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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION- 2023

DEPARTMENTAL COMMITTEE ON TRANSPORT & INFRASTRUCTURE

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

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2023	
DAY: TUESDAY	
TABLED BY:	HON. GEORGE MURUGARA MP, CHAIRPERSON, S.I.A.C
CLERK-AT-TABLE:	ESTHER AGNYO

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

MARCH, 2023

## TABLE OF CONTENTS

LIST OF ANNEXURES.....	2
CHAIRPERSON'S FOREWORD .....	3
EXECUTIVE SUMMARY .....	4
<b>1.0 PREFACE .....</b>	<b>5</b>
<b>1.1 Mandate of the Committee .....</b>	<b>5</b>
<b>1.2 Committee Subjects.....</b>	<b>5</b>
<b>1.3 Oversight .....</b>	<b>6</b>
<b>1.4 Committee Membership.....</b>	<b>7</b>
<b>2.0 INTRODUCTION .....</b>	<b>10</b>
2.1 Background Information .....	10
2.2 Summary of the Bill .....	10
<b>3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL.....</b>	<b>11</b>
3.1 The Marine Insurance Act, Cap 390 .....	11
<b>3.1.1 Kenya Law Reform Commission (KLRC).....</b>	<b>11</b>
3.2 The Merchant Shipping Act No. 4 of 2009 .....	12
<b>3.2.1 Submission by the Kenya Law Reform Commission .....</b>	<b>12</b>
<b>3.2.2 Submission by the Ministry of Mining, Blue Economy and Maritime Affairs .</b>	<b>12</b>
3.3 The National Transport and Safety Authority Act, 2012 (No. 33 of 2012).....	13
<b>3.3.1 Submission by Kenya Law Reform Commission .....</b>	<b>14</b>
<b>3.3.2 Submission by the Law Society of Kenya.....</b>	<b>14</b>
4. COMMITTEE OBSERVATIONS .....	15
5. COMMITTEE RECOMMENDATIONS.....	15

## LIST OF ANNEXURES

- **Annexure 1:** Signed list of Members who attended the sitting that considered and adopted the report
- **Annexure 2** Minutes of the Committee on sittings considering the Bill and adoption of the report
- Annexure 3:** Correspondence to stakeholders requesting for submission of comments
- Annexure 4:** Newspaper advertisement inviting the public to submit memoranda on the Bill
- Annexure 5:** Written submissions received from stakeholders
- Annexure 6:** Schedule of Committee Amendment

## **CHAIRPERSON'S FOREWORD**

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 60 of 2022) was read a first time on 8<sup>th</sup> December, 2022 and was subsequently committed to respective Departmental Committees for consideration and facilitation of public participation pursuant to Standing Order 127. The Bill seeks to, among other Statutes; amend the Marine Insurance Act (Cap 390), the Merchant Shipping Act, 2009 (No. 9 of 2009) and the National Transport and Safety Authority Act, 2012 (No. 19 of 2012).

The Clerk of the National Assembly placed adverts in the print media on 18<sup>th</sup> December, 2022 seeking for comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee also wrote to the Attorney General, the Principal Secretaries for the State Departments for Roads and Transport and the Kenya Law Reform Commission, vide a letter Ref.NA/DDC/TI/2022/ (010) dated 21<sup>st</sup> December, 2022. The Committee received memoranda/ submissions from four (4) stakeholders, namely; the Kenya Law Reform Commission, the Law Society of Kenya, the Ministry of Mining, Blue Economy and Maritime Affairs and the Ministry of Roads and Transport.

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

On behalf of the Committee and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Statute Law (Miscellaneous Amendment) Bill, 2022.

**HON. G.K. GEORGE KARIUKI, M.P**

## EXECUTIVE SUMMARY

The Statute Law (Miscellaneous Amendments) Bill, 2022 (National Assembly Bill No. 60 of 2022) was Read a First Time on 8<sup>th</sup> December, 2022 and thereafter committed to respective Departmental Committees for consideration and facilitation of public participation pursuant to Standing Order 127. The Departmental Committee on Transport and Infrastructure considered amendments to the Marine Insurance Act (Cap 390), the Merchant Shipping Act, 2009 (No. 9 of 2009), and the National Transport and Safety Authority Act, 2012 (No. 19 of 2012).

In order to fulfill the requirements of Article 118 of the Constitution, the Clerk of the National Assembly placed an advertisement in the print media on 16<sup>th</sup> December, 2022 requesting for comments from the general public on the Bill.

The Committee received memoranda from the following stakeholders:-

1. Kenya Law Reform Commission;
2. Ministry of Mining, Blue Economy and Maritime Affairs;
3. The Ministry of Roads and Transport
4. Law Society of Kenya.

The Committee considered all the submissions before making its recommendations. The Committee observed that Pursuant to Article 157 of the Constitution, the Director of Public Prosecutions is required to exercise State powers of prosecution and may institute criminal proceedings against any person before any court; In the Mombasa High Court Petition No. 18 of 2010 Maersk Kenya Limited and Others vs The Hon. Attorney General & others, the parties by consent agreed that Section 16 of the Merchant Shipping Act 2009 is inconsistent with Article 40 and 50 of the Constitution 2010. The Court therefore declared Section 16 unconstitutional null and void ab initio. The Committee further observed that statute laws (Miscellaneous Amendments) legislations also known as Omnibus Bills are meant to deal with minor and non-controversial amendments and not matters of a substantial nature such as the term of office of the Director-General.

In view of the above the Committee makes the following recommendations:-

1. **That the proposed amendments to the Marine Insurance Act, Cap 390 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022;**
2. **That the Proposed amendment to Section 16 of The Merchant Shipping Act No. 4 of 2009 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022; and**
3. **Rejects the amendment to Section 16 of The National Transport and Safety Authority Act, 2012 (No. 33 of 2012) on increasing the Tenure of office of Director-General to five (5) years.**

## **1.0 PREFACE**

### **1.1 Mandate of the Committee**

1. The Departmental Committee on Transport and Infrastructure is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
  - i. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
  - ii. study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
  - iii. on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
  - iv. study and review all legislation referred to it;
  - v. study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - vi. investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - vii. vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
  - viii. examine treaties, agreements and conventions;
  - ix. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - x. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
  - xi. examine any questions raised by Members on a matter within its mandate.

### **1.2 Committee Subjects**

2. The Committee is mandated to consider the following subjects:
  - i. Transport, including non-motorized transport;
  - ii. Construction and maintenance of roads;
  - iii. Rails, air and marine transport; Seaports and national integrated infrastructure policies and
  - iv. programmes; and
  - v. Transport safety

### 1.3 Oversight

3. The Committee oversees the Ministry of Roads and Transport which has two state departments namely:
  - i. State department for Roads
  - ii. State department for Transport
4. Further, Committee oversees the State Department for Shipping and Maritime Affairs which is under the Ministry of Mining, Blue Economy, and Maritime Affairs.

#### 1.4 Committee Membership

5. The Committee membership comprises: -

The Hon. G.K George Kariuki, M.P – **Chairperson**

M.P for Ndia Constituency

**United Democratic Alliance Party**

The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**

M.P. for Kimilili Constituency

**United Democratic Alliance Party**

The Hon. Arama Samuel, M.P

M.P for Nakuru Town West Constituency

**Jubilee Party**

M.P for Jomvu Constituency

**Orange Democratic Movement Party**

The Hon. Naicca, Johnson Many, M.P

M.P for Mumias East Constituency

**Orange Democratic Movement Party**

The Hon. Abdul Rahim Dawood, M.P.

M.P for North Imenti Constituency

**Independent**

The Hon. Francis, Kajwang' Tom Joseph,  
M.P.

M.P for Ruaraka Constituency

**Orange Democratic Movement Party**

The Hon. Elsie Muhanda, M.P.

M.P for Kakamega County

**Orange Democratic Movement Party**

The Hon. Kiaraho, David Njuguna, M.P.

M.P for Ol Kalao Constituency

**Jubilee Party**

The Hon. Chege John Kiragu, M.P.

M.P for Limuru Constituency

**United Democratic Alliance Party**

The Hon. Kiunjuri Festus Mwangi, M.P.

M.P for Laikipia East Constituency

**The Service Party**

The Hon. Abdirahman, Husseinweytan  
Mohamed, M.P.

M.P for Mandera East Constituency

**Orange Democratic Movement Party**

The Hon. Bady, Bady Twalib, M.P.



The Hon. Komingoi Kibet Kirui, M.P.  
M.P for Bureti Constituency  
**United Democratic Alliance Party**

The Hon. Saney Ibrahim Abdi, M.P  
M.P for Wajir North Constituency  
**Orange Democratic Movement Party**

The Hon. Jhanda Zaheer, M.P  
M.P for Nyaribari Chache Constituency  
**United Democratic Alliance Party**

### 1.5 Committee Secretariat

6. The Committee secretariat comprises: -

Ms. Tracy Chebet Koskei  
Senior Clerk Assistant  
**Lead Clerk**

Mr. Eric Kariuki  
Research Officer II

Ms. Marlene Ayiro  
Principal Legal Counsel

Mr. Mohamednur  
Abdulahi  
Clerk Assistant III

Ms. Clare Choper Doye  
Clerk Assistant II

Mr. Yusuf Moge  
Fiscal Analyst II

Ms. Ivy Maritim  
Media relations Officer

## **2.0 INTRODUCTION**

### **2.1 Background Information**

7. The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 60 of 2022) seeks to among other Statutes, amend the Marine Insurance Act (Cap 390), the Merchant Shipping Act, 2009 (No. 4 of 2009) Act and the National Transport and Safety Authority Act, 2012 (No. 19 of 2012).

### **2.2 Summary of the Bill**

8. The Bill seeks to amend the Marine Insurance Act (Cap 390) by deleting the expression “Attorney General” and substitute therefor the expression “Director of Public Prosecutions”. This is to align the Act with the Constitution.
9. The Bill also seeks to amend the Merchant Shipping Act, 2009 (No. 4 of 2009) Act by deleting section 16 which restricts 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.
10. Further, the Bill seeks to amend The National Transport and Safety Authority Act, 2012 (No. 19 of 2012) the Act to provide for the appointment of the Director- General, for a renewable period of five (5) years instead of three (3).

### **3.0 PUBLIC PARTICIPATION IN THE REVIEW OF THE BILL**

11. Article 118 (1) (b) of the Constitution of Kenya provides as follows: -

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”*

Standing Order 127(3) provides as follows-

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

12. In line with the Constitution and Standing Orders, the National Assembly placed an advert in the local daily newspapers of 18<sup>th</sup> December, 2022 (Annex II). The Committee further invited relevant stakeholders to make submissions vide a letter REF: NA/DDC/TI/2022/010 dated 21<sup>st</sup> December, 2022 (Annex III) of the report.

