to endless and protracted recovery court battles which may be more costly on the savers' contributions than what is intended to be recovered. NSSF should internally devise means or improve its internal mechanisms to directly recover from defaulting employers as going after third parties may cause delays in the collection of members' contributions, as well as conflict of interest on the part of those executing the task of the actual recovery from the third parties.

The Committee recommends that the proposed amendment to Sections 14 and 48 of the Principal Act be deleted.

6.6 Clause 12: Mid-term Access to benefits

Mid-term access aims to provide interim benefits for members of the fund in the interim. At the same time, the Committee is alive to the fact that there is need for a balance between providing members interim access to benefits while at the same time ensuring that members have benefits when they retire.

The Committee notes that the proposed Section 24A (1) refers to 'contributions' as opposed to 'savings' for voluntary savers and imposes terms and conditions. The

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Committee is concerned that this is restrictive to voluntary savers, and yet the Bill seeks to expand social security by, among other things, attracting voluntary savers.

The Committee further notes that the proposed Section 24A (1) gives the Minister discretion to provide for mid-term access to eligible members *a sum not exceeding 20%* of a member's benefits. This discretion allows the Minister to provide a sum less than 20%.

The Committee notes that there is no consideration of mid-term access for persons with disabilities, which runs counter to the need for equity and Uganda's Constitutional obligation for affirmative action. The Committee is aware of the fact that PWDs are, on average, more likely than their non-disabled counterparts not to get job opportunities easily, and more likely not to find jobs when they lose them. Moreover, a number of PWDs have underlying medical conditions which make them even more vulnerable. All these factors mean that PWDs are unlikely to work for the same number of years as their able-bodied counterparts. The Committee also notes that the number of PWD workers, and contributors to the fund is negligible and is unlikely to strain the fund when they are granted mid-term access.

The Committee further notes that there is need for the statutory instrument under the proposed Section 24A (3) prescribing the terms and conditions and procedures for accessing the accrued benefits is laid before Parliament to ensure that it is in consonance with the spirit of the Act.

The Committee therefore recommends that the proposed Section 24A of the Bill be amended by:

a) removing the restrictions on mid-term access for voluntary savings;

b) providing for mid-term access of a sum of 50% of accrued benefits for persons with disabilities who have attained the age of forty years and above and have made contributions to the fund for at least seven years; and

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c) requiring that the statutory instrument under Section 24(3) be laid before Parliament for approval

7.0 NEW AMENDMENTS

7.1 Section 20: Age Benefit

Section 20 (3) of the Principal Act restricts the number of times a member can be paid an age benefit.

It is the observation of the Committee that the restriction by Section 20 (3) of the Principal Act is unfair to members.

The Committee recommends that Section 20 (3) of the Principal Act be deleted.

7.2 Section 34: Members' Account

Section 34 (2) & (3) of the Principal Act provide for the closure of a member's account on the attainment of the age of 60 years and grant the Minister power to dispose a members' money into the reserve fund.

Section 34(2) & (3) run counter to the principle of expanding social security coverage espoused in the Bill which provides for voluntary contribution. Section 34 (2) (b) (i) of the Principal Act would, therefore, prohibit a member who wishes to make voluntary contributions to the fund after attaining the age of 60 years. The provision also bars persons aged 60 or over who may not have been members of the fund but who may wish to join and make voluntary contributions.

Under Section 34(3) of the Principal Act, empowers the Minister to permanently dispose of the monies in a member's account into the reserve fund.

The Committee recommends that Section 34 (2) & (3) of the Principal Act be amended to:

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- a) allow for continued voluntary saving even after attaining the age of sixty years;
- b) provide for the board to publish the names and details of all dormant members' accounts in the fund every year in a newspaper of wide circulation; and
- c) provide for more time before a member's contributions can be deposited into the reserve account.

8.0 CONCLUSION

The Committee welcomes the principle of the Bill to expand social protection coverage through initiatives such as voluntary contributions and making workers in the informal sector eligible to contribute to the fund, thereby providing a remedy to the poor saving culture in the country. The Bill brings forth innovative provisions such as mid-term access which should help workers in need of some relief especially given the effects of the Covid-19 Pandemic. The Bill provides for gender and equity through the addition of gender and disability among the areas that ought to be balanced by the Minister while appointing members of the Board.

The Committee wishes to note the measures put in place by NSSF to increase efficiency, such as the timely remittance of benefits within days, which is a huge improvement. While that is the case, the Committee observes that there is no visibility for NSSF in many parts of the country, as the fund has only 17 branches and 23 outreach centres countrywide. If the number of members is to increase the fund has got to scale up the number of branches and mobilisation efforts. If this is not done, the initiatives in the Bill may come to nothing.

There is also need to provide members of the fund with financial literacy, given that, according to figures from NSSF, 50% of members who receive their benefits exhaust them within one year, which negates the very objective of providing social security and/or protection which the fund was set up to achieve in the first place. It is the wish of the Committee that NSSF will put in place measures to ensure that the

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innovations of the Bill lead to an increase in membership and widen social protection coverage and heed to the call of the UN to Leave no one behind.

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PROPOSED AMENDMENTS TO THE NATIONAL SOCIAL SECURITY FUND (AMENDMENT) BILL, 2021.

The Committee recommends that the Bill entitled the National Social Security (Amendment) Bill, 2021 be passed into law subject to the following proposed amendments:

Clause 1: Commencement

Clause 1 is substituted for the following-

“Commencement

- (1) Subject to subsection (2), this Act shall come into force upon publication in the Gazette.
- (2) The Minister shall, in consultation with the board, by statutory instrument, commence section 24A within sixty days from the date of publication of this Act in the Gazette.”

Justification

To create certainty on the time of commencement of midterm access.

Clause 2: Amendment of section 1 of the National Social Security Fund Act

Clause 2 is amended-

- (a) in paragraph (c), by inserting a new definition immediately before the proposed paragraph (ga) as follows-
“corruption” has the meaning assigned to it in the Anti-Corruption Act, No.6 of 2009;”
- (b) in paragraph (e), by substituting for the proposed paragraph (u), the following-
“(u) “Minister” means the Minister responsible for Social Security;”

(c) by inserting a new paragraph immediately after paragraph “(e)” as follows-

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“(f) by inserting immediately after paragraph (V), the following-

“(va) “persons with disabilities” has the meaning assigned to it in the Persons with Disabilities Act, No. 3 of 2020;”

Justification

- i. The insertion of new definitions is to provide for terms used in the Act.
- ii. Placing the fund under the Ministry of Finance would alienate the Ministry of Gender from the overall management of NSSF whereas the object of the bill is social security and the subject is the management of the fund; it is pertinent that priority in consideration of the regulation and management is put on the workers whose money it is that NSSF keeps. It’s for this very purpose that the bill was introduced to Parliament by the Ministry of Gender labour and Social Development as opposed to the Ministry of Finance.
- iii. There is need to comply with International Labour Organisation Standards to which Uganda is both a signatory and member state (since 1963) and under whose Constitution is the obligation on member states to report on measures which it has taken to give effect to the provisions of Conventions to which it is a party. This obligation in practice, is with the Ministry of labour, and not the Ministry of Finance.
- iv. Further, there is need to implement the obligations in the National Tripartite Charter on Labour Relations signed between the government of Uganda and the Federation of Ugandan Employers, NOTU and COFTU which obligates the state to, among others, create a vibrant social sector that provides for the welfare of workers, retired persons, the unemployed, orphans, the sick, persons with disabilities, youth and other disadvantaged, and to promote good governance and compliance with the national laws and ratified regional and international treaties such as the ILO. The Ministry of Gender, Labour and Social Development is directly responsible for the creation of a vibrant social sector, as well as securing workers’ retirement through their contributions in NSSF.

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- v. Whereas It is the mandate of the Ministry of Gender labour and Social Development to mobilize and empower communities to harness their potential while protecting the rights of vulnerable population groups, it is the mandate of the Ministry of Finance to mobilize financial resources, regulate their management and formulate policies that enhance overall economic stability and development; the spirit of NSSF is social protection, especially for persons at the most vulnerable stage in their lives when they can no longer work. This is directly intertwined with the mandate of the Ministry of Gender as opposed to the Ministry of Finance.
- vi. The Ministry of Finance already has control and representation to NSSF through its Permanent secretary on the board who has a right to vote, and through its powers of appointment of the URBRA Board; NSSF should not be submerged in the Finance Ministry.

Clause 3: Amendment of section 3 of principal Act

Clause 3 is amended in the proposed section 3-

- a) by numbering the first provision of the proposed section 3 as subsection (1).
- b) in subsection (1) (f), by substituting for the word "with" the word "without".
- c) in subsection (2), by substituting for the word "five", the word "three".
- d) in subsection (3)-
 - (i) by substituting for the word "and" appearing at the end of paragraph (f), the word "or";
 - (ii) by inserting immediately after paragraph (g), the following-
 "(h) failure to declare any conflict of interest in the execution of a member's mandate as a member of the board."
- e) by substituting for subsection (6) (b) the following-
 "(b) there is consideration of persons with disabilities, balance of gender, skills and experience among the members of the board; and"

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Justification

- i. The numbering of the first provision under the proposed section 3 as subsection (1) is to ensure chronological order and to ease reference.
- ii. Removal of the voting right of the managing director is to avoid conflict of interest for the managing director on the board which recommends him/her for appointment, appraises him/her and to which he /she accounts as the chief executive officer of the fund.
- iii. Further, the board should be independent from any possibility of influence of the managing director in decision making.
- iv. To deter any board member from engaging in activities that could be in conflict with the objectives of the fund.
- v. To ensure that there is consideration of persons with disabilities on the board, in line with 1995 Constitutional obligation of affirmative action.
- vi. The substitution of the word "and" with "or" under subsection (3) (f) is to ensure that each of the grounds for removal of a member of the board is applied independently.

Clause 7: Insertion of section 13A in principal Act

Clause 7 is amended in the proposed section 13A-

- i. by substituting for the proposed subsection (6) the following-
 - "(6) An employer who deducts a voluntary contribution under subsection (2) and fails to remit the contribution to the fund commits an offence and is liable, on conviction to,-
 - a) remit to the fund any outstanding contribution due to the employee; and
 - b) pay a fine not exceeding one thousand currency points or imprisonment not exceeding three years, or both."

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ii. by substituting for subsection (7), the following-

"(7) The Minister shall, in consultation with the board, by regulations, prescribe the procedure for making voluntary contributions and benefits."

Justification

- i. The employee should be in position to recover from the employer any monies which the employer illegally failed to transmit to the fund as contributions.
- ii. The redraft is to ensure chronology in the bill with regard to the powers of the Minister.

Clause 8: Amendment of section 14 of principal Act

Delete clause 8

Justification

NSSF engaging with third parties shall expose members' contributions to protracted and endless recovery court battles which may cost more than what would have been intended to be recovered and therefore be costly on the savers' contributions; NSSF should internally devise or improve its internal mechanisms to directly recover from defaulting employers.

Attempting to recover from third parties may cause delays in the collection of members' contributions, as well as conflict of interest on the part of those executing the task of the actual recovery from the third parties.

New clause

Insert a new clause immediately after clause 8 as follows-

"Amendment of section 20 of principal Act

Section 20 of the principal Act is amended by repealing subsection (3)."

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