


REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL  
(NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2023	DAY: TUESDAY
TABLED BY:	HON. GEORGE MURUGARA MP, CHAIRPERSON ILAC
CLERK-AT THE-TABLE:	ESTHER NGINYO

Published by:

The Directorate of Departmental Committees  
Clerk's Chambers  
Parliament Buildings  
NAIROBI

March 2023

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## CHAIRPERSON'S FOREWORD

This report details the consideration by the Departmental Committee on Trade, Industry and Cooperatives of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022). The Bill seeks to amend many laws among them **that seeks to amend the Local Manufacturers (Export Compensation) Act, Cap 482, The Co-operative Societies Act, No. 12 of 1997, The Scrap Metal Act, No 1 of 2015** which are relevant to the Departmental Committee on Trade Industry and Cooperatives.

The Bill was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022. It was thereafter committed to various Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127.

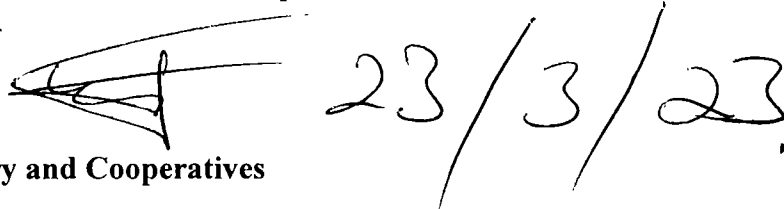
Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16<sup>th</sup> December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment. Further, vide a letter Ref: NA/DDC /TRADE/2022/011 dated 21<sup>st</sup> December, 2022 (Annex 4), the Committee invited the following key stakeholders to provide written submissions on the proposed amendments to the said Acts: The Attorney General, the Principal Secretary in the State Department for Cooperatives, the Principal Secretary State Department for Trade, the Principal Secretary in the State Department for Industry, the Chief Executive Officer for Sacco Societies Regulatory Authority, the Secretary of the Kenya Law Reform Commission, the Chief Executive Officer of the Kenya Private Sector Alliance, the Chief Executive Officer Kenya Association of Manufacturers and the Chief Executive Officer of the Scrap Metal Council.

From the foregoing, the Committee received views from the various stakeholders and thereafter held meetings with various stakeholders where submissions were received and the presentations considered before adoption of this report. Having considered the proposed amendments and based on analysis of submissions, the Committee made observations for each of the proposed amendments to the Local Manufacturers (Export Compensation) Act, Cap 482, The Co-operative Societies Act, No. 12 of 1997 The Scrap Metal Act, No 1 of 2015 as contained in Part IV of this Report.

Having reviewed the proposed amendments to the Local Manufacturers (Export Compensation) Act, Cap 482, The Co-operative Societies Act, No. 12 of 1997, The Scrap Metal Act, No 1 of 2015, 2019 as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), the Committee recommends:

- (1) **THAT** the proposed amendments to section 10(2) of the **Local Manufacturers (Export Compensation) Act, Cap 482** be proceeded with as proposed;
- (2) **THAT** the proposed amendments to section 94(3) of the **Cooperative Societies Act, 1997** be proceeded with as proposed; and
- (3) **THAT** the proposed amendments to section 2 of the **Scrap Metal Act, 2015** be amended as proposed in Chapter five of this Report.

Hon. James Mwangi Gakuya, M.P.  
Departmental Committee on Trade, Industry and Cooperatives



Handwritten signature and date: 23/3/23

## CHAPTER ONE

### 1.0 PREFACE

#### 1.1 Introduction

1. This report details the consideration by the Departmental Committee on Trade, Industry and Cooperatives of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022).
2. The Bill was published on 22nd November 2022 and read a First Time in the House on 8th December, 2022. It was thereafter committed to various Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127. Specifically, the Committee considered amendments proposed to the **Local Manufacturers (Export Compensation) Act, Cap 482, The Co-operative Societies Act, No. 12 of 1997, The Scrap Metal Act, No 1 of 2015.**

#### 1.2 Establishment and Mandate of the Committee

3. The Departmental Committee on Trade, Industry and Cooperatives is one of the Departmental Committees of the National Assembly established under Standing Order 216. The functions and mandate of the Committee include, among others, **“to study and review all legislation referred to it”**.
4. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Trade, including securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development, Micro, small & medium enterprise (MSMEs), and small and medium enterprise (SMEs), intellectual property, industry standards, anti-counterfeit and cooperative development.
5. In executing its mandate, the Committee oversees the Ministry of Investment, Trade and Industry and the Ministry of Cooperatives and Micro, Medium and Small Enterprises (MSMEs).

### 1.3 Committee Membership

6. The Departmental Committee on Communication, Information and Innovation was constituted by the House on Thursday, 27th October 2022 and comprises the following Members:

#### **Chairperson**

Hon. James Mwangi Gakuya, MP  
Embakasi North Constituency  
**UDA Party**

#### **Vice-Chairperson**

Hon Kitany Jebet Marianne, MP  
Aldai Constituency  
**UDA Party**

#### **Members**

Hon. Dr. Oundo Wilberforce Ojiambo, MP  
Funyula Constituency  
**ODM Party**

Hon. Korir Adams Kipsanai, MP  
Keiyo North Constituency  
**UDA Party**

Hon. Adagala Beatrice Kahai, MP  
Vihiga Constituency  
**ANC Party**

Hon. Maina Mwago Amos, MP  
Starehe  
**JP Party**

Hon. Githinji Robert Gichimu, MP  
Gichugu Constituency  
**UDA Party**

Hon. Sakimba Parashina Samwel, MP  
Kajiado South Constituency  
**ODM Party**

Hon. Hassan Kulow Maalim, MP  
Banissa Constituency  
**UDM Party**

Hon. Wanaina Antony Njoroge, MP  
Kieni Constituency  
**UDA Party**

Hon. Kamene Joyce, MP  
Machakos Constituency  
**WDM Party**

Hon. Waithaka John Machua  
Kiambu Constituency  
**UDA Party**

Hon. Mwalyo Joshua Mbithi, MP  
Masinga Constituency  
**Independent Member**

Hon. Oluoch Anthony, MP  
Mathare Constituency  
**ODM Party**

Hon. Guyo Adhe Wario, MP  
North Horr Constituency  
**KANU Party**

#### 1.4 Committee Secretariat

7. The Committee is facilitated by the following staff:

Nebert Ikai Lomechu  
**Clerk Assistant II/Head of Secretariat**

Mr. Kimathi Samson Timothy  
**Clerk Assistant III**

Ms. Doreen Karani  
**Senior Legal Counsel**

Ms. Loice Olesia  
**Fiscal Analyst III**

Mr. Arkan Ali Mumin  
**Research Officer III**

Ms. Mercy Mayende  
**Media Relations Officer**

Mr. Josphat Bundotich  
**Sergeant-At-Arms**

Mr. Onesmus Kiragu  
**Senior Sergeant-At-Arms**

Mr. Cosmas Akhonya  
**Audio Recording Officer**

Mr. Benjamin Ochutsi  
**Hansard Officer**

Ms. Pricillah Saidi  
**Research Officer III**

## CHAPTER TWO

### 2.0 PUBLIC PARTICIPATION/ STAKEHOLDERS CONSULTATION

8. Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16<sup>th</sup> December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment.
9. Submissions (annex 4) were received from the following stakeholders—
  - (a) The Ministry of Trade, Industry and Investments through the Principal Secretary, State Department of Industry
  - (b) The Ministry of MSMEs and CO-Operatives through the Principal Secretary, State Dept. of Cooperatives;
  - (c) Office of the Director of Public Prosecutions (ODPP);
  - (d) The Kenya Law Reform Commission;
  - (e) Scrap Metal Council;
  - (f) Adrian Kamotho Njenga & Co. Advocates;
  - (g) Consumer Federation of Kenya(COFEK); and
  - (h) Kenya Association of Manufacturers.
10. Through the placement of adverts in the print media on 16<sup>th</sup> December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment. Further, vide a letter Ref: NA/DDC /TRADE/2022/011 dated 21<sup>st</sup> December, 2022 (Annex 4), the Committee invited the following key stakeholders to provide written submissions on the proposed amendments to the said Acts: The Attorney General, the Principal Secretary in the State Department for Cooperatives, the Principal Secretary in the State Department for Trade, the Principal Secretary in the State Department for Industry, the Chief Executive Officer for Sacco Societies Regulatory Authority, the Secretary of the Kenya Law Reform Commission, the Chief Executive Officer of the Kenya Private Sector Alliance, the Chief Executive Officer Kenya Association of Manufacturers and the Chief Executive Officer of the Scrap Metal Council.
11. Further, vide a letter Ref: NA/DDC /TRADE /2023/009 dated 2<sup>nd</sup> March, 2023 (Annex 4), the Committee invited the following key stakeholders to provide appear and make oral submissions on the Bill. (Annex 5).
12. The analysis of the submissions made by the stakeholders are contained in Chapter three.

## **CHAPTER THREE**

### **3.0 ANALYSIS OF THE PROPOSED AMENDMENTS**

13. The Bill in particular proposes several amendments to the Local Manufacturers (Export Compensation) Act, Cap 482, The Co-operative Societies Act, No. 12 of 1997, The Scrap Metal Act, No 1 of 2015.
14. The following is an analysis of the proposed amendments and the submissions made by various stakeholders on each of the proposed amendments:

#### **3.1 Amendments to the Local Manufacturers (Export Compensation) Act, (Cap 482)**

15. The Bill seeks to amend section 10(2) of the Act by deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions"

##### **Submissions by the State Department for Industry**

16. The State Department supported the amendments as they seek to harmonise the provisions of the Act with the functions of the DPP under Article 157

##### **Submissions by the State Department for Trade**

17. The State Department supported the amendments as they seek to harmonise the provisions of the Act with the functions of the DPP under Article 157

##### **Submissions by the Office of the Director of Public Prosecutions**

18. The Office of the Director of Public Prosecutions supported the amendment as it will bring the provisions of the Act into conformity with Article 157 of the Constitution.

##### **Submissions by the Kenya Law Reform Commission**

19. The Kenya Law Reform Commission noted that the amendment was commendable and is pursuant to Article 157 (6) (a) which provides for the State prosecutorial powers of the Director of Public Prosecutions.

##### **Committee Observations**

20. The committee observed that the rationale of the amendment is to align provisions concerning prosecutions for criminal offences under the Act with the provisions of Article 157 of the Constitution noting that state prosecutorial powers are constitutionally endowed upon the Director of Public Prosecutions and not the Attorney General whose office previously handled prosecutions under the old constitutional order.

#### **3.2 Amendments to the Cooperatives Societies Act, 2007**

21. The Bill seeks to amend section 94(3) of the Act by deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions"

### **Submissions by the State Department for Cooperatives**

22. The State Department supported the amendments as they seek to harmonise the provisions of the Act with the functions of the DPP under Article 157

### **Submissions by the Office of the Director of Public Prosecutions**

23. The Office of the Director of Public Prosecutions supported the amendment as it will bring the provisions of the Act into conformity with Article 157 of the Constitution.

### **Submissions by the Kenya Law Reform Commission**

24. The Kenya Law Reform Commission noted that the amendment was commendable and is pursuant to Article 157 (6) (a) which provides for the State prosecutorial powers of the Director of Public Prosecutions.

### **Committee Observations**

25. The committee observed that the rationale of the amendment is to align provisions concerning prosecutions for criminal offences under the Act with the provisions of Article 157(6) of the Constitution noting that state prosecutorial powers are constitutionally endowed upon the Director of Public Prosecutions and not the Attorney-General whose office previously handled prosecutions under the old constitutional order.

### **3.3 Amendments to the Scrap Metal Act**

26. The Bill proposes to amend the Scrap Metal Act in section 2 by inserting the following new definitions in proper alphabetical sequence—

“Authority” means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act

“critical national infrastructure” means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect the government’s ability to undertake national defence and security;

“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;

“smelter” means an installation or factory for smelting metal from its ore or means a person engaged in the business of smelting”; and

“steel fabricators” means an installation or factory for the production of metal structures using a range of processes such as cutting, bending or assembling, which generates scrap metal in their processes.

### **Submissions by the State Department for Industry**

The State Department requested for the Committee to step down the amendments in favour of a more comprehensive Bill in the future

### **Submissions by the Scrap Metal Council**

27. The Scrap Metal Council requested that amendments be withdrawn to pave way for the introduction of the amendments as a comprehensive stand-alone Bill in the future.

### **Submissions by the Kenya Association of Manufacturers**

28. The Kenya Association of Manufacturers requested that amendments be withdrawn to pave way for the adequate consultation with business before their consideration.

### **Submissions by the Kenya Law Reform Commission**

29. The Kenya Law Reform Commission noted that the only proposed amendment to the Scrap Metal Act are proposed definitions to be introduced under section 2. The words are not found anywhere in the Act and neither are there substantive amendments proposed in the body of the Act. Definitions cannot stand alone and without associated substantive provisions, the amendments lack meaning.

30. There is a disarrangement of proposed amendments to the Energy Act and the Scrap Metal Act and thus the substantive amendments to support the proposed definitions appear in the Energy Act and may be moved to the Scrap Metal Act.

### **Submissions by the Adrian Kamotho Njenga & Co. Advocates**

31. The law firm was opposed to the amendments for the following reasons—

- (a) the amendments do not qualify to be in an omnibus bill and ought to be subjected to a rigorous public participation process
- (b) the amendments are in conflict with other statutes which would require amendment
- (c) similar proposals had been proposed through Scrap metal Dealers Rules (no 84 of 2022) that were rejected by the committee on Delegated Legislation
- (d) the amendments proposed to section 24 of the Scrap Metal Act run contrary to the provisions of sections 53, 163, 164, 165 of the Public Procurement and Asset Disposal Act, 2015
- (e) there is no legislative framework mandating the numerical machining complex and Kenya Shipyard complex the legal mandate to deal with scrap metal
- (f) notwithstanding the government shareholding therein the two are limited companies and should not be granted leeway to interfere with the operative mandates and dictate the asset disposal process of legally established state entities
- (g) the proposal under 1B is vague and would be difficult to implement given the subjectivity with which it is couched

### Submissions by the Consumer Federation of Kenya (COFEK)

32. The Federation was opposed to the amendments for the following reasons—

- (a) The Cabinet Secretary for Industrialization fatally erred in transmitting the impugned amendments without regard to the Scrap Metal Council (SMC) - on which the undersigned is a member and Chairperson of the Technical Committee. This move contravened provisions and especially the letter and spirit of Section 32(1) of the Act;
- (b) The Cabinet Secretary has been deliberately been mis-reading and mis-interpreting Section 7(2) of the Act “The Ministry responsible for matters relating to industrialization shall provide secretariat services to the Council” to purport to micro manage the Council in an unlawful manner so as to remove the clear provisions of being a body corporate as per Section 3(2) which states that “The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of ...” If there was ever a miscellaneous amendment was to delete the contradictory Section 7(2).
- (c) The Cabinet Secretary purported to remove the undersigned representative of COFEK from the Council on flimsy grounds – which included for having opposed imposition of amendments to the Act and Regulations to the Act (which were annulled *in toto* by the National Assembly in June, 2022 on the recommendation of the Committee on Delegated Legislation
- (d) That arising from Paragraph 3.3 hereinabove, the undersigned was reinstated by High Court in Nairobi and that the matters in question – both of amending the Act and annulled Regulations are actively before the Employment and Labour Relations Court in ELRC PET. No. E151/2022 of COFEK vs. Ministry of Trade and Industrialization & 4 others. It will be an act of raw breach of *subjudice* rule should the National Assembly go ahead and consider the proposed amendments before the said Petition is determined.
- (e) That the proposed amendments including terminologies, if allowed, will distort the object of the Act and render the law superfluous at the expense of selfish interests being advanced through the Cabinet Secretary for Industrialization. Examples would suffice;
- (f) Purporting to issue a special license for copper, aluminum, iron and their alloys (a mix of metal compounds) will negate the essence of separating and unbundling scrap metals. It will equally amount to double-licensing (and creating difficult- to- regulate super dealers) because there is already a standard dealer license as contemplated in the Act
- (g) Restriction of disposal of scrap metal from public agencies and offering preferential procurement to Numerical Machining Complex and Kenya Shipyard Ltd is unconstitutional on account of discrimination as at Article 27(4) and the move purports to amend the Public Procurement and Disposal Act. Using one Act (Scrap Metal Act, 2015) to purport to amend the laws that establish the Numerical Machining Complex and Kenya Shipyard Ltd is not a neat process especially via the Miscellaneous Amendment Bill
- (h) That hereinabove are highly substantive and fail the threshold of Miscellaneous Amendments as per various Authorities from with a few samples herein below-

- (i) What is the rationale for Miscellaneous Amendments? The purpose of as was observed in *Law Society of Kenya & Another (2016) e KLR*, by the five judge bench is, ‘it is therefore clear that both on policy and good governance, which is one of the values and principles of governance in Article 10 of the Constitution, which values and principles form the foundation of our State and Nation as decreed in Article 4(2) of the Constitution, omnibus amendments in the form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.
- (ii) ‘the practice in the United States of America as stated by Louis Massicotte, is varied with some states permitting omnibus bills and other restricting bills to a single issue. In a 1901 American case of *Commonwealth vs. Barnett* (199 US. 161) the court stated that: “Bills, popularly called omnibus bills, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits”.

### Committee Observations

33. The amendments proposed are new definitions under section 2. These terminologies proposed in the Bill to be inserted as amendments are neither used anywhere in the Scrap Metal Act nor are they proposed to be included within the body of the Act.
34. It is however observed that the substantive provisions to support the words that are proposed to be defined fall within the amendments that are erroneously appearing under the Energy Act. It is proposed by KLRC that the said erroneously be moved from the Energy Act to the amendments under the Scrap Metal Act.
35. As regards the proposal by KLRC, it is observed that such an action may trigger a question of whether the Committee/ National Assembly will have conducted *meaningful* public participation and also whether the same would be admissible under the provisions of standing order 133. This is for the reason that what has been subjected to public participation under the Scrap Metal Act is with regard to the proposed new definitions only. An interested stakeholder or ordinary citizen may be unaware that the proposals concerning Scrap Metal erroneously appeared under the amendments to the Energy Act and may not have had opportunity to give views on the same. In this respect also, court jurisprudence on the above issue indicates that new provisions introduced at the committee stage having not been subjected to public participation have been declared as unconstitutional on that material anomaly (want of meaningful public participation).
36. Further, the Committee observed the new amendments proposed by stakeholders, particularly by the State Department for Industry, are inadmissible as they expand the subject of the Bill contrary to Standing Order 133(5). The Principal Secretary indeed confirmed that the Ministry would require more time for stakeholder engagement and to reintroduce the amendments as a stand-alone amendment bill.

37. The committee observed that the other stakeholders who had presented submissions were particularly opposed to the amendments and the Committee therefore concurred with the proposal by the Ministry and the Scrap Metal Council and proposes to delete the amendments to pave way for the introduction of the amendments in a comprehensive amendment Bill to the Scrap Metal Act.

## CHAPTER FOUR

### 4.0 COMMITTEE OBSERVATIONS

38. Having considered the proposed amendments, the Committee observed **THAT**:

#### **The Local Manufactures (Export compensation) Act**

- (1) The amendment to section 10 is required as as it will bring the provisions of the Act into conformity with Article 157 of the Constitution on the powers of the Director of Public Prosecutions.

#### **The Cooperative Societies Act**

- (2) The amendment to section 94(3) is required as it will bring the provisions of the Act into conformity with Article 157 of the Constitution on the powers of the Director of Public Prosecutions.

#### **The Scrap Metal Act**

- (3) The amendment to section 2 be rejected since the proposed words to be defined are not found within the body of the Act. There are no further amendments proposed to the body of the Act hence the proposed amendments ought to be rejected for the reason that definitions cannot stand alone and without associated substantive provisions, they amendments lack meaning.

## CHAPTER FIVE

### COMMITTEE RECOMMENDATIONS

39. Pursuant to Standing Order 127, the Committee recommends:

- (a) **THAT** the proposed amendment to section 10(2) of the **Local Manufactures (Export compensation) Act** be proceeded with as proposed;
- (b) **THAT** the proposed amendment to section 94(3) of the **Cooperative Societies Act** be proceeded with as proposed;
- (c) **THAT** with respect to amendments to the **Scrap Metal Act**, the Schedule to the Bill be amended by deleting the proposed amendment to section 2

# **Report Adoption Schedule**



PARLIAMENT OF KENYA  
NATIONAL ASSEMBLY  
13<sup>TH</sup> PARLIAMENT  
SECOND SESSION (2023)

TRADE, INDUSTRY AND COOPERATIVES COMMITTEE

ADOPTION LIST

DATE: 16/03/2023...

VENUE: PANARI HOTEL.....

AGENDA: Adoption of the report on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)

No.	HON MEMBER	SIGNATURE
1.	HON. GAKUYA JAMES MWANGI, MP – <i>Chairperson</i>	
2.	HON. KITANY MARIANNE JEBET, MP – <i>Vice Chairperson</i>	
3.	HON.DR.OUNDO WILBERFORCE OJIAMBO, MP	
4.	HON.ADAGALA BEATRICE KAHAI, MP	
5.	HON. GITHINJI ROBERT GICHIMU, MP	
6.	HON.HASSAN KULOW MAALIM, MP	
7.	HON. KAMENE JOYCE, MP.	
8.	HON.MWALYO JOSHUA MBITHI MUTUA,MP	
9.	HON.OLUOCH ANTHONY TOM, MP	
10.	HON.GUYO ADHE WARIO, MP	
11.	HON. KORIR ADAMS KIPSANAI, MP	
12.	HON.MAINA MWAGO AMOS, MP	
13.	HON.SAKIMBA PARASHINA SAMUEL, MP	
14.	HON. WAINAINA ANTONY NJOROGE, MP	
15.	HON. WAITHAKA JOHN MACHUA, MP	

Nebert Ikai  
FOR: CLERK OF THE NATIONAL ASSEMBLY

# **Committee Minutes**

**MINUTES OF THE 27<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES HELD ON THURSDAY, 9<sup>TH</sup> MARCH 2023, AT WINDSOR GOLF HOTEL, KIAMBU COUNTY, AT 10.00 AM.**

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**PRESENT**

1. Hon. Gakuya James Mwangi M.P. - **Chairperson**
2. Hon. Kitany Marianne Jebet,MP - **Vice Chairperson**
3. Hon. Dr Oundo Wilberforce Ojiambo, M.P.
4. Hon. Adagala Beatrice Kahai, M.P
5. Hon. Mwalyo Joshua Mbithi Mutua, M.P.
6. Hon. Hassan Kulow Maalim, M.P.
7. Hon. Oluoch Anthony Tom, MP
8. Hon. Korir Adams Kipsanai, M.P
9. Hon. Guyo Adhe Wario, M.P
10. Hon. Maina Mwago Amos, M.P.
11. Hon. Sakimba Parashina Samuel, M.P
12. Hon. Wanaina Antony Njoroge, M.P.
13. Hon. Waithaka John Machua, M.P.

