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TABLED BY:	Leadership Ready Chair - Transport & public work
CLERK AT THE TABLE:	PK Iron Posing

DEPARTMENTAL COMMITTEE ON
TRANSPORT, PUBLIC WORKS AND HOUSING

REPORT ON CONSIDERATION OF THE STATUTE LAW MISCELLANEOUS
AMENDMENT BILL, 2019 (NATIONAL ASSEMBLY BILL NO. 21)

VOLUME I

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2019

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1.0 LIST OF ANNEXURES

- Annexure 1:** Minutes of Committee sittings on the consideration of the Bill (Volume I Report)
- Annexure 2:** Newspaper advertisement inviting the public to submit memoranda on the Bill (Volume I Report)
- Annexure 3:** Written submission received from stakeholders following newspaper advertisement (Volume II Report)

CHAIRPERSON'S FOREWORD

The Statute Law (Miscellaneous Amendment) Bill, 2019 (National Assembly Bill No. 21) was read a first time on **3rd April, 2019** and was subsequently committed to respective Departmental Committees (i.e. Justice and Legal Affairs, Administration and National Security, Finance and National Planning, environment and Natural Resources, Sports Culture and Tourism and Transport, Public Works and Housing) for consideration and facilitation of public participation pursuant to Standing Order 127. The Bill seeks to, among other Statutes; amend the Merchant Shipping Act, No.4 of 2009.

The Clerk of the National Assembly placed adverts in the print media on **10th April, 2019** seeking for comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee received memoranda from four (4) stakeholders. The Committee also wrote to the Principal Secretary for Shipping and Maritime Affairs inviting her for a meeting on 9th May, 2019.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and all those who responded to the National Assembly's advert inviting the public to present their views on the Bill.

On behalf of the Departmental Committee on Transport, Public Works and Housing and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Statute Law (Miscellaneous Amendment) Bill, 2019.

THE HON. DAVID PKOSING, MP, CBS

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

EXECUTIVE SUMMARY

The Statute Law (Miscellaneous Amendment) Bill, 2019 (National Assembly Bill No. 21) was published on **29th March, 2019**. The Bill was read a first time on **3rd April, 2019** and thereafter committed to respective Departmental Committees (Justice and Legal Affairs, Administration and National Security, Finance and National Planning, Environment and Natural Resources, Sports Culture and Tourism, and Transport, Public Works and Housing) that were expected to process the amendments of the respective Statutes that fall within their purview. The Departmental Committee on Transport, Public Works and Housing considered amendments to the Merchant Shipping Act, 2009.

The Bill seeks to amend the Merchant Shipping Act, 2009 in order to exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.

In order to fulfill the requirements of Article 118 of the Constitution, the Clerk of the National Assembly placed an advertisement in the print media on **10th April, 2019** requesting for comments from the general public on the Bill. The Committee received memoranda from five (7) stakeholders.

The Committee received memoranda from the following stakeholders:-

1. The Task Catering Institute;
2. The Coast Parliamentary Group;
3. Mr. Nyainda Paul Henry;
4. Seafarers Union of Kenya;
5. Hon. Mohamed Faki, Senator Mombasa County;
6. Maritime Industry Associations ;and
7. The State Department for Shipping and Maritime Affairs.

The Committee considered all the submissions before making its recommendation.

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Transport, Public Works and Housing is established under Standing Order 216(1) whose mandate, pursuant to the Standing Order 216 (5), is as follows;
 - a. 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. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - c. study and review all legislation referred to it;
 - d. study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - e. 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;
 - f. 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*);
 - g. examine treaties, agreements and conventions;
 - h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - j. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - k. examine any questions raised by Members on a matter within its mandate.

1.2 Mandate of the Committee

2. The Second Schedule to the Standing Orders mandates the Committee to consider matters relating to the following subjects:-
 - a) Transport;
 - b) Roads;
 - c) Public works;
 - d) Construction and maintenance of roads, rails and buildings;
 - e) Air and seaports; and
 - f) Housing.
3. In executing this mandate, the Committee oversees various State Departments, namely:
 - i. The State Department of Transport;
 - ii. The State Department of Infrastructure;
 - iii. The State Department of Housing and Urban Development;
 - iv. The State Department of Public Works; and

- v. The State Department of Shipping and Maritime Affairs.