13. The Committee received memoranda from the following stakeholders:

1. Kenya Law Reform Commission;
2. State Department for Shipping and Maritime Affairs;
3. Law Society of Kenya;

14. The stakeholders submitted as follows:

#### **3.1 The Marine Insurance Act, Cap 390**

15. The Amendment seeks to amend Section 91(3) of The Marine Insurance Act, Cap 390 by deleting the expression “Attorney General” and substitute therefor the expression “Director of Public Prosecutions”. This is to align the Act with the Constitution.

##### **3.1.1 Kenya Law Reform Commission (KLRC)**

16. The KLRC in a letter dated 9<sup>th</sup> January, 2023 Submitted that it supported the proposal and submitted that this was to align the Act with Article 157(6) of the Constitution.

### **Committee Observation**

17. The Committee agreed with the submission by KLRC since Article 157(6) of the Constitution vests prosecutorial functions on the Director of Public Prosecutions

### **3.2 The Merchant Shipping Act No. 4 of 2009**

18. The Bill seeks to Amend **Section 16 of The Merchant Shipping Act No. 4 of 2009** by deleting Section 16 on 'Restriction on ship owner'

(1) No owner of a ship or person providing the service of a shipping line shall, either directly or indirectly, provide in the maritime industry the service of crewing agencies, pilotage, clearing and forwarding agent, port facility operator, shipping agent, terminal operator, container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other service as the Minister may appoint under section 2.

(1A) The provisions of subsection (1) shall not apply to a shipping line wholly owned by the government.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment

#### **3.2.1 Submission by the Kenya Law Reform Commission**

19. In a letter dated 9<sup>th</sup> January, 2023, the KLRC submitted that it agrees with the proposal. It further submitted that in the *Mombasa High Court Petition No. 18 of 2010 Maersk Kenya Limited and Others vs The Hon. Attorney General & others*, the parties by consent agreed that Section 16 of the Merchant Shipping Act 2009 is inconsistent with Article 40 and 50 of the Constitution 2010. The Court therefore declared Section 16 unconstitutional null and void ab initio.

### **Committee Observation**

20. The Committee agreed with the submission by KLRC that since the Court declared Section 16 unconstitutional, then Section 16 should be deleted.

#### **3.2.2 Submission by the Ministry of Mining, Blue Economy and Maritime Affairs**

21. In a letter dated 13<sup>th</sup> January, 2023 the Principal Secretary for the State Department for Shipping and Maritime Affairs submitted a memoranda to the effect that Section 16 be deleted and replaced with the following: -

### Local Content Requirements

16A(1) A maritime transport operator undertaking commercial activities in the maritime industry shall-

- (a) comply with local content requirements in all operations;
  - (b) give priority to services provided and goods manufactured in Kenya where the goods meet the specifications of the maritime industry as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standard that the Authority shall approve;
  - (c) ensure that priority is given for the employment or engagement of qualified and skilled Kenyan citizens at all levels of the value chain.
  - (d) provide training opportunities to Kenyan citizens on maritime operations;
  - (e) ensure that foreign employees are engaged only in positions for which the operator cannot, after reasonable advertisement in at least two newspapers of wide circulation in Kenya and in such other media as may be determined, find available Kenyan nationals having the necessary qualifications and experience.
- (2) For the purpose of subsection (1) the Authority shall undertake local content monitoring, audit and enforcement in the maritime industry.
- (3) The Cabinet Secretary may make Regulations regarding local content in maritime operations.

### **Justification by the State Department for Shipping and Maritime Affairs**

22. The proposed amendment/deletion of Section 16 of the Act will have far reaching effects to the local contractors/business owners and industries as it will deny/limit these local industries an opportunity to provide key services at the port of Mombasa.
23. Accordingly, the Ministry proposed to introduce a Clause on local content requirements to be met by both foreign and national ship owners and maritime operators. This will enable Kenyan citizens to benefit from the massive opportunities available in the maritime industry.

### **Committee Observation**

24. The Committee noted that the proposed Clause on local content requirements is laudable however it was a substantive amendment that could not be introduced in the Statute Law.

### **3.3 The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)**

25. The Bill seeks to amend Section 16 of **The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)** On the Tenure of office of Director-General-it proposes that the Director General be appointed for a period of five years and be eligible for reappointment for one further term.

### 3.3.1 Submission by Kenya Law Reform Commission

26. KLRC submitted its Memoranda dated 9<sup>th</sup> January 2023 to the effect that KLRC does not agree with the proposal since such a proposal requires more detailed policy direction and involvement of key stakeholders before it is adopted.

#### Justification by the Kenya Law Reform Commission

27. The Nairobi High Court in *Law Society of Kenya v Attorney General & another* [2016] eKLR held that an omnibus amendment in form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.

#### Committee observation

28. The Committee agreed with the analysis by KLRC that Statute Laws (Miscellaneous Amendment) legislations also known as omnibus bills should deal with minor and non-controversial amendments and not matters of a substantial nature such as the term of office of the Director-General.

### 3.3.2 Submission by the Law Society of Kenya

29. LSK submitted its memoranda dated January 2023 to the effect that LSK does not agree with the proposal and it is not clear what this amendment seeks to achieve. Therefore, the previous provision bearing the term three years should be retained in line with the Mwongozo code for state corporations.

#### Justification

30. When a director stays on a tenure for a very long time, the Director may become complacent and not fulfil the required level of due diligence in their review of its operations, opportunities and performance.

### 3.3.3 Submission by the Ministry of Roads and Transport

31. In a letter dated 26<sup>th</sup> January, 2023 and signed by Mr. Mohamed Daghar, the Principal Secretary for the State Department for Transport, the Ministry sought for more time to consult further on the proposed amendment to the National Transport and Safety Authority Act, 2012 (No. 33 of 2012). The Ministry further requested that the amendment be expunged from the Statute Law.

#### 4. COMMITTEE OBSERVATIONS

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

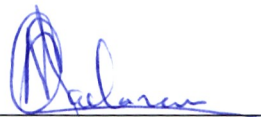
1. Pursuant to Article 157 of the Constitution, the Director of Public Prosecutions is required to exercise State powers of prosecution and may institute criminal proceedings against any person before any court;
2. In the Mombasa High Court Petition No. 18 of 2010 Maersk Kenya Limited and Others vs The Hon. Attorney General & others, the parties by consent agreed that Section 16 of the Merchant Shipping Act 2009 is inconsistent with Article 40 and 50 of the Constitution 2010. The Court therefore declared Section 16 unconstitutional null and void ab initio.
3. Statute laws (Miscellaneous Amendments) legislations also known as Omnibus Bills are meant to deal with minor and non-controversial amendments and not matters of a substantial nature such as the term of office of the Director-General.

#### 5. COMMITTEE RECOMMENDATIONS

33. Having considered the Bill and the views by different stakeholders, the Committee recommends the following:

1. **That the proposed amendments to the Marine Insurance Act, Cap 390 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022**
2. **That the Proposed amendment to Section 16 of The Merchant Shipping Act No. 4 of 2009 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022.**
3. **That the proposed amendment to Section 16 of The National Transport and Safety Authority Act, 2012 (No. 33 of 2012) on increasing the Tenure of office of Director-General to five (5) years be rejected.**

SIGNED \_\_\_\_\_



DATE \_\_\_\_\_

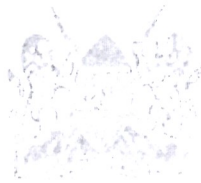
22/03/2023

**HON. G.K. KARIUKI, MP  
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRANSPORT AND  
INFRASTRUCTURE**



SPECIAL ISSUE

*Kenya Gazette Supplement No. 192 (National Assembly Bills No. 60)*



REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

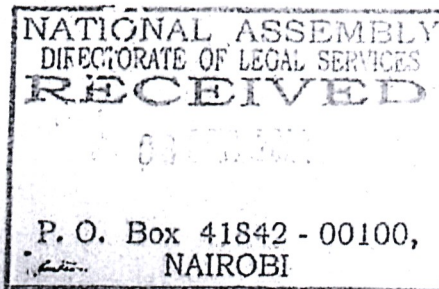
**NATIONAL ASSEMBLY BILLS, 2022**

**NAIROBI, 22nd November, 2022**

CONTENT

Bill for Introduction into the National Assembly—

	PAGE
The Statute Law (Miscellaneous Amendments) Bill, 2022 .....	1455



"affordable housing" means housing that is adequate, targeted for the population whose income is below the median individual or housing income, and whose cost does not exceed more than thirty per cent of household or individual income per month to rent or acquire.

"affordable housing development project" means a housing development project targeted to construct and deliver affordable housing and approved by the Cabinet Secretary responsible for matters relating to housing.

The Official Secrets Act (Cap. 187).	s. 10(1)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
	s. 49(1)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
The Geneva Conventions Act (Cap. 198).	s. 3(3)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
The Pharmacy and Poisons Act (Cap. 244).	s. 40(4)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
The Mental Health Act (Cap. 248).	s. 42(5)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
The Land Consolidation Act (Cap. 283).	s. 14(6)(b)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
The Land Adjudication Act (Cap. 284).	s. 33	Delete the expression "Attorney-General" appearing in the proviso and substitute therefor the expression "Director of Public Prosecutions".
✕ The Marine Insurance Act (Cap. 390).	s. 91(3)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
The Local Manufactures	s. 10(2)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of

	s. 158	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".
	s. 159	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".
	s. 160	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".
	s. 165	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".
	s. 171	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".
The Biosafety Act, 2009 (No. 2 of 2009).	s. 53	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".
* The Merchant Shipping Act, 2009 (No. 4 of 2009).	s. 16	Delete.
The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2010).	s. 18(1)	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".
The Prevention of Organised Crimes Act, 2010 (No. 6 of 2010).	s. 14	Delete the expression "five hundred thousand shillings" and substitute therefor the words "ten million shillings."
	(3)	Delete the expression "thirty days" and substitute therefor the words "ninety days".
	s. 17(9)	Delete paragraph (b) and substitute therefor the following new paragraph— (b) Inspector-General of the National Police Service.
The Counter-	s. 19(2)(e)	Delete the expression "Attorney-General" and

Service Commission Act, 2012 (No. 20 of 2012). immediately after subsection (1)–

(1A) The Commission shall submit the annual report in subsection (2) to the President and the National Assembly within six months after the end of the year to which it relates.

\* The National Transport and Safety Authority, 2012 (No. 33 of 2012).

Delete the word “three” and substitute therefor the word “five”

The Scrap Metals Act, 2015 (No. 1 of 2015)

Insert 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

**MEMORANDUM OF OBJECTS AND REASONS**

The Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to make various amendments to various statutes. It is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills into one Bill.

The Bill contains proposed amendments to the following statutes—

**The Judicature Act (Cap. 8)**

The Bill proposes to amend the Judicature Act to increase the number of judges of the Court of Appeal from forty to seventy.

**Appellate Jurisdiction Act (Cap. 9)**

The Bill proposes to amend the Appellate Jurisdiction Act to harmonise the provisions of the Act with the provisions of Article 157(2) of the Constitution relating to the functions of the Director of Public Prosecutions.