**APOLOGIES**

- 1.Hon. Githinji Robert Gichimu, MP
- 2.Hon. Kamene Joyce, M.P

**IN ATTENDANCE**

**KENYA NATIONAL ASSEMBLY**

1. Mr. Nebert Ikai - Clerk Assistant II.
2. Ms. Doreen Karani - Senior Legal Counsel.
3. Ms. Loice Olesia - Fiscal Analyst III.
4. Ms. Pricillah Saidi - Research Officer III
5. Mr. Onesmus Kamau - Serjeant At Arms
6. Mr. Cosmos Akhonia - Audio Officer.

**MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY.**

1. Dr. Juma Mukhwana - Principal Secretary State department for Industry
2. Mr. Abubakar Hassan - Principal Secretary State department for Investments
3. Mr.Hezekiah B Okeyo - Industry Secretary.
4. Mr.Martin Chesire - Chief executive Officer,KENAS
5. Eng,David Mwadali - Managing Director,NMC
6. Ms. Purity Kimathi - General Manager,KNTC
7. Dr. Robi Mbugua Njoroge - Chief Executive Officer,ACA

**AGENDA**

1. Prayers
2. Preliminaries
3. Confirmation of Previous Minutes.
4. Matters Arising;
5. Meeting with the Ministry of Investments, Trade and industry and Ministry of Cooperatives and SMMES to Statute Law (Miscellaneous Amendment) m Bill, 2022
6. Any Other Business
7. Adjournment

**MIN. NO. NA/TRADE/2023/109: PRELIMINARIES**

The Chairperson called the meeting to order at 10:00AM followed by a word of prayer and introductions.

**MIN. NO. NA/TRADE/2023/110: CONFIRMATION OF PREVIOUS MINUTES AND MATTERS ARISING.**

Confirmation of Minutes was deferred to the next meeting and therefore no matter arose.

**MIN. NO. NA/TRADE/2023/111: MEETING WITH THE MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY AND MINISTRY OF COOPERATIVES AND SMMES TO STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022.**

**Analysis of the Proposed Amendments**

The Bill in particular proposes several amendments to the Local Manufacturers (Export Compensation) Act, Cap 482, The Co-operative Societies Act, No. 12 of 1997, The Scrap Metal Act, No 1 of 2015.

**AMENDMENTS TO THE LOCAL MANUFACTURERS (EXPORT COMPENSATION) ACT, (CAP 482)**

The Bill seeks to amend section 10(2) of the Act by deleting the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”

**Submissions by the State Department for Industry**

The State Department supported the amendments as they seek to harmonise the provisions of the Act with the functions of the DPP under Article 157.

**Submissions by the State Department for Trade**

The State Department supported the amendments as they seek to harmonise the provisions of the Act with the functions of the DPP under Article 157.

**Submissions by the Office of the Director of Public Prosecutions**

The Office of the Director of Public Prosecutions supported the amendment as it will bring the provisions of the Act into conformity with Article 157 of the Constitution.

### **Submissions by the Kenya Law Reform Commission**

The Kenya Law Reform Commission noted that the amendment was commendable and is pursuant to Article 157 (6) (a) which provides for the State prosecutorial powers of the Director of Public Prosecutions.

### **Committee Observations**

The committee observed that the rationale of the amendment is to align provisions concerning prosecutions for criminal offences under the Act with the provisions of Article 157 of the Constitution noting that state prosecutorial powers are constitutionally endowed upon the Director of Public Prosecutions and not the Attorney General whose office previously handled prosecutions under the old constitutional order.

### **AMENDMENTS TO THE COOPERATIVES SOCIETIES ACT, 2007**

The Bill seeks to amend section 94(3) of the Act by deleting the expression “Attorney-General” and substitute therefor the expression “Director of Public Prosecutions”

### **Submissions by the State Department for Cooperatives**

The State Department supported the amendments as they seek to harmonise the provisions of the Act with the functions of the DPP under Article 157

### **Submissions by the Office of the Director of Public Prosecutions**

The Office of the Director of Public Prosecutions supported the amendment as it will bring the provisions of the Act into conformity with Article 157 of the Constitution.

### **Submissions by the Kenya Law Reform Commission**

The Kenya Law Reform Commission noted that the amendment was commendable and is pursuant to Article 157 (6) (a) which provides for the State prosecutorial powers of the Director of Public Prosecutions.

### **Committee Observations**

The committee observed that the rationale of the amendment is to align provisions concerning prosecutions for criminal offences under the Act with the provisions of Article 157(6) of the Constitution noting that state prosecutorial powers are constitutionally endowed upon the Director of Public Prosecutions and not the Attorney-General whose office previously handled prosecutions under the old constitutional order.

### **Amendments to the Scrap Metal Act**

The Bill proposes to amend the Scrap Metal Act in section 2 by inserting the following new definitions in proper alphabetical sequence—

“Authority” means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act

“critical national infrastructure” means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect the government’s ability to undertake national defence and security;

“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;

“smelter” means an installation or factory for smelting metal from its ore or means a person engaged in the business of smelting”; and

“steel fabricators” means an installation or factory for the production of metal structures using a range of processes such as cutting, bending or assembling, which generates scrap metal in their processes.

#### **Submissions by the State Department for Industry**

The State Department requested for the Committee to step down the amendments in favour of a more comprehensive Bill in the future

#### **Submissions by the Scrap Metal Council**

The Scrap Metal Council requested that amendments be withdrawn to pave way for the introduction of the amendments as a comprehensive stand-alone Bill in the future.

#### **Submissions by the Kenya Association of Manufacturers**

The Kenya Association of Manufacturers requested that amendments be withdrawn to pave way for the adequate consultation with business before their consideration.

#### **Submissions by the Kenya Law Reform Commission**

The Kenya Law Reform Commission noted that the only proposed amendment to the Scrap Metal Act are proposed definitions to be introduced under section 2. The words are not found anywhere in the Act and neither are there substantive amendments proposed in the body of the Act. Definitions cannot stand alone and without associated substantive provisions, the amendments lack meaning.

There is a disarrangement of proposed amendments to the Energy Act and the Scrap Metal Act and thus the substantive amendments to support the proposed definitions appear in the Energy Act and may be moved to the Scrap Metal Act.

#### **Other written submission considered by the Committee**

##### **Submission Submissions by the Adrian Kamotho Njenga & Co. Advocates**

The law firm was opposed to the amendments for the following reasons—

- (a) the amendments do not qualify to be in an omnibus bill and ought to be subjected to a rigorous public participation process
- (b) the amendments are in conflict with other statutes which would require amendment
- (c) similar proposals had been proposed through Scrap metal Dealers Rules (no 84 of 2022) that were rejected by the committee on Delegated Legislation
- (d) the amendments proposed to section 24 of the Scrap Metal Act run contrary to the provisions of sections 53, 163, 164, 165 of the Public Procurement and Asset Disposal Act, 2015
- (e) there is no legislative framework mandating the numerical machining complex and Kenya Shipyard complex the legal mandate to deal with scrap metal
- (f) notwithstanding the government shareholding therein the two are limited companies and should not be granted leeway to interfere with the operative mandates and dictate the asset disposal process of legally established state entities
- (g) the proposal under 1B is vague and would be difficult to implement given the subjectivity with which it is couched

### **Submissions by the Consumer Federation of Kenya (COFEK)**

The Federation was opposed to the amendments for the following reasons—

- (a) The Cabinet Secretary for Industrialization fatally erred in transmitting the impugned amendments without regard to the Scrap Metal Council (SMC) - on which the undersigned is a member and Chairperson of the Technical Committee. This move contravened provisions and especially the letter and spirit of Section 32(1) of the Act;
- (b) The Cabinet Secretary has been deliberately been mis-reading and mis-interpreting Section 7(2) of the Act “The Ministry responsible for matters relating to industrialization shall provide secretariat services to the Council” to purport to micro manage the Council in an unlawful manner so as to remove the clear provisions of being a body corporate as per Section 3(2) which states that “The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of ...” If there was ever a miscellaneous amendment was to delete the contradictory Section 7(2).
- (c) The Cabinet Secretary purported to remove the undersigned representative of COFEK from the Council on flimsy grounds – which included for having opposed imposition of amendments to the Act and Regulations to the Act (which were annulled *in toto* by the National Assembly in June, 2022 on the recommendation of the Committee on Delegated Legislation
- (d) That arising from Paragraph 3.3 hereinabove, the undersigned was reinstated by High Court in Nairobi and that the matters in question – both of amending the Act and annulled Regulations are actively before the Employment and Labour Relations Court in ELRC PET. No. E151/2022 of COFEK vs. Ministry of Trade and Industrialization & 4 others. It will be an act of raw breach of *subjudice* rule should the National Assembly go ahead and consider the proposed amendments before the said Petition is determined.
- (e) That the proposed amendments including terminologies, if allowed, will distort the object of the Act and render the law superfluous at the expense of selfish interests being advanced through the Cabinet Secretary for Industrialization. Examples would suffice;

- (f) Purporting to issue a special license for copper, aluminum, iron and their alloys (a mix of metal compounds) will negate the essence of separating and unbundling scrap metals. It will equally amount to double-licensing (and creating difficult- to- regulate super dealers) because there is already a standard dealer license as contemplated in the Act
- (g) Restriction of disposal of scrap metal from public agencies and offering preferential procurement to Numerical Machining Complex and Kenya Shipyard Ltd is unconstitutional on account of discrimination as at Article 27(4) and the move purports to amend the Public Procurement and Disposal Act. Using one Act (Scrap Metal Act, 2015) to purport to amend the laws that establish the Numerical Machining Complex and Kenya Shipyard Ltd is not a neat process especially via the Miscellaneous Amendment Bill
- (h) That hereinabove are highly substantive and fail the threshold of Miscellaneous Amendments as per various Authorities from with a few samples herein below-
  - (i) What is the rationale for Miscellaneous Amendments? The purpose of as was observed in *Law Society of Kenya & Another (2016) e KLR*, by the five judge bench is, *‘it is therefore clear that both on policy and good governance, which is one of the values and principles of governance in Article 10 of the Constitution, which values and principles form the foundation of our State and Nation as decreed in Article 4(2) of the Constitution, omnibus amendments in the form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.*
  - (ii) *‘the practice in the United States of America as stated by Louis Massicotte, is varied with some states permitting omnibus bills and other restricting bills to a single issue. In a 1901 American case of Commonwealth vs. Barnett (199 US. 161) the court stated that: “Bills, popularly called omnibus bills, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits”.*

### **Committee Observations**

1. The amendments proposed are new definitions under section 2. These terminologies proposed in the Bill to be inserted as amendments are neither used anywhere in the Scrap Metal Act nor are they proposed to be included within the body of the Act.
2. It is however observed that the substantive provisions to support the words that are proposed to be defined fall within the amendments that are erroneously appearing under the Energy Act. It is proposed by KLRC that the said erroneously be moved from the Energy Act to the amendments under the Scrap Metal Act.
3. As regards the proposal by KLRC, it is observed that such an action may trigger a question of whether the Committee/ National Assembly will have conducted *meaningful* public participation and also whether the same would be admissible under the provisions of standing

order 133. This is for the reason that what has been subjected to public participation under the Scrap Metal Act is with regard to the proposed new definitions only. An interested stakeholder or ordinary citizen may be unaware that the proposals concerning Scrap Metal erroneously appeared under the amendments to the Energy Act and may not have had opportunity to give views on the same. In this respect also, court jurisprudence on the above issue indicates that new provisions introduced at the committee stage having not been subjected to public participation have been declared as unconstitutional on that material anomaly (want of meaningful public participation).

4. Further, the Committee observed the new amendments proposed by stakeholders, particularly by the State Department for Industry, are inadmissible as they expand the subject of the Bill contrary to Standing Order 133(5). The Principal Secretary indeed confirmed that the Ministry would require more time for stakeholder engagement and to reintroduce the amendments as a stand-alone amendment bill.
5. The committee observed that the other stakeholders who had presented submissions were particularly opposed to the amendments and the Committee therefore concurred with the proposal by the Ministry and the Scrap Metal Council and proposes to delete the amendments to pave way for the introduction of the amendments in a comprehensive amendment Bill to the Scrap Metal Act.

**MIN. NO NA/TRADE/23/112: ANY OTHER BUSINESS AND ADJOURNMENT**

There being no other business, the meeting was adjourned at twelve o'clock. The next meeting will be held on notice.

SIGNED: ..... DATE: 22/3/23  
(CHAIRPERSON: HON.GAKUYA JAMES MWANGI, MP)



**MINUTES OF THE 30<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES HELD ON THURSDAY, 16<sup>TH</sup> MARCH 2023, AT PANARI HOTEL, NAIROBI COUNTY, AT 10.40 AM.**

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**PRESENT**

1. Hon. Gakuya James Mwangi M.P. - **Chairperson**
2. Hon. Githinji Robert Gichimu, MP
3. Hon. Hassan Kulow Maalim, M.P.
4. Hon. Adagala Beatrice Kahai, M.P
5. Hon. Kamene Joyce, M.P.
6. Hon. Mwalyo Joshua Mbithi Mutua, M.P.
7. Hon. Oluoch Anthony Tom, MP
8. Hon. Maina Mwago Amos, M.P.
9. Hon. Wanaina Antony Njoroge, M.P.
10. Hon. Waithaka John Machua, M.P.

**APOLOGIES**

- 1.Hon. Kitany Marianne Jebet,MP - **Vice Chairperson**
- 2.Hon. Dr Oundo Wilberforce Ojiambo, M.P.
- 3.Hon. Guyo Adhe Wario,M.P
- 4.Hon. Korir Adams Kipsanai, M.P
- 5.Hon. Sakimba Parashina Samuel, M.P

**SECRETARIAT**

1. Mr. Nebert Ikai - Clerk Assistant II.
2. Mr. Kimathi Samson Timothy - Clerk Assistant III.
3. Ms. Doreen Karani - Senior Legal Counsel.
4. Ms. Loice Olesia - Fiscal Analyst III.
5. Ms. Pricillah Saidi - Research Officer III
6. Mr. Onesmus Kamau - Serjeant At Arms
7. Mr. Cosmos Akhonia - Audio Officer.

**AGENDA**

1. Prayers
2. Preliminaries
3. Confirmation of Previous Minutes.
4. Matters Arising;
5. Adoption of the report on the Statute Law (Miscellaneous Amendment) Bill, 2022
6. Any Other Business
7. Adjournment

**MIN. NO. NA/TRADE/2023/121: PRELIMINARIES**

The Chairperson called the meeting to order at 10:40AM followed by a word of prayer and introductions.

**MIN. NO. NA/TRADE/2023/122: CONFIRMATION OF PREVIOUS MINUTES AND MATTERS ARISING.**

Confirmation of Minutes was deferred to the next meeting and therefore no matter arose.

**MIN. NO. NA/TRADE/2023/123: ADOPTION OF THE REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022.**

The report on the consideration the Statute Law (Miscellaneous Amendment) Bill, 2022 was unanimously adopted by the Committee having been proposed by Hon. Hassan Kulow Maalim, M.P. and seconded by Hon. Adagala Beatrice Kahai, M.P.

**MIN. NO NA/TRADE/23/124: ANY OTHER BUSINESS AND ADJOURNMENT**

There being no other business, the meeting was adjourned at twelve o'clock. The next meeting will be held on notice.

SIGNED:  ..... DATE: 23/3/23  
(CHAIRPERSON: HON.GAKUYA JAMES MWANGI, MP)

# **Copy of Newspaper Advert**





REPUBLIC OF KENYA  
THIRTEENTH PARLIAMENT (FIRST SESSION) 2022  
THE NATIONAL ASSEMBLY

In the Matter of Consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) is sponsored by the Leader of Majority Party, Hon. Kimani Ichung'uah, CBS, MP is an Omnibus Bill which seeks to amend various statutes in keeping with practice of making minor amendments which do not merit the publication of separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes:-

1. The Appellate Jurisdiction Act (Cap 9)
2. The Vexatious Proceedings Act (Cap 41)
3. The Extradition (Commonwealth Countries) Act (Cap 77)
4. The National Flag, Emblems and Names Act (Cap 99)
5. The Official Secrets Act (Cap 187)
6. The Geneva Conventions Act (Cap 198)
7. The Pharmacy and Poisons Act (Cap 244)
8. The Mental Health Act (Cap 248)
9. The Land Consolidation Act (Cap 283)
10. The Land Adjudication Act (Cap 284)
11. The Marine Insurance Act (Cap 290)
12. The Local Manufacturers (Export Compensation) Act (Cap 482)
13. The Capital Markets Act (Cap 485A)
14. The Architects and Quantity Surveyors Act (Cap 525)
15. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)
16. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
17. The Retirement Benefits Act, 1997 (No. 3 of 1997)
18. The Co-operatives Societies Act, 1997 (No. 12 of 1997)
19. The Central Depositories Act, 2000 (No. 4 of 2000)
20. The Sexual Offences Act, 2006 (No. 3 of 2006)
21. The National Museums and Heritage Act, 2006 (No. 6 of 2006)
22. The Labour Institutions Act, 2007 (No. 12 of 2007)
23. The Accountants Act, 2008 (No. 15 of 2008)
24. The International Crimes Act, 2008 (No. 16 of 2008)
25. The Biosafety Act, 2009 (No. 2 of 2009)
26. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)
27. The Tourism Act, 2011 (No. 28 of 2011)
28. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)

The Bill seeks to amend these Acts in order to harmonise their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

29. The Judicial Service Commission Act, 2011 (No. 1 of 2011)

30. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)

31. The Salaries and Remuneration Commission Act, 2011 (No. 14 of 2011)

32. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)

33. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)

34. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)

35. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)

36. The National Police Service Commission Act, 2011 (No. 30 of 2011)

37. The National Land Commission Act, 2012 (No. 5 of 2012)

38. The Teachers Service Commission Act, 2012 (No. 20 of 2012)

39. The Controller of Budget Act, 2016 (No. 26 of 2016)

40. The Public Service Commission Act, 2017 (No. 17 of 2017)

The Bill seeks to amend these Acts to require the presentation of Annual Reports by the Commissions/Offices within six (6) months after the end of the year to which they relate.

41. The Excise Duty Act, 2015 (No. 23 of 2015)

The Bill seeks to amend the First Schedule to the Excise Duty Act to correct mistakes in a tariff number.

42. The Judicature Act (Cap 8)

The Bill proposes to amend the Act to increase the number of Judges of the Court of Appeal from thirty to seventy.

43. The Penal Code (Cap 83)

The Bill seeks to amend Section 246 of the Act by deleting expressions therein which may be discriminatory towards persons with mental disabilities.

44. The Criminal Procedure Code (Cap 75)

The Bill seeks to amend the statute to harmonize terms therein with the provisions of the Constitution of Kenya, 2010 and the National Police Service Act, 2011. It also seeks to allow the Director of Public Prosecutions to delegate powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2006.

45. The Evidence Act (Cap 80)

The Bill seeks to amend the Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with the current technological advancements. It also seeks to delete expressions which may be perceived to be discriminatory to persons with mental disabilities.

46. The Public Holidays Act (Cap 110)

The Bill proposes to amend the Public Holidays Act to provide that 10<sup>th</sup> October be *Muhuru Day* and 28<sup>th</sup> December *Uguzumani Day*.

47. The Copyright Act 2001 (No. 12 of 2001)

The Bill seeks to amend the Act to provide for the equitable remuneration of performers and reducers of sound recordings and expand the responsibilities of collective management organisations towards authors and performers. It also seeks to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

48. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)

50. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)

The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also seeks to enhance the penalty for organised crimes and to extend the period in which an order obtained in relation to the tracing of property shall lapse.

51. Leadership and Integrity Act, 2012 (No. 19 of 2012)

The Bill seeks to amend the Act to allow the Ethics and Anti-Corruption Commission to verify the suitability of candidates seeking public service appointments and make recommendations.

52. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)

The Bill seeks to amend the Act to provide for the appointment of the Director-General, for a renewable period of five years instead of three.

53. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)

The Bill seeks to amend the Act to clarify the provisions on the attendance of ex-officio members at the Commission meetings.

54. The Water Act, 2016 (No. 43 of 2016)

The Bill seeks to amend the Act to include the Attorney-General as a member of the Water Resources Management Board and to require the appointments of Chief Executive Officers under the Act to be in line with guidelines issued by the Salaries and Remuneration Commission. The Bill further seeks to allow the designation of representatives to sit in Boards in place of designated officer holders and the introduction of new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.

55. The Bribery Act, 2016 (No. 47 of 2016)

The Bill seeks to amend the Act to include both private and public entities in the scope and application of the Act and to make other minor amendments.

56. The Scrap Metal Act, 2015 (No. 1 of 2015)

The Bill seeks to amend the Act to provide for the issuance of a special license for dealing in copper, aluminum, and their alloys. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely: Numerical Machining Complex and the Kenya Shipyard Limited and the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act in order to deter vandalism and other prohibited acts.

57. The Energy Act, 2019 (No. 1 of 2019)

The Bill proposes to amend the Act to give effect to the recommendations of the "Presidential Task Force on the Review of Power Purchase Agreements". The recommendations include addressing the overlapping functions between the Energy Petroleum Regulatory Authority and the Ministry responsible for Energy matters.

58. The Housing Act (Cap 17)

The Bill seeks to amend the Act by placing definitions of terminologies in proper alphabetical sequence.

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE	
i. The Vexatious Proceedings Act (Cap 41)	Departmental Committee on Justice and Legal Affairs
ii. The Extradition (Commonwealth Countries) Act (Cap 77)	
iii. The Official Secrets Act (Cap 187)	
iv. The Sexual Offences Act, 2006 (No. 3 of 2006)	
v. The International Crimes Act, 2008 (No. 16 of 2008)	
vi. The Judicial Service Commission Act, 2011 (No. 1 of 2011)	
vii. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)	
viii. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)	
ix. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)	
x. The Penal Code (Cap 83)	
xi. The Criminal Procedure Code (Cap 75)	
xii. The Evidence Act (Cap 80)	
xiii. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	
xiv. Leadership and Integrity Act, 2012 (No. 19 of 2012)	
xv. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)	
xvi. The Bribery Act, 2016 (No. 47 of 2016)	
xvii. The Judicature Act (Cap 8)	
xviii. The Appellate Jurisdiction Act (Cap 9)	
i. The Capital Markets Act (Cap 485A)	Departmental Committee on Finance and National Planning
ii. The Retirement Benefits Act, 1997 (No. 3 of 1997)	
iii. The Central Depositories Act, 2000 (No. 4 of 2000)	
iv. The Accountants Act, 2008 (No. 15 of 2008)	
v. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)	
vi. The Salaries and Remuneration Commission Act, 2011 (No. 14 of 2011)	
vii. The Controller of Budget Act, 2016 (No. 26 of 2016)	
viii. The Excise Duty Act, 2015 (No. 23 of 2015)	

i. The National Flag, Emblems and Names Act (Cap 99)	Departmental Committee on Administration and Internal Affairs
ii. The Public Holidays Act (Cap 110)	
iii. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)	
iv. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)	
v. The National Police Service Commission Act, 2011 (No. 30 of 2011)	
vi. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)	
i. The Marine Insurance Act (Cap 290)	Departmental Committee on Transport and Infrastructure
ii. The Kenya Roads Board Act, 1999 (No. 7 of 1999)	
iii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)	
iv. The Merchant Shipping Act, 2009 (No. 4 of 2009)	
i. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)	Departmental Committee on Education
ii. The Teachers Service Commission Act, 2012 (No. 20 of 2012)	
i. The Land Consolidation Act (Cap 283)	Departmental Committee on Lands
ii. The Land Adjudication Act (Cap 284)	
iii. The National Land Commission Act, 2012 (No. 5 of 2012)	
i. The Co-operatives Societies Act, 1997 (No. 12 of 1997)	Departmental Committee on Trade, Industry and Cooperatives
ii. The Scrap Metal Act, 2015 (No. 1 of 2015)	
iii. The Local Manufacturers (Export Compensation) Act (Cap 482)	
i. The Pharmacy and Poisons Act (Cap 244)	Departmental Committee on Health
ii. The Mental Health Act (Cap 248)	
i. The Labour Institutions Act, 2007 (No. 12 of 2007)	Departmental Committee on Labour
ii. The Public Service Commission Act, 2017 (No. 17 of 2017)	
i. The Architects and Quantity Surveyors Act (Cap 525)	Departmental Committee on Housing and Public Works
ii. The Housing Act (Cap 17)	
i. The National Museums and Heritage Act, 2006 (No. 6 of 2006)	Departmental Committee on Sports and Culture
ii. The Copyright Act 2001 (No. 12 of 2001)	
The Tourism Act, 2011 (No. 28 of 2011)	Departmental Committee on Tourism and Wildlife
The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)	Departmental Committee on Social Protection
The Geneva Conventions Act (Cap 198)	Departmental Committee on Defence, Intelligence and Foreign Relations
The Energy Act, 2019 (No. 1 of 2019)	Departmental Committee on Energy
The Water Act, 2016 (No. 43 of 2016)	Departmental Committee on Blue Economy and Irrigation
The Biosafety Act, 2009 (No. 2 of 2009)	Departmental Committee on Agriculture and Livestock

IN COMPLIANCE with Article 118(1) (a) of the Constitution and Standing Order 127(1), Departmental Committees hereby invite the public and interested stakeholders to submit memoranda on the Bill.

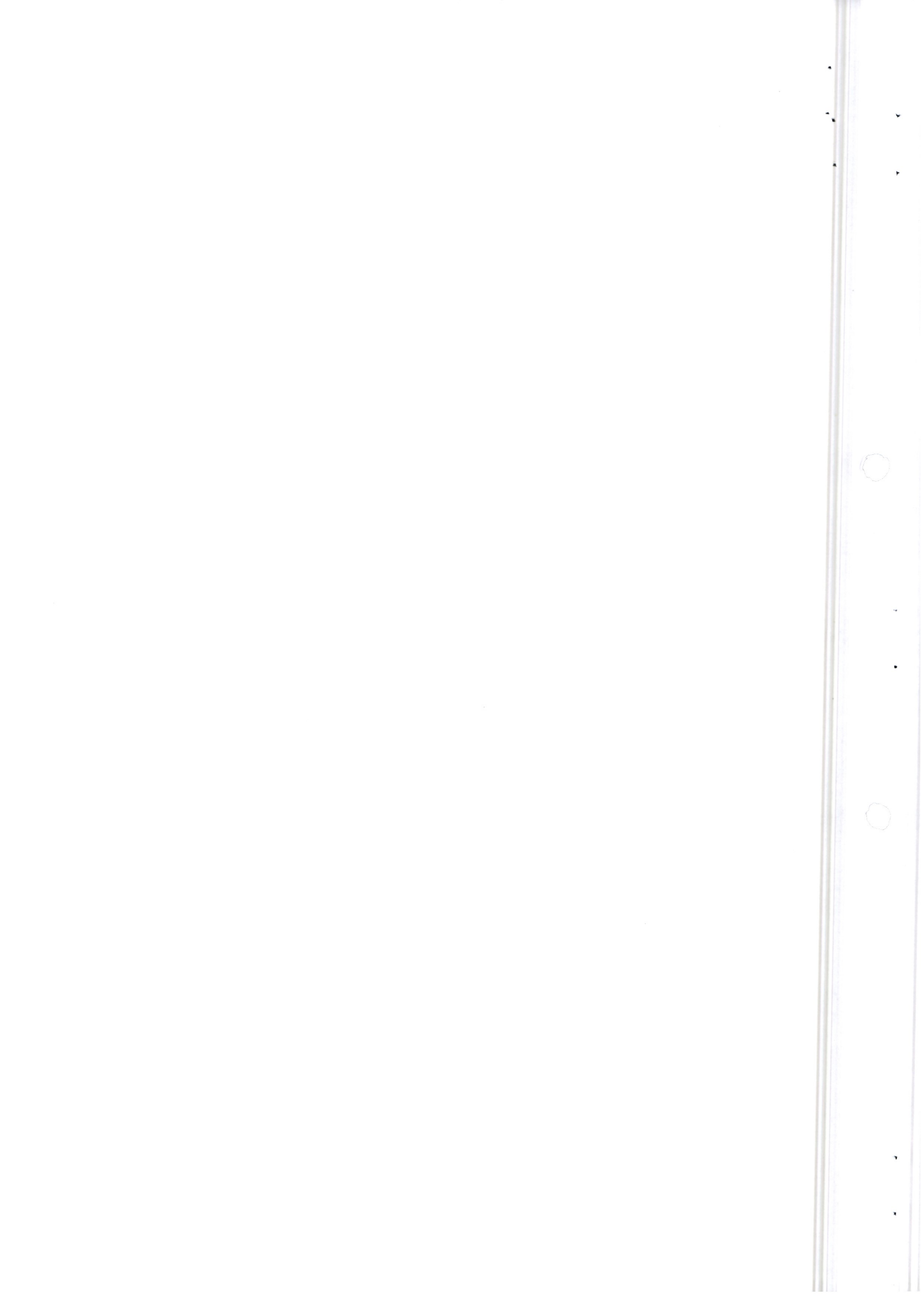
Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building on [www.parliament.go.ke](http://www.parliament.go.ke) and the National Assembly website [www.na.go.ke](http://www.na.go.ke).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41 00100, Nairobi; or hand-delivered to the Office of the Clerk, Main Parliament Building Nairobi; or emailed to [secretary@na.go.ke](mailto:secretary@na.go.ke) to be received on or before Friday, 8<sup>th</sup> Jan 2023 by 5.00 pm.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY

18<sup>th</sup> December, 2022

# **Letter Seeking Stakeholders**



Telegraphic Address  
'Bunge', Nairobi  
Tel. +254-020-2848000  
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www.parliament.go.ke



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

Clerk's Chambers  
National Assembly  
Parliament Buildings  
P.O. Box 11842-00100  
NAIROBI, Kenya

Ref. NA/DDC/TRADE/2022/011

21<sup>st</sup> December, 2022

Hon. Justin B. N. Muturi, EGH  
Attorney General of the Republic of Kenya  
Office of the Attorney General and Department of Justice  
Sheria house  
Harambee Avenue  
**NAIROBI**

Mr. Patric Kiburi Kilemi  
Principal Secretary  
State Department for Cooperatives  
Ministry of Trade Industry and Investment  
**NAIROBI**

Mr. Peter Njuguna  
Chief Executive Officer  
Sacco Society Regulatory Authority (SASRA)  
Upper Hill Road, UAP Old Mutual Tower, 19th Floor  
**NAIROBI,**

Mr. Joash Dache  
Secretary /Chief Executive Officer  
Kenya Law Reform Commission (K.L.R.C)  
P.O BOX 34999-00100.  
**NAIROBI**

Ms. Carole Kariuki  
Chief Executive Officer  
Kenya Private Sector Alliance (K.E.P.S.A)  
P.O BOX 3556-00100  
**NAIROBI**

Dear Mr. Kilemi:

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE COOPERATIVE SOCIETIES ACT, OF 1997 (NO. 12 OF 1997)**

The Departmental Committee on Trade, Industry and Cooperatives is established under National Assembly Standing Order 216 which amongst others mandates it to "**study and review all legislation referred to it**".

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.60 of 2022) on the Cooperative Societies Act, of 1997 (No 12 of 1997) (copy of which is forwarded

herewith) was Read a First Time on Thursday 8<sup>th</sup> December, 2022 and referred to the Departmental Committee on Trade, Industry and Cooperatives for consideration and reporting to the House. Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3) require Parliament to facilitate public participation and involvement of the public in the conduct of its business and that of its Committees.

The Bill seeks to amend the Act in order to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

The Committee has identified your organization as a key stakeholder in consideration of the Bill. The purpose of this letter is to seek your views on the proposed amendments to the Cooperative Societies Act, of 1997 (No 12 of 1997). In view of short timelines within which the Committee is required to consider the Bill and report to the House, it will be appreciated if your views reach the Office of the Clerk of the National Assembly, First Floor, Main Parliament Building not later than **Friday, 13<sup>th</sup> January, 2023**. Soft copies of the representations may be emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

Our Liaison officers on this subject are **Nebert Ikai**, Committee Clerk who may be contacted on **Tel No. 0716 085 705** or email: \_\_\_\_\_ and **Timothy Kimathi**, 0725650878 or email: \_\_\_\_\_

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

**Copy to: - Hon. Moses Kuria, HSC**  
Cabinet Secretary  
Ministry of Trade, Investment and Industry  
17<sup>th</sup> Floor, NSSF Building Block A  
**NAIROBI**

**Mr. George Kuria Murathe**  
Chairperson  
Sacco Society Regulatory Authority (SASRA)  
Upper Hill Road, UAP Old Mutual Tower, 19<sup>th</sup> Floor  
**NAIROBI**



THE NATIONAL ASSEMBLY  
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When replying, please quote

**NA/DDC/TRADE/2023/010**

**2<sup>nd</sup> March 2023**

**Mr. Patric Kiburi Kilemi**  
Principal Secretary  
State Department for Cooperatives  
Ministry of Trade Industry and Investment  
**NAIROBI**

**Mr. Peter Njuguna**  
Chief Executive Officer  
Sacco Society Regulatory Authority (SASRA)  
Upper Hill Road, UAP Old Mutual Tower, 19th Floor  
**NAIROBI**

**The Chief Executive Officer**  
Consumer Federation of Kenya  
Rehema Place, Block F- 45  
Ngong Rd, Ring Rd Kilimani

Dear

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE COOPERATIVE SOCIETIES ACT, OF 1997 (NO. 12 OF 1997)**

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
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NA/DDC/TRADE/2023/008

2<sup>nd</sup> March 2023

**Dr. Eusebius Juma Mukhwana, PhD**  
Principal Secretary  
State Department for Industry  
Ministry of Trade Industry and Investment  
**NAIROBI**

**The Chief Executive Officer**  
Scrap Metal Council (SMC)  
17th Floor, Social Security House, Block A (Eastern Wing)  
**NAIROBI**

Dear *Dr. Mukhwana*

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE  
SCRAP METAL ACT, 2015 (NO. 1 OF 2015)**

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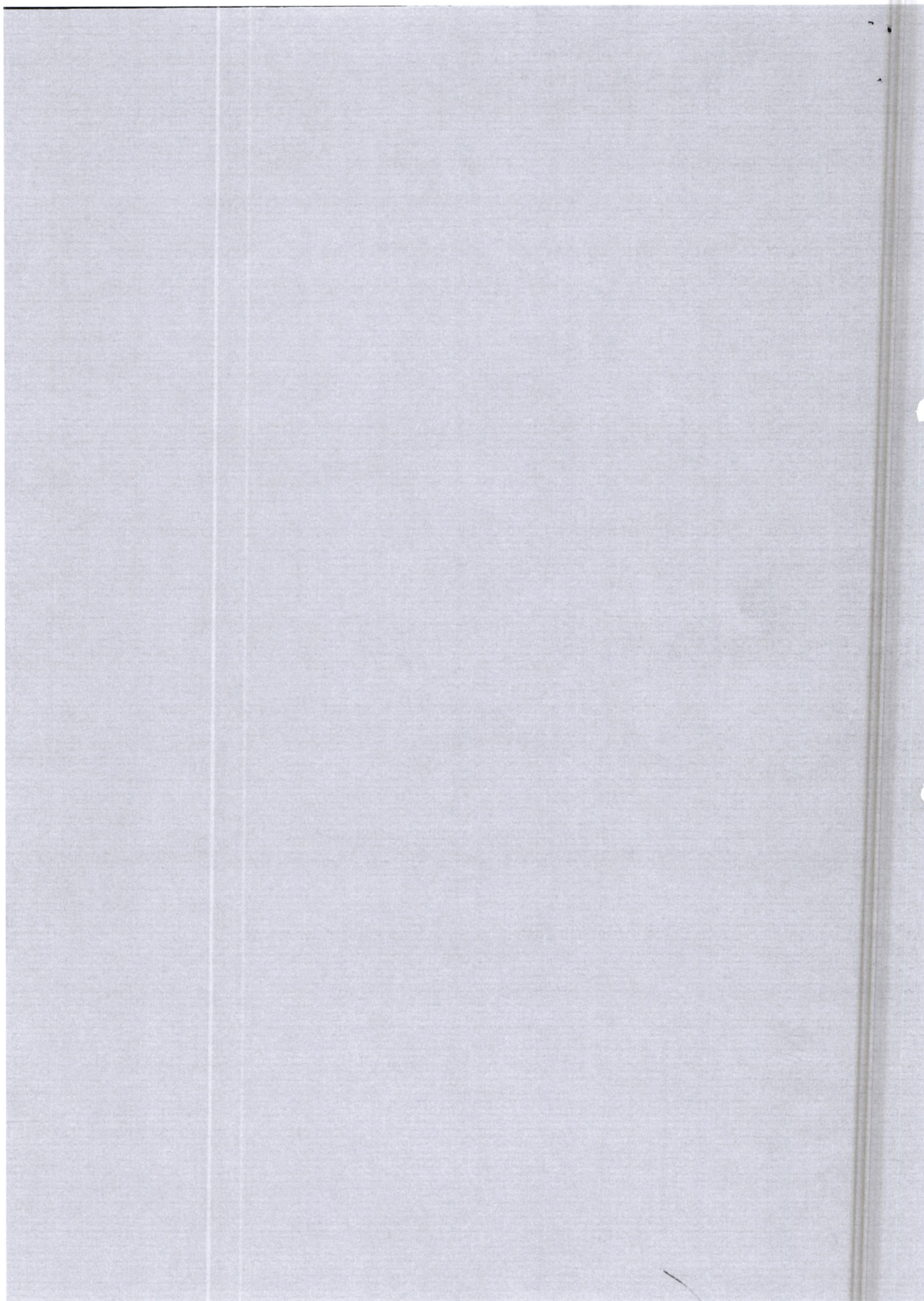
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State Department for Industry  
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**Mr. Alfred Ombudo K'Ombudo**  
Principal Secretary  
State Department for Trade  
Ministry of Trade Industry and Investment  
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Dear *Dr. Mukhwana*

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
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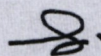
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A handwritten signature in black ink, appearing to be 'M. Kuria', is written to the right of the recipient's name.



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
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Chief Executive Officer  
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# **Submissions by Stakeholders**

*Trade*

# KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"  
Telegrams: "LAWREFORM" NAIROBI  
Telephone: Nairobi, +254-20-2241186/2241201  
Fax: +254-20-2225786  
www.info@klrc.go.ke

When replying please quote  
Ref. No. **KLRC/RES/93 VOL.VI (38)**  
and Date



KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR  
TAIFA ROAD  
P.O. Box 34999-00100  
NAIROBI, KENYA  
12<sup>th</sup> January, 2023

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*16/01/23*

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*distribute to see*  
*relevant committees*  
*involved*  
*upw - 17/1/23*

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Clerk's Chambers  
National Assembly  
Parliament Building  
P.O Box 41842 -00100  
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear *Jerem*,

**RE: INVITATION TO SUBMIT VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO.60 OF 2022)**

We acknowledge with thanks receipt of your letter Ref.No.NA/DDC/JLAC/2022/010 dated 20<sup>th</sup> December, 2022 on the above subject.

Enclosed herein please find the Commission's comments on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No.60 Of 2022) for further action.

As always, we are grateful for your continued support and collaboration.

Yours *faithfully,*  
*Joash Dache*

Joash Dache, MBS  
Secretary/Chief Executive Officer

Encl.

NATIONAL ASSEMBLY  
RECEIVED  
13 JAN 2023  
CLERK'S OFFICE  
P O Box 41842, NAIROBI

DIRECTOR  
RECEIVE  
16 JAN 2023  
Directorate of Developmental Com. Affairs

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## THE KLRC COMMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

### I. INTRODUCTION

This memorandum is issued in furtherance of the Kenya Law Reform Commission's mandate under section 6 of the Kenya Law Reform Commission Act, No. 19 of 2013, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The Kenya Law Reform Commission (KLRC) is in receipt of a letter from the National Assembly dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) seeking its comments on the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bill, No. 60 of 2022. The Bill seeks to "amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of several separate Bills". The National Assembly has sought KLRC's comments on the Bills under the purview of the Departmental Committee on Justice and Legal Affairs.

Against this background and pursuant to the KLRC's mandate, KLRC has undertaken an analysis of the relevant Bills as set out below.

### II. ANALYSIS

	LAW	S.	PROPOSED AMENDMENT	KLRC COMMENT	JUSTIFICATION
1.	The Judicature Act (Cap.8)	7(1)	Delete the word "thirty" and substitute therefor the word "seventy".	No objection to the proposed amendment.	Increasing the number of judges at the Court of Appeal will facilitate speedy delivery of justice.
2.	The Appellate Jurisdiction Act (Cap. 9)	59(7)	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Court of Appeal Rules in the requisite	The proposed amendment would align the Rules to Article 157(6) of the Constitution which provides that the Director of Public Prosecutions is the one to exercise State powers of prosecution.

				manner and not through the amendment of the Appellate Jurisdiction Act.	
	The Appellate Jurisdiction Act (Cap. 9)	73	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Rules in the requisite manner and not through the amendment of the Appellate Jurisdiction Act.	The proposed amendment would align the Rules to Article 157 of the Constitution.
3.	The Vexatious Proceedings Act (Cap. 41)	4	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157(6) of the Constitution.
4.	The Penal Code (Cap. 63)	146	Delete the words "idiots or imbeciles" wherever they appear and substitute therefor the words "persons with mental disabilities".	No objection to the proposed amendment.	The proposed amendment aligns the Code with the constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No. 14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
5.	The Criminal Procedure Code (Cap.75)	2	Delete the expression "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	No objection to the proposed amendment.	The proposed amendment would align the Code to the Office of the Director of Public Prosecutions Act, 2013.

		<p>Delete the definition of "police officer" and substitute therefor the following new definition—</p> <p>"police officer" has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
		<p>Delete the definition of "police station" and substitute therefor the following new definition—</p> <p>"police station" has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
	83	<p>Delete and substitute therefore the following new section—</p> <p>83.(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Secretary of Prosecution Services, the Deputy Director of Public Prosecutor, the Senior Assistant Director of Public Prosecutions, the Senior Principal Prosecution Counsel, Senior Prosecution Counsel and Prosecution Counsel, and the exercise of those powers by the specified officers shall then operate as if they had been exercised by the Director of Public Prosecutions.</p>	No objection to the proposed amendment.	The proposed amendment would align the Act to the Office of the Director of Public Prosecutions Act, 2013.

			(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.		
		90(3)	Delete the words "a Sunday" and substitute therefor the words "any day of the week including Sunday".	No objection to the proposed amendment.	The proposed amendment clarifies the provision.
		123(1)	Delete the words "other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence".	No objection to the proposed amendment.	The proposed amendment aligns the Code to Article 49(1) (h) of the Constitution which provides that all offences are bailable.
		131(2)	Delete the word "movable".	No objection to the proposed amendment.	The proposed amendment widens the scope of property that may be attached. This may, in turn, act as a deterrent to a person bound by a recognizance.
		137	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
6.	The Extradition (Commonwealth) Countries Act (Cap. 77)	7	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		8	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		9	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.

		10	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
7.	Official Secrets Act (Cap. 187)	10(1). 49(1)	Deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
8.	The Evidence Act (Cap. 80)	3	Insert the following definition in proper alphabetical sequence—  "photograph" means an image created by light falling on a light sensitive surface, either photographic film or an electronic medium and made visible and permanent by chemical treatment or stored digitally,	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		78(1)	Insert the words "or an electronic and digital medium" immediately after the word "film".	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		125 (2)	Insert the word "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	No objection to the proposed amendment.	The proposed amendment aligns the Act with constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No.14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
9.	The Vetting of Judges and Magistrates Act (No. 2 of 2011)		Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment save that the citation of the Act is wrong. It should read No. 2 of 2011 and not 2010).	The proposed amendment would align the Act to Article 157 of the Constitution.

