



PAPER laid  
17/6/2014

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

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ELEVENTH PARLIAMENT – SECOND SESSION

REPORT OF THE DEPARTMENTAL COMMITTEE  
ON  
FINANCE, PLANNING & TRADE ON THE CONSIDERATION OF  
THE SCRAP METAL BILL, 2014

PARLIAMENT BUILDINGS  
NAIROBI

JUNE, 2014

## PREFACE

Mr. Speaker, Sir

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia; 'to study and review all legislations referred to it'.

Mr. Speaker, Sir

The Committee on Finance, Planning & Trade was constituted by the House on Thursday 16<sup>th</sup> May, 2013 comprising of the following members:

1. The Hon. Benjamin Langat, MP (Chairman)
2. The Hon. Nelson Gaichuhie, MP (vice Chairman)
3. The Hon. Jones M Mlolwa, MP
4. The Hon. Anyanga, Andrew Toboso, MP
5. The Hon. Timothy M .E. Bosire, MP
6. The Hon. Ahmed Shakeel Shabbir Ahmed, MP
7. The Hon. Joash Olum, MP
8. The Hon. Dr. Oburu Oginga, MP
9. The Hon. Patrick Makau King'ola, MP
10. The Hon. Abdullswamad Sheriff, MP
11. The Hon. Sumra Irshadali, MP
12. The Hon. Ogendo Rose Nyamunga, MP
13. The Hon. Iringo Cyprian Kubai, MP
14. The Hon. Dennis Waweru, MP
15. The Hon. Tiras N. Ngahu, MP
16. The Hon. Sakaja Johnson, MP
17. The Hon. Jimmy Nuru Angwenyi, MP
18. The Hon. Ronald Tonui, MP
19. The Hon. Mary Emase, MP
20. The Hon. Joseph Limo, MP
21. The Hon. Lati Lelelit, MP
22. The Hon. Kirwa Stephen Bitok, MP
23. The Hon. Sammy Mwaita, MP
24. The Hon. Daniel E. Nanok, MP
25. The Hon. Eng. Shadrack Manga, MP
26. The Hon. Abdul Rahim Dawood, MP
27. The Hon. Sakwa John Bunyasi, MP
28. The Hon. Alfred W. Sambu, MP
29. The Hon. Sammy Koech, MP

Mr. Speaker, Sir,

On 26<sup>th</sup> March 2014, the Scrap Metal Bill, 2014 sponsored by the Majority Leader, the Hon. Aden Duale, MP, was read a first time and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration pursuant to Article 118 of the Constitution and Standing Order No. 127.

Mr. Speaker, Sir,

The Committee placed an advert in the local dailies on Friday 18<sup>th</sup> April, 2014 calling for any memoranda from the public on the Bill Pursuant to Article 118 of the Constitution. The Committee also invited the Registrar General, as the implementing government entity, for comments in the process of considering the Bill. The Associated Battery Manufacturers (East Africa) Limited; the Kenya Association of Manufacturers and Public Interest Stakeholder Group in Scrap Metal Trade submitted their memoranda to the Committee. Further, the Cabinet Secretary for Industrialization and Enterprise Development also appeared before the Committee and presented his views on the Bill.

Mr. Speaker, Sir,

While examining the Bill, the Committee noted the following:

1. The principle object of the Bill is to repeal the existing scrap metal Act and provide for the regulation of dealings in scrap metal and to establish and provide for the functions of the Scrap Metal Council.
2. Part I of the Bill contains preliminary provisions and clause 2 bearing definitions. However, there is need to define a dealer in the Bill and make it clear that the licensed dealer is prohibited from dealing with transformers and generators.
3. Part II of the Bill establishes the Scrap Metal Council and defines its functions. The main function of the Council as provided in clause 6 will be to advise the Cabinet Secretary on dispensing excess material, protecting public interest, applicable license fees, and bring order to the scrap metal industry.