1.3 Committee Membership

The Departmental Committee on Transport, Public Works & Housing was constituted by the House on Thursday 14th December 2017 comprising of the following Members:-

	Names	Party	Constituency
1.	Hon. David Pkosing (Chairman)	Jubilee	Pokot South
2.	Hon. Moses Kuria (Vice Chair)	Jubilee	Gatundu South
3.	Hon. Dominic Kipkoech Koskei	Jubilee	Sotik
4.	Hon. Peris Pesi Tobiko	Jubilee	Kajiado East
5.	Hon. Kulow Maalim Hassan	EFP	Banissa
6.	Hon. Mugambi Murwithania Rindikiri	Jubilee	Buuri
7.	Hon. Samuel Arama	Jubilee	Nakuru Town West
8.	Hon. Shadrack John Mose	Jubilee	Kitutu Masaba
9.	Hon. Rigathi Gachagua	Jubilee	Mathira
10.	Hon. Rehema Dida Jaldesa	Jubilee	Isiolo
11.	Hon. Ahmed Bashane Gaal	PDP	Tarbaj
12.	Hon. David Njuguna Kiaraho	Jubilee	Oi Kalou
13.	Hon. Johnson Manya Naicca	ODM	Mumias West
14.	Hon. Tom Mboya Odege	ODM	Nyatike
15.	Hon. Suleiman Dori Ramadhani	ODM	Msambweni
16.	Hon. Ahmed Abdisalan Ibrahim	ODM	Wajir North
17.	Hon. Gideon Mutemi Mulyungi	WDP	Mwingi Central
18.	Hon. Savula Ayub Angatia	ANC	Lugari
19.	Hon. Vincent Kemosi Mogaka	Ford K	West Mugirango

A. Committee Secretariat:

- | | | |
|----|--------------------------|-----------------------|
| 1. | Ms. Chelagat Tungo Aaron | First Clerk Assistant |
| 2. | Mr. Ahmed Salim Abdalla | Third Clerk Assistant |
| 3. | Ms. Mercy Wanyonyi | Legal Counsel |
| 4. | Mr. James Muguna | Research Officer |
| 5. | Mr. Abdinasir Moge Yusuf | Fiscal Analyst |
| 7. | Mr. Collins Mahamba | Audio Officer |
| 8. | Ms. Zainab Wario | Sergeant-at-Arms |

2 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2019

2.1 Background Information

4. The Statute Law (Miscellaneous Amendment) Bill, 2019 seeks to among other Statutes, amend the Merchant Shipping Act, No.4 of 2009 by inserting a new section 4A immediately after section 4.

2.2 Summary of the Bill

5. The Bill seeks to amend the Merchant Shipping Act, 2009 in order to exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.

6. **Proposed amendment to section 4 of the Act**

Insert the following new section immediately after section 4—

4A. Notwithstanding any other provision of this Act, the Cabinet Secretary may, on the recommendation of the Authority, by notice in the Gazette and subject to such conditions as may be appropriate, exempt any Government entity or enterprise from any provision of this Act where such exemption is in the public interest and in furtherance of Government policy.

3 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL

7. Article 118 (1) (b) of the Constitution of Kenya provides as follows: -
“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”

Standing Order 127(3) provides as follows-

“The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee makes its recommendations to the House”

8. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of April 10th 2019 invited the public to make representations on the proposed amendments in the Bill as per annexure 2 of the report. Several members of the public either individually or representing institutions and organizations submitted their views to the Committee by way of written and oral submissions.

The Committee received written submissions on the proposed amendments to the Merchant Shipping Act, 2009 Act.

The written submissions received are contained in Annexure 3 of the report.

9. The following stakeholders submitted their memoranda to the Committee:-
 - a. The Task Catering Institute;
 - b. The Coast Parliamentary Group;
 - c. Mr. Nyainda Paul Henry;
 - d. Seafarers Union of Kenya;
 - e. Hon. Mohamed Faki, Senator Mombasa County;
 - f. Maritime Industry Associations ;and
 - g. The State Department for Shipping and Maritime Affairs.

3.1 Task Catering Institute

10. In their memorandum to the Committee, the Institute submitted that they supported the proposed amendment because it will lead to the MSC Cruise Ships to be given a berth by Kenya National Shipping Line under Kenya Ports Authority in the port of Mombasa. Further, that the proposed amendment will have a ripple effect in terms of opening up employment opportunities for Kenyans and enhancing capacity for locals.

3.2 Coast Parliamentary Group

11. The Members of the Coast Parliamentary Group requested that the public participation through the Departmental Committee on Transport, Public Works and Housing be done in Mombasa County (Coast Region).

3.3 Mr. Nyainda Paul Henry

12. In his submission, he stated that he supported the amendment on the basis that thousands of unemployed Kenyan youth in the maritime sector will finally gain meaningful employment on board ocean-going vessels.

3.4 Seafarers Union of Kenya

13. In their written submissions, the Seafarers Union of Kenya supported the proposed amendments because in their view, there is urgent need to revive, build and strengthen the Kenya National Shipping Line. That this would be in line with the Blue Economy which will provide employment and training opportunities to thousands of Kenyan seafarers. That since 2014 to date, Kenya has been training youths in marine engineering and nautical science from certificates to degrees.
14. It was their further submission that as a long term plan, Kenya must own and run its own ships through the Kenya National Shipping Line. That in order to get there, laws and policies must be developed to facilitate and enhance the process hence the need to amend the Merchant Shipping Act, 2009.
15. It was also submitted that about 80% of the cargo that goes through the port of Mombasa is owned by the Government of Kenya and that in shipping transport, whoever has the cargo controls the ships. That once the Kenya National Shipping Line is empowered to handle all government owned cargo, it will be in a position to control and actually own ships.