**The Vexatious Proceedings Act (Cap. 11)**

The Bill proposes to amend the Vexatious Proceedings Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.

**The Penal Code (Cap. 63)**

The Bill proposes to amend section 146 of the Penal Code by deleting expressions therein that may be perceived to be discriminatory towards persons with mental disabilities.

**The Criminal Procedure Code (Cap. 75)**

The Bill proposes to amend the Criminal Procedure Code to harmonise the terms therein with the provisions of the Constitution and the National Police Service Act, 2011. It additionally proposes to amend the Act to allow the Director of Public Prosecution to delegate his powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2006.

**The Extradition (Commonwealth Countries) Act (Cap. 77)**

The Bill proposes to amend the Extradition (Commonwealth Countries) Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.

**The Evidence Act (Cap 80)**

The Bill proposes to amend the Evidence Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with current technological advancements. It also seeks

to delete, expressions in the Act which may be perceived to be discriminatory towards persons with mental disabilities.

**The National Flag, Emblems and Names Act (Cap.99)**

The Bill proposes to amend the National Flag, Emblems and Names Act to harmonise its provisions with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.

**The Public Holidays Act (Cap. 319)**

The Bill proposes to amend the Public Holidays Act to provide that the 10th October shall be known as Induma Day and the 26th December shall be known as Uhlenzani Day.

**The Official Secrets Act (Cap. 187)**

The Bill proposes to amend the Official Secrets Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

**The Geneva Conventions Act (Cap.198)**

The Bill proposes to amend the Geneva Conventions Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

**The Pharmacy and Poisons Act (Cap.244)**

The Bill proposes to amend the Pharmacy and Poisons Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

**The Mental Health Act (Cap. 248)**

The Bill proposes to amend the Mental Health Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

**The Land Consolidation Act (Cap. 283)**

The Bill proposes to amend the Land Consolidation Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

**The Land Adjudication Act (Cap.284)**

The Bill proposes to amend the Land Adjudication Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

**\* The Marine Insurance Act (Cap. 390)**

**Biosafety Act, 2009 (No. 2 of 2009)**

The Bill proposes to amend the Biosafety Act to harmonise its provisions with the functions of the Director of Public Prosecution under Article 157(2) of the Constitution.

\* **The Merchant Shipping Act, 2009 (No. 4 of 2009)**

The Bill proposes to amend the Merchant Shipping Act by deleting section 16 which restricts ship owners from providing the following services in the maritime industry: crewing agencies, pilotage, clearing and forwarding agencies, port facility operator, shipping agent, terminal operator, container freight station, quay side service provider, general ship contractor, haulage, empty container depots, ship chandler or such other services. This was on the request of the Office of the President following the declaration of the section as unconstitutional by the High Court in September, 2020 and to allow for the revival of the Kenya National Shipping Line.

**The Prevention of Organised Crimes Act, 2010 (No. 6 of 2010)**

The Bill proposes to amend the Prevention of Organised Crimes to harmonise the provisions of the Act with the provisions of Article 157(2) of the Constitution relating to the functions of the Director of Public Prosecutions. It seeks to enhance the penalty for organized crimes and to extend the period in which an order obtained in relation to tracing of property shall lapse. It seeks to apply the term "Inspector-General" as authorised officer in place of "Commissioner of Police".

**The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)**

The Bill proposes to amend the Counter-Trafficking in Persons Act to harmonise the provisions of the Act with the provisions of Article 157(2) of the Constitution relating to the functions of the Director of Public Prosecutions.

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

The Bill seeks to amend the JSC Act to require the presentation of the Annual report within six months after the end of the year to which it relates.

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

The Bill seeks to amend the Independent Electoral and Boundaries Commission Act to require the presentation of its annual report within six months to the end of the year to which it relates.

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

The Bill proposes to amend the Leadership and Integrity Act to allow the Ethics and Anti-Corruption Commission to verify the suitability of candidates intending to apply to be appointed to a public entity and to make recommendation to the recruiting entity on the integrity suitability of the candidates. It additionally proposes to allow the High Court on application by any person, to declare the assumption of office by a state officer to be invalid for want of executing a commitment to the specific Leadership and Integrity Code.

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

The Bill proposes to amend the Teacher Service Commission Act to require the presentation of the annual report to be done within six months after the expiry of the year to which it relates.

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

The Bill proposes to amend the National Transport and Safety Authority Act to provide for a appointment of the Director-General for a renewable period of five years instead of three.

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

The Bill proposes to amend the Kenya Law Reform Commission Act to clarify the provisions on the attendance of ex-officio members at meetings of the Commission.

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

The Bill proposes to amend the Scrap Metal Act to provide for a special licence for dealing in copper, aluminium and their alloys. This is intended to protect critical infrastructure for instance transformers. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely the Numerical Machining Complex and the Kenya Shipyard Limited.

The Ministry of Industrialization, Trade and Enterprise Development has also proposed the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act to deter vandalism and other prohibited acts.

**The Excise Duty Act 2015 (No.23 of 2015)**

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

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

The Bill proposes to amend the Controller of Budget Act to require the presentation of the annual report within six months after the expiry of the year to which it relates.



**Annexure 1:**

**Signed list of Members who attended the sittings that considered  
and adopted the report**



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT- SECOND SESSION -2022

DEPARTMENTAL COMMITTEE ON TRANSPORT & INFRASTRUCTURE

Adoption list for the Report on the National Transport and Safety (Amendment) Bill, 2022 (National Assembly Bills No. 43 of 2022)

DATE:

VENUE: SAWELA LODGE, NAIVASHA

START TIME:

END TIME:

	NAMES	SIGNATURE
1.	The Hon. GK George Kariuki, M.P - Chairperson	
2.	The Hon. Mutua Didmus Wekesa Barasa, M.P- Vice-Chairperson	
3.	The Hon. Kiunjuri, Festus Mwangi, M.P.	
4.	The Hon. Abdul Rahim Dawood, M.P.	
5.	The Hon. Arama Samuel, M.P.	
6.	The Hon. Bady, Bady Twalib, M.P.	
7.	The Hon. Francis, Kajwang' Tom Joseph M.P.	
8.	The Hon. Kiaraho, David Njuguna, M.P.	
9.	The Hon. Naicca, Johnson Many, M.P.	
10.	The Hon. Chege, John Kiragu, M.P.	
11.	The Hon. Elsie Muhanda, M.P.	
12.	The Hon. Saney, Ibrahim Abdi, M.P.	
13.	The Hon. Hussein Weytan, Mohamed, M.P.	
14.	The Hon. Jhanda Zaheer, M.P	
15.	The Hon. Komingoi, Kibet Kirui, M.P.	

**Annexure 2:**

**Minutes of the Committee on sittings considering the Bill and  
adoption of the report**

**MINUTES OF THE SIXTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE  
ON TRANSPORT AND INFRASTRUCTURE HELD ON FRIDAY, 17<sup>TH</sup> MARCH 2023 AT  
SAWELA LODGE, NAIVASHA AT 2:30 PM.**

**MEMBERS PRESENT**

1. The Hon. G.K George Kariuki, M.P – **Chairperson**
2. The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**
3. The Hon. Kiunjuri, Festus Mwangi, M.P.
4. The Hon. Arama Samuel, M.P.
5. The Hon. Bady, Bady Twalib, M.P.
6. The Hon. Francis, Kajwang’ Tom Joseph M.P.
7. The Hon. Kiaraho, David Njuguna, M.P.
8. The Hon. Naicca, Johnson Many, M.P.
9. The Hon. Chege, John Kiragu, M.P.
10. The Hon. Saney, Ibrahim Abdi, M.P.
11. The Hon. Hussein Weytan Mohamed, M.P.
12. The Hon. Jhanda Zaheer, M.P.
13. The Hon. Komingoi, Kibet Kirui, M.P

**APOLOGIES**

1. The Hon. Elsie Muhanda, M.P.
2. The Hon. Abdul Rahim Dawood, M.P

**IN-ATTENDANCE**

1. Mr. Emile N. Arao - Director General Kenya Civil Aviation Authority (KCAA)
2. Mr. Joseph K. Chebungei - Director Corporative Services (KCAA)
3. Mr. David Ndungi - Finance Manager (KCAA)

**SECRETARIAT**

1. Ms. Tracy Chebet Koskei - Senior Clerk Assistant
2. Ms. Clare Choper Doye - Clerk Assistant III
3. Mr. Mohamednur M. Abdullahi - Clerk Assistant III
4. Mr. Abdinasir Moge - Fiscal Analyst
5. Mr. Erick Kariuki - Research Officer
6. Ms. Ivy Maritim - Media relation Officer
7. Mr. Moses Moit - Audio Recording Officer
8. Mr. Moses Kariuki - Serjeant at Arms

**MIN/ NO./TI/2023/077: PRELIMINARIES**

The Chairperson called the meeting to order at half past two O'clock (2:30pm) with a word of prayer. The Agenda of the meeting was adopted after being proposed and seconded by the Hon. Francis, Kajwang' Tom Joseph M.P and the Hon. Chege, John Kiragu, M.P. respectively.

The Chairperson informed the meeting was meant to consider among other things, the approved budget for the KCAA and list of projects undertaken by the Authority for the last five Financial Years. Further, the Chairperson welcomed the Director General for Kenya Civil Aviation Authority and other officials who were present for the meeting.

**MIN./NO./TI/2023/078: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

Confirmation of Minutes of the previous Sitting was deferred.

**MIN./NO./TI/2023/079: SUBMISSION BY THE DIRECTOR GENERAL FOR THE KENYA CIVIL AVIATION AUTHORITY**

Mr. Emile Arao, Director General for the Kenya Civil Aviation Authority while appearing before the Committee on Friday 17<sup>th</sup> March, 2023, submitted as follows;

The Director General informed the Committee that the Kenya Civil Aviation Authority is categorised as a regulatory State Corporation under the State Department of Transport, Ministry of Roads and is charged with the responsibility of ensuring air safety in Kenya and promoting the development of a dynamic and competitive civil aviation industry.

He further informed the Members of the mandate and functions of the Authority which includes: Aviation Safety and Security Oversight, Air Transport licensing and Regulation, Provision of Air Navigation Services in Kenya's Airspace, Provision of Aviation Training through the East African School of Aviation, Coordination of Search and Rescue among others.

The Director General submitted the legislative and policy gaps in the agency as follows;

- (a) Resolving the Air Passenger Service Charge (APSC) collection and remittance process by having the Kenya Revenue Authority (KRA) collect and remit directly to KCAA its share of the APSC without going through KAA as is the situation currently.
- (b) Review the PFMA regulation 219(2) to anchor approval to allow KCAA to factor in and retain Capital Budget for the subsequent financial year before remitting the 90% surplus to The National Treasury. The revenue earnings from the regulatory services were 6% of the total revenue compared to 61% revenue earnings from air navigation services during 2021/2 FY.
- (c) Amend the Value Added Tax, 2013 to include provision of domestic flight services to the list of zero rated supplies under the VAT Act 2013. Currently only international flight

services are zero rated. KRA assessed KCAA for prior year services and raised assessments that KCAA paid and continues to pay. Imposition of this tax which is currently not being levied will raise the cost of domestic flying by 16% that has to be borne by domestic passengers.

- (d) Explore the possibility of disengaging KRA from collection of KCAA revenues.
- (e) Amend the Civil Aviation Act 2013 to provide for submission of the Annual Report within six months after the end of the financial year to which it relates instead of the current three months.
- (f) Empower KCAA to issue Aeronautical Information Circular on all aviation matters and not only for aviation meteorology as currently provided under the Civil Aviation (Amendment) Act 2016.
- (g) Strengthening the Air Accident Investigation Department (AAID) to improve Kenya's compliance with ICAO Annex 13 requirements.

The Director General also submitted the Approved Budgets for the last Five Financial Years (2018/19, 2019/20, 2020/2021 and 2021/2022) and the Financial Year 2022/23.

	<b>DESCRIPTI ON</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
	<b>Source of Funding</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>
01	Appropriation -In-Aid (AIA)	7,200,000 ,000	8,114,000 ,000	3,934,574 ,593	5,987,806 ,213	7,315,005 ,845	8,114,989 ,598
02	Cash Reserves	1,356,297 ,110	541,914,8 67	1,985,996 ,449	1,058,043 ,239	206,631,1 18	754,379,7 88
03	GoK Grant	-	-	89,201,07 2	-	-	-
04	NUTRIP Grant	100,000,0 00	-	-	-	-	-
05	Donor Funding (IDA)	900,000,0 00	120,840,7 11	-	-	-	-
	<b>Gross Total Funding</b>	<b>9,556,297 ,110</b>	<b>8,776,755 ,578</b>	<b>6,009,772 ,114</b>	<b>7,045,849 ,452</b>	<b>7,521,636 ,963</b>	<b>8,869,369 ,386</b>
	<b>Expenditure</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>	<b>Kshs</b>

01	Recurrent Expenditure	6,680,508,146	6,587,833,868	5,146,968,090	5,982,245,020	6,626,892,086	7,582,183,874
02	Capital Expenditure	2,875,788,964	2,188,921,710	862,804,024	1,063,604,432	894,744,878	1,287,185,512
	<b>Total Expenditure</b>	<b>9,556,297,110</b>	<b>8,776,755,578</b>	<b>6,009,772,114</b>	<b>7,045,849,452</b>	<b>7,521,636,963</b>	<b>8,869,369,386</b>

The Director General further submitted the Recurrent Budget Absorption for the 2022/23 Financial Year that the total approved recurrent budget was Ksh. 6,871,740,137 As at 28<sup>th</sup> February, 2023, the total recurrent expenditure amounted to Ksh. 3,844,903,303 which translates to a budget absorption of 56.0 %.

The Committee heard that the Development Budget Absorption for the 2022/23 Financial Year that the total approved Development budget was Ksh. 894,744,878.00. As at 28<sup>th</sup> February, 2023, the total development budget expenditure amounted to Ksh. 90,078,060.76 which translates to a budget absorption of 10.07%.

The Committee was also informed that the Authority has implemented to completion, a total of 38 projects whose total cost was valued at Ksh. 2,831,656,330.37, there are a total of 82 ongoing projects whose total cost is Ksh.3,607,416,996. As of 28<sup>th</sup> February, 2023, The Authority had made payments amounting to Ksh. 272,940,906 related to 21 projects which is equivalent to 7.57 % of the total cost of the projects. The rest of the projects are in the procurement stages and initial implementation stages of implementation and payments have not been done.

The Committee was further informed that the Authority's major investments are in the provision of Air Navigation Services equipment and facilities and are guided by the Global Air Navigation Plan (GANP) which is approved at the international level for implementation by States who are members of the International Civil Aviation Organisation (ICAO) in order to achieve safe flow of global air traffic. As such the investments are undertaken to enable the growth of aviation and other businesses in the country and their returns can be considered from the wider economic benefits to the country.

The Director General submitted that Regulatory State Corporations are required to remit 90% of their surplus funds to the National Treasury. Since the Financial year 2014/15, the Authority has remitted a total of Ksh. 8,265,749,661 (91.97%) of the Ksh. 8,987,376,946 surplus funds generated to the National Treasury which has supported the government in implementation of various development programmes and projects.

In concluding his submission the Director General submitted the Challenges faced and proposed Mitigations as follows;

- (a) High cost of attracting and retaining qualified professional and technical staff – Offer of competitive terms of service to the flight safety inspectors and continuous building of capacity at the KCAA to increase the number of qualified inspectors.
- (b) Restrictive employment conditions based on Public Service pay structure - There is need to consider allowing KCAA to offer terms outside the approved ones by Salaries and Remuneration Commission. KCAA should be supported when it seeks consideration for exemption.
- (c) High cost of training of flight safety inspectors – Allocation and approval of adequate budgets for initial and currency training for staff.
- (d) Incompatible land uses around aerodromes which causes about 20 bird strikes per annum.
  - (i) Strict enforcement on land use plans.
  - (ii) Relocation of waste dump sites from near flight paths.
- (e) Security threats from possible launch of Manpads due to encroachment of airport land and settlements near the airports. Increase security surveillance around aerodromes.

#### **Members Concerns and resolutions**

The following matters arose:

- (a) Members were concerned that Cargo business has a lot of potential in the Country which is not adequately exploited by KCAA. Members noted that there was need for effective route planning and a revamped revenue department that can explore and advice on optimal solutions.
- (b) Members noted that the revenues generated by the School of aviation were quite low for an institution that trains air traffic controls from across the continent. Urgent measures should be instituted to revamp the institution to international standards to attract many students thereby generating increased revenues.
- (c) The Committee noted that KRA continued to collect air passenger service charge on behalf of KCAA which is against the repealed law. The Committee suggested that there was need to pursue the matter with KRA of the reasons as to why they have continued to collect the said revenues even after the law was repealed and transferring it to KCAA.

**MIN/ NO./TI/2023/080:**

#### **CONSIDERATION AND ADOPTION OF THE REPORT ON CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY**



## **AUTHORITY (AMENDMENT) NATIONAL ASSEMBLY BILLS NO. 43 OF 2022)**

The Committee considered and adopted its report on the National Transport and Safety Authority (Amendment) Bill. (National Assembly Bills No. 43 of 2022), after being proposed and seconded by the Hon. Komingoi, Kibet Kirui, M.P and the Hon. Chege, John Kiragu, M.P. respectively.

The Committee made the following Observation and Recommendations;

### **COMMITTEE OBSERVATIONS**

1. The proposed amendments in the Bill as formulated were already provided for in the National Transport and Safety Authority Act No. 33 of 2012;
2. The National Transport and Safety Authority (Amendment) Bill (*National Assembly Bills No. 43 of 2022*) emanated from issues of laxity in implementation, compliance and enforcements of the existing laws and regulations;
3. The NTSA (Operation of Motorcycles) (Amendment) Regulations 2022 provide for the licensing of motorcycle taxis by the County Governments;
4. In March 2022 the Government launched a national registration process of two and three wheeled public service Motorcycles and the same is to be done in the NTSA Portal; and
5. There are in existence regulations formulated in 2015 that provide that the motorcycles should have a third party PSV insurance, riders to have a valid driving licence and operators to be members of a registered body corporate.

### **COMMITTEE RECOMMENDATIONS**

Having considered the Bill and the views by different stakeholders, the Committee recommends the following, That:

1. **The House rejects the National Transport and Safety Authority (Amendment) Bill (*National Assembly Bills No. 43 of 2022*) in its entirety; and**
2. **The Cabinet Secretary for Roads and Transport should review the National Transport and Safety Authority (Operation of Motorcycles) (Amendment) Regulations 2022, to enforce compliance to the Act by *Boda Boda* operators and also to cater for emerging issues such as insecurity and safety in the *Boda Boda* Sector.**

MIN/ NO./TI/2023/081:

**CONSIDERATION AND ADOPTION OF THE  
REPORT ON CONSIDERATION OF THE  
STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL (NATIONAL ASSEMBLY  
BILLS NO. 60 OF 2022)**

The Committee considered and adopted its report on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 60 of 2022) and Safety Authority (Amendment), after being proposed and seconded by the Hon. Francis, Kajwang' Tom Joseph M.P. and the Hon. Mutua Didmus Wekesa Barasa, M.P. respectively.

The Committee made the following Observation and Recommendations;

**COMMITTEE OBSERVATIONS**

1. Pursuant to Article 157 of the Constitution, the Director of Public Prosecutions is required to exercise State powers of prosecution and may institute criminal proceedings against any person before any court;
2. In the Mombasa High Court Petition No. 18 of 2010 Maersk Kenya Limited and Others vs The Hon. Attorney General & others, the parties by consent agreed that Section 16 of the Merchant Shipping Act 2009 is inconsistent with Article 40 and 50 of the Constitution 2010. The Court therefore declared Section 16 unconstitutional null and void ab initio.
3. Statute laws (Miscellaneous Amendments) legislations also known as Omnibus Bills are meant to deal with minor and non-controversial amendments and not matters of a substantial nature such as the term of office of the Director-General.

**COMMITTEE RECOMMENDATIONS**

Having considered the Bill and the views by different stakeholders, the Committee recommends the following:

1. **That the proposed amendments to the Marine Insurance Act, Cap 390 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022**
2. **That the Proposed amendment to Section 16 of The Merchant Shipping Act No. 4 of 2009 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022.**

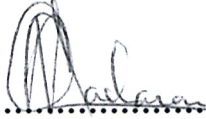
3. That the proposed amendment to Section 16 of The National Transport and Safety Authority Act, 2012 (No. 33 of 2012) on increasing the Tenure of office of Director-General to five (5) years be rejected.

MIN/ NO./TI/2023/082:

ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the meeting was adjourned at five O'clock (5.00 pm) the next meeting was scheduled for the following day (Saturday 18<sup>th</sup> March 2023)z.

SIGNED.....



DATE.....

22/03/2023

HON GK GEORGE KARIUKI, MP  
CHAIRPERSON

**MINUTES OF THE FOURTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE HELD ON TUESDAY, 14<sup>TH</sup> MARCH 2023 AT THE EMARA OLE SERENI HOTEL, NAIROBI AT 10:00AM**

**MEMBERS PRESENT**

1. The Hon. GK George Kariuki, M.P – **Chairperson**
2. The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**
3. The Hon. Kiunjuri, Festus Mwangi, M.P.
4. The Hon. Bady, Bady Twalib, M.P.
5. The Hon. Kiaraho, David Njuguna, M.P.
6. The Hon. Naicca, Johnson Manya, M.P.
7. The Hon. Chege, John Kiragu, M.P.
8. The Hon. Abdul Rahim Dawood, M.P
9. The Hon. Komingoi, Kibet Kirui, M.P
10. The Hon. Hussein Weytan Mohamed, M.P.

**APOLOGIES**

1. The Hon. Arama Samuel, M.P.
2. The Hon. Francis, Kajwang' Tom Joseph M.P.
3. The Hon. Elsie Muhanda, M.P.
4. The Hon. Saney, Ibrahim Abdi, M.P.
5. The Hon. Jhanda Zaheer, M.P.

**IN-ATTENDANCE**

**STATE DEPARTMENT FOR SHIPPING AND MARITIME AFFAIRS**

1. Mr. M. Chisomba - Senior Deputy Secretary, State Department for Shipping and Maritime Affairs
2. Mr. John Omingo - A.g. Director General, Kenya Maritime Authority
3. Ms. Wilfred Kagimbi - Technical advisor
4. Mr. Abdallah Hatimy - Special Advisor
5. Ms. Rose Gathuthi - A.S
6. Ms. Naomi Kemunto - ICTO
7. Ms. Lynnette Bunei - Legal Counsel State Department for Shipping and Maritime Affairs
8. Ms. June Otieno - Director, Legal services- Kenya Maritime Authority

**SECRETARIAT**

1. Ms. Tracy Chebet Koskei - Senior Clerk Assistant
2. Ms. Clare Choper Doye - Clerk Assistant III
3. Mr. Mohamednur M. Abdullahi - Clerk Assistant III
4. Ms. Marleane Ayiro - Principal Legal

- |                       |                           |
|-----------------------|---------------------------|
| 5. Mr. Abdinasir Moge | - Fiscal Analyst          |
| 6. Mr. Erick Kariuki  | - Research Officer        |
| 7. Ms. Ivy Maritim    | - Media relation Officer  |
| 8. Mr. Eugene Luteshi | - Audio Recording Officer |
| 9. Mr. Moses Kariuki  | - Serjeant-at- Arms       |

**MIN/ NO./TI/2023/067: PRELIMINARIES**

The Vice-Chairperson called the meeting to order at 10:25am with a word of prayer from the Hon. Kominoi Kirui Kibet, M.P. The Agenda of the meeting was adopted after being proposed and seconded by the Hon. Chege, John Kiragu, M.P. and the Hon. Hon. Naicca, Johnson Many, M.P. respectively.

**MIN./NO./TI/2023/068: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING**

The Minutes of the previous sittings were adopted as follows:

- (i) Minutes of the Eighth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Naica Johnson Many, M.P and The Hon. Kiragu John Chege, M.P, respectively.
- (ii) Minutes of the Ninth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Naica Johnson Many, M.P and The Hon. Kiragu John Chege, M.P, respectively.
- (iii) Minutes of the Tenth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Kiragu John Chege, M.P and The Hon. Naica Johnson Many, M.P, respectively.
- (iv) Minutes of the Eleventh Sitting were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Komingoi Kirui Kibet, M.P and The Hon. Naica Johnson Many, M.P, respectively
- (v) Minutes of the Twelfth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Abdul Rahim Dawood, M.P and The Hon. Kiaraho David Njuguna, M.P, respectively.
- (vi) Minutes of the Thirteenth Sitting were confirmed as a true record of the proceedings after being proposed and seconded by The Hon. Kiaraho David Njuguna, M.P and The Hon. Komingoi Kibet Kirui, M.P, respectively.

**MIN./NO./TI/2023/069: BRIEF BY THE COMMITTEE LEGAL COUNSEL**

The legal counsel attached to the committee briefed the committee on the three proposals for amendments of the Statue Law, namely;

- i. The Marine Insurance Act
- ii. The Merchant Shipping Act
- iii. The NTSA Act

The Bill seeks to amend the Marine Insurance Act (Cap 390) by deleting the expression “Attorney General” and substitute therefor the expression “Director of Public Prosecutions”. This is to align the Act with the Constitution.

The Bill also seeks to amend the Merchant Shipping Act, 2009 (No. 4 of 2009) Act by deleting section 16 which restricts 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.

Further, the Bill seeks to amend The National Transport and Safety Authority Act, 2012 (No. 19 of 2012) the Act to provide for the appointment of the Director- General, for a renewable period of five (5) years instead of three (3).

As regards the submission on the amendment to amend Section 91(3) of The Marine Insurance Act, Cap 390 by deleting the expression “Attorney General” and substitute therefor the expression “Director of Public Prosecutions”. This is to align the Act with the Constitution. The Committee heard that it had received submissions from the Kenya Law Reform Commission (KLRC) who supported the proposal as it was meant to align the Act with Article 157(6) of the Constitution.

As regards submission on the proposed amendment to delete Section 16 of the Merchant Shipping Act, the Committee heard that the KLRC had made a submission that it agreed with the proposal. It further submitted that in the Mombasa High Court Petition No. 18 of 2010 Maersk Kenya Limited and Others vs The Hon. Attorney General & others, the parties by consent agreed that Section 16 of the Merchant Shipping Act 2009 is inconsistent with Article 40 and 50 of the Constitution 2010. The Court therefore declared Section 16 unconstitutional null and *void ab initio*.

The Principal Secretary for the State Department for Shipping and Maritime Affairs also supported the amendment to delete Section 16. However they proposed that it be replaced with the following amendment:

#### Local Content Requirements

16A(1) A maritime transport operator undertaking commercial activities in the maritime industry shall-

- (a) comply with local content requirements in all operations;
- (b) give priority to services provided and goods manufactured in Kenya where the goods meet the specifications of the maritime industry as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standard that the Authority shall approve;
- (c) ensure that priority is given for the employment or engagement of qualified and skilled Kenyan citizens at all levels of the value chain.
- (d) provide training opportunities to Kenyan citizens on maritime operations;
- (e) ensure that foreign employees are engaged only in positions for which the operator cannot, after reasonable advertisement in at least two newspapers of wide circulation in Kenya

and in such other media as may be determined, find available Kenyan nationals having the necessary qualifications and experience.

(2) For the purpose of subsection (1) the Authority shall undertake local content monitoring, audit and enforcement in the maritime industry.

(3) The Cabinet Secretary may make Regulations regarding local content in maritime operations.

The Department submitted that the proposed amendment will enable Kenyan citizens to benefit from the massive opportunities available in the maritime industry.

On the proposed Amendment to the National Transport and Safety Authority Act, 2012 (No. 19 of 2012) the Act seeking to provide for the appointment of the Director- General, for a renewable period of five (5) years instead of three (3), the Committee was informed that the KLRC disagreed with the amendment and cite the Nairobi High Court in *Law Society of Kenya v Attorney General & another* [2016] eKLR Petition that held that an omnibus amendment in form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.

Further, the Law Society of Kenya also disagreed with the proposed amendment and cited lack of clarity on what the amendment seeks to achieve and therefore stated that the previous provision bearing the term three years should be retained in line with the Mwongozo code for state corporations.

**MIN./NO./TI/2023/070: SUBMISSIONS BY THE STATE DEPARTMENT OF SHIPPING AND MARITIME AFFAIRS**

The A.g Director General, Kenya Maritime Authority Mr. John Omingo submitted that, the Legislative history leading to the enactment of section 16 of the Merchant Shipping Act 2009 was anchored on the need to protect the indigenous players in the shipping industry. Therefore, parliament saw it necessary to put in place laws to strengthen and reinforce local capacity in the maritime industry, and the first logical step in this regard was the Introduction of section 16 of the Merchant Shipping Act, 2009 which states that;

1. No owner of a ship or a person providing the service of shipping line shall, either directly or indirectly provide in the maritime industry the service or crewing agencies, pilotage, clearing and forwarding agent, port facility operator, container freight station. Quay side service provider, general ship contractor, haulage, ship breaker, ship chandler, cargo consolidator, ship repair, maritime training or such other services as the Minister may appoint under section 2.
2. Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both fine and imprisonment.

He further added that, a petition was filed in 2010 by the Maersk Kenya Ltd and 14 other Ship Owners and Shipping line service providers against the Attorney General, the ministry of Transport, Kenya Ports Authority and Kenya Maritime Authority challenging the constitutionality of section 16 of the Act. The court suspended temporarily the operation,

implementation and enforcement of the said provision pending the hearing and determination of the Petition.

Therefore, on 10<sup>th</sup> September 2020, a consent was entered between the parties to the above petition as follows;

- i. A declaration that section 16 of the Act is inconsistent with Article 40 of the constitution in that it interferes with the petitioners' companies' fundamental rights and freedom to acquire property in Kenya;
- ii. A declaration that section 16 of the Act violates Article 40 of the constitution of Kenya limiting and/or restricting the petitioners' fundamental rights to the protection of their property and that the section was thereby *void ab initio*.

The State Department for Shipping and Maritime Affairs submitted their amendments proposing the replacement of the Section 16 of the Act with a Clause on Local content Requirements in the Shipping Industry. It ranges from mandatory targets to soft requirements to supportive policies and capacity building measures. As much as the government too will benefit from increasing local content, the Maritime Industry will generally have clear incentives procuring and recruiting from the domestic market.

The DG further submitted that the benefit of the local content engagement is the maximization of economic benefits to locals through jobs and employment opportunities. The local content will protect the domestic shipping from foreign competition and create opportunities for domestic employment, thereby contributing to growth in income, capacity development of Kenyans and overall increased economic growth, preserve domestically owned shipping infrastructure for national security purposes, and ensure safety in congested territorial waters.

The State Department for Shipping and Maritime Affairs acknowledge that, majority of the ship owners and shipping line providers are foreigners with huge financial muscle. The deletion of section 16 of the Act allows the foreign ship owners to set up a shop in Kenya to provide key services at the port thus giving them undue advantage to the detriment of local service providers. In order to counter this, the Director General, KMA submitted that they propose for the introduction of the local content clause to create a level playing field for the local industries and service providers for instance local crewing agencies, clearing and forwarding agencies, ship repair services among others.

### **Committee concerns**

The Committee raised the following matters:

- a) The Committee noted that there was need to ensure that communities that live near lakes and oceans and along ports to reap benefits from the ships and other related activities.
- b) The Committee noted that the proposed Clause on local content retirements is laudable however it was a substantive amendment that could not be introduced in the Statute Law. The Committee therefore directed the Director General, Kenya Maritime authority to do a



final draft of the amendment and incorporate other proposals that has not been captured for consideration by the Committee.

**Committee Resolutions**

Having considered the Bill and the views by different stakeholders, the Committee recommended the following:

1. **That the proposed amendments to the Marine Insurance Act, Cap 390 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022**
2. **That the Proposed amendment to Section 16 of The Merchant Shipping Act No. 4 of 2009 be adopted as contained in the Statute Law (Miscellaneous Amendments) Bill, National Assembly Bills No. 60 of 2022.**
3. **Rejects the amendment to Section 16 of The National Transport and Safety Authority Act, 2012 (No. 33 of 2012) on increasing the Tenure of office of Director-General to five (5) years.**

**MIN./NO./TI/2023/071:**

**ADJOURNMENT/DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at 12 noon. The next meeting will be on notice.

Signed..........Date.....22/03/2023.....

**HON. GK George Kariuki, M.P  
(Chairperson)**

**Annexure 3:**

**Correspondence to stakeholders requesting for Submission of  
comments**



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

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

Clerk's Chambers  
National Assembly  
Parliament Buildings  
P.O. Box 41842-00100  
NAIROBI, Kenya

Ref: NA/DDC/TI/2022/010

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. Shadrack Mwadime**  
Principal Secretary  
State Department for Shipping and Maritime Affairs  
Ministry of Mining, Blue Economy and Maritime Affairs  
**NAIROBI**

**Eng. Joseph M. Mungai, MBS**  
Principal Secretary  
State Department for Roads  
Ministry of Roads and Transport  
Transcom House, Ngong Road  
**NAIROBI**

**Mr. Mohamed Daghar**  
Principal Secretary  
State Department for Transport  
Ministry of Roads and Transport  
Transcom House, Ngong Road  
**NAIROBI**

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

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

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The above matter refers.

The Departmental Committee on Transport and Infrastructure is established under National Assembly Standing Order 216 and is mandated to amongst others, '*study and review all legislation referred to it*'.

Article 118(1)(b) of the Constitution 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) sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, 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 several separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes and Acts under the purview of the Committee:-

**1. The Marine Insurance Act (Cap 390)**

**2. The Merchant Shipping Act, 2009 (No. 4 of 2009)**

The Bill seeks to amend the Act by deleting section 16 which restricts 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.

**3. The Kenya Roads Board Act, 1999 (No. 7 of 1999)**

**4. The National Transport and Safety Authority 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.

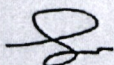
The Statute Law (Miscellaneous Amendments) Bill was published on 22<sup>nd</sup> November 2022 and Read a First Time in the House on 8<sup>th</sup> December, 2022. Pursuant to Standing Order 127(1), the Bill was subsequently referred to the relevant Departmental Committees to conduct stakeholders' engagement and to make submissions on the Bill.

This is therefore to invite you to present your written submissions in a matrix format that indicates the Section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions and a soft copy should be sent to the Office of the Clerk, Main Parliament Building or email the same to [cna@parliament.go.ke](mailto:cna@parliament.go.ke) to be received on or before **Friday, 13<sup>th</sup> January 2023**.

Enclosed find a copy of the Bill for reference.

The Liaison Officers facilitating this matter is **Tracy Chebet Koskei** who may be contacted on **0726416794** or email: [tracy.koskei@parliament.go.ke](mailto:tracy.koskei@parliament.go.ke) and **Mr. Mohamednur M. Abdullahi** who may be contacted on **0720928507** or email: [mohamednur.abdullahi@parliament.go.ke](mailto:mohamednur.abdullahi@parliament.go.ke)

Yours



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

Encl.//

**Copies to:**

**Hon. Salim Mvurya, E.G.H**  
Cabinet Secretary  
Ministry of Mining, Blue Economy and Maritime Affairs  
**NAIROBI**

**Hon. Kipchumba Murkomen, E.G.H**  
Cabinet Secretary  
Ministry of Roads and Transport  
Transcom House - Ngong Road  
**NAIROBI**



**Annexure 4:**

**Newspaper advertisement inviting the public to submit  
Memoranda on the Bill**



**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'uwa, 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 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 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, 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 2010)

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. 3 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)

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

The Excise Duty Act, 2015 (No. 23 of 2015)  
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 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, 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 *Huduma Day* and 26<sup>th</sup> December *Utamaduni 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 officer 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 16 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 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, aluminium, 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 63)	
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. 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. 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, 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) (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/the-national-assembly/legislation/bills](http://www.parliament.go.ke/the-national-assembly/legislation/bills).

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-01010, Nairobi; or hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [cn@parliament.go.ke](mailto:cn@parliament.go.ke) to be received on or before Friday, 6<sup>th</sup> January, 2023 by 5.00 pm.

**SAMUEL NJORGE  
CLERK OF THE NATIONAL ASSEMBLY**

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



*Transmit*

# 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



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

When replying please quote

**KLRC/RES/93 VOL.VI (38)**

Ref. No. ....  
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*

*DDC*  
*Please deal*  
*Orli*  
*16/01/23*

*Urban secret*  
*make copies and*  
*distribute to sue*  
*relevant committees*  
*involved*  
*17/1/23*

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

RECEIVED  
10 JAN 2023  
DEPUTY CLERK  
P.O. Box 41842, NAIROBI

**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  
RECEIVED  
16 JAN 2023  
Directorate of Departmental Committees



## 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 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)	<p>(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.</p> <p>(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—</p> <p>(a) conceal, alter, destroy, or remove</p>	No objection to the proposed amendment. However, consider including the expression "public officer" in subsection (6A) as has been proposed in subsection (6B).	This offence should apply to both State and public officers. In addition, the proposed amendment is in line with the Court of Appeal decision in the case of <i>Moses Kasaine Lenolkulal vs Republic</i> , Criminal Appeal No. 109 of 2019.



			<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 propose 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.



**MINISTRY OF ROADS & TRANSPORT**  
**STATE DEPARTMENT OF TRANSPORT**  
**OFFICE OF THE PRINCIPAL SECRETARY**

OFFICE OF THE ATTORNEY GENERAL &  
DEPARTMENT OF JUSTICE  
SOLICITOR GENERAL'S OFFICE  
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Fax. (020) 2726362  
Email: [cs@transport.go.ke](mailto:cs@transport.go.ke)  
Website: [www.transport.go.ke](http://www.transport.go.ke)

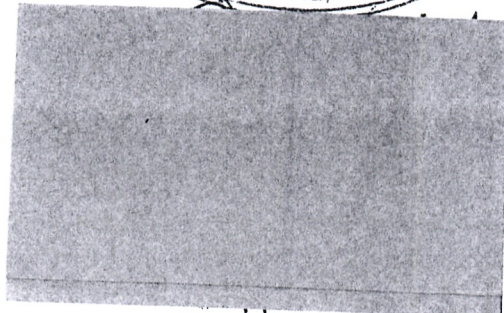
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NAIROBI

**MOT & I/C/RDT/001/1VOL. X (63)**

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

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

OFFICE OF THE ATTORNEY GENERAL & DEPARTMENT OF JUSTICE  
**RECEIVED**  
03 FEB 2023  
CHIEF PARLIAMENTARY  
COUNSEL'S OFFICE  
P.O. Box 40112, NAIROBI



**Mr. Kennedy Ogeto, CBS**  
Solicitor General  
Office of the Attorney General  
& Department of Justice  
NAIROBI

Dear *Kennedy*

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

Reference is made to the above letter dated 21<sup>st</sup> December 2022 referenced NA/DDC/TI/2022 /010 and 30<sup>th</sup> December 2022 reference AG/LDD/190/1/84.

Ministry seeks time to consult further on the amendment proposal to the National Transport & Safety Authority Act, No.33 of 2012 laws of Kenya. We therefore request that the amendment be expunged from the Statute Law (Miscellaneous Amendments) Bill,2022.

Yours *Sincerely*

Mohamed Daghar  
**PRINCIPAL SECRETARY**

**Copy to:** Hon. Kipchumba Murkomen, EGH  
Cabinet Secretary  
Ministry of Roads & Transport  
NAIROBI

Ms. Margaret Nzioka DDC  
Principal Deputy  
02 FEB 2023  
Solicitor General





REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/190/1/84

6<sup>th</sup> February, 2023

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

*D/S Service Committee*  
*D/S*  
*To process, before*  
*relevant committees*  
*and facilitate*  
*them with*  
*necessary*  
*amendments*  
*S/W*  
*WJA*  
*7/2/23*

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

This is in reference to the above subject matter and the letter from the Ministry of Roads and Transport, which we note was also addressed to yourselves, seeking more time to consult further on the proposed amendment to the National Transport and Safety Act, 2012, (a copy enclosed for ease referer.ce).

Kindly confirm receipt and any action taken on the same.

Fredrick J. Mwachi  
DEPUTY CHIEF PARLIAMENTARY COUNSEL  
FOR: ATTORNEY-GENERAL.

RECEIVED  
07 FEB 2023  
Directorate of Departmental Committees

Copy to:

Hon. J.B.N, Muturi EGH  
Attorney-General

Mr. Kennedy Ogeto CBS  
Solicitor General

*Tracy chebet*  
*pls facilitate*  
*WJA*  
*8/2/23*

NATIONAL ASSEMBLY  
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07 FEB 2023  
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P O Box 41842, NAIROBI

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P.O. Box40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995  
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DEPARTMENT OF JUSTICE  
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337  
E-MAIL: [legai@justice.go.ke](mailto:legai@justice.go.ke) WEBSITE: [www.justice.go.ke](http://www.justice.go.ke)

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S.L.

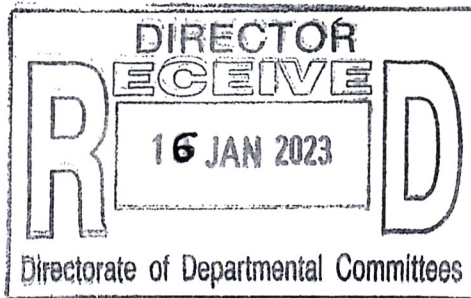
13/01/23



REPUBLIC OF KENYA  
MINISTRY OF MINING, BLUE ECONOMY AND SHIPPING AND MARITIME AFFAIRS  
STATE DEPARTMENT FOR SHIPPING AND MARITIME AFFAIRS  
Office of the Principal Secretary

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NAIROBI



13th January, 2023

MOT & I/MSA/5/18 VOL.XI (87)

Mr. Samuel Njoroge  
The Clerk  
National Assembly  
Parliamentary Building  
NAIROBI

Tracy chebet  
pls facilitate  
17/1/23

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

The above matter and your letter referenced NA/DDC/TI/2022/010 and dated 21<sup>st</sup> December, 2022 refers.

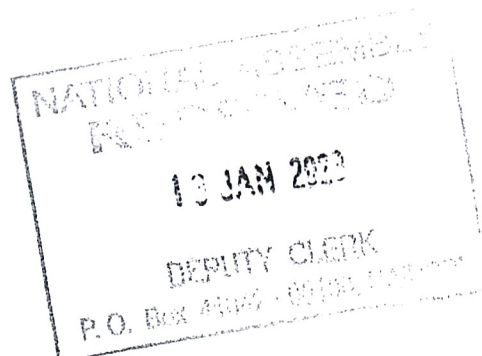
We have reviewed the Statute Law (Miscellaneous Amendments) Bill, 2022 that was duly published on 22<sup>nd</sup> November, 2022 and Read a First Time in the House on 8<sup>th</sup> December, 2022.

Enclosed find a copy of our written submissions in a matrix format for ease of reference by the Committee.

Thank you for your continued support.

Lynette C. Bunei  
FOR: PRINCIPAL SECRETARY

Encls.



**THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022**

S/ N O	Act of Parliament	Section to be Amended	Proposed Amendment	Justification
1	The Merchant Shipping Act (the Act)	The Bill proposes to delete Section 16 of the Act in its entirety.	Section 16 be deleted and replaced with the following:-  <b>Local Content Requirements</b> 16 A (1) A maritime transport operator undertaking commercial activities in the maritime industry shall— (a) comply with local content requirements in all operations; (b) give priority to services provided and goods manufactured in Kenya where the goods meet the specifications of the	The proposed amendment/deletion of Section 16 of the Act will have far reaching effects to the local contractors/business owners and industries as it will deny/limit these local industries an opportunity to provide key services at the port of Mombasa.
				Accordingly, we propose to introduce a Clause on local content requirements to be met by both foreign and national ship owners and maritime operators. This will enable Kenyan citizens to benefit from the massive opportunities available in the maritime industry.



maritime industry as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standard that the Authority shall approve;

(c) ensure that priority is given for the employment or engagement of qualified and skilled Kenyan citizens at all levels of the value chain

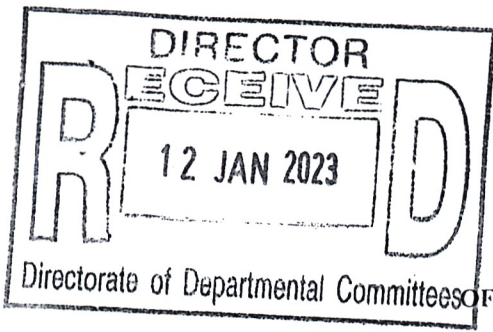
(d) provide training opportunities to Kenyan citizens on maritime operations

(e) ensure that foreign employees are engaged only in positions for which the operator cannot, after reasonable advertisement in at

least two newspapers of wide circulation in Kenya and in such other media as may be determine, find available Kenyan nationals having the necessary qualifications and experience

(2) For the purpose of subsection (1) the Authority shall undertake local content monitoring, audit and enforcement in the maritime industry.

(3) The Cabinet Secretary may make Regulations regarding local content in maritime operations.



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

*5/7 Frank Ghebri*  
*Amos*  
*ZNR*  
*12/1/23*

Our Ref: AG/LDD/190/1/84  
Your Ref. NA/DDC/TI/2022/010

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

This has reference to your letter dated the 21<sup>st</sup> December, 2022 under Ref. NA/DDC/TI/2022/010, requesting our views on the proposed amendments to the Marine Insurance Act (Cap. 390), Merchant Shipping Act (No. 4 of 2009), Kenya Roads Board Act (No. 7 of 1999) and National Transport and Safety Authority Act (No. 19 of 2012) 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 Roads and Transport, 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

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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  
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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

# KENYA LAW REFORM COMMISSION



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When replying please quote

**KLRC/RES/93 VOL.VI (33)**

Ref. No. ....  
and Date



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

9th January, 2023

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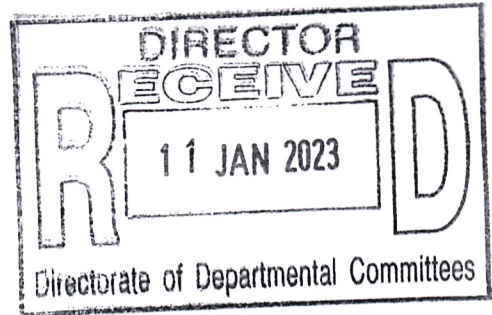
① D/DC  
Please deal.  
11/01/23

② Trang Chebel  
CRA  
11/1/23

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

We acknowledge with thanks receipt of your letter Ref.NA/DDC/TI/2022/010 dated 21<sup>st</sup> December, 2022 on the above matter.

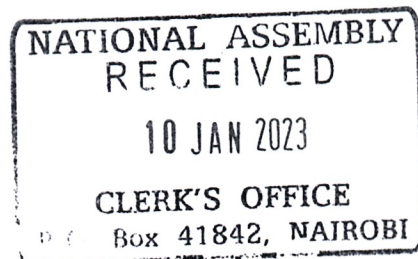
Enclosed herein please find our Comments on the Statute Law (Miscellaneous Amendment) Bill (National Assembly Bills No. 60 of 2022) for further action.

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

Yours  *sincerely,*  
*Joash Dache*

Joash Dache, MBS  
Secretary/Chief Executive Officer

Encls.





## **KLRC COMMENTARY ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022**

### **I. INTRODUCTION**

This memorandum is issued in furtherance of the Kenya Law Reform Commission's (KLRC) 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.

KLRC is in receipt of a letter from the National Assembly Departmental Committee on Transport and Infrastructure (the Committee) dated 21<sup>st</sup> December, 2022, requesting for views on the Statute Law (Miscellaneous Amendment) Bill, 2022.

The Statute Law (Miscellaneous Amendments) Bill, 2022 sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, 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 several separate Bills.

The Statute law (Miscellaneous Amendment) Bill, 2022 contains proposals to amend the following Acts which are under the purview of the Committee:

- (a) The Marine insurance Act, Cap 390;
- (b) The Merchant Shipping Act, 2009 (No.4 of 2009); and
- (c) The National Transport and Safety Authority Act, 2012 (No.19 of 2012).

The analysis below has been done following the review of the proposed amendments.

## II. ANALYSIS OF THE PROPOSED AMENDMENTS

STATUTE	PROPOSED AMENDMENT	KLRC PROPOSAL	RATIONALE
The Marine Insurance Act, Cap 390	S. 91 (3)—Delete the expression ‘Attorney General’ and substitute therefor the expression ‘Director of Public Prosecution’	We agree with the proposal.	To align with Article 157(6) of the Constitution, 2010.
The Merchant Shipping Act, 2009 (No. 4 of 2009)	S. 16—Delete	We agree with the proposal.	<p>Mombasa High Court under <i>Petition No. 18 of 2010, Maersk Kenya Limited &amp; Others vs. The Hon. Attorney General &amp; Others, [2020]</i>, the parties by consent agreed that section 16 of the Merchant Shipping Act, 2009 is inconsistent with Article 40 and 50 of the Constitution, 2010.</p> <p>The Court therefore declared it unconstitutional, null and <i>void ab initio</i>.</p>
The National Transport and Safety Authority Act, 2012 (No.19 of 2012).	S. 16—Delete the word ‘three’ and substitute therefor the word ‘five’	We <i>do not</i> agree with the proposal	<p>In <i>Law Society of Kenya &amp; Another (2016) e KLR</i>, the five judge bench stated that <i>an omnibus amendments in the form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.</i></p> <p>The proposed amendment on the term of office of the Director-General therefore falls outside the scope of an omnibus amendment bill as defined by the Courts.</p> <p>Such a proposal requires a more detailed policy direction and involvement</p>

			of key stakeholders before it is adopted.
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**III. CONCLUSION**

Subject to the above proposals, KLRC is in support of the enactment of the Statute Law (Miscellaneous Amendment) Bill, 2022.



Transpat

D/DC

Please deal.

Gl

19/01/23



LAW SOCIETY OF KENYA

Lavington, Opposite Valley Arcade

Gitanga Road

P.O. Box 72219-00200

NAIROBI

Tel. 387 4664

0720 904983

Lilian

to distribute to relevant committees.

up with 20/1/23

MEMORANDUM

TO

THE CLERK OF THE NATIONAL ASSEMBLY

ON

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

JANUARY 2022

Eric Theuri, President Law Society of Kenya

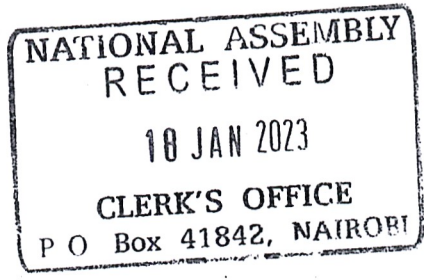
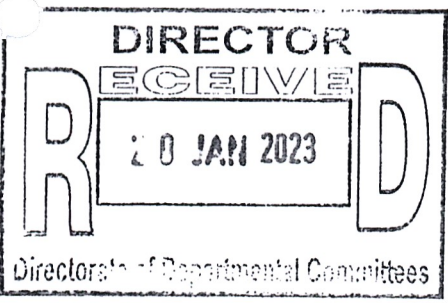
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10 JAN 2023

## THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

### Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya currently numbering to over 21,000.

The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- o President, Eric Theuri
- o Vice President, Faith Mony Odhiambo
- o General Membership Representatives, Chrysostom Akhaabi, Kabata Mwaura, Tom K'opere
- o Nairobi Representatives, Cohen Amany, Njoki Mboce, Ochieng Gor
- o Up-country Representatives, Byron Menezes, Lindah Kiome, Michael Wabwile, Vincent Githaiga
- o Coast Representative, Riziki Emukule
- o Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes presentations on the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 60 Of 2022).

### GENERAL COMMENT

The Statute Law (Miscellaneous Amendments) Bill, 2022 makes amendments to various statutes. It is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills into one. Specifically, it amends a total of 57 Acts. While most of the amendments are indeed minor such as the replacement of the name of the Attorney – General with the Director of Public Prosecutions, and increasing the period of submission of

annual report to the National Assembly from three to six months in various Acts, it is worthy to note that amendments of other Acts were on substantive issues. Do find below our specific comments on the same.

SPECIFIC COMMENTS ON THE DRAFT MOTOR VEHICLE INSPECTION REGULATIONS, 2022 & DRAFT TRAFFIC (DRUNK DRIVING) RULES, 2022

ACT	AMENDMENT	NEW PROVISION	COMMENTS
The Judicature Act (Cap. 8)	Section 7  Delete the word "thirty" and substitute therefore the word "seventy".	Section 7  Number of Judges of Appeal and the High Court  7(1) The Court of Appeal shall consist of not more than <del>thirty</del> seventy judges.	While increasing the number of judges is a transformative judiciary reform, it is to be noted that this is not a minor amendment and further, its enactment will occasion additional expenditure of public funds.  This needs to be expressly stated within this Bill and a further provision is needed to indicate that this additional expenditure will be provided for by budgetary estimates or else it will be a means to no end.
The Appellate Jurisdiction Act (Cap. 9).	Section 59(7)  Delete the expression "Attorney-General" and substitute therefore the expression "Director of Public Prosecutions".  Section 73  Delete the expression "Attorney-General" wherever it appears and substitute		This amendment doesn't make sense. The Appellate Jurisdiction Act doesn't contain section 59 and 73.

	therefor the expression "Director of Public Prosecutions".		
The Leadership and Integrity Act, 2012 (No. 19 of 2012).	Section 19(6)  Delete the words "fail to submit annual statements of account" and substitute therefor the words "fails to submit statements of account annually as required under section 19 (3)".	Section 19  Bank accounts outside Kenya  (6) Without prejudice to the foregoing provisions of this section, a State officer who fails to declare operation or control of a bank account outside Kenya commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years, or a fine not exceeding five million shillings, or both.	In this section, the words "fail to submit annual statements of account" do not exist.
The National Transport and Safety Authority, 2012 (No. 33 of 2012).	Section 16  Delete the word "three" and substitute therefor the word "five"	Section 16  Tenure of office of Director-General  The Director-General shall be appointed for a term of <del>three</del> five years and shall be eligible for reappointment for one further term.	Not clear what this amendment seeks to achieve.  When a director stays on a tenure for a very long time, the Director may become complacent and not fulfil the required level of due diligence in their review of its operations, opportunities and performance.  The previous provision bearing the term three years should be retained. This is also in line with

			the Mwongozo code for state corporations.
The Energy Act, 2019 (No. 1 of 2019)	<p>Section 4(1)</p> <p>Insert new paragraph immediately after paragraph (e)</p> <p>(ea) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative.</p> <p>Section 4(1)(f)(i)</p> <p>Delete the word "the" and substitute therefor the word "a".</p> <p>Section 4(1)(f)(v)</p> <p>Delete.</p> <p>Section 6(1)(a)(ii)</p> <p>Delete the word "utility" and substitute therefor the words "critical national".</p>	<p>Section 4</p> <p>National energy policy</p> <p>(1) The Cabinet Secretary shall in consultation with the relevant stakeholders develop and publish a national energy policy which shall be reviewed every five years.</p> <p>(2) Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national energy policy</p> <p>Section 6</p> <p>Monitoring implementation of National integrated energy plan</p> <p>Within three months after the end of each financial year, the Cabinet Secretary shall prepare and publish a report on the implementation of the national integrated energy plan.</p>	<p>There appears to be a wrong reference as Section 4 does not contain paragraphs.</p> <p>Section 6 does not contain paragraphs, neither does it contain the word "utility"</p>

	<p>Section 9(1)</p> <p>Insert the word “a” immediately after the word “of”.</p>	<p>Section 9</p> <p>Establishment of the Energy and Petroleum Regulatory Authority</p> <p>(1) There is established the Energy and Petroleum Regulatory Authority hereinafter referred to as the Authority.</p>	<p>The word “of” does not exist in this section.</p>
	<p>Section 12(1)(e)</p> <p>Delete.</p>	<p>Section 12.</p> <p>Board of the Authority</p> <p>(1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of—</p> <p>(e) one County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors.</p>	<p>This amendment is a claw back on devolution as Energy is a shared function between the national and county governments.</p>



	<p>Section 20(4)</p> <p>Delete the word "one" and substitute therefor the word "five".</p>	<p>Section 20</p> <p>(4) There shall be paid out of the funds of the Authority, all expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.</p>	<p>The word "one" doesn't exist</p>
	<p>Section 22(2)</p> <p>Delete the words "one million" and substitute therefor the word "five million".</p>	<p>Section 22</p> <p>Powers of Committees or Agents</p> <p>(2) A committee, member, officer, employee or agent entering any premises under this section may be accompanied by such persons as the committee, officer, employee or agent deems necessary and may enter with such equipment as may be necessary for the performance of their functions.</p>	<p>One million doesn't exist/wrong reference</p>
	<p>Section 24</p> <p>(1) Insert the words "critical national" immediately after the word "the".</p>	<p>Section 24.</p> <p>Appeal against a decision of the Authority</p> <p>(1) A person aggrieved by a decision of the Authority may appeal</p>	<p>Words "critical national" not found in the Act or section 24</p>



	<p>Section 24(2)</p> <p>Delete the word "ten" and substitute therefor the word "twenty"</p> <p>Delete the word "three" and substitute therefor the word "seven".</p>	<p>to the Tribunal within thirty days of receipt of the decision.</p> <p>(2) Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.</p>	<p>Section 24(2) doesn't have the word "ten" or the word "three"</p>
	<p>Section 26(1)</p> <p>Insert the words "or import" immediately after the word "export".</p> <p>Section 26(2)</p>	<p>Section 26.</p> <p>Members of the Tribunal</p> <p>(1) The Tribunal shall consist of not more than seven members as follows—</p> <p>(a) a chairperson who shall be appointed by the President from</p>	<p>Wrong cross-reference</p> <p>Word "export" doesn't exist.</p> <p>No sub-sections 2 or 3</p>

	<p>Insert the words "or import" immediately after the word "export"</p> <p>Section 26(3)</p> <p>Insert the words "in consultation with the Authority."</p> <p>immediately after the word "Secretary"</p>	<p>among persons qualified to be judges of the High Court and who has at least five years' experience in energy and petroleum matters; and</p> <p>(b) six other persons possessing knowledge and experience in law, petroleum and energy and who are not in the employment of the Government, Agency or the Authority.</p>	
	<p>Section 30(1)(a)</p> <p>Insert the words "critical national"</p> <p>immediately after the word "vandalized".</p> <p>Section 30(1)(e)(ii)</p> <p>Insert the words "smelter, electrical rewinder, steel fabricator"</p> <p>immediately after the word "miller".</p>	<p>Section 30</p> <p>Secretary and other staff</p> <p>(1) The Cabinet Secretary shall appoint the secretary to the Tribunal.</p> <p>(2) A person shall be qualified to be appointed to hold office as secretary to the Tribunal under subsection (1) if such a person is an advocate of the High Court of Kenya of not less than seven years standing.</p>	<p>Wrong cross-reference</p> <p>Paragraph (a) does not exist.</p>

		(3) The Tribunal may appoint such other staff as may be necessary for the proper discharge of the functions of the Tribunal under this Act.	
	<p>Section 45(1)</p> <p>Delete the words "who shall be the Secretary to the Board" appearing in paragraph (d).</p> <p>Section 45(1)(e)</p> <p>Delete the word "three" and substitute therefor the word "seven".</p> <p>Delete paragraph (f).</p>	<p>Section 45.</p> <p>Board of the Corporation</p> <p>(1) The management of the Corporation shall vest in the Board of Directors of the Corporation which shall consist of—</p> <p>(d) the Chief Executive Officer <del>who shall be the Secretary to the Board;</del></p> <p>(e) three—seven members appointed by the Cabinet Secretary; and</p> <p>(f) four other members appointed by the Council of County Governors.</p>	<p>The deletion is redundant. The CEO is still the Secretary</p> <p>Alternatively, a separate provision can be placed to state, <i>"The Chief Executive Officer shall be an ex officio member of the Management Board with no voting rights."</i></p> <p>We also note that there is no provision for removal of members and when offices will fall vacant which are also necessary.</p> <p>Same as section 12 which seeks to remove the county representation, this section also is a claw back on devolution. Energy is a shared function.</p>
	<p>Section 199(1)</p> <p>Insert the word "Gazette"</p>	Section 199	<p>As County Government Gazette are non-existent as was held in <u>Republic vs Kiambu County executive Committee &amp; 3 others exparte James Gacheru Kariuki</u></p>

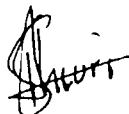
	immediately after the words “by notification in the”.	Power of County Government to make rules  (1) A County Government may, by notification in the Gazette, make rules for carrying out the provisions of this Act and not inconsistent with the rules and regulations, if any, made by the National Government.	<u>&amp; 9 others [2017] eKLR</u> , for avoidance of doubt, this provision should specifically refer to “Kenya Gazette”.
	Section 216(1)  Delete the word “Consolidated”	Section 216  <del>Consolidated</del> —Energy Fund  (1) The Cabinet Secretary shall establish the <del>Consolidated</del> Energy Fund to cater for—	What about the other sections where the Consolidated Energy Fund is being mentioned such as section 70 (b), section 53, section 20 and the 5th Schedule part 3(1).
The Water Act, 2016 (No. 43 of 2016)	Section 73  Delete the words “the Cabinet Secretary for Public Service may determine on the advice of the Salaries and Remuneration Commission” and substitute therefor the words “may be specified in the instrument of	Section 73  Employees of the Regulatory Board  (2) The Regulatory Board may appoint such officers and other employees as may be necessary for the exercise and performance of its powers and functions, upon such terms and	Section 73 has sub-sections and therefore reference should be made to sub-section (2) specifically.

	<p>appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.”</p>	<p>conditions as the Cabinet—Secretary responsible for public service may determine upon consideration of advice from the Salaries and Remuneration Commission may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.</p>	
<p>The Bribery Act, 2016 (No. 47 of 2016).</p>	<p>Section 1</p> <p>Delete the expression “Bribery Act” and substitute thereof the expression “Anti-Bribery Act”.</p>	<p>Section 1</p> <p>Short title</p> <p>This Act may be cited as the <del>Bribery Act</del> Anti-Bribery Act, 2016.</p>	<p>Cannot change the citation of the Act within the Short Title without changing the title of the Act.</p> <p>Anti-Bribery Act, 2016 (No. 47 of 2016)</p>
	<p>Section 5</p> <p>Delete the word “who” and substitute therefor the words “if the person offering, promising or giving knows”</p>	<p>Section 5</p> <p>Giving a bribe</p> <p>(1) A person commits the offence of giving a bribe if the person offers, promises or gives a financial or other advantage to another person, <del>who if the person offering, promising or giving</del> knows or</p>	<p>Is the amendment for subsection 5(1) alone or both because inclusion of the amendment in subsection 2 does not make sense.</p>

		<p>believes the acceptance of the financial or other advantage would itself constitute the improper performance of a relevant function or activity.</p> <p>(2) Subject to subsection (1), it shall not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned, or whether the advantage is offered, promised or given by a person directly or through a third party.</p>	
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In conclusion, we humbly submit that our comments be considered before enacting this Bill.

Yours faithfully,



Eric Theuri  
President Law Society of Kenya

**Annexure 6:**  
**Schedule of Committee Amendment**

22<sup>nd</sup> March, 2023

The Clerk of the National Assembly,  
Parliament Buildings,  
**NAIROBI.**

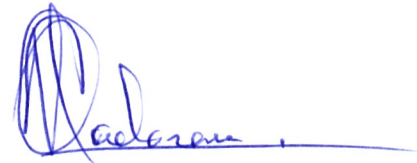
**RE: COMMITTEE STAGE AMENDMENTS TO THE STATUTE LAW  
(MISCELLANEOUS AMENDMENTS) (No. 60) BILL, 2022.**

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**NOTICE** is given that the Chairperson of the Departmental Committee on Transport and Infrastructure Hon. George Kariuki, MP., intends to move the following amendments to the Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No. 60) 2022 at the Committee Stage—

**SCHEDULE**

- (1) **THAT** the Bill be amended in the Schedule in the proposed amendments to the **National Transport and Safety Authority Act** by deleting the proposed amendments to section 16.



**Hon. George Kariuki, MP.,**  
**Chairperson, Departmental Committee on Transport and Infrastructure.**