



**REPUBLIC OF KENYA  
THE SENATE- FIFTH SESSION**

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**FEDERATION OF WOMEN LAWYERS (FIDA-KENYA) SUBMISSIONS ON THE NATIONAL COHESION AND PEACE BUILDING BILL, 2018 (SENATE BILLS, 2021)**

The Federation of Women Lawyers-Kenya (FIDA-Kenya) submits this memorandum vehemently opposing further deliberation and enactment of the National Cohesion and Peace Building Bill 2018 on the following grounds:

- a) The impugned Bill has huge similarities with the National Cohesion and Integration Act, 2008 (the Parent Act) and the minor difference identified do not warrant an overhaul of the Act but amendment.
- b) The similarities of the National Cohesion and Integration Act, 2008 (parent Act) and the National Cohesion and Peace Building Bill 2018 are very evident from the purpose and objective of both documents: to **encourage national cohesion and integration by outlawing discrimination on ethnic grounds; to provide for the establishment, powers and functions of nthe National Cohesion and Integration Commission.**
- c) The impugned Bill was introduced in parliament for the first reading on 31<sup>st</sup> July 2019 and was presented before the Select Committee on National Cohesion and Equal Opportunity for deliberations and the Select Committee's findings was that majority of the provisions in the Bill are similar to the provisions in the National Cohesion and Integration Act, 2008 and the minor differences do not warrant an overhaul of the NCI Act, 2008, (Attached and Mark FIDA-K 1 is a copy of the report from the select committee).
- d) That before the National Assembly is the National Cohesion and Integration (Amendment) Bill 2019 which seeks to amend the National Cohesion and Integration Act, 2008 and incorporate the minor amendments contemplated in the National Cohesion and Peace Building Bill, (Attached and Marked FIDA-K 2 is a copy of the Amendment Bill 2019)
- e) The enactment of two legislations by the two houses of parliament whose purpose is to establish state organs that have similar function is ultra vire and an affront to Art 10 of the Constitution.

- f) State organs **SHOULD NOT** duplicate functions as this has a direction correlation on the ballooning wage bill, odious debt and national budget of the country.
- g) It also amounts a waste and improper management of public resources which is contrary to Kenya’s international obligation on sustainable development.

**IT IS FOR THIS REASONS THAT FIDA-KENYA PROPOSES THE FOLLOWING:**

NO.	CLAUSE (AS IT IS IN THE Bill)	PROPOSED AMENDMENT	JUSTIFICATION
1.	<p><b>Purpose of the Bill</b></p> <p>‘AN ACT of Parliament to: provide for the establishment of the National Cohesion and Peace Building Commission; outlaw discrimination on ethnic grounds; provide for the establishment of an institutional framework for national cohesion and peace building; and for connected purposes</p>	<p>There is need to <b>overhaul</b> this Act as there seems to be duplicity of legislation</p>	<p>There is an An Act of Parliament dabbed, “the National Cohesion and Integration Act,” 12 of 2008 whose objective/purpose is: “AN Act of Parliament to encourage national cohesion and integration by outlawing discrimination on ethnic grounds; to provide for the establishment, powers and functions of the National Cohesion and Integration Commission, and for connected purposes</p>
2.	<p><b>Clause 2: Interpretations</b></p> <p>“peace building” means interventions designed to prevent conflicts or their escalation measures to consolidate peaceful relations through transformative short term and long-term processes including conflict prevention, response, traditional dispute resolution, post conflict recovery, mediation and reconciliation</p>	<p>This clause be overhauled as it bears similitates with Clause 2 of the National Cohesion and Integration Act</p>	<p>Similiaties with Clause 2 of the National Cohesion and Integration Act</p>
	<p><b>Clause 3: Objects</b></p> <p>a)</p>	<p>This clause be overhauled and incorporated in the National Cohesion and Integration Act</p>	<p>Incorporate this objectives in the National Cohesion and Integration (Amendment) Bill 2019 which seeks to amend the National Cohesion and Integration Act, 2008</p>

	<b>Clause 4: Establishment of the National Cohesion and Peace Building Commission</b>	We propose the overhaul of this Clause	National Cohesion and Integration Commission is established the Commission and its Function There seems to be duplicity of functions
	<b>Clause 6: Function of the Commission</b>	We propose the overhaul of this clause as it lays out similar functions to those established under Section 25 of the National Cohesion and Integration Act. The power of the Commission are also similar to the power of the commission established under the National Cohesion and Integration Act	Similarity in functions with the National Cohesion and Integration Commission
3.	7. (2)(c) publish the names of persons or institutions whose words or conduct may undermine or have undermined or contributed towards undermining good ethnic relations, or who are involved in ethnic discriminations or propagation of ethnic hatred	This Clause needs to be overhauled as it is a duplicity of Section 26(b) of the National Cohesion and Integration Act.  Further we publishing the names of persons and institutions without a conclusive investigation and fair trial may infringe on their rights to fair administrative action. Publishing false statements which causes damages also qualifies as defamation.	Article 47 of the Constitution of Kenya provides for fair administrative action saying (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
	Clause 8, 9 and 10 which speak to Headquarter of the Commission, Membership of The Commission And Qualifications of the Commissioner	We propose an overhaul of these sections since the National Cohesion and Integration Act already established the headquarter of the commission and functions and qualifications of members of the Commission under Section 16, 17 and 18	National Cohesion and Integration Act already established the headquarter of the commission and functions and qualifications of members of the Commission under Section 16, 17 and 18
	Clause 11,12, 13, 14, 15,16,17,18, 19,20,21, 22, 23which reslate to the	We propose the overhauled of all these section as they are a duplicity of Sec.19, 20,	Duplicity of Sec.19, 20, 21,22,23,24 and 33 of the National Cohesion and

	recruitment, selection, assumption of office and security of tenure	21,22,23,24 and 33 of the National Cohesion and Integration Act	Integration Act
	Part 111 on Financial Provision	We propose the overhaul of this entire Part as it is a duplicity of Part V of the National Cohesion and Integration Act	Duplicity of Part V of the National Cohesion and Integration Act
	Part IV on discrimination, hate speech and negative ethnicity	We propose the overhaul of this entire section as it is similar to Part 111 of the National Cohesion and Integration Act	Similarity to Part 111 of the National Cohesion and Integration Act
	Part V on Complaints, Investigations and Enforcement	We propose the overhaul of this part as it is similar to Part VI of the National Cohesion and Integration Act	Similarity to Part VI of the National Cohesion and Integration Act