3.5 Hon. Mohamed Faki, Senator Mombasa County

16. In his submission to the Committee, the Hon. Senator for Mombasa County submitted that the amendment as proposed, gave the Cabinet Secretary wide and unfettered powers to exempt any entity, a matter that was of great concern since the CS will have unchecked powers. He submitted to the Committee that it was a matter of great concern on how a Cabinet Secretary can solely determine what public interest without public participation is.
17. The Senator further submitted that whereas it was public knowledge that the intention was to exempt KNSL from the provisions of section 16, it was important to note that the KNSL had no capacity to operate berth C2 at the Mombasa Port. He noted that the KNSL was not wholly owned by the government with the government owning 53% while a private entity owning 47% of the shares. He submitted that any failure by the Kenya Maritime Authority to fully enforce the existing Act cannot be blamed on the people or the leaders. The Senator submitted that it was true people were being exploited and that it was the Cabinet Secretary who had the mandate and powers over the industry in general.

3.6 Maritime Industry Associations

18. The Committee received a delegation of representatives from different associations related to the maritime industry, all in support of the amendment. These include the Association for Women in the Maritime Sector in Eastern and Southern Africa (WOMESA), Mission to Seafarers, Homa Bay Boat Owners Association, Faza Isand Dwellers, Old Port Boat Owners Association, South Coast Windsurfing Association, Young Seafarers Workers Group, National Marine Cadets Association, Technical University of Mombasa Nautical Science Students Association (TUMNSA), among so many others, all of who submitted their written memoranda to the Committee.
19. The groups submitted that there was high and unfair exploitation of workers in the maritime sector, where foreign companies enrich themselves in the country at the expense of the poor workers. They submitted that the amendment will create job opportunities. The Secretary General of the Seafarers Union of Kenya submitted that Kenya has goods, has cargo but has no ships, making matters worse for the industry. He submitted that the revival of the KNSL will be very helpful for Kenya.

3.7 State Department for Shipping and Maritime Affairs.

20. In their written submissions, they stated that the State Department supported the amendment and further proposed that the Merchant Shipping Act be amended in section 16 by inserting the

words “**except the Kenya National Shipping Line**” immediately after the words “**shipping line**”. *Section 16 provides that-*

16. Restriction on ship owner

(1) No owner of a ship or person providing the service of a shipping line shall, either directly or indirectly, provide in the maritime industry the service of crewing agencies, pilotage, clearing and forwarding agent, port facility operator, shipping agent, terminal operator, container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other service as the Minister may appoint under section.

21. The rationale for the proposed amendment to section 16 of the Merchant Shipping Act is that the section as currently worded shuts out any national shipping aspirations. The revival of the Kenya National Shipping Line is now a part of the Medium-Term Plan III of Vision 2030 and as part of support to the “Big 4” Agenda particularly as regards to Manufacturing, Food security as well as agro-processing. That further, it will enable the KNSL take pride of its place as a national carrier of local imports and exports as well as create the catalytic impact of developing a full blown Blue Economy with the full participation of Kenyans in the sector while reducing the maritime transport burden on the national economy. That restriction of international companies in certain aspects of marine transportation logistics is a global practice aimed at encouraging participation of locals in segments where capacities can easily be created.

4 COMMITTEE OBSERVATIONS

The Committee while considering the Bill made the following key observations;

- 1) The proposed amendment is substantive in nature since it seeks to allow the Cabinet Secretary to exempt an organization from the application of the Act hence ought not to be contained in a Statute Law (Miscellaneous) Amendment Bill, whose purpose is to make minor amendments to existing statutes. The merits of the proposed amendment should be considered in a substantive amendment Bill to the Merchant Shipping Act, No.4 of 2009.
- 2) The proposed amendments gives draconian powers to the Cabinet Secretary to exempt any government entity or enterprise from the provisions of the Merchant Shipping Act and thus, the said powers may be abused.
- 3) The import of the proposed amendment is to revive the Kenya National Shipping Line by ensuring that the Kenya National Shipping Line provides the service of crewing agencies, pilotage, clearing and forwarding agent, port facility operator, shipping agent, terminal operator,

container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other service as the Minister may appoint under section 16 of the Merchant Shipping Act, No.4 of 2009.

5 COMMITTEE STAGE AMENDMENTS

Having considered the Bill and the views by different stakeholders, the Committee proposed that:

SCHEDULE

THAT the Schedule to the Bill be amended by deleting the proposed amendment to section 4 of the Merchant Shipping Act, No.4 of 2009 and substituting therefore the following new amendments—

s.2 Insert the following new definition in its proper alphabetical order—
“national shipping line” means the Kenya National Shipping Line;

 Insert the words “except a national shipping line” immediately after the
s.16(1) words “shipping line”.

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

THE HON. DAVID PKOSING, MP, CBS

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING