



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

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THIRTEENTH PARLIAMENT – SECOND SESSION – 2023

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 67 OF 2023)

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 15 FEB 2024	DAY: <i>Titus</i>
TABLED BY:	<i>Chairperson, Justice &amp; Legal Affairs Hon. George Mwangi, MP</i>
CLERK-AT THE TABLE:	<i>A. Shitiko</i>

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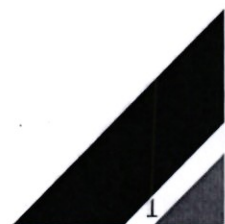


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## CHAIRPERSON'S FOREWORD

This report details the consideration by the Departmental Committee on Trade, Industry and Cooperatives of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023). The Bill seeks to amend various statutes among them **The Scrap Metal Act, No 1 of 2015** which is relevant to the Departmental Committee on Trade Industry and Cooperatives.

The Bill was published on 30<sup>th</sup> October 2023 and read a First Time in the House on 15<sup>th</sup> November, 2023. It was thereafter committed to various relevant Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127.

Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 17<sup>th</sup> November, 2023 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment.

From the foregoing, the Committee received views from the various stakeholders and thereafter held meetings with the stakeholders where submissions were received and the presentations considered before adoption of this report. Having considered the proposed amendments and based on analysis of submissions, the Committee made observations for each of the proposed amendments The Scrap Metal Act, No 1 of 2015 as contained in Part IV of this Report.

Having reviewed the proposed amendments to the Scrap Metal Act, No 1 of 2015, as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), the Committee recommends **THAT** the proposed amendments to the **Scrap Metal Act, 2015 should not proceed** but should be put on hold pending further review, wider stakeholder consultations and submission of a comprehensive bill to review the entire Scrap Metal Act.

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



## CHAPTER ONE

### 1.0 PREFACE

#### 1.1 Introduction

1. This report details the consideration by the Departmental Committee on Trade, Industry and Cooperatives of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 67 of 2023).
2. The Bill was published on 30<sup>th</sup> October 2023 and read a First Time in the House on 15th November, 2022. It was thereafter committed to various Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127. Specifically, the Committee considered amendments proposed to the **The Scrap Metal Act, No 1 of 2015**.

#### 1.2 Establishment and Mandate of the Committee

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

In executing its mandate, the Committee oversees the Ministry of Investment, Trade and Industry and the Ministry of Cooperatives and Micro, Medium and Small Enterprises (MSMEs)

### 1.3 Committee Membership

5. The Departmental Committee on Trade Industry and Cooperatives was constituted by the House on Thursday, 27th October 2022 and comprises the following Members:

#### **Chairperson**

Hon. James Mwangi Gakuya, MP  
Embakasi North Constituency

#### **UDA Party**

#### **Vice-Chairperson**

Hon Kitany Jebet Marianne, MP  
Aldai Constituency

#### **UDA Party**

#### **Members**

Hon. Dr. Oundo Wilberforce Ojiambo, MP  
Funyula Constituency

#### **ODM Party**

Hon. Adagala Beatrice Kahai, MP  
Vihiga Constituency

#### **ANC Party**

Hon. Githinji Robert Gichimu, MP  
Gichugu Constituency

#### **UDA Party**

Hon. Hassan Kulow Maalim, MP  
Banissa Constituency

#### **UDM Party**

Hon. Kamene Joyce, MP  
Machakos Constituency

#### **WDM Party**

Hon. Mwalyo Joshua Mbithi, MP  
Masinga Constituency

#### **Independent Member**

Hon. Oluoch Anthony, MP  
Mathare Constituency

#### **ODM Party**

Hon. Guyo Adhe Wario, MP  
North Horr Constituency

#### **KANU Party**

Hon. Korir Adams Kipsanai, MP  
Keiyo North Constituency

#### **UDA Party**

Hon. Maina Mwago Amos, MP  
Starehe

#### **JP Party**

Hon. Sakimba Parashina Samwel, MP  
Kajiado South Constituency

#### **ODM Party**

Hon. Wanaina Antony Njoroge, MP  
Kieni Constituency

#### **UDA Party**

Hon. Waithaka John Machua  
Kiambu Constituency

#### **UDA Party**

#### **1.4 Committee Secretariat**

6. The Committee is facilitated by the following staff:

Rose Mudibo  
**Senior Clerk Assistant /Head of Secretariat**

Mr. Ellam Omuhinda  
**Clerk Assistant III**

Ms. Evelyn Kerubo Orina  
**Clerk Assistant III**

Ms. Doreen Karani  
**Senior Legal Counsel**

Mr. Peter Barasa  
**Legal Counsel II**

Ms. Loice Olesia  
**Fiscal Analyst III**

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

Ms. Mercy Mayende  
**Media Relations Officer**

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

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

Mr. Cosmas Akhonya  
**Audio Recording Officer**

Mr. Benjamin Ochutsi  
**Hansard Officer**

Ms. Pricillah Saidi  
**Research Officer III**

## **CHAPTER TWO**

### **2.0 PUBLIC PARTICIPATION/ STAKEHOLDERS CONSULTATION**

7. Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16<sup>th</sup> December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment.
8. Through the placement of adverts in the print media on 17<sup>th</sup> November, 2023 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment.
9. Submissions (Annex 4) were received from the following stakeholders—
  - (a) Consumer Federation of Kenya;
  - (b) Ministry of Investments, Trade and Industry;
  - (c) Scrap Metal Council.
10. The analysis of the submissions made by the stakeholders are contained in Chapter three.



## **CHAPTER THREE**

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

11. The Bill in particular proposes several amendments to The Scrap Metal Act, No 1 of 2015.
12. The following is an analysis of the proposed amendments and the submissions made by various stakeholders on each of the proposed amendments:

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

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

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

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

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

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

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

14. The Bill proposes amendment to section 4(1)(f)(i) by deleting the word “the” and substituting the same with the word “a”  
The Bill proposes amendment to section 4(1)(f)(v) by deleting the aforementioned section.
15. The Bill proposes amendment to section 6(1)(a)(ii) by deleting the word “utility” and substituting the same with the words “critical national”
16. The Bill proposes amendment to section 9(1) by inserting the word “a” immediately after the word “of”

17. The Bill proposes amendment to section 11 by renumbering the provisions as subsection (1) and adding the following—
- (2) Notwithstanding subsection (1) the Cabinet Secretary shall issue a special license for dealing in copper, aluminum and their alloys.
  - (3) An application for a special license shall be made in accordance with section 10.
18. The Bill proposes amendment to section 18(3) (a) by deleting the word “one million” and substituting the therefor the words “five million”. The Bill proposes amendment to section 18(3) (b) by deleting the word “five” and substituting the therefor the word “ten”
19. The Bill proposes amendment to section 20(4) by deleting the word “one” and substituting the therefor the word “five”
20. The Bill proposes amendment to section 22(2) by deleting the words “one million” and substituting the therefor the words “five million”
21. The Bill proposes amendment to section 24 by inserting the words “critical national” immediately after the word “the”. Further the Bill proposes amendment to section 24 by inserting new section immediately after section (1) –
- (1A) A state entity responsible for critical national infrastructure shall dispose scrap metal from critical national infrastructure to the numerical machining complex to the Kenya Ship yard limited for smelting into billets.
  - (1B) Where there is inadequate capacity at the numerical machining complex and Kenya Shipping yard limited, the respective state entity through a written consent from numerical machining complex and Kenya Shipping yard limited, shall seek approval from the counsel to partner with a local smelter directly without involving a broker.
- The Bill proposes amendment to section 24(2) by deleting the word “ten” and substituting the therefor the words “twenty”
- The Bill further proposes amendment to section 24(2) by deleting the word “three” and substituting the therefor the words “seven”
22. The Bill proposes amendment to section 26(1) by inserting the words “or import” immediately after the word “export”
- The Bill proposes amendment to section 26(3) by inserting the words “in consultation with the authority” immediately after the word “Secretary”
- The Bill further proposes amendment to section 26 by inserting the following new subsection section immediately after sub section (3)—
- (3A) The certificate issued under subsection (3) shall indicate the nature, quantity and consideration for scrap metal to ensure compliance with the approved limits.

23. The Bill proposes amendment to section 30(a) by inserting the words “critical national” immediately after the word “vandalized”

The Bill proposes amendment to section 30(1)(e)(ii) by inserting the words “smelter, electrical rewinder, steel fabricator” immediately after the word “miller”

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

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

- a. That the proposed amendments are strange to Scrap Metal Council and offend the provisions of section 32 of the Scrap Metal Act as the remail proceeds of fraudulent process and one which impersonates the council for selfish gains of unnamed cartels.
- b. That republication of the amendments under the ministry of Investment Trade Industry is in itself a confirmation that the amendments are stale, illegal, unprocedural and do not relate to the ministry of Investment, Trade and Industry and as such should not be used in the house.
- c. That the amendments shall occasion violation of the constitution either through form or content.
- d. That removal of a council /Board, in light with the consumer rights under article 46 of the constitution cannot be through miscellaneous amendments but should be through a substantive amendment of the parent Act.
- e. That the Cabinet Secretary has acted beyond the power/mandate bestowed upon the office in coming up with the aforementioned amendments.
- f. That the proposed amendments offend the provisions of Article 1(1) and 10 of the constitution. By seeking to remove consumer federation of the Kenya from the scrap metal council without following due procedure intends to offend the provisions of Article 27(40, 47 and 50 of the constitution of Kenya.
- g. That the amendments seek to amend other legislations such as the Numerical Machining and Kenyan Shipyard through the Scrap Metal Act , 2015. This should only be done through a substantive amendment and not the miscellaneous amendment.
- h. The purpose rationale for Miscellaneous Amendments as was observed in *Law Society of Kenya & Another (2016) e KLR*, by the five judge bench is, *‘it is therefore clear that both on policy and good governance, which is one of the values and principles of governance in Article 10 of the Constitution, which values and principles form the foundation of our State and Nation as decreed in Article 4(2) of the Constitution, omnibus amendments in the form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.*

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

### **1.5 Committee Observations**

25. The amendments proposed are new definitions under section 2. These terminologies proposed in the Bill to be inserted as amendments are neither used anywhere in the Scrap Metal Act nor are they proposed to be included within the body of the Act.
26. Further, the Committee observed the new amendments are inadmissible as they expand the subject of the Bill contrary to Standing Order 133(5). That the committee would require more time to scrutinize and conduct stakeholders' engagement in order to make a consideration on the aforementioned proposed amendments.
27. The committee observed that there has been inadequate stakeholders' engagement who had presented submissions and the only stakeholder who has presented their memoranda opposed to the amendments and the Committee therefore seek more time to scrutinize the Bill in order advice on whether the Scrap Metal Act should be amended through a miscellaneous amendment or through introduction of a comprehensive amendment Bill to the Scrap Metal Act

## **CHAPTER FOUR**

### **4.0 COMMITTEE OBSERVATIONS**

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

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

- (1) The amendments proposed are new definitions under section 2. These terminologies proposed in the Bill to be inserted as amendments are neither used anywhere in the Scrap Metal Act nor are they proposed to be included within the body of the Act.
- (2) Further, the Committee observed the new amendments are inadmissible as they expand the subject of the Bill contrary to Standing Order 133(5). That the committee would require more time to scrutinize and conduct stakeholders' engagement in order to make a consideration on the aforementioned proposed amendments.
- (3) The committee observed that there has been inadequate stakeholders' engagement who had presented submissions and that the only stakeholder who presented their memoranda was opposed to the amendments and the Committee therefore seek more time to scrutinize the Bill in order advice on whether the Scrap Metal Act should be amended through a miscellaneous amendment or through introduction of a comprehensive amendment Bill to the Scrap Metal Act.

**CHAPTER FIVE**


**COMMITTEE RECOMMENDATIONS**

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

- (a) **THAT** with respect to amendments to the **Scrap Metal Act**, the Schedule to the Bill be amended by deleting ALL the proposed amendments.

*[Handwritten signature]* 15/2/2024

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

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	15 FEB 2023
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TABLED BY:	<i>Chairperson, Justice Legal Affairs</i> <i>Hon George Mwangi, M.P.</i>
CLERK AT THE TABLE:	<i>A. Shuboko</i>

# Consumers Federation of Kenya

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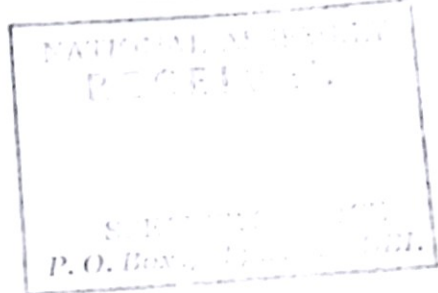


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November 24, 2023

Hon Moses M. Wetang'ula  
Speaker  
National Assembly  
Parliament Buildings  
NAIROBI

*CNA*  
*Deal*  
*SNA*  
*30/11/23*



Dear Sir,

*Clive Onyandia*  
*to facilitate*  
*ca 11/23*  
*DDC*  
*30/11*

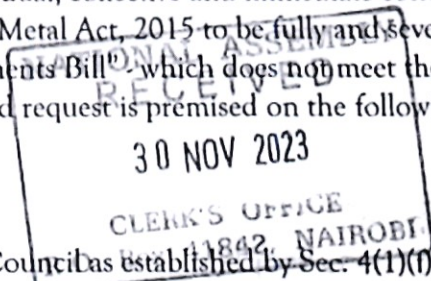
**RE: REQUEST TO EXPUNGE PURPORTED AMENDMENTS ON SCRAP METAL ACT, 2015 CONTAINED WITHIN MISCELLANEOUS AMENDMENT BILL 2023**

We hereby write to draw your kind attention to our grave concern at the persistent and mostly fraudulent moves being used by cartels to remove the Consumers Federation of Kenya (COFEK) from the Scrap Metal Council through illegal, vexatious and contemptuous amendments to the Act.

The latest such bid is another hurried attempt to use error-ridden Miscellaneous Amendment Bill as published on October 30, 2023. The Government Printer and or the relevant Committee knows or ought to know that the originating Ministry of Investments, Trade and Industry (MITI) verbally disowned the recommendations by their predecessor (Ministry of Industrialization, Trade and Enterprise Development - MITED) sneaked into the Miscellaneous Amendment Bill, 2022 on Scrap Metal Act, 2015. Sad. To show the scale of the stinking scam between the Attorney General and Government Printer, someone republished the MITED proposals - when the Ministry is now MITI.

The move by MITI on MITED offending recommendations meant there was neither stakeholder/public participation that could have proceeded. They collapsed sine die. They were never meant to be resuscitated in the form and content - except with the express concurrence of the Scrap Metal Council and the Cabinet Secretary, MITI as per provisions of Section 32 of the Scrap Metal Act, 2015. Never mind that in the continued presence of the offending purported amendments risk the legality and or constitutionality of the entire Bill - as there is no Ministry in Kenya now call MITED.

Accordingly, we write to seek your early, individual, collective and immediate concurrence to have the said amendments touching on Scrap Metal Act, 2015 to be fully and severally expunged from latest "Miscellaneous Amendments Bill" which does not meet the threshold of "Miscellaneous" in any respect. Our considered request is premised on the following details;



## 1.0 Background to Our Case

1.1 COFEK is a member of the Scrap Metal Council as established by Sec. 4(1)(v) and which Section the said the offending Bill wishes to mischievously delete - without basis, rationale or

30 NOV 2023

even according a hearing to COFEK contrary to provisions of Article 47 and 50. It can only qualify as discrimination which is prohibited under Article 27(4) of CoK-2010. The presence of COFEK on the Council is critical to address public interest matters - principally on environmental and health considerations - especially on minimizing the real danger of the carcinogenic nature of scrap metal.

1.2 Under Section 3, the Scrap Metal Council (SMC) is a body corporate able to sue and be sued in its' name. It is in charge of its' business. Although its' primary role is advisory to the CS for Investments, Trade and Industry (MITI), under Section 32 and on all occasions - it initiates advisories *Suo Moto* to the CS. It is never *vice versa*

1.3 In unexplained and wrong move contrary to Paragraph (1.2) herein above, the former Cabinet Secretary for Ministry of Industry and Trade and Enterprise Development (MITED) Ms Betty Maina, working in cahoots with other forces except the Scrap Metal Council, forwarded her version own amendments to the Act as well as Regulations purporting to amend and to operationalize the Scrap Metal Act, 2015. They were never processed by SMC

1.4 Both her Amendments and her proposed Regulations were defeated. We refer to them as "her Amendments" because they were neither initiated by any formal meeting of the Scrap Metal Council nor were they, at any point, ratified by the same Scrap Metal Council - to which we are represented.

1.5 In rejecting the Regulations the House Committee on Delegated Legislation then led by Hon Kassait Kamket observed in part, thus;

1.5.1 Contrary to Article 10, CoK2010 as read together with Sec. 5A of the Statutory Instruments Act of 2013, there no demonstration at all of public participation in the process of making regulation. In any case, it was only SMC that would have undertaken the public participation.

1.5.2 The Committee also observed that contrary to Sections 6,7,8 and 9 of the Statutory Instruments Act, 2013 there was no regulatory impact assessment submitted. This would never have been possible considering that no stakeholder and public participation had been conducted.

1.5.3 For avoidance of doubt Ms Maina's Regulations and Amendments never had a statement on the proof and demonstration that sufficient public consultation was/had been conducted as required under Articles 10 and 118 of the Constitution; Also missing were - A brief statement of all the consultations undertaken before the statutory instrument was made; A brief statement of the way the consultation was carried; an outline of the results of the consultation; a brief explanation of any changes made to the legislation as a result of the consultation and worse, the regulation-making authority entity failed to explain why no such consultation was undertaken.

1.6 COFEK petitioned both the House and the High Court. The House gave reprieve. COFEK later withdrew the Petition at the High Court (E151 of 2022). This followed the request by the Cabinet Secretary for Ministry of Investments, Trade and Industry (MITI) directly (Mr Moses Kuria) and from Industry Principal Secretary Dr Juma Mukhwana - to the undersigned. The



Petition was withdrawn without due costs on the understanding that each party would bear its' costs. The withdrawal was conditional, on among others,

1.6.1 That MITI recalls all such communications that were made to the effect that the undersigned should be removed from membership of the Scrap Metal Council (SMC)

1.6.2 That MITI recalls its' proposed amendments to the Scrap Metal Act, 2015 as contained in the earlier version of the Miscellaneous Amendment and as per law be referred to the SMC to develop both the Amendments and Regulations as per Section 32 of the Scrap Metal Act, 2015.

1.6.3 That Section 3 of the Scrap Metal Act, 2015 which provides that the Council is a body corporate be read in its rightful context without any erroneous (mis)interpretation of Section 7(2) which has made the Ministry to micro-manage the operations and or even purport to veto decisions of the SMC.

1.6.4 That at least prioritize deletion of the offending Section 7(2) which is often dmis-read to sound as if it is compulsory for MITI to provide 'secretariat services' and if provision of such services meant/means the seconded officers answer to the SMC or the Ministry PS or CS.

1.7 That the HCCC E151 of 2022 was withdrawn on those grounds. If MITI were either mischievous and or Government Printer republished the offending Scrap Metal stale amendments in error, MITI should and or ought to, have by now, formally disowned the MITED version of the Amendments. After all, and save for doctrine of perpetuity, the MITI team cannot competently defend them. They have full brief of the same.

## 2.0 GROUNDS OF OPPOSITION

2.1 That the proposed Amendments are a stranger to SMC and MITI and offend Section 32 of the Scrap Metal Act, 2023 as they remain proceeds of a fraudulent process and one which impersonates the SMC for selfish gains of unnamed cartels.

2.2 Cartels should not be allowed to enjoy the proceeds of a fraudulent process. In any case, Parliament cannot be that institution that should be used for individuals to settle their grievances and or greed.

2.3 The republication of the offending Amendments under MITED (instead of MITI) is in itself a confirmation that they are both stale, illegal, unprocedural and do not relate to Ministry of Investments, Trade and Industry and as such cannot be used by the House. There was no Ministry of Industry, Trade and Enterprise Development (MITED) that existed by October 30, 2023 nor exists in Kenya by that name as a lawful Ministry of the Executive arm of the Republic of Kenya today.

2.4 That from Paragraph 2.3, the said Amendments purporting to amend the Scrap Metal Act, 2015 have no basis to remain standing. They must immediately fall in their entirety and those involved in their fraudulent inclusion brought to book. They have no feet to stand upon if they did not, as is clearly the case, emanate from no known Ministry as per publication date of the said Bill.

2.5 That the offending impugned amendments occasion violation of the Constitution either through form and content. Whether the violation is one of form or content, any such violation is sufficient for the Honourable House Speaker to find that a proposed impugned law is unconstitutional. COFEK is persuaded that the impugned amendments are equally most substantive in nature since they were fashioned to overhaul the manner in which affected Acts of the law will operate. An example is the purported, unexplained, unwarranted, mischievous, immoral and unlawful proposed removal of of Consumers Federation of Kenya (COFEK) from the Scrap Council Act - for selfish interests of cartels within and outside Government afraid of the strictness of the said COFEK on the SMC.

2.5.1 Removal of a Council/Board member, in light of constitutional consumer rights at Article 46 of the Constitution, cannot be 'a miscellaneous' amendment but most substantive. The parent Act should be amended. Not a miscellaneous amendment

2.5.2 Even in the worst case scenario where it were still to be forced to be a "miscellaneous amendment", a rogue and or a corrupt Cabinet Secretary and or her agents who have acted in excess of her limited powers to either direct and or purport to direct the Attorney General and or the Government Printer, *Suo Moto*, to publish a Bill purporting remove an institution from an Act of Law established by Parliament without showing cause, substance and basis - is untenable and bad in law.

2.5.3 This alone implies that the proposed amendment is NOT a miscellaneous one. Ideally such an amendment if it has gone through Cabinet will be debated by the House and amended accordingly from the context of the parent Act, not Omnibus (Miscellaneous Bill).

2.5.5 That there the proposed Amendments to the Scrap Metal Act, 2015 offend Article 1(1) and especially Article 10 of the Constitution. By seeking to remove COFEK from the SMC, without following due process, the process and intent offends Articles 27(4), 47 and 50 of the Constitution of Kenya for which both the House Speaker and MPs swore to protect and uphold.

2.5.6 That for many reasons stated here, the stale and offending Amendments to the Scrap Metal Act, 2015 have not and will not undergo any form of public participation (in that form and content) as they are fraudulently carried within the Miscellaneous Amendment Bill

2.5.7 When the same Amendments came up for public participation in late February 2023, at Windsor Hotel, Nairobi, the MITI officials led by Principal Secretary Dr Juma Mukhwana verbally disowned them and informed the House Committee that the Council will re-draft the Amendments before the MITI resubmits them.

2.4.8 To the best of our/my understanding, at no time has SMC discussed, approved and even formed an advisory opinion on the offending amendments to the Scrap Metal Act, 2015

### 3.0 Facts of Law

3.1 For a long time, sections of the Executive have misused the Parliamentary process to grossly abuse the House Statute Law Miscellaneous Amendment Bills which have become synonymous with controversial and often illegal provisions sneaked in under the disguise of

minor amendments. As a result, the High Court under Article 165(3)(d)(i)(ii), have severally ruled against legislations carried as miscellaneous when they are substantive.

3.2.0 From the National Assembly Hansard Report of May 26, 2022 (Page 13) the Speaker (Hon J.B Muturi) said thus,

*"Hon. Members, before we go to Order No.13, I have just looked at the Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No. 26 of 2022) and I do not know whether the people responsible... Majority Whip, maybe, you could find out. It is very untidy to claim to amend 56 laws through one Bill. This House has expressed itself severally – it is a very untidy way of going about it – and especially at the tail end of a Parliament. Even though the Bill stands committed to various committees, I even do not know which one, because there are so many laws being amended. It looks like a hotchpotch of everything. The Copy Right Law which was passed the other day is being proposed to be amended; and so is the Kenya Human Rights Commission; the Energy Act; and many others. Somebody must say where this Bill would be referred to, and who is going to undertake the requisite public participation because there are so many laws that are being amended ..."*

Similar issues were observed in the National Assembly, Hansard Report Thursday, 9th May 2019 at 9.30 a.m. and at 2.30 p.m available at [http://www.parliament.go.ke/the-national-assembly/house-business\\_hansard](http://www.parliament.go.ke/the-national-assembly/house-business_hansard)

3.3.1 Many Court findings have ruled against substantive matters being amended via the 'omnibus' Bills within the meaning of the word 'miscellaneous'. On rationale for Miscellaneous Bills, the purpose of as was observed in *Law Society of Kenya & Another (2016) e KLR*, by the five judge bench is, 'it is therefore clear that both on policy and good governance, which is one of the values and principles of governance in Article 10 of the Constitution, which values and principles form the foundation of our State and Nation as decreed in Article 4(2) of the Constitution, omnibus amendments in the form of Statute Law Miscellaneous legislations ought to be confined only to minor non-controversial and generally house-keeping amendments.

3.3.2 In that case the Court cited the position in other jurisdictions including Australia, Canada and the United States of America. The purpose of Miscellaneous Amendments as generally accepted even in the jurisdictions mentioned above is to introduce minor, non-controversial amendments or to repeal spent or redundant legislation. Consequently, the intention ought to be to avoid having many small separate bills that seek to introduce small minor amendments to various Acts. According to the Canadian Miscellaneous Statute Law Amendment Program, for instance, for a Bill to qualify as a Miscellaneous Amendment it must not be controversial, not involve the spending of public funds and not prejudicially affect the rights of persons or subject a new class of persons to an existing offence.

3.3.3 The Miscellaneous Amendments Bills have been used to introduce some very controversial amendments in law, which is a clear indicator that the House is not acting in good faith creating a lot of suspicion and mistrust amongst citizens.

3.3.4 The power to legislate is delegated to democratically elected representatives by the people of Kenya, who have all the sovereign power as at Article 1(1). That power must thus be

exercised in accordance with the national values and principles of governance under Article 10 of the Constitution and acting to the contrary is a direct violation of the Constitution.

3.3.5 In a 1901 American case of *Commonwealth vs. Barnett* (199 US. 161) the court stated that: "Bills, popularly called omnibus bills, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits". The Court also noted further observations by Louis Massicotte: The real question, however, beyond the convenience of the government or of the opposition parties, may well be: is the public interest well served by omnibus bills? Take for example the clause-by-clause study in committee. When a bill deals with topics as varied as fisheries, unemployment insurance and environment, it is unlikely to be examined properly if the whole bill goes to the Standing Committee on Finance..."

3.3.6 The Miscellaneous Amendment Bill, 2019 was considered by the Committee of the Whole House of Parliament in spite of the numerous Acts cutting across various subjects that were under consideration. It is important to note that Hon. T.J Kajwang, raised similar concerns on the manner in which the Miscellaneous Amendments Bills were being used during the Parliamentary proceedings over the 2019 Bill, and a number of other MPs agreed that the Bill was not proper in principle.

3.3.7 The Miscellaneous Amendment Bill purports to amend other legislations such as the Numerical Machining and Kenya Shipyard through the Scrap Metal Act, 2015. That would not only be a substantive amendment but a shortcut and a sharp contravention, in letter and spirit, as envisaged by the drafters of the Constitution of Kenya, 2010. Parliament as a duty to defend the Constitution. This it can ably do by loathing and condemning such short cuts and adhere to the values enshrined under the Constitution, as the supreme law of the land. It also needs to restore the dignity and respect to the Miscellaneous Amendment Bills.

#### 4.0 CONCLUSION

4.1 The most key miscellaneous amendment needed on the Scrap Metal Act, 2015 is the need for deletion of Section 7(2) which has been misused and abused by the State Department of Industrialization to micro-manage the Scrap Metal Council (SMC) yet it is a body corporate capable of suing and being sued. Yet Section 7(2) of the Ministry 'providing secretariat services' is misconstrued to imply the SMC is a department and or an extension of State Department of Industrialization.

4.2 In line with Article 3(a) and 94(1)(6), the legislative authority of the Republic is derived from the people (and not State officers) and at the national level is vested in and exercised by Parliament. Any person and or entity attempting to circumvent provisions of this law are engaging on a treasonable offence.

4.3 In conclusion therefore, we hope that the House can introduce better mechanisms to sieve and arrest cartels riding on and maliciously abusing the Miscellaneous Amendment Bills which serve a critical purpose

we look forward to your early and favourable response. Thank you.

Yours Sincerely

CONSUMERS FEDERATION OF KENYA (COFEK)

  
Stephen Mutoro  
SECRETARY GENERAL



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Cabinet Secretary  
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Ref. No. MITI/SDI/1/88

Date: 12<sup>th</sup> January, 2024

Mr. Samuel Njoroge, CBS  
Clerk of the National Assembly  
Parliament Building  
Nairobi

AMENDMENTS TO THE SCRAP METAL ACT

The above-named amendments came up in the National Assembly for the first reading in November, 2023.

Subsequently, several meetings were convened to identify issues that needed to be addressed.

The Ministry of Investments, Trade, and Industry has established that there is a need to consult widely on the issue. Consequently, this is to request that the processing of this bill be put on halt until further notice.

Hon. Rebecca Miano, EGH  
**CABINET SECRETARY**

Copy to: Juma Mukhwana, PhD, CBS  
Principal Secretary  
State Department for Industry  
Nairobi

Ms. Debra  
Karani, sec

Please note and  
bring to the  
attention of  
the Trade  
Committee.

JUV 2/2/2023

Hon. James Gakuya  
Chair, Trade, Industry & Cooperatives Committee  
Parliament Building  
Nairobi

Mr. Gideon Oele  
Head of Secretariat, Scrap Metal Council

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