10.	The Judicial Service Act (No. 1 of 2011)	38	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) of the Constitution which requires constitutional commissions and independent offices to submit a report to the President and to Parliament. In addition, the proposed amendment contravenes section 38(4) of the Judicial Service Act which requires the report to be tabled before the two Houses of Parliament.</p>
				<p>Consider standardizing the provision for all constitutional commissions and independent offices.</p>	<p>This ensures consistency in legislation.</p>
11.	Independent Electoral and Boundaries Commission Act (No. 9 of 2011)	24(1)	<p>Delete the word "three" and substitute therefor the word "six".</p>	<p>No objection to the proposed amendment.</p>	<p>Three months is too short a period to file the annual report in view of the magnitude of work involved.</p>
12.	The Kenya National Commission on Human Rights Act. (No. 14 of 2011)	53	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) which requires constitutional commissions and independent offices to submit a report to the President and to Parliament.</p>

				Consider standardizing the provision for all constitutional commissions and independent offices.	This ensures uniformity in legislation.
13.	Ethics and Anti-Corruption Commission Act (No. 22 of 2011)	27(2)	Delete the word "three" and substitute therefor the word "six".	No objection to the proposed amendment.	Three months is too short a period to file the annual report in view of the magnitude of work involved.
14.	Anti-Corruption and Economic Crimes Act (No. 3 of 2003)	25A.	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendments.	The proposed amendment would align the Act to Article 157 of the Constitution.
		37(6)			
		62(5)	62(6)	(6A) Notwithstanding the provisions of any other law, where a state officer is under investigation for, or has been charged with corruption or economic crime, the Commission may, by an <i>ex parte</i> application in the High Court, seek for an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and supervising staff.  (6B) The provisions of subsection (6A) shall apply where the Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to—  (a) conceal, alter, destroy, or remove	No objection to the proposed amendment. However, consider including the expression "public officer" in subsection (6A) as has been proposed in subsection (6B).

			<p>records, documents or other evidence;</p> <p>(b) intimidate, threaten or otherwise interfere with witnesses; or</p> <p>(c) interfere with investigations in any other manner.</p>		
15.	Sexual Offences Act (No. 3 of 2006)	40	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
16.	International Crimes Act (No. 16 of 2008)		Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
17.	Leadership and Integrity Act, 2012 (No. 19 of 2012)	12A.	New subsections to mandate the EACC vet all the shortlisted candidates.	Considering the number of requests that the EACC may receive from the various public entities, it would be prudent for the Commission to be mandated to vet only those who are considered for appointment, that is, those who have undergone the interview process.	This would save the EACC time and money.
18.	The Kenya Law Reform Commission Act (No. 19 of 2013)			Although the National Assembly's letter dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) and the Memorandum to the Public indicates that the Statute Law (Miscellaneous Amendment) Bill, 2022, seeks to amend the Kenya Law Reform Commission	

				<p>Act to provide for clarifications on the attendance of the <i>ex officio</i> members at the Commission meeting, the Bill does not contain any proposed amendments.</p> <p>Further, the Kenya Law Reform Commission Act is erroneously cited as Act, No. 35 of 2013 instead of No. 19 of 2013.</p>	
19.	Bribery Act (No. 47 of 2016)	1.	Delete the expression "Bribery Act" and substitute "Anti-Bribery Act".	No objection to the proposed amendment.	The proposed amendment describes what the Act is about and avoids any misrepresentation.
		5.	Delete the word "who" and substitute therefore the word "if the person offering, promising or giving knows".	The word "who" appears in both subsection (1) and (2), hence there is need for clarity on where the phrase "if the person offering, promising or giving knows" is to be inserted.	This will clarify the provision.





REPUBLIC OF KENYA  
THIRTEENTH PARLIAMENT (FIRST SESSION) 2022  
THE NATIONAL ASSEMBLY

In the Matter of Consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) is sponsored by the Leader of Majority Party, Hon. Kimani Ichung'uah, CBS, MP is an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes-

1. The Appellate Jurisdiction Act (Cap 9)
2. The Vestibular Proceedings Act (Cap 41)
3. The Extradition (Commonwealth Countries) Act (Cap 77)
4. The National Flag, Emblems and Names Act (Cap 99)
5. The Official Secrets Act (Cap 167)
6. The Geneva Conventions Act (Cap 168)
7. The Pharmacy and Poisons Act (Cap 244)
8. The Mental Health Act (Cap 248)
9. The Land Consolidation Act (Cap 283)
10. The Land Adjudication Act (Cap 284)
11. The Marine Insurance Act (Cap 390)
12. The Local Manufacturers (Export Compensation) Act (Cap 482)
13. The Capital Markets Act (Cap 485A)
14. The Architects and Quantity Surveyors Act (Cap 525)
15. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)
16. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
17. The Retirement Benefits Act, 1997 (No. 3 of 1997)
18. The Co-operatives Societies Act, 1997 (No. 12 of 1997)
19. The Central Depositories Act, 2000 (No. 4 of 2000)
20. The Sexual Offences Act, 2008 (No. 3 of 2008)
21. The National Museums and Heritage Act, 2008 (No. 9 of 2008)
22. The Labour Institutions Act, 2007 (No. 12 of 2007)
23. The Accountants Act, 2008 (No. 15 of 2008)
24. The International Crimes Act, 2008 (No. 16 of 2008)
25. The Biosafety Act, 2009 (No. 2 of 2009)
26. The Counter-Trafficking in Persons Act, 2010 (No. 6 of 2010)
27. The Tourism Act, 2011 (No. 28 of 2011)
28. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)

The Bill seeks to amend these Acts in order to harmonise their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

29. The Judicial Service Commission Act, 2011 (No. 1 of 2011)
30. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)
31. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)
32. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)
33. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)
34. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)
35. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)
36. The National Police Service Commission Act, 2011 (No. 30 of 2011)
37. The National Land Commission Act, 2012 (No. 5 of 2012)
38. The Teachers Service Commission Act, 2012 (No. 20 of 2012)
39. The Controller of Budget Act, 2016 (No. 28 of 2016)
40. The Public Service Commission Act, 2017 (No. 17 of 2017)

The Bill seeks to amend these Acts to require the presentation of Annual Reports by the Commissions/Offices within six (6) months after the end of the year to which they relate.

**The Excise Duty Act, 2015 (No. 23 of 2015)**  
The Bill seeks to amend Section 246 of the Excise Duty Act to correct mistakes in a tariff number.

**42. The Judiciary Act (Cap 8)**  
The Bill proposes to amend the Act to increase the number of Judges of the Court of Appeal from Thirty to Seventy.

**43. The Penal Code (Cap 63)**  
The Bill seeks to amend Section 246 of the Act by deleting expressions therein which may be perceived to be discriminatory towards persons with mental disabilities.

**44. The Criminal Procedure Code (Cap 75)**  
The Bill seeks to amend the statute to harmonize terms therein with the provisions of the Constitution of Kenya, 2010 and the National Police Service Act, 2011. It also seeks to allow the Director of Public Prosecutions to delegate powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2008.

**45. The Evidence Act (Cap 80)**  
The Bill seeks to amend the Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with the current technological advancements. It also seeks to delete expressions which may be perceived to be discriminatory to persons with mental disabilities.

**46. The Public Holidays Act (Cap 110)**  
The Bill proposes to amend the Public Holidays Act to provide that 10<sup>th</sup> October be *Madama Day* and 20<sup>th</sup> December *Utsumani Day*.

**47. The Copyright Act 2001 (No. 12 of 2001)**  
The Bill seeks to amend the Act to provide for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organisations towards authors and performers. It also seeks to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

**48. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)**  
The Bill seeks to amend the Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also proposes to amend the Act to allow the Commission to seek a court order for a state officer under investigation or charged with corruption or economic crimes to be barred from accessing office or exercising powers of that office where the public officers is likely to interfere with investigations.

**49. The Merchant Shipping Act, 2009 (No. 4 of 2009)**  
The Bill seeks to amend the Act by deleting section 18 which restricts ship owners from providing crewing agencies, pilotage, clearing and forwarding, port facility operator and shipping agencies among other services in the maritime industry. This is after the High Court in September, 2020 declared the section unconstitutional and to allow for the revival of the Kenya National Shipping Line.

50. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)  
The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also seeks to enhance the penalty for organised crimes and to extend the period in which an order obtained in relation to the tracing of property shall lapse.
51. Leadership and Integrity Act, 2012 (No. 19 of 2012)  
The Bill seeks to amend the Act to provide for the appointment of the Director-General, for a renewable period of five years instead of three.
52. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)  
The Bill seeks to amend the Act to provide for the appointment of the Director-General, for a renewable period of five years instead of three.
53. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)  
The Bill seeks to amend the Act to clarify the provisions on the attendance of ex-officio members at the Commission meetings.
54. The Water Act, 2016 (No. 43 of 2016)  
The Bill seeks to amend the Act to include the Attorney-General as a member of the Water Resources Management Board and to require the appointments of Chief Executive Officers under the Act to be in line with guidelines issued by the Salaries and Remuneration Commission. The Bill further seeks to allow the designation of representatives to sit in Boards in place of designated officer holders and the introduction of new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.
55. The Bribery Act, 2016 (No. 47 of 2016)  
The Bill seeks to amend the Act to include both private and public entities in the scope and application of the Act and to make other minor amendments.
56. The Scrap Metal Act, 2015 (No. 1 of 2015)  
The Bill seeks to amend the Act to provide for the issuance of a special license for dealing in copper, aluminium, and their alloys. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely; Nummettal Machining Complex and the Kenya Shipyard Limited and the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act in order to deter vandalism and other prohibited acts.
57. The Energy Act, 2019 (No. 1 of 2019)  
The Bill proposes to amend the Act to give effect to the recommendations of the "Presidential Task Force on the Review of Power Purchase Agreements". The recommendations include addressing the overlapping functions between the Energy Petroleum Regulatory Authority and the Ministry responsible for Energy matters.
58. The Housing Act (Cap 17)  
The Bill seeks to amend the Act by placing definitions of terminologies in proper alphabetical sequence.

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 6<sup>th</sup> December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE	
i. The Vestibular Proceedings Act (Cap 41)	Departmental Committee on Justice and Legal Affairs
ii. The Extradition (Commonwealth Countries) Act (Cap 77)	
iii. The Official Secrets Act (Cap 167)	
iv. The Sexual Offences Act, 2008 (No. 3 of 2008)	
v. The International Crimes Act, 2008 (No. 16 of 2008)	
vi. The Judicial Service Commission Act, 2011 (No. 1 of 2011)	
vii. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)	
viii. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)	
ix. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)	
x. The Penal Code (Cap 63)	
xi. The Criminal Procedure Code (Cap 75)	Departmental Committee on Finance and National Planning
xii. The Evidence Act (Cap 80)	
xiii. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	
xiv. Leadership and Integrity Act, 2012 (No. 19 of 2012)	
xv. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)	
xvi. The Bribery Act, 2016 (No. 47 of 2016)	
xvii. The Judiciary Act (Cap 8)	
xviii. The Appellate Jurisdiction Act (Cap 9)	
xix. The Capital Markets Act (Cap 485A)	
xx. The Retirement Benefits Act, 1997 (No. 3 of 1997)	
xxi. The Central Depositories Act, 2000 (No. 4 of 2000)	
xxii. The Accountants Act, 2008 (No. 15 of 2008)	
xxiii. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)	
xxiv. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)	
xxv. The Controller of Budget Act, 2016 (No. 28 of 2016)	
xxvi. The Excise Duty Act, 2015 (No. 23 of 2015)	

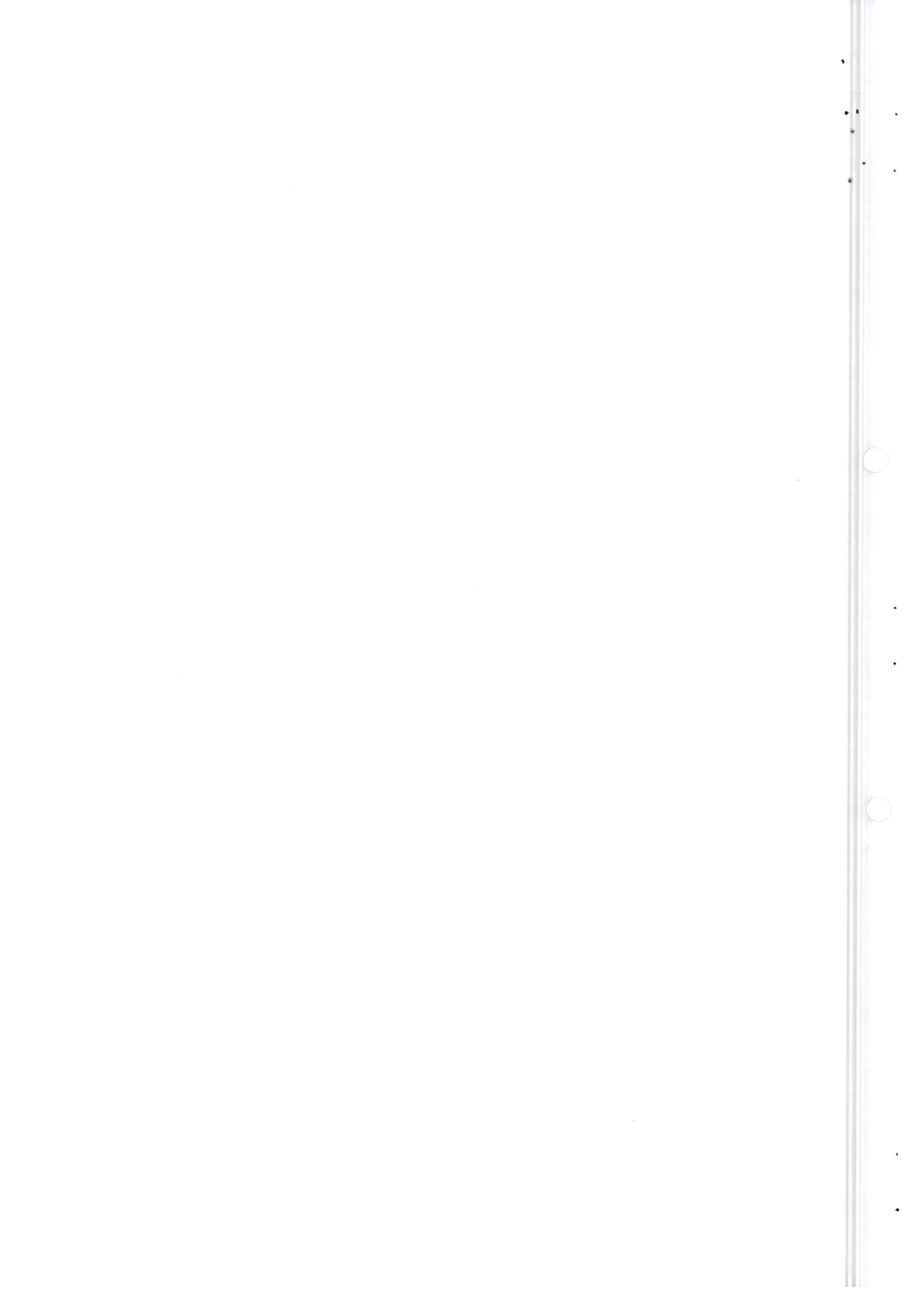
i. The National Flag, Emblems and Names Act (Cap 99)	Departmental Committee on Administration and Internal Affairs
ii. The Public Holidays Act (Cap 110)	
iii. The Counter-Trafficking in Persons Act, 2010 (No. 6 of 2010)	
iv. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)	
v. The National Police Service Commission Act, 2011 (No. 30 of 2011)	
vi. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)	
i. The Marine Insurance Act (Cap 390)	Departmental Committee on Transport and Infrastructure
ii. The Kenya Roads Board Act, 1996 (No. 7 of 1996)	
iii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)	
iv. The Merchant Shipping Act, 2009 (No. 4 of 2009)	
i. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)	Departmental Committee on Education
ii. The Teachers Service Commission Act, 2012 (No. 20 of 2012)	
i. The Land Consolidation Act (Cap 283)	Departmental Committee on Lands
ii. The Land Adjudication Act (Cap 284)	
iii. The National Land Commission Act, 2012 (No. 5 of 2012)	
i. The Co-operatives Societies Act, 1997 (No. 12 of 1997)	Departmental Committee on Trade, Industry and Cooperatives
ii. The Scrap Metal Act, 2015 (No. 1 of 2015)	
iii. The Local Manufacturers (Export Compensation) Act (Cap 482)	
i. The Pharmacy and Poisons Act (Cap 244)	Departmental Committee on Health
ii. The Mental Health Act (Cap 248)	
i. The Labour Institutions Act, 2007 (No. 12 of 2007)	Departmental Committee on Labour
ii. The Public Service Commission Act, 2017 (No. 17 of 2017)	
i. The Architects and Quantity Surveyors Act (Cap 525)	Departmental Committee on Housing and Public Works
ii. The Housing Act (Cap 17)	
i. The National Museums and Heritage Act, 2008 (No. 9 of 2008)	Departmental Committee on Sports and Culture
ii. The Copyright Act 2001 (No. 12 of 2001)	
i. The Tourism Act, 2011 (No. 28 of 2011)	Departmental Committee on Tourism and Wildlife
The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)	Departmental Committee on Social Protection
The Geneva Conventions Act (Cap 168)	Departmental Committee on Defence, Intelligence and Foreign Relations
The Energy Act, 2019 (No. 1 of 2019)	Departmental Committee on Energy
The Water Act, 2016 (No. 43 of 2016)	Departmental Committee on Blue Economy and Irrigation
The Biosafety Act, 2009 (No. 2 of 2009)	Departmental Committee on Agriculture and Livestock

IN COMPLIANCE with Article 118(1) (b) of the Constitution and Standing Order 127(3), the Departmental Committees hereby invite the public and interested stakeholders to submit memoranda on the Bill.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on [www.parliament.go.ke/national-assembly/issue-business/bills](http://www.parliament.go.ke/national-assembly/issue-business/bills).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; or hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [en@parliament.go.ke](mailto:en@parliament.go.ke) to be received on or before Friday, 6<sup>th</sup> January, 2023 by 5.00 pm.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY  
16<sup>th</sup> December, 2022





REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (FIRST SESSION)  
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

In the Matter of Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012  
and

In the Matter of Consideration by the National Assembly of:

- 1) The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 2) The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
- 3) The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

**PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)**

Pursuant to Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the following Agreements were submitted to the Speaker of the National Assembly on 29<sup>th</sup> November, 2022 and consequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House:

1. Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
2. The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
3. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

The **Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer** sets out to significantly limit future production and consumption of hydrofluorocarbons (HFCs). It also contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment further includes target baselines and emission levels that states in agreement with it are to achieve.

The **Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa** aims to prohibit the import into Africa of any hazardous waste and to specifically ban the transboundary movement of hazardous wastes.

The **Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities** aims to enhance the management of the marine and coastal environment and natural heritage including its biological diversity for the sustainable use and benefits of present and future generations.

The Departmental Committee on Environment, Forestry and Mining hereby invites the public and stakeholders to submit Memoranda on the three Agreements. The full text of the Agreements and the accompanying Memorandum to Parliament may be accessed at <http://www.parliament.go.ke/the-national-assembly/tenua-buolmsa/paper-lald>

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to [ena@parliament.go.ke](mailto:ena@parliament.go.ke); to be received on or before Friday, 6<sup>th</sup> January, 2023.

SAMUEL NJOROGE  
CLERK OF THE NATIONAL ASSEMBLY

16<sup>th</sup> December, 2022

*For the Welfare of Society and the just Government of the People*







REPUBLIC OF KENYA

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY

State Department for Industry

Office of the Principal Secretary

Telephone: +254-(0)20-2731531/2-44  
Web: [www.industrialization.go.ke](http://www.industrialization.go.ke)  
Email: [ps.moied@gmail.com](mailto:ps.moied@gmail.com)  
Email: [ps@industrialization.go.ke](mailto:ps@industrialization.go.ke)

Social Security House, Block A  
P.O. Box 30547 - 00100  
NAIROBI, GPO  
KENYA

Ref. No. MITED/CS/SMC/VOL.11

11<sup>th</sup> January 2023

Date: .....

**Mr. Samuel Njoroge**  
Clerk of the National Assembly  
Parliament Building  
Sheria House, Harambee Avenue  
P.O. Box 41842-00100,  
NAIROBI

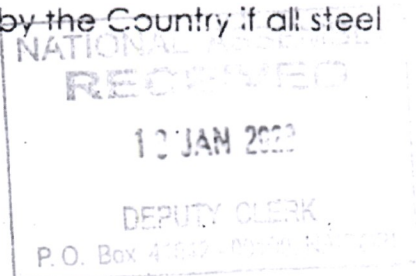


Dear Mr. Samuel,

**RE: CONSIDERATION OF THE STATUTE LAW MISCELLENEOUS AMENDMENTS BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE SCRAP METAL ACT NO.1 OF 2015**

Reference is made to your letter NA/DDC/TRADE/2022/012 dated 21<sup>st</sup> December 2022 on the above-mentioned matter.

The Amendment of the Act is very important as it operationalizes the Scrap Metal Council, facilitates businesses in this sector, ensures price of steel products are controlled due to local smelting of scrap metal into other products and reduces the foreign exchange which might have been used by the Country if all steel products are imported.



Mr Akai  
ENA  
16/1/23

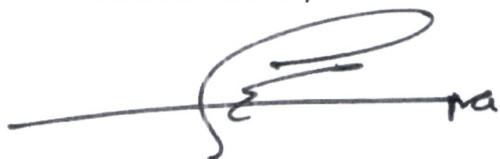
D/DC  
Please deal.  
Soni  
13/01/23

Find attached matrix and presentation indicating the proposed amendments.

The Ministry therefore requests for your support in this matter as it offers continuity of business in this sector especially the small businesses who are "hustlers" and are not properly supported by the current Act.

Kindly find attached matrix on amendments documents for your information and necessary action.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Juma Mukhwana', written over a horizontal line.

**Dr. Juma Mukhwana, PhD, HSC**  
**PRINCIPAL SECRETARY**

Encls. 2

Copy to: **Hon. Moses Kuria, HSC**  
Cabinet Secretary  
Ministry of Investment, Trade and Industry  
**NAIROBI**

**REPUBLIC OF KENYA**



**MINISTRY OF TRADE, INVESTMENTS AND INDUSTRY**

**COMMENTS ON THE SCRAP METAL ACT MISCELLENEOUS  
AMMENDMENT BEFORE THE NATIONAL ASSEMBLY**

**JANUARY 2023**

## **SCRAP METAL ACT MISCELLENEOUS AMMENDMENT**

### **Introduction**

The Scrap Metal Council was formed as a result of the enactment of the Scrap Metal Act no. 1 of 2015. It is an Act of Parliament to make provision for the regulation of dealings in scrap metal, to provide for the establishment of a Scrap Metal Council and for connected purposes

The primary function as a member of the Council shall be advisory in nature to the Cabinet Secretary as prescribed in the Scrap Metal Act.

### **Moratorium**

His Excellency the President during an address on 20th January 2022 announced a moratorium on the export, buying and selling of scrap metal.

Speaking at the National Police College in Kiganjo during a passing out parade on Wednesday, Mr Kenyatta said that no dealer will be allowed to engage in the business until proper **guidelines** are put in place to regulate the sector.

Chronology of events during moratorium

A Multi-Agency team has been constituted to do fresh **vetting** of all fresh applications for licencing and those already licenced to have their licences renewed in order to streamline the Scrap metal trade in the country.

Requests were sent to the Ministry of Interior, Kenya Revenue Authority, Kenya Power, Ministry of Transport, Infrastructure Housing, Urban Development and Public Works (Kenya Railways Corporation, KENHA, KURA)

#### Drafting and review of guidelines

The State Department of Industrialization together with the Scrap Metal Council held meetings with stakeholders to review draft guidelines which had been developed. The Meetings were held on 9<sup>th</sup> February 2022 and 15<sup>th</sup> February 2022

#### Forwarding the guidelines

The guidelines have been finalized and forwarded to Head of Public Service, CS Ministry of Interior, and Attorney General for information and concurrence. Subsequently the Office of the Attorney General drafted the Scrap Metal Rules, 2022 which they shared with my Ministry on 18<sup>th</sup> March 2022.

**The Ministry had intended to use the drafted guidelines to open up the sector the meeting of stakeholders held on 16<sup>th</sup> March 2022 decided to go the legal route.**

**The Attorney General as they were sharing the draft Scrap Metal Rules advised that the other input from Stakeholders need to be submitted as draft amendments to the Act and further advised that the amendments be included in the Miscellaneous Amendment Bill, 2022 due to its urgency.**

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There was also an inter-ministerial team also under the aegis of "protected Areas" Act also made several proposals for amendment to the Act, the Ministry was represented by Mr. Joseph Mbeva. The Team presented their views directly to the Attorney General for consideration.

Therefore, the matrix below clearly indicated the proposed amendments indicating the route used to propose the amendments.





			<p>operate as a mobile collector in a designated area to gather, collect and buy scrap metal in quantities that do not exceed three thousand kilograms per transaction;</p> <p>"critical national infrastructure" means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect the government's ability to undertake national defense and security;</p> <p>"electrical rewinding means removal or stripping of the coils of a motor and replacing them with new coils made from wire of the same type and gauge.</p> <p>"smelter" means an installation or factory for smelting a metal from its ore</p>	
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		<p>or a person engaged in the business of smelting”</p> <p>“steel fabricators” means an installation or factory for the production of metal structures using a range of processes such as cutting, bending and assembling which for the purposes of the act generates scrap Metal in their processes.</p> <p>“mobile collector” means a person who—</p> <p>(a) carries on business as a scrap metal dealer otherwise than at a site, and</p> <p>(b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.</p> <p>“platinoid group” means metals that possess a silvery white colour except osmium, and includes ruthenium, rhodium, palladium, osmium, iridium, and platinum;</p> <p>“site” means any premises used in the course of carrying on business as a scrap metal dealer, whether or not metal is kept there;</p>	
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			<p>"transporter" means a person appointed by an agent, dealer, and/or collector using a registered vehicle to transport Scrap metal.</p>	
<p>3</p>	<p>Section 2A</p>	<p>New Section</p>	<p>The objective and purpose of this Act is to regulate matters relating to scrap metal industry.</p>	<p>Not provided in the Act</p>

4	Section 4 (1)	<p>1. Principal Secretary, transport  2. Commissioner General, Kenya Revenue Authority  3. Inspector General of Police  4. Principal Secretary, Industrialization</p>	<p>Addition of council members:  1. Principal Secretary, Ministry Energy  2. Principal Secretary, National Treasury  3. Principal Secretary, Ministry of Information Communication and Technology  4. Attorney General  5. Section 4(1) (dd) to read the Director of Criminal Investigations or a representative.</p>	To ensure representation of key stakeholders in the Council
5	Section 4 (1)	<p>Section 4 (1) (f) (iii) one person nominated by the Kenya Association of Manufacturers ;  (iv) one person nominated by large utility companies or agencies in charge of infrastructure, to be appointed on rotational basis;  (v) one person nominated by the Consumer Federation of Kenya.</p>	<p>New Sec.4.1 (f) (i)  1. one person nominated by National Scrap Metal Dealers Association</p> <p>Deletion of section (4)(1) (f) (iii), (iv) and (v)</p>	To rationalize the representation of non-State Actors

6	Section 4(1)	New	<p>Insertion of new section to read as section 4A.</p> <p>There shall be a Secretary to the Council.</p> <p>1. The Council shall through an open, transparent and competitive recruitment process, recommends for appointment by the Cabinet Secretary a qualified person to be the Secretary to the council.</p> <p>2. A person shall be qualified for appointment as secretary if the person –</p> <p>(a) holds a minimum of a first degree in metallurgy or related discipline;</p> <p>(b) has had at least ten years proven experience in leadership at senior management level;</p> <p>(c) has experience in finance, management and public administration; and</p>	<p>1. To rationalize the representation of non-State Actors</p> <p>2. Make the Council Independent</p>
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	<p>(d) Satisfies the requirements of Chapter Six of the Constitution.</p>		
	<p>The Secretary shall—</p> <p>(a) be appointed by the Cabinet Secretary;</p> <p>(b) be an ex officio member of the Council;</p> <p>(c) be the secretary to the Council;</p> <p>(d) subject to the directions of the Council, be responsible for the day to day management of the affairs of the Council; and</p> <p>(e) perform such other functions as the Council may from time to time, determine.</p>		
	<p>3. The Secretary shall serve on such terms and conditions as the Cabinet Secretary may determine upon the advice of the Salaries and Remuneration Commission.</p>		

7	<p>Sec. 4 Application of the Rules collectors, agents, dealers, millers, smelters, transporters, steel fabricators, Stockists of second-hand metal parts, motor vehicle salvage operators, electrical re-winders, local welding machines fabricators.</p>		<p>Scope of coverage of the dealers This was the ice-breakers which made the small dealers accept the Ministry's terms</p>	<p>Meant to capture all the traders in the sector  Not in the Act</p>
8	Section 6(1)(e)	New Sub-section	<p>i. The Council shall intensify public awareness campaign to all stakeholders – scrap metal dealers on matters of licensing, transportation, record keeping and prevention of vandalism and theft. This will ensure that all players in the sub-sector are identified up to their premises of operations, licensed, and monitored to prevent trading in vandalized and stolen materials. ii. The Council shall undertake public awareness in line with the provisions of the Act</p>	<p>This will ensure that all players in the sub-sector are identified up to their premises of operations, licensed, and monitored to prevent trading in vandalized and stolen materials.</p>

9	<p>Sec. 7 Scrap Metal Business Covers – Scrap metal</p> <ul style="list-style-type: none"> <li>- Motor Salvage Operators</li> <li>- batteries</li> </ul>	<p>Its not clear on coverage</p>	<p>Defines the coverage of the Scrap Metal trade</p>	<p>Ministry process</p>
10	<p>Section 7 (2)</p>	<p>Section 7(2) The Ministry responsible for matters relating to industrialization shall provide secretariat services to the Council.</p>	<p>Delete section 7 (2)</p>	<p>The Secretary to the Council shall provide secretarial services to the Council. Provide Autonomy to the Scrap Metal Council</p>
11	<p>Sec.9 Application of license licence shall be in respect to the person and premises for carrying on scrap metal dealings, vetting before licensing</p>		<p>Enumerates the process of license application to include provision of tax compliance, LR No of premises, EIA, Certificate of good conduct and address</p>	<p>Facilitates the traders to obtain NEMA approvals easily</p>

12	Sec.9 (1) Restriction from dealing in scrap metal	(1) A person shall not deal in scrap metal, unless that person has a licence issued by the Council and is a member of Scrap Metal Dealers Association	New Section 9(1) (1) A person shall not deal in scrap metal, unless that person has a licence issued by the Council and is a member of a National Scrap Metal Dealers Association	Have an umbrella body at the national level to pave way for proper regulatory processes of scrap metal industry by the government
13	Sec. 10 Copper, aluminium or their alloys (1)A person who intends to deal in scrap copper, aluminium or their alloys shall apply to the Council for a licence in accordance with section 10 of the Act. (2) An applicant for a licence under this rule shall be vetted separately.		Main elements of part of critical infrastructure (Energy)hence need to control their trade Mainly suggested by Government Institutions, might be opposed by the dealers as they make more money here	Include it
14	Section 10 application for license	Section 10(1)(b) Specify the premises in which the applicant intends to deal in scrap metal;	New Section 10(1)(b) Specify the premise in which the applicant intends to deal in scrap metal;	The applicant to apply separately for different premises

<p>15</p>	<p>Section 11 d</p>	<p>specifically permits a licensee to have several premises for purposes of dealing in scrap metal where this is specifically indicated in the licence.</p>	<p>Sec. 11 (d) is amended to read as- The applicant shall apply for a separate license for each premise.</p>	<p>The applicant to apply separately for different premises</p>
<p>16</p>	<p>Section 12</p>	<p>Where the Council refuses to issue or renew a licence, the applicant may appeal to the Cabinet Secretary.</p>	<p>Section 12 is deleted and re-numbered as Section 12(1) to read as- "where the Council refuses to issue or renew a licence, the applicant may appeal to the Cabinet Secretary" Insert a new sub section as 12(2) to read as- "the refusal notification shall give the applicant fourteen days to lodge an appeal to the Cabinet Secretary for consideration from the date on which the notice is given, if not, the Council decision shall remain as per section 10(5)"</p>	<p>Clarity of process</p>

17	<p>Sec. 14 Issue of Licence</p> <p>a) that the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;</p> <p>a) that all scrap metal received must be kept in the form in which it is received for a specified period, minimum of seven days, commencing on the date when it as received.</p>	I.	<p>II. A lot of illegal Scrap metal trade at night</p> <p>III. Seven days is to ensure smelting is not undertaken to illegally acquired scrap metal</p>	Include it to control the trade and protect innocent traders
18	Section 16A	New section	<p>Create a new section as Section 16A with a sub heading to read as – “Display of license”</p> <p>Create a new section as 16A with sub section (1),(2) and (3) to read as</p> <ol style="list-style-type: none"> <li>1. “a scrap metal operator who holds a license must display it at the business premise identified in the license.”</li> <li>2. “the copy must be displayed in a prominent place in an area accessible to the public.”</li> <li>3. “a scrap metal operator who fails to display the license is</li> </ol>	To ascertain compliance

<p>19</p>	<p>Section 168 Transportation of scrap metal</p>		<p>guilty of an offense and is liable on summary conviction to a fine as per section 31 of the Act and any other relevant law"</p>	<p>Also in the proposed Scrap Meta Rules, 2022 Control movement of scrap metal from place of origin This need to be harmonized with NEMA licensing (NEMA should stop charging) and make it easy for the dealers to transport</p> <p>Create a new section as Section 168 with a sub heading to read as – "transportation of scrap metal"</p> <p>Create a new section as 16B with sub sections to read as-</p> <ol style="list-style-type: none"> <li>1. A scrap metal operator who holds a license must carry a copy of the license on any vehicle that is being used in the course of transportation of any scrap metal;</li> <li>2. The copy of the license must be provided whenever required in any inspection by an authorized officer;</li> <li>3. The vehicle owner must have an authorization letter from the licensee</li> </ol>
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			<p>indicating the source of the scrap and destination; type and quantity of scrap metal; and name, national identification and contact details of the driver;</p> <p>4. All the licensed scrap metal operators shall adhere to the laid down operating hours between half-past six o'clock in the morning and half-past six o'clock in the evening for the purposes of transporting scrap metal;</p> <p>5. All licensed scrap metal transporters shall be in possession or production of the copy of the licensed of the scrap metal dealer of origin and copy of the licensed scrap metal dealer buying or receiving the scrap metal;</p> <p>6. Any transporter found flouting the provisions of this Act or illegally transporting scrap metals, the vehicle shall be deregistered and forfeited to the State together with the scrap metals;</p> <p>7. A scrap metal operator who fails to meet the requirements for</p>	
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<p>20</p>	<p>Section 17 (3) Records by licensee</p>	<p>(3) The licensee shall keep this record for a maximum of seven years</p>	<p>(3) The licensee shall keep this record for a minimum of seven years</p>	<p>transport is guilty of an offense and is liable on summary conviction to a fine as per section 31 of the Act and any other relevant law</p>	<p>The Period proposed is too short the proposal is trying to keep up with other Government Records storage periods</p>
<p>21</p>	<p>New Sec. 24A Destruction, vandalism of Critical National Infrastructure</p>		<p>(1) A State Entity responsible for its respective critical infrastructure shall dispose scrap metal from critical infrastructure to the Numerical Machining Complex or Kenya Shipyard Limited for smelting into billets. (2) Where there is inadequate capacity at the Numerical Machining Complex or Kenya Shipyard Limited, the</p>	<p>Not provided in the Act To Protect the infrastructure</p>	

			<p>respective state entity through a written consent from the Numerical Machining Complex and Kenya Shipyard Limited, shall seek approval from the Council to partner with a local smelter directly without involving a broker.</p>	
22	<p>Sec. 26 Import and Exports of scrap metal</p>	<p>(1) A person shall not export scrap metal in any form. (2) Notwithstanding subsection (1), the Cabinet Secretary for matters relating to finance, in consultation with the Cabinet Secretary responsible for industrialization and with the recommendation of the Council. May, under such circumstances as may be prescribed, authorize the export of specific scrap metal for a specified period. (3) A certificate for each consignment shall be issued by the Principal Secretary.</p>	<p>1. The Council will issue an export or an import license to a licensed scrap metal operator for a period of six months from the date of issue specifying the monthly quotas for the scrap metal to be imported or exported. 2. The Council working with KRA shall verify and issue consignment permit to scrap metal exporter or importer. The permit issued shall detail the nature, quantity and consideration of scrap metal to ensure compliance with the set export/import quotas.</p>	<p>The Act provides for exports but it is silent with regards to imports.</p>

<p>23</p>	<p>Sec. 29 Appointment of inspectors</p>	<p>(4) Any exemption allowed under this section shall be valid for six months from the date of issue of the certificate of exemption.</p> <p>(b) Shall have police powers in the exercise of his or her duties under this Act.</p> <p>(c) May subject to the direction of the Director of Public Prosecutions summon, examine witnesses under oath or affirmation and conduct prosecutions for offences committed under this Act.</p>	<p>(a) An inspector shall have the same powers as are exercised by a customs officer with regard to importation of scrap metal under the East African Community Customs Management Act, 2005.</p> <p>(b) If a magistrate, on sworn information in writing— is satisfied that there is reasonable ground to believe either— that any goods, books or documents which an inspector has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of commission of an offence under this Act; or that any offence under this Act has been, is being, or is</p>	<p>To enhance compliance, surveillance and enforcement.</p>
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			<p>about to be committed on any premises; and is also satisfied either— that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier; or that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return, the magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorize an inspector to enter the premises, if need be by force.</p> <p>(c) An inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he has so entered by virtue of</p>	
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			<p>a warrant he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.</p> <p>(d) The Council shall, for purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Council may consider appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as inspectors.</p> <p>(e) The Council may designate other public officers to be inspectors for purposes of this Act.</p>	
<p>24</p>	<p>Sec. 30 (1) (ii) Power or entry</p>	<p>(ii) demand from that person any book, document, article, item or object which in any way may assist in identifying the location, source or destination of the scrap metal, or the identity and address of any person who may be involved in dealing as a supplier, miller,</p>	<p>Section 30 (1) (ii) should read:- demand from that person any book, document, article, item or object which in any way may assist in identifying the location, source or destination of the scrap metal, or the identity and address of any person who may be involved in dealing as a miller, smelter, metal</p>	<p>To include all the players in the scrap metal industry</p>

		distributor, exporter or clearing and forwarding agent of the scrap metal.	fabricator, motor vehicle salvage operator, collector, agent, exporter, importer or clearing and forwarding agent of the scrap metal	
25	Section 18 (3) license by register	Any licensee, servant or agent who fails to comply with this section commits an offence and is liable on conviction— for a first offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both; and for a second or subsequent offence to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and such license shall be revoked.	Any licensee, servant or agent who fails to comply with this section commits an offence and is liable on conviction— for a first offence, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both; and for a second or subsequent offence to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both and such license shall be revoked.	To deter vandalism, pilferages of critical infrastructure, assets or facilities.

	First schedule paragraph 5 (section 7 (1))	The quorum for the conduct of business at a meeting of the Council shall be at least five members of the Council.	First schedule paragraph 5 (section 7 (1)) The quorum for the conduct of business at a meeting of the Council shall be two-thirds of the members of the Council.	To suit the proposed adjustments of membership of the Council under section 7(1)
26	Third Schedule Should include categories	Licence is for dealers only	<ol style="list-style-type: none"> <li>1. Dealer, Miller, Smelter over 5000Kgs Kshs 250,000</li> <li>2. Agent 5000Kgs – Ksh 100,000</li> <li>3. COLLECTOR, JUA KALI, 3000Kgs – Kshs 50,000</li> <li>4. STEEL FABRICATOR, II. MOTOR VEHICLE SALVAGE OPERATORS III.STOCKISTS OF SECOND HAND MOTOR SPARE, ELECTRICAL, REWINDERS, LOCAL WELDING MACHINES (TRANSFORMERS) FABRICATORS below 3000Kgs – Kshs 50, 000</li> </ol>	This one will include all dealers in this area, ease of doing business, facilitating “hustlers”

## PROPOSED PENALTIES

SECTION 18 LICENSE BY REGISTER	1M – FIRST OFFENCE 5M – SECOND OFFENCE	5M – FIRST OFFENCE 10M – SECOND OFFENCE
SECTION 20 (4) RESTRICTION ON LICENSES	1M	5M
SECTION 22 INFORMATION REGARDING STOLEN OR LOST PROPERTY	1M	5M
SECTION 24. DESTRUCTION OF INFRASTRUCTURE	10M 3 YEARS IMPRISONMENT	20M 7 YEARS

We propose we retain the same fines in the Act or even, as from past experience high fines are only attracting extortion.



**MINISTRY OF INDUSTRIALIZATION, TRADE  
AND ENTERPRISE DEVELOPMENT**

**SCRAP METAL AMMENDMENT BILL**

**PRESENTATION TO THE  
NATIONAL ASSEMBLY**

11-Jan-23

RESTRICTED

1



# **Scrap Metal Council**



❖ Scrap Metal Council was gazetted on 9<sup>th</sup> January 2015 with a date of commencement being 23<sup>rd</sup> January 2015. It was operationalized in October 2020 .



# Functions



Advise the Cabinet Secretary in:-

- The appropriate measures and mechanisms for regulating Scrap Metal industry in ensuring economic growth, protection of Public health and conformity to the Principles of environmental stewardship as required by the Basal Convention.
- The appropriate measures and mechanisms for protecting Public Interest against vandalism, theft of utility infrastructure and private property.
- The methods of attracting investors in the utilization of excess scrap materials and supporting existing users of scrap metal.
- The applicable licence fees to be prescribed under this Act and; any other matter relevant to the operations of this Act.
- Receive public complaints and disputes from the public and within the Scrap Metal Industry,
- Submit an annual status report on the Scrap Metal industry in Kenya to the Cabinet Secretary.



# **Moratorium**



- ❖ His Excellency the President during an address on 20th January 2022 announced a moratorium on the export, buying and selling of scrap metal.
- ❖ No dealer will be allowed to engage in the business until proper guidelines are put in place to regulate the sector.



## **Basis of Moratorium**



- ❖ In Naivasha where people intentionally unbolted some of our transmission lines and masts to create chaos and havoc.
- ❖ 18th January 2022, a breakdown at Kenya Power's transmission line caused a blackout that affected customers across major cities in the country such as Nairobi.
- ❖ The electricity distributor said the outage, which occurred around 10:45am last Tuesday was caused by a collapsed tower on the Kiambere-Embakasi high voltage transmission line.



# **Stakeholders**



- 1) State Department of Industrialization 16)Kenya consumer Protection
- 2) Scrap Metal Council Advisory Committee
- 3) State Department of Trade 17)Numerical Machining Complex
- 4) National Police Service
- 5) Kenya Urban Roads Authority
- 6) Kenya National Highways Authority
- 7) Kenya Railways Corporation
- 8) Kenya Revenue Authority
- 9) Directorate of Criminal Investigation
- 10)Kenya Iron And Scrap Metal Association
- 11)Kenya Power
- 12)Kenya Association of Manufacturers
- 13)Numerical Machining Complex



## **Chronology of Events**



- ❖ Presidential Moratorium – 20th January 2022
- ❖ Scrap Metal Council Meeting – 21st January 2022
- ❖ Court Case by Silver Steel Limited VS Government
- ❖ Nomination of multi-agency team
- ❖ Drafting and review of guidelines 9/15-2-22
- ❖ The guidelines finalized and forwarded to Head of Public Service, CS Ministry of Interior, and Attorney General for



## **Chronology of Events Cont.**



- ❖ 16/3/22 all stakeholders meeting at Ministry of Interior and National Coordination
  - Scrap Metal Traders requested to register by 16-2-22
- ❖ Drafting of Scrap Metal Rules, 2022 : 18-3-2022
- ❖ Draft Scrap Metal Rules, 2022 shared with stakeholders



## **Structure of Multi-Agency Team**



- ❖ County Commissioner – Chair
- ❖ County Industrial Development Officer – Secretary
- ❖ National Police Service - Member
- ❖ Directorate of Criminal Investigation - Member
- ❖ Kenya Power - Member
- ❖ Kenya Railways - Member
- ❖ National Environmental Management Authority

11-Jan-23

RESTRICTED



## **Precondition of Lifting of Moratorium**



- ❖ More categories introduced in the website including Agents (Ksh 150,000 from 250,000), Collectors, Steel Fabricators, Second hand Metal Plate and motor vehicle salvage operators (Kshs 50,000)
- ❖ Draft guidelines finalized (now Draft Scrap Metal Rules, 2022), sent for gazettment



## **Precondition of Lifting of Moratorium**



- ❖ Inspection guidelines for the multi-agency teams shared with Cabinet Secretary, Ministry of Interior and Coordination of the National Government
- ❖ Vetting of all Scrap Metal Traders before issuance of license by Multi-Agency Team



# Proposed Amendments

S/NO	ISSUE	GAP
1	Sec.2 Definition Critical National Infrastructure Electrical re-winder Steel fabricators Agent Authorized Officer Collector Smelter Platinoid Group Site Transporter	Include the definitions in the Rules and Act Critical National Infrastructure – vandalism of the same is the basis of moratorium The other two definitions are considered for new licensing. Definitions not included in the Act
2	Sec. 2A – New Section The objective and purpose of this Act is to regulate matters relating to scrap metal industry.	It is not provided in the Act

UNCLASSIFIED



# Council Membership

3	<p><b>Sec 4(1) – Council Membership</b></p> <ol style="list-style-type: none"> <li>Principal Secretary, transport</li> <li>Commissioner General, Kenya Revenue Authority</li> <li>Inspector General of Police</li> <li>Principal Secretary, Industrialization</li> </ol>	<p><b>Addition of council members :</b></p> <ol style="list-style-type: none"> <li>Principal Secretary, Ministry Energy</li> <li>Principal Secretary, National Treasury</li> <li>Principal Secretary, Ministry of Information Communication and Technology</li> <li>Attorney General</li> </ol> <p>1. Section 4(1) (dd) to read the Director of Criminal Investigations or a representative.</p>
4	<p>1. Section 4 (1) (f) (iii) one person nominated by the Kenya Association of Manufacturers ; (iv) one person nominated by large utility companies or agencies in charge of infrastructure, to be appointed on rotational basis; (v) one person nominated by the Consumer Federation of Kenya.</p>	<p>To rationalize the membership of non-state actors</p> <p>New Sec.4.1 (f) (i)</p> <ol style="list-style-type: none"> <li>one person nominated by National Scrap Metal Dealers Association</li> <li>One Organization nominated by Consumer Protection Advisory Committee as per the Consumer Act 2012       <ol style="list-style-type: none"> <li>Consumer Unit Trust Society</li> <li>Consumer Federation of Kenya</li> <li>Consumer International Network</li> <li>Kenya Consumer Organization</li> <li>Consumer Downtown Association</li> <li>Health Consumers Federations of Kenya</li> <li>Insurance Consumer Federations of Kenya</li> <li>Association of Insurance Consumers of Kenya</li> <li>Information Communications Technology Consumers Association of Kenya</li> <li>Kenya Association of Residents Association</li> </ol> </li> </ol> <p>Deletion of section (4)(1) (f) (iii), (iv) and (v)</p>



# Application of Rules and Awareness

5	<p><b>Sec. 4</b></p> <p><b>Application of the Rules</b></p> <p>collectors, agents, dealers, millers, smelters, transporters, steel fabricators, Stockists of second-hand metal parts, motor vehicle salvage operators, electrical re-winders, local welding machines fabricators.</p>	<p><b>Scope of coverage of the dealers</b></p> <p>This was the ice-breakers which made the small dealers accept the Ministry's terms</p>
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6	<p><b>Sec 6 (1)</b></p> <p>i. The Council shall intensify public awareness campaign to all stakeholders – scrap metal dealers on matters of licensing, transportation, record keeping and prevention of vandalism and theft. This will ensure that all players in the sub-sector are identified up to their premises of operations, licensed, and monitored to prevent trading in vandalized and stolen materials.</p>	<p>(i) This will ensure that all players in the sub-sector are identified up to their premises of operations, licensed, and monitored to prevent trading in vandalized and stolen materials.</p>
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# Scrap Metal Business

7	<p>Sec. 7 Scrap Metal Business Covers – Scrap metal - Motor Salvage Operators - batteries</p>	<p>Defines the coverage of the Scrap Metal trade</p>
8	<p>Section 7(2) The Ministry responsible for matters relating to industrialization shall provide secretariat services to the Council. Delete this Section</p>	<p>The Secretary to the Council shall provide secretarial services to the Council.</p>
9	<p>Sec.9 Application of license licence shall be in respect to the person and premises for carrying on scrap metal dealings, vetting before licensing</p>	<p>Enumerates the process of license application to include provision of tax compliance, LR No of premises, EIA, Certificate of good conduct and address</p>
10	<p>Sec 9(1) A person shall not deal in scrap metal, unless that person has a licence issued by the Council and is a member of Scrap Metal Dealers Association.</p>	<p>Have an umbrella body at the national level to pave way for proper regulatory processes of scrap metal industry by the government</p>
11	<p>Section 10(1)(b) Specify the premises in which the applicant intends to deal in scrap metal;</p>	<p>the applicant to apply separately for different premises</p>

# Copper and Aluminum



12	<p>Sec. 10 Copper, aluminum or their alloys</p> <p>(1) A person who intends to deal in scrap copper, aluminum or their alloys shall apply to the Council for a licence in accordance with section 10 of the Act.</p> <p>(2) An applicant for a licence under this rule shall be vetted separately.</p>	<p>Main elements of part of critical infrastructure (Energy) hence need to control their trade</p> <p>Mainly suggested by Government Institutions, might be opposed by the dealers as they make more money here</p>
13	<p>Section 12 is deleted and re-numbered as Section 12(1) to read as-</p> <p>"where the Council refuses to issue or renew a licence, the applicant may appeal to the Cabinet Secretary"</p> <p>Insert a new sub section as 12(2) to read as-</p> <p>"the refusal notification shall give the applicant fourteen days to lodge an appeal to the Cabinet Secretary for consideration from the date on which the notice is given, if not, the Council decision shall remain as per section 10(5)"</p>	<p>Stipulates the timelines for appealing against the council's decision and determination for the appeal.</p>
14	<p>Sec. 14 Issue of Licence</p> <p>a) that the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;</p> <p>a) that all scrap metal received must be kept in the form in which it is received for a specified period, minimum of seven days, commencing on the date when it is received.</p>	<p>I. A lot of Illegal Scrap metal trade at night</p> <p>II. Seven days is to ensure smelting is not undertaken to illegally acquired scrap metal</p>



# Display of Licence



15

Create a new section as Section 16A with a sub heading to read as – "Display of license"

Create a new section as 16A with sub section (1),(2) and (3) to read as

1. "a scrap metal operator who holds a license must display it at the business premise identified in the license."
2. "the copy must be displayed in a prominent place in an area accessible to the public"
3. "a scrap metal operator who fails to display the license is guilty of an offense and is liable on summary conviction to a fine as per section 31 of the Act and any other relevant law"

To Ascertain compliance



11-Jan-23

RESTRICTED

17



# Transportation

16

Create a new section as Section 16B with a sub heading to read as – “transportation of scrap metal”

Create a new section as 16B with sub sections to read as-

1. A scrap metal operator who holds a license must carry a copy of the license on any vehicle that is being used in the course of transportation of any scrap metal;
2. The copy of the license must be provided whenever required in any inspection by an authorized officer;
3. The vehicle owner must have an authorization letter from the licensee indicating the source of the scrap and destination; type and quantity of scrap metal; and name, national identification and contact details of the driver;
4. All the licensed scrap metal operators shall adhere to the laid down operating hours between half-past six o'clock in the morning and half-past six o'clock in the evening for the purposes of transporting scrap metal;
5. All licensed scrap metal transporters shall be in possession or production of the copy of the licensed of the scrap metal dealer of origin and copy of the licensed scrap metal dealer buying or receiving the scrap metal;
6. Any transporter found flouting the provisions of this Act or illegally transporting scrap metals, the vehicle shall be deregistered and forfeited to the State together with the scrap metals;
7. A scrap metal operator who fails to meet the requirements for transport is guilty of an offense and is liable on summary conviction to a fine as per section 31 of the Act and any other relevant law

11-Jan-25

RESTRICTED

18



# Proposed Amendments cont 3

17

Sec. 29

**Critical National Infrastructure (CNI)**

A state entity responsible for its respective critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining Complex and Kenya Shipyard limited for smelting into billets.

A lot of vandalism lately witnesses of CNI

18

Sec. 30

**Appointment of Inspectors**

Pursuant to section 29(3) and (5) of the Act, the Cabinet Secretary may by Notice in the Gazette appoint public officers from the following entities to be inspectors for purposes of the Act

One Government Approach most effective in enforcement in this sector but currently the biggest gap in enforcement. Agencies identified include:-

- a) State Department of Industrialization (County Industrial Development Officer – Secretary at County Level)
- b) Scrap Metal Council
- c) County Commissioner – Chair at County Level
- d) National Intelligence Service
- e) National Police Service;
- f) Kenya Railways Corporation;
- g) Kenya Electricity Transmission Company Limited;
- h) Kenya National Highways Authority;
- i) Kenya Urban Roads Authority;
- j) Communications Authority of Kenya;
- k) Kenya Revenue Authority;
- l) Office of the Director of Public Prosecutions;
- m) National Environment Management Authority; and
- n) Kenya Power and Lighting Company.

RESTRICTED



# Inspectors

- 19 (a) An inspector shall have the same powers as are exercised by a customs officer with regard to importation of scrap metal under the East African Community Customs Management Act, 2005.
- (b) If a magistrate, on sworn information in writing—  
is satisfied that there is reasonable ground to believe either—  
that any goods, books or documents which an inspector has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of commission of an offence under this Act; or  
that any offence under this Act has been, is being, or is about to be committed on any premises; and  
is also satisfied either—  
that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier; or  
that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,  
the magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorize an inspector to enter the premises, if need be by force.
- (a) An inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he has so entered by virtue of a warrant he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- (b) The Council shall, for purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Council may consider appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as inspectors.
- (c) The Council may designate other public officers to be inspectors for purposes of this Act.



## Proposed Amendments cont 4

20	Sec. 38 Transportation of scrap metal	I. Every licensed dealer shall carry a certified copy of the licence of the licensed dealer and the recipient of the scrap metal on any vehicle that is being used to transport any scrap metal. II. Purpose is to limit illegal trade
21	Sec. 39 Scrap metal dealers' Association	I. Need to strengthen and use the associations to encourage self-regulation and Control the sector
22	Sec. 41 Creation of Awareness	I. Need for sensitizing scrap metal dealers of the law given before moratorium very few dealers were licensed
23	Schedule (r. 8(1)) SCHEDULE: FEES PAYABLE BY SCRAP METAL DEALERS	I. Introduce various fees making it easier to apply for licenses especially for small traders
24	Sec.24 Copper, Aluminum and their alloys	I. Proposal to have a special license for copper, aluminum and their alloys in order to protect critical infrastructure namely transformers
25	Sec. 26 Restriction of Imports/Exports	I. Summary Project Report in line with Environmental Management Coordination Act 2018 for low risk projects". I. The Act provides for exports but it is silent with regards to imports. Import should be included due to risk of hazardous imports
26	Critical Infrastructure	I. A state entity responsible for its respective critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining Complex and Kenya Shipyard Limited for smelting into billets



# Fees

	1M – FIRST OFFENCE 5M – SECOND OFFENCE	5M – FIRST OFFENCE 10M – SECOND OFFENCE
SECTION 18 LICENSE BY REGISTER		
SECTION 20 (4) RESTRICTION ON LICENSES	1M	5M
SECTION 22 INFORMATION REGARDING STOLEN OR LOST PROPERTY	1M	5M
SECTION 24. DESTRUCTION OF INFRASTRUCTURE	10M 3 YEARS IMPRISONMENT	20M 7 YEARS

We propose we retain the same fines in the Act, as from past experience high fines are only attracting extortion.



# SAGA



Expunge section 7 (2) The Ministry responsible for matters relating to industrialization shall provide secretariat services to the Council. This will enable the Scrap Metal Council to be semi-autonomous and thus support the sector



# Charges

S/NO	TYPE OF USER	AMOUNT OF SCRAP METAL IN KGS	AMOUNT OF FEES IN KSHS
1	SMELTER, DEALER, MILLER	OVER 5000	250, 000
2	AGENT	5000	100, 000
3	COLLECTOR, SMELTER	3,000	50, 000
4	1. SMELTER FABRICATOR 2. MOTOR VEHICLE SALVAGE OPERATORS 3. STOCKISTS OF SECOND HAND MOTOR SPARE, ELECTRICAL REWINDERS, LOCAL WELDING MACHINES (TRANSFORMERS), FABRICATORS	ANY AMOUNT BELOW	20, 000



# GUIDANCE

11-Jan-23

RESTRICTED

25



OUR REF: AKN/V3/102A

YOUR REF: TBA

DATE: 2nd January 2023

The Clerk of the National Assembly,  
Republic of Kenya,  
Main Parliament Buildings,  
P.O. Box 41842-00100,  
Nairobi.  
E-Mail: clerk@parliament.go.ke

*D/DC*  
*Please deal.*  
*[Signature]*  
*16/01/23*

*Nebert Ikal*  
*pls facilitate*  
*[Signature]*  
*17/1/23*

Dear Sir/Madam,

**MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022: OBJECTION TO AMENDMENTS TO THE SCRAP METAL ACT, 2015 (NO. 1 OF 2015)**

**1. INTRODUCTION**

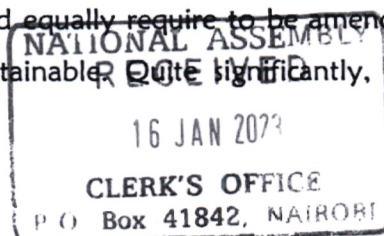
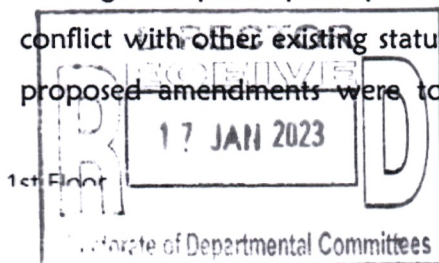
Receive warmest compliments from our firm of advocates. We acknowledge with profound gratitude, the phenomenal transformation across the country triggered by the legislative foresight of the National Assembly. In response to the call for representations on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022, may it please the August House, to consider this brief memorandum which summarizes our position in respect to the aforesaid Bill.

**2. POLICY GROUNDING OF THE BILL**

In our perspective, the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022 is anchored on the practice of making various amendments which do not merit the publication of separate Bills and consolidating them into one omnibus Bill.

**3. AMENDMENTS TO THE SCRAP METAL ACT, 2015 (NO. 1 OF 2015)**

Foremost, the proposed amendments to the Scrap Metal Act, 2015 are gross and would not qualify to be boarded into an omnibus bill. The same would require to be subjected to a rigorous public participation process. Secondly, the amendments are excessively in conflict with other existing statutes which would equally require to be amended if the proposed amendments were to be legally sustainable. Quite significantly, were the



amendments to be enacted they would completely cripple the Scrap Metal sector owing to their over-regulative character.

It is noteworthy that similar regulatory proposals that had been cunningly sneaked in through the Scrap Metal Dealers Rules, 2022 (Legal Notice No. 84 of 2022), were wholesomely rejected by the Committee on Delegated Legislation in its report tabled and adopted by the House on 8<sup>th</sup> June 2022. It would therefore be a travesty to countenance provisions that have previously been found wanting and rejected, by merely clothing them differently and placing them in an omnibus bill.

Among other shortcomings, the proposed amendments are offensive to the established legal order in that Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022, proposes to amend section 24 of the Scrap Metal Act, 2015 by introducing the following provisions:

***(1A) A state entity responsible for critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining Complex and the Kenya Shipyard Limited for smelting into billets.***

***(1B) Where there is inadequate capacity at the Numerical Machining Complex and Kenya Shipyard Limited, the respective state entity through a written consent from the Numerical Machining Complex and the Kenya Shipyard Limited, shall seek approval from the Council to partner with a local smelter directly without involving a broker.***

The above amendments proposed to section 24 of the Scrap Metal Act, 2015 are untenable on among others the following grounds:

- i. The amendments run counter to the express stipulates of sections 53, 163, 164, 165 of the Public Procurement and Asset Disposal Act, 2015.
- ii. There is no legislative framework conferring the requisite mandate to both the Numerical Machining Complex and the Kenya Shipyard Limited, the legal mandate to deal with scrap metal.
- iii. In any event, notwithstanding the government shareholding therein, the Numerical Machining Complex and the Kenya Shipyard Limited are limited companies and cannot be granted leeway to interfere with the operative mandates and to dictate the asset disposal process of legally established state entities.

- iv. Amendment 1B is excruciatingly vague and would be difficult to implement given the subjectivity with which it is couched.

#### **4. CONCLUSION**

Kenya legitimately prides itself as being a business friendly destination. The proposed amendments to the Scrap Metal Act, 2015 fundamentally set the stage for turbulence in the scrap metal sector with the risk of clawing back the gains and potentially triggering black market trade. Accordingly, we respectfully urge the Honorable House to drop all the proposed amendments to the Scrap Metal Act, 2015, pending suitable consultations with the public and more so the industry stakeholders.

Confident of Parliament's unwavering commitment to legislate for posterity, we assure you of our highest regards and look forward to your continued partnership in fostering the growth of our nation.

Yours faithfully,

**For: Adrian Kamotho Njenga & Co. Advocates,**



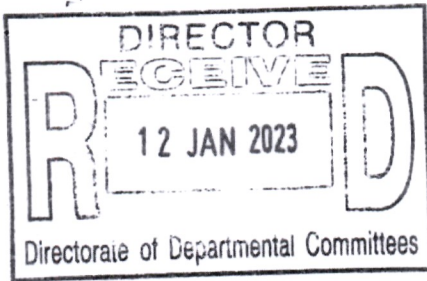
Dr. Adrian Kamotho Njenga, PhD

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○



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

6/7  
Mr. R. K. M. /  
T. M. /  
12/1/23

Our Ref: AG/LDD/190/1/84  
Your Ref. NA/DDC/TRADE/2022/012

30<sup>th</sup> December, 2022

The Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O. Box 41842-00100  
**NAIROBI**

(Attn: Mr. Jeremiah Ndombi MBS)

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE SCRAP METAL ACT (NO. 1 OF 2015)**

This has reference to your letter dated the 21<sup>st</sup> December, 2022, under Ref. NA/DDC/TRADE/2022/012, requesting our views on the proposed amendments to the Scrap Metal Act (No. 1 of 2015) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8<sup>th</sup> December, 2022.

We have sought the policy guidance of the Ministry of Trade, Investment and Industry, which is responsible for the policy relating to the aforementioned statute and shall share the results of that guidance as and when we receive it.

Samson Davies Maundu  
Principal Parliamentary Counsel  
**FOR: ATTORNEY-GENERAL**

Copies to: Hon. J.B.N. Muturi EGH  
Attorney-General

Mr. Kennedy Ogeto CBS  
Solicitor-General

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355 07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)  
DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

ISO 9001:2008 Certified



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**M.N. Nzioka (Mrs.)**  
Deputy Solicitor-General



MEMO

D/DC  
To bring the COFEK request to the attention of the Committee on Trade, Industry and Cooperatives.  
*[Signature]*  
16/01/23

TO: THE CLERK, NATIONAL ASSEMBLY

THRO' THE DIRECTOR, LEGAL SERVICES - NA

The submissions by COFEK may be submitted to the Departmental Committee on Trade, Industry and Co-operatives.  
*[Signature]*

FROM: SENIOR LEGAL COUNSEL

For DLs 16/01/2023

DATE: 13<sup>th</sup> January, 2023

RE: OBJECTIONS AGAINST THE SCRAP METAL ACT, 2015 AMENDMENTS

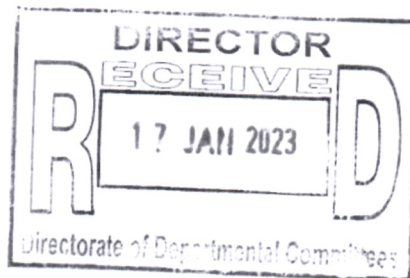
The above matter and the letter dated January 10, 2023 by Mr. Stephen Mutoro on behalf of the Consumers Federation of Kenya (COFEK) refer.

Mr. Mutoro requests the National Assembly to expunge all the proposed amendments to the Scrap Metal Act, 2015. We note that these amendments are contained in the Statute Law (Miscellaneous Amendments) Bill, 2022 and the consideration of the proposed amendments to the Scrap Metal Act, 2015 were committed to the Departmental Committee on Trade, Industry and Co-operatives as per the attached advertisement on public participation.

In light of the above, we advise that the letter be submitted to the Departmental Committee on Trade, Industry and Co-operatives for their further action.

Submitted for your consideration and further directions.

*Oteinde*  
EMMA ESSENDI  
NATIONAL ASSEMBLY



Nelba 16/1  
to table before committee for consideration  
*[Signature]*  
17/1/23

# Consumers Federation of Kenya

Rehema Place, Block F-45,  
Ngong Rd/Ring Rd. Kilimani ,  
P.O. Box 28053-00200  
Nairobi.



Cell: +254-715555550, 0733180008;  
Email: admin@cofek.co.ke  
: hotline@cofek.africa  
Twitter: @Cofek\_africa  
Web: www.cofek.africa

10<sup>th</sup> January 2023

**The Clerk  
The National Assembly  
Parliament Buildings  
NAIROBI**

DLS  
To review and advise.  
*[Signature]*  
11/01/23

Dear Sir,

## **RE: OBJECTIONS AGAINST SCRAP METAL ACT, 2015 AMENDMENTS**

The abovementioned subject matter and the Scrap Metal Act, 2015 proposed amendments as contained within the Miscellaneous Amendments Bill, 2022 refers.

### 1.0 ABOUT COFEK:

The Consumers Federation of Kenya (Cofek) is Kenya's independent, self-funded, multi-sectorial, non-political and apex non-profit Federation committed to consumer protection, education, research, consultancy, litigation, anti-counterfeits campaign and business rating on consumerism and customer-care issues.

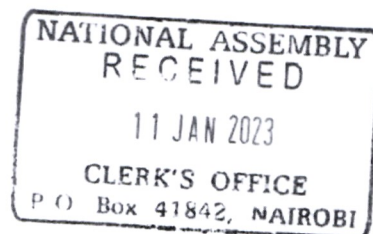
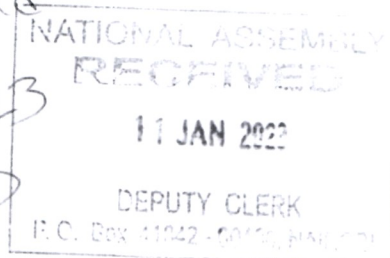
The Federation was registered on March 26, 2010. Cofek works towards a fair, just and safe marketplace for all Kenyan and regional consumers in all sectors of the economy.

Cofek is a founder Chair of the Government-run Kenya Consumer Protection Advisory Committee (Kecopac). Our mandate is drawn from Article 46 of the Constitution of Kenya 2010, the Consumer Protection Act, 2012 and the Competition Act, Cap 504 among other statutes. The legal framework provides high thresholds for consumer protection in all spheres and for both private and public sectors.

### 2.0 LOCUS STANDI

By dint of Section 4(f)(v) of the Scrap Metal Act, 2015 Cofek is a member of the Scrap Metal Council as established under Section 3 of the Act. Section 32(1): *the Cabinet Secretary may on the recommendation of the Council make rules regulations for the better carrying out of this Act.*

*Ms. Emma Otieno,  
Kindly assign and  
supervise  
12.1.2023  
[Signature]*



### 3.0 RATIONALE FOR OBJECTION

Cofek wishes to object all proposed amendments to the Scrap Metal Act, 2015 on account of the following;

3.1 The Cabinet Secretary for Industrialization fatally erred in transmitting the impugned amendments without regard to the Scrap Metal Council (SMC) - on which the undersigned is a member and Chairperson of the Technical Committee. This move contravened provisions and especially the letter and spirit of Section 32(1) of the Act

3.2 The Cabinet Secretary has been deliberately been mis-reading and mis-interpreting Section 7(2) of the Act "*The Ministry responsible for matters relating to industrialization shall provide secretariat services to the Council*" to purport to micro-manage the Council in an unlawful manner so as to remove the clear provisions of being a body corporate as per Section 3(2) which states that "*The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of ...*" If there was ever a Miscellaneous amendment was to delete the contradictory Section 7(2).

3.3 The Cabinet Secretary purported to remove the undersigned representative of Cofek from the Council on flimsy grounds – which included for having opposed imposition of Amendments to the Act and Regulations to the Act (which were annulled in toto by the National Assembly in June, 2022 on the recommendation of the Committee on Delegated Legislation

3.4 That arising from Paragraph 3.3 hereinabove, the undersigned was reinstated by High Court in Nairobi and that the matters in question – both of amending the Act and annulled Regulations are actively before the Employment and Labour Relations Court in ELRC PET. No. E151/2022 of COFEK vs Ministry of Trade and Industrialization & 4 others. It will be an act of raw breach of **subjudice** rule should the National Assembly go ahead and consider the proposed amendments before the said Petition is determined.

3.5 That the proposed amendments including terminologies, if allowed, will distort the object of the Act and render the law superfluous at the expense of selfish interests being advanced through the Cabinet Secretary for Industrialization. Examples would suffice;

3.5.1 Purporting to issue a **special license** for copper, aluminium, iron and their alloys (a mix of metal compounds) will negate the essence of separating and unbundling scrap metals. It will equally amount to **double-licensing** (and creating difficult- to- regulate super dealers) because there is already a standard dealer license as contemplated in the Act

3.5.2 **Restriction of disposal** of scrap metal from public agencies and offering preferential procurement to Numerical Machining Complex and Kenya Shipyard Ltd is unconstitutional on account of discrimination as at Article 27(4) and the move purports to amend the Public Procurement and Disposal Act. Using one act (Scrap Metal Act, 2015) to purport to amend the laws that establish the Numerical Machining Complex and Kenya Shipyard Ltd is not a neat process especially via the Miscellaneous Amendment Bill

3.5.3 That Paragraphs 3.5.1 and 3.5.2 hereinabove are highly **substantive and fail the threshold of Miscellaneous Amendments** as per various Authorities from with a few samples herebelow

3.5.3.1 What is the rationale for Miscellaneous Amendments? The purpose of as was observed in *Law Society of Kenya & Another (2016) e KLR*, by the five judge bench is, *'it is therefore clear that both on policy and good governance, which is one of the values and principles of governance in Article 10 of the Constitution, which values and principles form the foundation of our State and Nation as decreed in Article 4(2) of the Constitution, omnibus amendments in the form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.*

3.5.3.2 *'the practice in the United States of America as stated by Louis Massicotte,[4] is varied with some states permitting omnibus bills and other restricting bills to a single issue. In a 1901 American case of Commonwealth vs. Barnett (199 US. 161) the court stated that: "Bills, popularly called omnibus bills, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits".*

From the foregoing, we are urging the National Assembly to **expunge all the proposed amendments on the Scrap Metal Act, 2015.**

**TAKE NOTICE** that The Consumers Federation of Kenya (COFEK) will seek legal redress against the National Assembly and the entire Miscellaneous Bill if this cautionary notice is not observed and strictly heeded. Thank you.

Yours Sincerely,

**CONSUMERS FEDERATION OF KENYA (COFEK)**



**PP:** Stephen Mutoro  
**SECRETARY GENERAL**



Our Ref: KAM/10/27/mm/dm/mb/jw/AM/2023

2nd March 2023

Mr. Samuel Njoroge  
The Clerk, National Assembly  
Parliament of Kenya, Parliament Buildings  
P.O Box 41842 - 00100  
NAIROBI

*Dr. Joseph Kombo*

Dear Mr. Njoroge,

**RE: OBJECTION TO THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022  
- AMENDMENTS TO THE SCRAP METAL ACT, 2015**

Kenya Association of Manufacturers (KAM) presents her compliments on behalf of its members.

KAM is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through its strong linkages with all sectors of the economy. KAM has over 1500 members and represents over 40 percent of Kenya's manufacturing value-add industries.

Reference is made to the Statute Law (Miscellaneous Amendments) Bill, 2022, (the Bill) which seeks to amend the Scrap Metal Act, 2015 among other various legislations. KAM has businesses under the Metal and Allied Sector across the country who will be greatly impacted on the proposed amendments.

The Bill proposes significant amendments to the Scrap Metal Act 2015, which will impact on the metal and allied businesses and trading environment in the country. This therefore requires adequate time and consultations with businesses before their consideration. This will be in line with the participation requirements enshrined under Article 10 of the Constitution. Additionally, we have informed the Ministry of Investment, Trade and Industry to withdraw the proposed amendment under the Statute Law (Miscellaneous Amendments) Bill, 2022, (the Bill) seeking to amend the Scrap Metal Act, 2015 to allow stakeholders discussion and ownership.

NATIONAL ASSEMBLY  
RECEIVED  
06 MAR 2023  
CLERK'S OFFICE  
P O Box 41842, NAIROBI

*Ms. Neberk Ekai*  
*Pls TNA. [Signature] 01/03/23*

25 - 00100 Nairobi, Kenya  
www.kam.co.ke  
kam.co.ke  
Mwanzi Road, Opposite Westgate  
Nairobi

Tel: +254 20 2324817/8; 020 8155531/2, 020 2  
Mobile: +254 722 201368, 0706

KAM  
Kenya Association of Manufacturers

The purpose of this letter is to, therefore object to the proposed amendment under the Statute Law (Miscellaneous Amendments) Bill, 2022, (the Bill) which seeks to amend the Scrap Metal Act, 2015.

Advance feedback on this matter can be sent through [ceo@kam.co.ke](mailto:ceo@kam.co.ke) or call +254 20 2324817/8.

We look forward to your consideration.

Yours Sincerely,



**Anthony Mwangi**  
**CHIEF EXECUTIVE**

# **Copy of Newspaper Advert**



NATIONAL ASSEMBLY  
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16 JAN 2023  
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P O Box 41842, NAIROBI

*DDC*  
*Please deal*  
*Sh*  
*16/01/22*



REPUBLIC OF KENYA



Email: [scrapmetalcouncil@gmail.com](mailto:scrapmetalcouncil@gmail.com)  
Website: [www.scrapmetalcouncil.go.ke](http://www.scrapmetalcouncil.go.ke)  
Twitter: @ScrapMetalC\_ke

National Social Security House  
Block A, 17<sup>th</sup> Floor Eastern Wing  
P.O. Box 30418 - 00100,  
NAIROBI- KENYA

Ref. No. MITED/CS/SMC/VOL.11

11<sup>th</sup> January 2023

Date: .....

**Mr. Samuel Njoroge**

Clerk of the National Assembly  
Parliament Building  
Sheria House, Harambee Avenue  
P.O. Box 41842-00100,  
**NAIROBI**

*Nebet Ikai*  
*pls facilitate*  
*up w m*  
*17/1/23*

Dear *Mr. Njoroge,*

**RE: CONSIDERATION OF THE STATUTE LAW MISCELLANEOUS AMENDMENTS BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE SCRAP METAL ACT NO.1 OF 2015**

Reference is made to your letter NA/DDC/TRADE/2022/012 dated 21<sup>st</sup> December 2022 on the above-mentioned matter.

This is to inform you that my comments have been consolidated with the one of Principal Secretary, State Department of Industry who has presented the comments in a later dated 11<sup>th</sup> January 2023.

DIRECTOR  
RECEIVED  
17 JAN 2023  
R D  
Directorate of Departmental Committees

NATIONAL ASSEMBLY  
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13 JAN 2023  
DEPUTY CLERK  
P.O. Box 41842, NAIROBI

Further, I will accompany the Principal Secretary if the situation requires physical presentations at the National Assembly and I am ready to offer any assistance required by your Office.

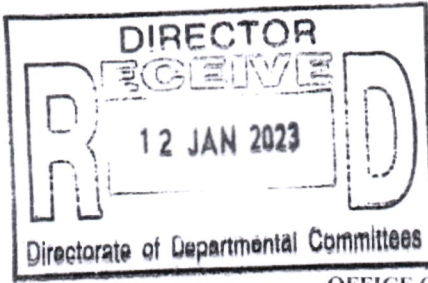
Yours Sincerely,



**George Makalelo**  
**HEAD OF SECRETARIAT**

Copy to: **Hon. Moses Kuria, HSC**  
Cabinet Secretary  
Ministry of Investment, Trade and Industry  
**NAIROBI**

**Dr. Juma Mukhwana, PhD, HSC**  
Principal Secretary  
Ministry of Investment, Trade and Industry  
**NAIROBI**



317

Mr Akoe  
Deal

12/1/23

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/190/1/84  
Your Ref. NA/DDC/TRADE/2022/013

30<sup>th</sup> December, 2022

The Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O. Box 41842-00100  
**NAIROBI**

(Attn: Mr. Jeremiah Ndombi MBS)

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE LOCAL MANUFACTURER (EXPORT COMPENSATION) ACT (CAP. 482**

This has reference to your letter dated the 21<sup>st</sup> December, 2022 under Ref. NA/DDC/TRADE/2022/013, requesting our views on the proposed amendments to the Local Manufacturer (Export Compensation) Act (Cap. 482) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8<sup>th</sup> December, 2022.

We have sought the policy guidance of the Ministry of Trade, Investment and Industry, which is responsible for the policy relating to the aforementioned statute and shall share the results of that guidance as and when we receive it.

Samson Davies Maundu  
Principal Parliamentary Counsel  
**FOR: ATTORNEY-GENERAL**

Copies to: Hon. J.B.N. Muturi EGH  
Attorney-General

Mr. Kennedy Ogeto CBS  
Solicitor-General

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

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**M.N. Nzioka (Mrs.)**  
Deputy Solicitor-General



# KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI  
Telephone: Nairobi, +254-20-2241186/2241201  
Fax: +254-20-2225786  
www.info@klrc.go.ke

When replying please quote

Ref. No. **KLRC/RES/93 VOL.VI (31)**  
and Date

The Clerk of National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O Box 41842 -00100  
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear *Jerem,*

RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE LOCAL MANUFACTURER EXPORT COMPENSATION) ACT (CAP 482)

We acknowledge with thanks receipt of your letter Ref.NA/DDC/TRADE/2022/013 dated 21<sup>st</sup> December, 2022 on the above matter.

Enclosed herein please find our Comments on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.60 Of 2022) on the Local Manufacturer Export Compensation) Act (Cap 482) for further action.

As always, we are grateful for your continued support and collaboration.

Yours

*Sincerely,*  
*Joash Dache*

Joash Dache, MBS  
Secretary/Chief Executive Officer

Encls.

*D/DC*  
*Please read.*  
*Soni*  
*11/01/23*

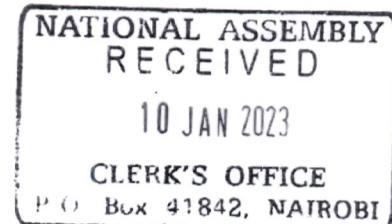
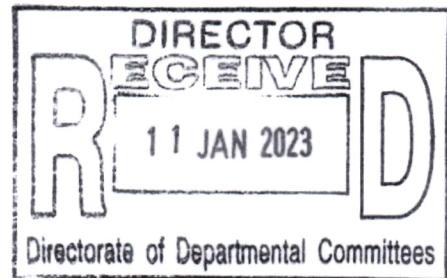
*Mr Akai*  
*Desl*  
*11/1/23*



KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR  
TAIFA ROAD  
P.O. Box 34999-00100  
NAIROBI, KENYA

9<sup>th</sup> January, 2023

.....20.....







## Introduction

The Kenya Law Reform Commission is in receipt of a letter from the National Assembly dated 21<sup>st</sup> December 2022, requesting the Commission to submit its comments on the **Statute Law (Miscellaneous Amendments) Bill on the Local Manufacturer (Export Compensation) Act (Cap 482)**

This memorandum is also issued in furtherance of the Commission's mandate, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

## Objects and reasons for the Bill

The Bill proposes to amend the **Local Manufacturers (Export Compensation) Act** to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157 (2) of the Constitution.

## COMMENTS ON THE BILL

PROVISION IN THE BILL	PROPOSED AMENDMENT	SUGGESTION AND RATIONALE
Clause 10 (2)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	The amendment is commendable.  The section 10 (2) of the Local Manufacturers (Export Compensation) Act deals with prosecution

---



		<p>for an offence against the Act. For that purpose, any officer, may subject to the control of the Director of Public Prosecutions have power to conduct a prosecution for an offence in the Act.</p> <p>Under Article 157 (6) (a): The Director of Public Prosecutions shall exercise State powers of Prosecution and may institute and undertake criminal proceedings against any person before any court.</p>
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**CONCLUSION**

The amendment is commendable as the Director of Public Prosecutions is vested with the powers of prosecution and may institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed.





NATIONAL ASSEMBLY  
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19 JAN 2023  
CLERK'S OFFICE  
P.O. BOX 41842, NAIROBI

**MINISTRY OF INVESTMENT, TRADE, AND INDUSTRY**  
**State Department for Industry**  
**Office of the Principal Secretary**

Telephone: 020-2731531-9  
0704097021/23, 0788484840/41  
Email: [ps.moied@gmail.com](mailto:ps.moied@gmail.com)  
Url: [www.industrialization.go.ke](http://www.industrialization.go.ke)

Social Security House BLK 'A'  
Bishops Road,  
P.O. Box 30418 - 00100  
NAIROBI

When replying, please quote:

REF: MITI/SDI/ 9/28/Vol. III.

*Nebest'ikai*  
*pls facilitate*  
*wa w/ D/DC*  
*6/2/23*

Date: 13<sup>th</sup> January 2023

**Mr. Samuel Njoroge**  
Clerk of the National Assembly  
Clerk's Chambers  
Parliament Buildings  
NAIROBI

*Please deal*  
*20/01/23*

DIRECTOR  
RECEIVED  
06 FEB 2023  
Directorate of Departmental Committee

Dear

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE LOCAL MANUFACTURER (EXPORT COMPENSATION) ACT (CAP 482)**

This is in reference to the letter from your office Ref. No. NA/DDC/TRADE/2022/013 of 21<sup>st</sup> December 2022 on the above-mentioned subject matter.

The Bill seeks to delete the expression "Attorney General" and Substitute it with the expression "Director of Public Prosecution" under Section 10 (2) of the Local Manufactures Export Compensation) Act (Cap. 482).

The Ministry notes that Section 10 (2) of the Local Manufactures (Export Compensation) Act (Cap. 482) reads "**Any officer, as defined in the Customs and Excise Act (Cap. 472), shall, subject to the control of the Attorney-General, have the power to conduct prosecution against this Act and for that purpose shall have all powers of a public prosecutor appointed under the Criminal Procedure Code (Cap. 75)**". The reference to the Attorney-General, in this case, is about conducting public prosecution.

This State Department, however, notes that the Constitution of Kenya, 2010, under Chapter Nine – The Executive, Section 157 (1) establishes the Office of Public Prosecutions and gives the office State Powers of prosecution under Section 157 (6).

This is therefore to concur with the proposed amendment under *The Statute Law (Miscellaneous Amendments Bill No. 60 of 2022) on the Local Manufactures (Export Compensation) Act (Cap 482)* as it aligns it with the Constitution.

Yours

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and the initials 'Ma' written in a cursive style.

**Dr. Juma Mukhwana, PHD, HSC**  
**PRINCIPAL SECRETARY**

D/DC

① Please deal.  
13/01/23



② Mv RKA  
TNA  
16/1/23

REPUBLIC OF KENYA  
MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY  
STATE DEPARTMENT FOR TRADE  
OFFICE OF THE PRINCIPAL SECRETARY

Telephone: +254-(0)20-3315001/2-4  
Web: [www.trade.go.ke](http://www.trade.go.ke)  
Email: [ps.trade@trade.go.ke](mailto:ps.trade@trade.go.ke) / [psfortrade@gmail.com](mailto:psfortrade@gmail.com)  
When replying please quote

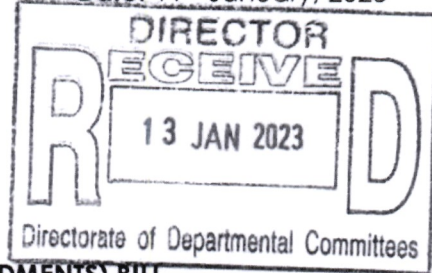
TELPOSTA TOWERS  
KENYATTA AVENUE  
P.O. Box 30430 - 00100  
GPO NAIROBI - KENYA

Ref. NO.MITI/SDT/1/93 (15)

Date: 11th January, 2023

Mr. Samuel Njoroge  
Clerk of the National Assembly  
Parliament Buildings  
NAIROBI

Dear



**CONSIDERATION OF THE STATUTE LAW (MISC. AMENDMENTS) BILL  
(NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE LOCAL MANUFACTURER  
(EXPORT COMPENSATION) ACT (CAP 482)**

The State Department for Trade is in receipt of communication from the National Assembly's Departmental Committee on Trade, Industry and Cooperatives requesting for views on the proposed amendments to the Local Manufacturer (Export Compensation) Act (Cap.482) as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022).

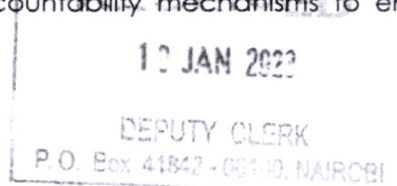
The Bill proposes to amend the Local Manufactures (Export Compensation) Act to harmonize its provisions with the functions of the Office of the Director of Public Prosecutions (ODPP) under Article 157(2) of the Constitution.

Specifically, the Bill proposes to amend section 10 (2) of the Act which reads thus; *Any officer, as defined in the Customs and Excise Act (Cap. 472), shall, subject to the control of the Attorney-General, have power to conduct a prosecution for an offence against this Act and for that purpose shall have all the powers of a public prosecutor appointed under the Criminal Procedure Code (Cap. 75).*

These are offences in relation to proceedings where a person(s), in making application for compensatory payments for exports, makes or causes to be made statements which are false in material particular; fails to disclose material information or; fails to comply with any applicable condition.

Prior to the promulgation of the 2010 Constitution, the ODPP was placed under the Attorney General who had the ultimate powers in respect of prosecutions.

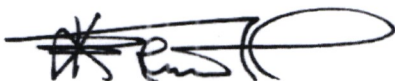
The Constitution of Kenya 2010 establishes the ODPP as an independent office that would not be under the direction of anyone in the exercise of the state powers of prosecution, with attendant accountability mechanisms to ensure checks and balances.



Further, Article 156 (4) (b) of the Constitution provides that the Attorney General shall represent the national government in court or in any other legal proceedings to which the national government is a party, **other than criminal proceedings.**

In light of the above, section 10(2) of the Local Manufactures (Export Compensation) Act may be amended by substituting the word "Attorney General" with the word "Director of Public Prosecutions".

Yours



Alfred O. K'ombudo  
PRINCIPAL SECRETARY

MITI/SDT/1/93 (15)

Local manufacturer (Export Compensation) Act



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

717

Our Ref: AG/LDD/190/1/84  
Your Ref: NA/DDC/TRADE/2022/013

30<sup>th</sup> December, 2022

The Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O. Box 41842-00100  
**NAIROBI**

*Mr. Akar*  
*Deal appropriately*  
*[Signature]*  
*12/1/23*

(Attn: Mr. Jeremiah Ndombi MBS)

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE CO-OPERATIVE SOCIETIES ACT (NO. 12 OF 1997)**

This has reference to your letter dated the 21<sup>st</sup> December, 2022 under Ref. NA/DDC/TRADE/2022/011, requesting our views on the proposed amendments to the Co-operative Societies Act (No. 12 of 1997) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8<sup>th</sup> December, 2022. A copy of the letter is annexed hereto.

We have sought the policy guidance of the Ministry of Trade, Investment and Industry, which is responsible for the policy relating to the aforementioned statute and shall share the results of that guidance as and when we receive it.

**Samson Davies Maundu**  
Principal Parliamentary Counsel  
**FOR: ATTORNEY-GENERAL**

Copies to: **Hon. J.B.N. Muturi EGH**  
Attorney-General

SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355/07119445555/0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

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**Mr. Kennedy Ogeto CBS**  
Solicitor-General

**M.N. Nzioka (Mrs.)**  
Deputy Solicitor-General

② D/DC  
Please deal  
13/01/23



REPUBLIC OF KENYA

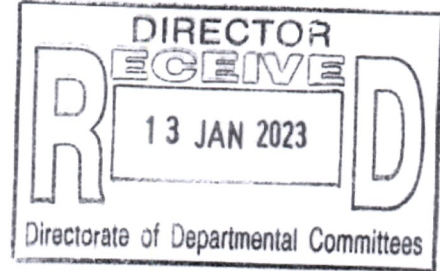
OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

② Mr Rkar  
Deal  
16/1/23

Our Ref: AG/LDD/190/1/84  
Your Ref: NA/DDC/TRADE/2022/011

12<sup>th</sup> January, 2023

The Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O. Box 41842-00100  
**NAIROBI**



(Attn: Mr. Jeremiah Ndombi MBS)

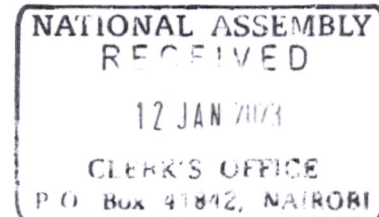
**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022 (NATIONAL ASSEMBLY BILLS NOP. 60 OF 2022) ON THE CO-OPERATIV SOCIETIES ACT**

This has reference to your letter dated the 21<sup>st</sup> December, 2022 under Ref. NA/DDC/TRADE/2022/011 requesting our views on the proposed amendments to the Co-operative Societies Act contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8<sup>th</sup> December, 2022.

We have sought the policy guidance of the Ministry of Co-operatives, MSME Development, which is responsible for the policy relating to the aforementioned statutes and the same is annexed hereto for your consideration and further necessary action.

Samson Davies Maundu  
Principal Parliamentary Counsel  
**FOR: ATTORNEY-GENERAL**

Copies to: Hon. J.B.N. Muturi EGH  
Attorney-General



SHERIA HOUSE, HARAMBEE AVENUE  
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355/07119445555-0732529995  
E-MAIL: [info.statelawoffice@kenya.go.ke](mailto:info.statelawoffice@kenya.go.ke) WEBSITE: [www.attorney-general.go.ke](http://www.attorney-general.go.ke)

DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legal@justice.go.ke](mailto:legal@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

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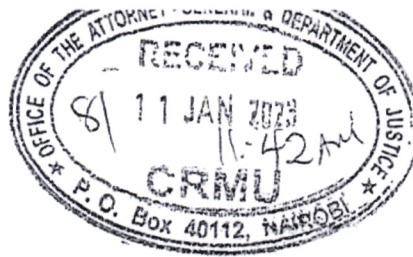
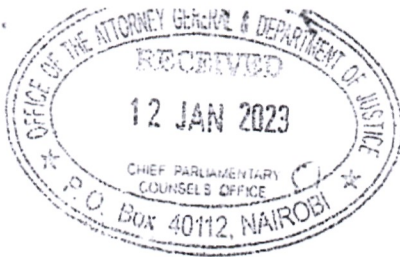


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**Mr. Kennedy Ogeto CBS**  
Solicitor-General

**M.N. Nzioka (Mrs.)**  
Deputy Solicitor-General

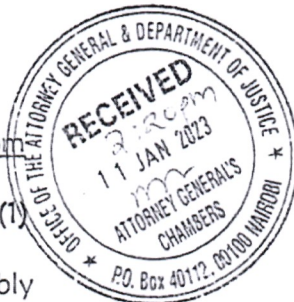




100

**MINISTRY OF CO-OPERATIVES AND MICRO, SMALL AND MEDIUM  
ENTERPRISES (MSMEs) DEVELOPMENT**  
STATE DEPARTMENT FOR CO-OPERATIVES  
OFFICE OF THE PRINCIPAL SECRETARY

Telephone: 020-2731531-9  
0704097021/23  
0788484840/41  
Email : [ps.ushirika@gmail.com](mailto:ps.ushirika@gmail.com)



Social Security House Block A,  
Bishops Road,  
P.O. Box 40530-00100,  
NAIROBI.

Ref: MCMSME/SDC/VOL. 1 (1)

10<sup>th</sup> January 2023

Clerk of the National Assembly  
Parliament Buildings  
P.O.Box 41842 – 00100  
**NAIROBI**

**CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL,  
2022 (NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE CO-OPERATIVE  
SOCIETIES ACT (NO. 12 OF 1997)**

Reference is made to the above subject matter and to your letter Reference Number NA/DDC/TRADE/2022/011 dated 21<sup>st</sup> December, 2022.

The Statute Law (Miscellaneous Amendments) Bill, 2022 (National Assembly Bill No. 60 of 2022) proposed to amend the Co-operative Societies Act to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

We endorse the proposed amendment.

**PATRICK KIBURI KILEMI**  
**PRINCIPAL SECRETARY**

Copy to: The Attorney General  
Office of the Attorney General and Department of Justice  
Sheria House, Harambee Avenue  
**NAIROBI**

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Telegraphic Address  
'Bunge', Nairobi  
Tel. +254-020-2848000  
Fax: +254-020-2243694  
E-mail: ena@parliament.go.ke  
www.parliament.go.ke



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

Clerk's Chambers  
National Assembly  
Parliament Buildings  
P.O. Box 11842-00100  
NAIROBI, Kenya

Ref. NA/DDC/TRADE/2022/011

21<sup>st</sup> December, 2022

Hon. Justin B. N. Muturi, EGH  
Attorney General of the Republic of Kenya  
Office of the Attorney General and Department of Justice  
Sheria house  
Harambee Avenue  
**NAIROBI**

Mr. Patric Kiburi Kilemi  
Principal Secretary  
State Department for Cooperatives  
Ministry of Trade Industry and Investment  
**NAIROBI**

Mr. Peter Njuguna  
Chief Executive Officer  
Sacco Society Regulatory Authority (SASRA)  
Upper Hill Road, UAP Old Mutual Tower, 19th Floor  
**NAIROBI,**

Mr. Joash Dache  
Secretary /Chief Executive Officer  
Kenya Law Reform Commission (K.L.R.C)  
P.O BOX 34999-00100.  
**NAIROBI**

Ms. Carole Kariuki  
Chief Executive Officer  
Kenya Private Sector Alliance (K.E.P.S.A)  
P.O BOX 3556-00100  
**NAIROBI**

Dear Mr. Kilemi

**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE COOPERATIVE SOCIETIES  
ACT, OF 1997 (NO. 12 OF 1997)**

The Departmental Committee on Trade, Industry and Cooperatives is established under National Assembly Standing Order 216 which amongst others mandates it to "**study and review all legislation referred to it**".

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.60 of 2022) on the Cooperative Societies Act, of 1997 (No 12 of 1997) (copy of which is forwarded

herewith) was Read a First Time on Thursday 8<sup>th</sup> December, 2022 and referred to the Departmental Committee on Trade, Industry and Cooperatives for consideration and reporting to the House. Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3) require Parliament to facilitate public participation and involvement of the public in the conduct of its business and that of its Committees.

The Bill seeks to amend the Act in order to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

The Committee has identified your organization as a key stakeholder in consideration of the Bill. The purpose of this letter is to seek your views on the proposed amendments to the Cooperative Societies Act, of 1997 (No 12 of 1997). In view of short timelines within which the Committee is required to consider the Bill and report to the House, it will be appreciated if your views reach the Office of the Clerk of the National Assembly, First Floor, Main Parliament Building not later than **Friday, 13<sup>th</sup> January, 2023**. Soft copies of the representations may be emailed to [cna@parliament.go.ke](mailto:cna@parliament.go.ke).

Our Liaison officers on this subject are **Nebert Ikai**, Committee Clerk who may be contacted on **Tel No. 0716 085 705** or email: \_\_\_\_\_ and **Timothy Kimathi**, 0725650878 or email: \_\_\_\_\_

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

**Copy to: - Hon. Moses Kuria, HSC**  
Cabinet Secretary  
Ministry of Trade, Investment and Industry  
17<sup>th</sup> Floor, NSSF Building Block A  
**NAIROBI**

**Mr. George Kuria Murathe**  
Chairperson  
Sacco Society Regulatory Authority (SASRA)  
Upper Hill Road, UAP Old Mutual Tower, 19th Floor  
**NAIROBI**



REPUBLIC OF KENYA  
THIRTEENTH PARLIAMENT (FIRST SESSION) 2022  
THE NATIONAL ASSEMBLY

In the Matter of Consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) is sponsored by the Leader of Majority Party, Hon. Kimani Ichung'uah, CBS, MP. It is an Omnibus Bill which seeks to amend various statutes in keeping a practice of making minor amendments which do not merit the publication of separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes-

- The Appellate Jurisdiction Act (Cap 9)
- The Vexatious Proceedings Act (Cap 41)
- The Extradition (Commonwealth Countries) Act (Cap 77)
- The National Flag, Emblems and Names Act (Cap 99)
- The Official Secrets Act (Cap 187)
- The Geneva Conventions Act (Cap 188)
- The Pharmacy and Poisons Act (Cap 244)
- The Mental Health Act (Cap 248)
- The Land Consolidation Act (Cap 283)
- The Land Adjudication Act (Cap 284)
- The Marine Insurance Act (Cap 300)
- The Local Manufacturers (Export Compensation) Act (Cap 482)
- The Capital Markets Act (Cap 485A)
- The Architects and Quantity Surveyors Act (Cap 525)
- The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)
- The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
- The Retirement Benefits Act, 1997 (No. 3 of 1997)
- The Perpetual Societies Act, 1997 (No. 12 of 1997)
- The Central Depositories Act, 2000 (No. 4 of 2000)
- The Sexual Offences Act, 2006 (No. 3 of 2006)
- The National Museums and Heritage Act, 2006 (No. 6 of 2006)
- The Labour Institutions Act, 2007 (No. 12 of 2007)
- The Accountants Act, 2008 (No. 15 of 2008)
- The International Crimes Act, 2008 (No. 16 of 2008)
- The Biosafety Act, 2009 (No. 2 of 2009)
- The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)
- The Tourism Act, 2011 (No. 28 of 2011)
- The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)

The Bill seeks to amend these Acts in order to harmonize their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

- The Judicial Service Commission Act, 2011 (No. 1 of 2011)
- The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)
- The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)
- The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)
- The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)
- The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)
- The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)
- The National Police Service Commission Act, 2012 (No. 30 of 2012)
- The National Land Commission Act, 2012 (No. 25 of 2012)
- The Teachers Service Commission Act, 2012 (No. 25 of 2012)
- The Controller of Budget Act, 2016 (No. 26 of 2016)
- The Public Service Commission Act, 2017 (No. 17 of 2017)

The Bill seeks to amend these Acts to require the presentation of Annual Reports by the Commissions/Offices within six (6) months after the end of the year to which they relate.

- The Excise Duty Act, 2015 (No. 23 of 2015)
- The Bill seeks to amend the First Schedule to the Excise Duty Act to correct mistakes in a tariff number.

- The Judiciary Act (Cap 8)
- The Bill proposes to amend the Act to increase the number of Judges of the Court of Appeal from Thirty to Seventy.

- The Penal Code (Cap 83)
- The Bill seeks to amend Section 246 of the Act by deleting expressions therein which may be discriminatory towards persons with mental disabilities.

- The Criminal Procedure Code (Cap 75)
- The Bill seeks to amend the statute to harmonize terms therein with the provisions of the Constitution of Kenya, 2010 and the National Police Service Act, 2011. It also seeks to allow the Director of Public Prosecutions to delegate powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2006.

- The Evidence Act (Cap 80)
- The Bill seeks to amend the Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with the current technological advancements. It also seeks to delete expressions which may be perceived to be discriminatory towards persons with mental disabilities.

- The Public Holidays Act (Cap 110)
- The Bill proposes to amend the Public Holidays Act to provide that 10<sup>th</sup> October be *Mwanaumama Day* and 26<sup>th</sup> December *Utamamuzi Day*.

- The Copyright Act 2001 (No. 12 of 2001)
- The Bill seeks to amend the Act to provide for the equitable remuneration of performers and rotators of sound recordings and expand the responsibilities of collective management organisations towards authors and performers. It also seeks to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

- The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)
- The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also proposes to amend the Act to allow the Commission to seek a court order for a state officer under investigation or charged with corruption or economic crimes to be barred from accessing office or exercising powers of that office where the public officer is likely to interfere with investigations.

- The Merchant Shipping Act, 2009 (No. 4 of 2009)
- The Bill seeks to amend the Act by deleting section 16 which restricts ship owners from providing crewing agencies, pilotage, clearing and forwarding, port facility operator and snipping agencies among other services in the maritime industry. This is after the High Court in September, 2020 declared the section unconstitutional and to allow for the revival of the Kenya National Shipping Act.

- The Prevention of Organized Crimes Act, 2010 (No. 8 of 2010)
- The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also seeks to enhance the penalty for organised crimes and to extend the period in which an order obtained in relation to the tracing of property shall lapse.

- Leadership and Integrity Act, 2012 (No. 19 of 2012)
- The Bill seeks to amend the Act to allow the Ethics and Anti-Corruption Commission to verify the suitability of candidates seeking public service appointments and make recommendations.

- The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)
- The Bill seeks to amend the Act to provide for the appointment of the Director-General, for a renewable period of five years instead of three.

- The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)
- The Bill seeks to amend the Act to clarify the provisions on the attendance of ex-officio members at the Commission meetings.

- The Water Act, 2016 (No. 43 of 2016)
- The Bill seeks to amend the Act to include the Attorney-General as a member of the Water Resources Management Board and to require the appointments of Chief Executive Officers under the Act to be in line with guidelines issued by the Salaries and Remuneration Commission. The Bill further seeks to allow the designation of representatives to sit on Boards in place of designated officer holders and the introduction of new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.

- The Bribery Act, 2016 (No. 47 of 2016)
- The Bill seeks to amend the Act to include both private and public entities in the scope and application of the Act and to make other minor amendments.

- The Scrap Metal Act, 2015 (No. 1 of 2015)
- The Bill seeks to amend the Act to provide for the issuance of a special license for dealing in copper, aluminum, and their alloys. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely: Numerical Machining Complex and the Kenya Shipyard Limited and the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act in order to deter vandalism and other prohibited acts.

- The Energy Act, 2019 (No. 1 of 2019)
- The Bill proposes to amend the Act to give effect to the recommendations of the "Presidential Task Force on the Review of Power Purchase Agreements". The recommendations include addressing the overlapping functions between the Energy Petroleum Regulatory Authority and the Ministry responsible for Energy matters.

- The Housing Act (Cap 17)
- The Bill seeks to amend the Act by placing definitions of terminologies in proper alphabetical sequence.

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22<sup>nd</sup> November 2022 and read a First Time in the House on 8<sup>th</sup> December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE	
i. The Vexatious Proceedings Act (Cap 41)	Departmental Committee on Justice and Legal Affairs
ii. The Extradition (Commonwealth Countries) Act (Cap 77)	
iii. The Official Secrets Act (Cap 187)	
iv. The Sexual Offences Act, 2006 (No. 3 of 2006)	
v. The International Crimes Act, 2008 (No. 16 of 2008)	
vi. The Judicial Service Commission Act, 2011 (No. 1 of 2011)	
vii. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)	
viii. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)	
ix. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)	
x. The Penal Code (Cap 83)	
xi. The Criminal Procedure Code (Cap 75)	
xii. The Evidence Act (Cap 80)	
xiii. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	
xiv. Leadership and Integrity Act, 2012 (No. 19 of 2012)	
xv. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)	
xvi. The Bribery Act, 2016 (No. 47 of 2016)	
xvii. The Judiciary Act (Cap 8)	
xviii. The Appellate Jurisdiction Act (Cap 9)	
i. The Capital Markets Act (Cap 485A)	Departmental Committee on Finance and National Planning
ii. The Retirement Benefits Act, 1997 (No. 3 of 1997)	
iii. The Central Depositories Act, 2000 (No. 4 of 2000)	
iv. The Accountants Act, 2008 (No. 15 of 2008)	
v. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)	
vi. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)	
vii. The Controller of Budget Act, 2016 (No. 26 of 2016)	
viii. The Excise Duty Act, 2015 (No. 23 of 2015)	

i. The National Flag, Emblems and Names Act (Cap 99)	Departmental Committee on Administration and Internal Affairs
ii. The Public Holidays Act (Cap 110)	
iii. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)	
iv. The Prevention of Organized Crimes Act, 2010 (No. 8 of 2010)	
v. The National Police Service Commission Act, 2011 (No. 30 of 2011)	
vi. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)	
i. The Marine Insurance Act (Cap 300)	Departmental Committee on Transport and Infrastructure
ii. The Kenya Roads Board Act, 1990 (No. 7 of 1990)	
iii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)	
iv. The Merchant Shipping Act, 2009 (No. 4 of 2009)	
i. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)	Departmental Committee on Education
ii. The Teachers Service Commission Act, 2012 (No. 25 of 2012)	
i. The Land Consolidation Act (Cap 283)	Departmental Committee on Lands
ii. The Land Adjudication Act (Cap 284)	
iii. The National Land Commission Act, 2012 (No. 25 of 2012)	
i. The Co-operatives Societies Act, 1997 (No. 12 of 1997)	Departmental Committee on Trade, Industry and Cooperatives
ii. The Scrap Metal Act, 2015 (No. 1 of 2015)	
iii. The Local Manufacturers (Export Compensation) Act (Cap 482)	
i. The Pharmacy and Poisons Act (Cap 244)	Departmental Committee on Health
ii. The Mental Health Act (Cap 248)	
i. The Labour Institutions Act, 2007 (No. 12 of 2007)	Departmental Committee on Labour
ii. The Public Service Commission Act, 2017 (No. 17 of 2017)	
i. The Architects and Quantity Surveyors Act (Cap 525)	Departmental Committee on Housing and Public Works
ii. The Housing Act (Cap 17)	
i. The National Museums and Heritage Act, 2006 (No. 6 of 2006)	Departmental Committee on Sports and Culture
ii. The Copyright Act 2001 (No. 12 of 2001)	
The Tourism Act, 2011 (No. 28 of 2011)	Departmental Committee on Tourism and Wildlife
The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)	Departmental Committee on Social Protection
The Geneva Conventions Act (Cap 188)	Departmental Committee on Defence, Intelligence and Foreign Relations
The Energy Act, 2019 (No. 1 of 2019)	Departmental Committee on Energy
The Water Act, 2016 (No. 43 of 2016)	Departmental Committee on Blue Economy and Irrigation
The Biosafety Act, 2009 (No. 2 of 2009)	Departmental Committee on Agriculture and Livestock

IN COMPLIANCE with Article 118(1) (a) of the Constitution and Standing Order 127(1), Departmental Committees hereby invite the public and interested stakeholders to submit memoranda on the Bill.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building on [www.parliament.go.ke](http://www.parliament.go.ke) or [www.nas.go.ke](http://www.nas.go.ke).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41 00100, Nairobi; or 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 Friday, 8<sup>th</sup> Jan 2023 by 5.00 pm.

SAMUEL NIROGEO  
CLERK OF THE NATIONAL ASSEMBLY

16<sup>th</sup> December, 2022

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# KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI  
Telephone: Nairobi, +254-20-2241186/2241201  
Fax: +254-20-2225786  
www.info@klrc.go.ke

When replying please quote

Ref. No. **KLRC/RES/93 VOL.VI (34)**  
and Date

① D/DC  
Please deal.  
*[Signature]*  
11/01/23

② Mr Akac  
Deal  
*[Signature]*  
11/1/23



KENYA LAW REFORM COMMISSION  
REINSURANCE PLAZA  
3RD FLOOR  
TAIFA ROAD  
P.O. Box 34999-00100  
NAIROBI, KENYA

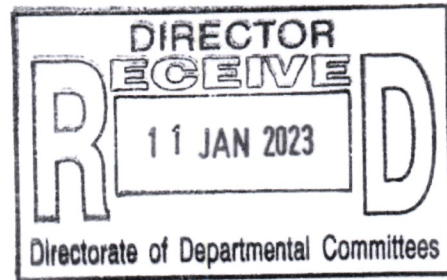
10<sup>th</sup> January, 2023

.....20.....

The Clerk of National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Building  
P.O Box 41842 -00100  
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear *Jerem,*



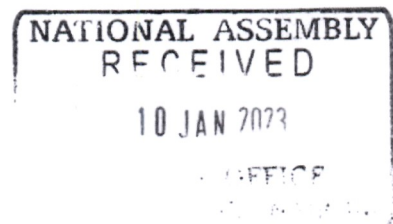
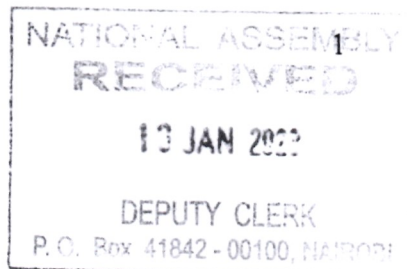
**RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO.60 OF 2022) ON THE COOPERATIVE SOCIETIES ACT, 1997(NO. 12 OF 1997)**

The Kenya Law Reform Commission is in receipt of a letter from the National Assembly dated 21<sup>st</sup> December 2022, requesting the Commission to submit its comments on the Statute Law (Miscellaneous Amendments) Bill on the Cooperative Societies Act, 1997 (No. 12 of 1997).

This memorandum is also issued in furtherance of the Commission's mandate, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

## Objects and Reasons for the Bill

The Bill proposes to amend the **Cooperative Societies Act** to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157 (2) of the Constitution.



COMMENTS ON THE BILL

PROVISION IN THE BILL	PROPOSED AMENDMENT	SUGGESTION AND RATIONALE
Clause 94(3)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	The amendment is desirable. Section 94 (3) of the Cooperative Societies Act deals with the appointment of public prosecutors for the prosecution of the offences committed against the Act. With the promulgation of the 2010 Constitution, it established the Office of the Director of Public Prosecutions under article 157 whose power is to prosecute criminal proceedings which include the appointment of public prosecutors. This thus transferred the function of prosecuting criminal proceedings previously handled by the Office of the Attorney General to the Office of the Director of Public Prosecutions. As such the proposed amendment is appropriate as it will enable the continued implementation of that the said section and ensures that the same is aligned with the provisions of article 157 of the 2010 Constitution.

CONCLUSION

The proposed amendment is apt and long overdue as by virtue of article 157 of the 2010 Constitution, the Director of Public Prosecutions has been vested with the powers of prosecution and may institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed against the Cooperative Societies Act 1997 (No 12 of 1997).

As always, we are grateful for your continued support and collaboration.

Yours *Joash Dache*  
*Joash Dache*

Joash Dache, MBS  
Secretary/Chief Executive Officer

② Mr Akas  
Deal  
16/1/23



D/DC  
Please deal  
12/01/23

**MINISTRY OF CO-OPERATIVES AND MICRO, SMALL AND MEDIUM ENTERPRISES (MSMEs) DEVELOPMENT**  
**STATE DEPARTMENT FOR CO-OPERATIVES**  
**OFFICE OF THE PRINCIPAL SECRETARY**

Telephone: 020-2731531-9  
0704097021/23  
0788484840/41  
Email : [ps.ushirika@gmail.com](mailto:ps.ushirika@gmail.com)

Social Security House Block A,  
Bishops Road,  
P.O. Box 40530-00100,  
**NAIROBI.**

Ref: MCMSME/SDC/VOL. 1 (1)

10<sup>th</sup> January 2023

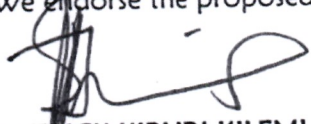
Clerk of the National Assembly  
Parliament Buildings  
P.O.Box 41842 – 00100  
**NAIROBI**

**CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022 (NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE CO-OPERATIVE SOCIETIES ACT (NO. 12 OF 1997)**

Reference is made to the above subject matter and to your letter Reference Number NA/DDC/TRADE/2022/011 dated 21<sup>st</sup> December, 2022.

The Statute Law (Miscellaneous Amendments) Bill, 2022 (National Assembly Bill No. 60 of 2022) proposed to amend the Co-operative Societies Act to harmonize its provisions with the functions of the Director of Public Prosecution under Article 157 of the Constitution.

We endorse the proposed amendment.

  
**PATRICK KIBURI KILEMI**  
**PRINCIPAL SECRETARY**



Copy to: The Attorney General  
Office of the Attorney General and Department of Justice  
Sheria House, Harambee Avenue  
**NAIROBI**