*Of major concern to the Committee is the definition of an excess scrap metal as provided for in clause 6(1). It is not practical to define what an excess scrap metal is.*

*The Committee was also concerned on the composition of the Council under clause 4. The Council as it is currently constituted excludes important players in the industry especially the Kenya Power and lighting Company whose cables and generators suffer from vandalism almost on a daily basis. The Kenya Private Sector Alliance (KEPSA) would have been the most appropriate institution to nominate representatives under clause 4(2)(ii) rather than being nominated by the Kenya Association of Manufacturers. There is need for the*

*representation of the Principal Secretary responsible for industrialization in the Council considering that the Council will be domiciled under his/her docket.*

4. Part III of the Bill deals with administrative issues relating to dealings in scrap metal. While clause 9 prohibits a person from dealing in scrap metal without a license from the Council, it fails to provide that such a dealer should be a member of the Scrap Metal Association. Clause 10 provides for the issue of a license by the council to deal in scrap metal. Clause 24 makes it an offence for a person to destroy any metal intended for a government infrastructure project, clause 25 provides for the forfeiture of scrap metal upon an order made by the High court while clause 26 provides for exports of scrap metal.

*It is important to note that some East African Countries such as Uganda and Tanzania had banned export of scrap metals in their respective countries in line with the EAC ban on the same in 2011. However, Kenya did not ratify this ban in her domestic law. To spur economic growth in the industrial sector, there is need to protect the manufacturing industries whose major raw materials are the scrap metals. If export has to be undertaken, there must be a mechanism/procedure from the Council through which a dealer's due diligence must be done rather than merely inform the Cabinet Secretary of absence of market as provided under clause 26(2)*

5. Part IV of the Bill provides for the enforcement provisions of the Act. Clause 29 provides for the appointment of inspectors to enforce the provisions of the Act. Of major concern is whether the country has enough personnel with requisite capacities to be appointed as inspectors across the country and the sustainability of the same in terms of expenditure.
6. Part V of the Bill contains miscellaneous provisions -clause 33 empowers the Cabinet Secretary to Make Rules while clause 34 repeals the Scrap Metal, Act cap 503.

**Mr. Speaker, Sir,**

The Committee will propose appropriate amendments to the Bill in clauses 2, 4, 6, 9, and 26 to expand the definitions to include a dealer, address imbalance of the Council by including in Kenya Private Sector Alliance, define clearly the functions of the Council in so far as dealing with hazardous metals is concerned, and finally provide for the procedure for export or ban export of scrap metals.

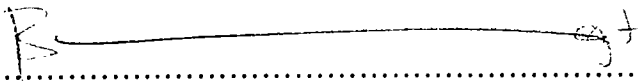
**Mr. Speaker, Sir,**

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.



Mr. Speaker, Sir,

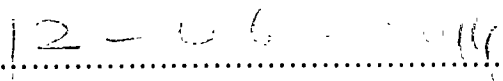
It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning & Trade, to table its report in the House on the consideration of the Scrap Metal Bill, 2014 for consideration Pursuant to Standing Order 127

Signed .....  .....

(HON. BENJAMIN LANGAT, MP)

CHAIRPERSON,

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

Date: .....  .....

## ANALYSIS OF PERTINENT ISSUES IN THE BILL

### (i) The Bill proposes to repeal the Scrap Metal Act, 1962

- a. The Scrap Metal Act was first enacted in 1959 and amended in 1962. Since then, there have been some amendments to some of its sections through other laws. For instance, the Statute Law (Miscellaneous Amendment) Act, 1966 amended the Act to define the East Africa Territory to mean Kenya Uganda and Tanzania and also clarify the issue of a licensing office. Also, the Licensing Laws (Repeal and Amendment) Act of 2007 amended several sections that were dealing with licensing.
- b. However, the pre-independence legislation needs an overhaul in order to update the provisions in tandem with the changing times. For instance, the 1962 Act contained a penalty of KSh. 1,000 for an offence under the Act an amount that was substantial then, not now. Further, the vandalism menace which the Bill seeks to arrest is perhaps more pronounced now compared to 1959 or 1962.

### (ii) Provision for the licensing fee

- a. The licensing fee according to the Third Schedule is KSh. 1 million and is due for renewal annually. The Ministry's intention might be setting the licensing fee high to ensure only serious dealers are allowed to operate as well as generating revenue but it may be clarified whether the amount is feasible for both the government as well as the scrap metal business.
- b. In the UK for instance, the scrap metal licence is about KSh. 50,000 on average and renewable after 3 years but the operating conditions and intention may differ with the Kenyan situation.
- c. Probably, the scrap metal industry in the UK is already developed and streamlined whereas Kenya is grappling with weak regulation and menace of vandalism of public infrastructure utilities. It is estimated that Kenya spends about KSh. 120 million annually on repairs on vandalized important traffic warnings on Mombasa Road and Thika Super Highway alone. Therefore, this shows that negative impact of vandalism of public utility infrastructure is phenomenal.
- d. With previous attempt at combating vandalism such as the total ban on all export of scrap metal in 2009/10 hurting the sector and economy, perhaps the high licence fees may ensure only serious dealers operate in the market. Nonetheless, the balance should be struck to ensure a seamless process.

### (iii) The Bill provides for record keeping and maintenance of register

- a. Clause 17 provides for the licensee to prepare a record (kept for a maximum of 7 years) of each variety of scrap including the weight, dimension and general description and submit a

copy to the Council. This record will help document the scrap metal in possession or control of dealers/licensees.

- b. Clause 18 provides for the licensees to maintain a detailed register of all scrap metals that come into their possession or control and that the entries in this register should be done within 24 hours of the transaction. The details to be captured in this register include: the description of the scrap metal, the name of person (licensee, servant or agent) who purchased or received the scrap metal, date and time of transaction, identity and details of the seller of the scrap metal.
- c. This register will help keep track of the scrap metal that come into possession or control of the licensees on a daily basis. It will help the inspectors and law enforcement agencies to swiftly apprehend perpetrators in the event of vandalism.

**(iv) Prohibition for changing the form of scrap metal and reporting stolen property**

- a. Clause 21 restricts disposing or changing the form of scrap metal except with the permission of the Principal Secretary for Industrialization. This will prevent quick smelting of vandalized metals to, perhaps, erase evidence.
- b. Clause 22 provides for the licensee to report any stolen property to an inspector or nearest police station; given prior information and description of a lost property. Failure to report is an offence. This will facilitate apprehension of perpetrators of vandalism at the point of selling the scrap metal.

**(v) The Bill contains hefty penalty for offenses**

Clause 23 provides for liability of an offense for any person found with scrap metal whose origin is unknown. Also, clause 24 provides for a stiff penalty for a person found with scrap metal vandalized from infrastructure installations (roads, rail, bridge, pipeline, telecommunication, electricity, water, sewerage). The KSh. 20 million and jail term of 7 years will be a commensurate penalty for the vandals and economic saboteurs.

**(vi) Bill provides for export of scrap metal only under authorization**

- a. Clause 26 stipulates that any export of scrap metal can only be done with authorization by the Cabinet Secretary for Finance in consultation with the Cabinet Secretary for Industrialization and the Scrap Metal Council. The Principal Secretary shall issue a certificate whose validity is 6 months.
- b. This may institute some form of controls but care should be taken not to leave a leeway for discretionary actions. However, this authorization procedure may further need to be documented under the Regulations.

## COMPARATIVE ANALYSIS

### (i) United Kingdom

- a. In the UK, scrap metal is regulated by the Scrap Metal Dealers Act, 2013 which provides for two types of licences. These are: the site licence that allows a dealer to operate a site and buy scrap metal relevant to that site, and collector's licence which allows one to collect scrap metal only within the jurisdictional area where the licence is issued.
- b. The site licence fee is approximately KSh. 54, 000 whereas collector's licence cost the dealers about KSh. 40, 000. It is an offence if one is found operating without a licence and upon conviction, the penalty is about an equivalent of KSh. 720, 000
- c. It is also mandatory for the dealer to keep record of details of persons scrap metal is purchased from including their personal details, any documents supporting the origin of the scrap metal and even the vehicle registration number that did the delivery. They also maintain a register of scrap metals including form, type, condition, any mark identifying the previous owner, date and time obtained.

### ii) Republic of South Africa

South Africa enacted the Scrap Metal Dealers and Recyclers Identification Act in 2013. It provides for a penalty of about KSh. 500,000 for individuals and KSh. 1.3 million for corporate, upon conviction

### FINANCIAL IMPLICATION OF THE BILL

The enactment of this Bill would occasion expenditure of public funds in form of remuneration and allowances of Council Members and the Scrap Metal Inspectors. The Secretariat shall be provided by the Ministry of Industrialization; hence, no major additional cost. Conversely, the Council will be generation revenue to the government in form of licence fees. Therefore, the fiscal implication might be insignificance or net revenue to government considering licensing fees for scrap metal dealers is KSh. 1 million renewable annually.

### ANALYSIS OF CLAUSES

Clause	Highlights	Remarks
1.	Short title	
2.	Interpretation	
3.	Provides for establishment and incorporation of the Scrap Metal Council	The Council's role is to licence and regulate scrap metal
4.	Provides for the composition of the Council. Creates a 10-member Council and for the Chairperson shall be appointed by the Cabinet Secretary for Industrialization. Other Members	The appointment of the chairperson and the non ex-officio members of the



	include Principal Secretary for Industrialization, Commissioner General of KRA, Inspector General of police or their representatives, two persons each nominated by the metal dealers Association and Kenya Association of Manufacturers, a representative each from the metal cottage industry and utility companies.	Council by the Cabinet Secretary should be competitive
5.	It contain provisions for removal of Council Members, other than ex-officio members (public officials), from office	
6.	The functions of the Council are to advice the Cabinet Secretary on matters concerning methods of dispensing excess materials unable to be utilized by local millers, mechanisms for protecting public interest against vandalism and theft of utility infrastructure and also licensing.	The functions of the Council are elaborate very crucial with regard to safeguarding public interest and general good of the country
7.	The clause provides for the conduct of business of the Council	The Ministry of Industrialization shall provide the Secretariat of the Council. There will be expenditure savings
8.	Provides for protection from personal liability in the course of performance of functions under the Act	
9.	This clause provides for restriction on dealing with scrap metal unless one is licensed by the Council	This will prevent unlicensed persons from handling scrap metal and the KSh. 10 and penalty or jail term of 3 upon conviction will act as deterrence
10.	Provides for application for licensing by the Council after supplying required information and prescribed licensing fees.	The Council may decline to issue or renew a licence if convinced of a malpractice on the licensee
11.	Provides for issuance of licence and that the validity is 1 year	

12.	Provides a window of appeal to the Cabinet Secretary when the Council refuses to issue or renew a licence.	A licensee may appeal to the Cabinet Secretary if the Council refuses to issue or renew a licence
13.	The clause provides that the licence is not transferable unless a consent is sort from the Cabinet Secretary and upon the advice by the Council	Variation of licence for substitution of premises or any other reason will as well attract a fee of KSh. 1 million upon granting of consent
14.	Provides for cancellation of the licence in case of a malpractice by a licensee	
15.	An appeal may be lodged at the High Court if one is dissatisfied by the decision of the Cabinet Secretary and the Council to cancel a licence	
16.	This clause stipulates that a signboard of licensed scrap dealers should be conspicuously displayed on the dealers' premises	The signboard 'LICENSED SCRAP DEALER' applies to scrap metal as a result of internal process
17.	This clause provides for the licensee to prepare a record of each variety of scrap including the weight, dimension and general description and submit a copy to the Council	This record will help document the scrap metal in possession or control of dealers/licensees
18.	Provides for the licensee to keep a detailed register of all scrap metals that come into their possession or control and that the entries in this register should be done within 24 hours of the transaction	This register will help keep track of the scrap metal that come into possession or control of the licensees on a daily basis.
19.	Provides for the presumption that the register is kept with the authority of the licensee	
20.	The clause provides for the restriction on licensees that scrap metals shall only be dealt with between 0615hrs and 1815hrs and by persons over the age of 18 years, whose identity is certain	This might deter scrap metal arising from vandalized infrastructure from being transacted
21.	This clause restricts disposing or changing the form of scrap metal except with the permission	This will prevent quick smelting of vandalized

	of the Principal Secretary for Industrialization	metals to erase evidence
22.	Provides for the licensee to report any stolen property to an inspector or nearest police station; given prior information and description of a lost property	This will facilitate impounding of perpetrators of vandalism at the point of selling the scrap metal
23.	Provides for liability of an offense for any person found with scrap metal whose origin is unknown	The KSh. 20 million and jail term of 7 years will be a commensurate penalty for likely vandals
24.	This clause provides for a stiff penalty for a person found with scrap metal vandalized from infrastructure installations (roads, rail, bridge, pipeline, telecommunication, electricity, water, sewerage e.t.c)	The KSh. 20 million and jail term of 7 years will be a commensurate penalty for the economic sabotage
25.	Provides for forfeiture to the state of scrap metal whose ownership is undetermined as may be ordered by a Court	
26.	The clause stipulates that any export of scrap metal can only be done with authorization by the Cabinet Secretary for Finance in consultation with the Cabinet Secretary for Industrialization and the Scrap Metal Council. The Principal Secretary shall issue a certificate whose validity is 6 months	The KSh. 10 million and jail term of 5 years is a worth penalty for any offender and may be just act as a good deterrence
27.	Provides that any action or lack of it by any person either agents or servants of the licensee will make the licensee liable for an offence	
28.	The clause provides for personal and institutional liability of offences committed by institutions and respective officers of such institutions	This will prohibit officers from committing offences and hiding under the veil of their institutions
29.	The clause provides for appointment of scrap metal inspectors by the Cabinet Secretary.	The inspectors are required to have adequate training on metallurgy and empowered with



		police powers. This will enable them perform their duties effectively.
30.	The clause proposes to empower inspectors to enter and inspect premises to carry out their duties	
31.	Provides for general penalty of KSh. 1 million and jail term of 1 year for an offence whose penalty is not specified	
32.	This clause empowers the Cabinet Secretary to make rules for effecting the provisions of the Act	
33.	Provides for repeal of the Scrap Metal Act, 1962	The Scrap Metal Act was first enacted in 1959 and amended in 1962. Other amendment were done under different statutes
Schedules		
First	Provides for conduct of business and affairs of the Council	
Second	An application form for a license or licence renewal to deal with scrap metal	Valid for 1 year
Third	A licence to deal with scrap metal which contains a licence fee of KSh. 1 million	This licence form once filled acts as the official receipt. Is valid for 1 year
Fourth	The schedule contains a form to be filled as record of scrap metal in possession of a dealer	The record must be submitted to the Council and be kept by the licensee for at least 7 years
Fifth	It is a form that will act as a register of scrap metal	The register must be completed within 24 hours of transaction
Sixth	This contains a form for variation of a licence to deal in scrap metal. The fee here is also KSh. 1 million	variation fee is similar to fresh licensing or renewal
Seventh	This contains the notice of seizure of scrap metal	



## COMITTEE'S PROPOSED AMENDMENTS

The Committee is considering the following amendments to the Scrap Metal Bill, 2014 for introduction during the Committee Stage of the Bill:-

### CLAUSE 2

THAT clause 2 be amended by inserting the following definition:-

“dealer”, means a person who buys scrap metal for the sole purpose of selling in its original form and excludes generators and users of metal by products

#### Justification

The Scrap Metal Bill covers scrap metal dealers. The generators and smelters are not dealers in scrap metal but produce or use scrap metal as a byproduct and raw material for their manufacturing processes. The inclusion of generators and smelters in the application of the Bill will impact negatively on the industry as they do not deal in scrap metal as a prime business but buy scrap metal as a raw material. Scrap metal is produced by the Industry as a process generated waste.

### CLAUSE 4

THAT clause 4 be amended as follows

- (a) In sub clause 1(a) by inserting the words “or Private Sector” after the word “sector”

#### Justification

This expands the qualification of the chairperson to the Council to include an individual with ten years experience in both the public and the private sector rather than limit it to only the public sector as provided in the Bill.

- (b) By deleting sub-clauses 4(e)(i) to (iv) by deleting them and replacing therefore with:

- (i) one person nominated by the Scrap Metal Dealers Association
- (ii) one person nominated by the Metal cottage industry
- (iii) one person nominated by the Kenya Association of Manufacturers
- (iv) one person nominated by large Utility companies / Agencies in charge of infrastructure on rotational basis
- (v) one person nominated by the Kenya Private Sector Alliance
- (vi) one person nominated by the Consumer Federation of Kenya

#### Justification

This brings on board a more representative body of the private sector (KEPSA) in the nomination of the representatives of the private sector into the council rather than limiting it to the Kenya Association of Manufacturers as is the case in the Bill.

- (c) In sub-clause 4(e) by inserting the following sub-clause 4(1)(f) immediately after 4(1)(e)(iv):

*the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialization or a representative*

Justification

This brings on board the Principal Secretary for industrialization under whose docket the council will be domiciled

CLAUSE 6

THAT clause 6 of the Bill be amended as follows-

- (a) By deleting Sub-clause 6(1)(a) and replacing it with the following

*The appropriate measures and mechanisms for regulating the scrap metal industry to ensure long term economic growth, while protecting public health and high levels of environmental stewardship in scrap metal recycling industry as required by the Basel Convention in the case of hazardous waste*

- (b) In Sub-clause (b) by adding the following words immediately after the word “infrastructure”

*“and private property; Such measures to be in conformity with EAC legislations”*

- (c) In Sub-clause (d) by inserting the following new sub-clause 4(e) immediately after sub-clause (d)

*The methods of attracting investors to utilize excess scrap materials available in the Kenyan market; and / or supporting existing users of scrap to increase their capacity;*

Justification

The functions of the Council appear shallow and self serving yet the regulatory role of the Council should be a mechanism to ensure economic growth, protection of public good, like employee safety and safeguarding public health and ensure consistent applications of regional and international conventions which Kenya is a signatory to, such as the Basel Convention that regulates handling of hazardous waste like scrap automotive batteries, and trans-boundary movement of such scrap materials as provided for in the Bamako Accords. Equally important is the National Environmental Management and Coordination Act, and the East African Common Market agreements.”

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following words immediately after the word “council”

“and is member of scrap metal association”

Justification

To provide that it is an offence to deal with scrap metal if an individual is not a member of the scrap metal association.

## CLAUSE 26

THAT clause 26 of the Bill be amended by deleting sub-clauses 1, 2, 3, and 4 and replacing therefore with the following:

26(1)(a) There shall be no exports of scrap metal in any form.

(b) No export of scrap automotive batteries, scrap lead, semi recycled lead, crude lead or semi processed lead in any form.

(2) Under very special instances, in dealing with unforeseen circumstances, the Cabinet Secretary responsible for matters relating to finance, in consultation with the Cabinet Secretary responsible for Industrialization, and with the recommendation of the Council, may authorize the export of an amount of specific scrap for a specified period. This however does not include items in (b) above.

(3) Any export allowed under subsection (2) shall be with respect to—

(a) a certain type of non-ferrous metals upon written proof from each of the registered millers in Kenya confirming that there is no demand or capacity for the excess volume of scrap available

(b) a specific licensee and for a specific quantity and period

### Justification

To prohibit export of scrap metals and provide for the rare circumstances under which metals could be exported.

MINUTES OF THE 38<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE, PLANNING & TRADE HELD ON THURSDAY 12<sup>TH</sup> JUNE, 2014 IN THE  
BOARD ROOM, 4<sup>TH</sup> FLOOR, PROTECTION HOUSE, AT 11.00AM

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**Present**

- |                                    |   |                         |
|------------------------------------|---|-------------------------|
| 1. Hon. Benjamin Langat, MP        | - | <b>Chairperson</b>      |
| 2. Hon. Nelson Gaichuhie, MP       | - | <b>Vice-Chairperson</b> |
| 3. Hon. Timothy Bosire, MP         |   |                         |
| 4. Hon. Anyanga Andrew Toboso, MP  |   |                         |
| 5. Hon. Joseph Limo, MP            |   |                         |
| 6. Hon. Patrick Makau King'ola, MP |   |                         |
| 7. Hon. Iringo Cyprian Kubai, MP   |   |                         |
| 8. Hon. Abdul Rahim Dawood, MP     |   |                         |
| 9. Hon. Abdullswamad Shariff, MP   |   |                         |
| 10. Hon. Eng. Shadrack Manga, MP   |   |                         |
| 11. Hon. Lati Lelelit, MP          |   |                         |
| 12. Hon. Jones Mlolwa, MP          |   |                         |

**Absent with Apologies**

1. Hon. Mary Emase, MP
2. Hon. Alfred Sambu, MP
3. Hon. Joash Olum, MP
4. Hon. Sammy Koech, MP
5. Hon. Sakwa John Bunyasi, MP
6. Hon. Ogendo Rose Nyamunga, MP
7. Hon. Ronald Tonui, MP
8. Hon. Kirwa Stephen Bitok, MP
9. Hon. Sakaja Johnson, MP
10. Hon. Shakeel Shabbir Ahmed, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Tiras Ngahu, MP
13. Hon. Dennis Waweru, MP
14. Hon. Jimmy Nuru Angwenyi, MP
15. Hon. Dr. Oburu Oginga, MP
16. Hon. Sammy Mwaita, MP
17. Hon. Daniel Epuyo Nanok, MP

**IN ATTENDANCE**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda      | - | First Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno  | - | Third Clerk Assistant |
| 4. Benjamin Ngimor      | - | Fiscal Analyst        |



The Chairperson called the meeting to order at 11.05 am followed by a word of prayer from Hon. Abdul Rahim Dawood,MP.

**MIN.NO. DCF/176/2014:            CONSIDERATION OF SCRAP METAL BILL, 2014**

The Committee was informed that the Secretariat had received memoranda from three institutions calling for introduction of a number of amendments to the Bill. The Memoranda was submitted pursuant to the advert placed in the local dailies on 18<sup>th</sup> April, 2014 calling for the same from Parliament. The Associated Battery Manufacturers (East Africa) Limited; the Kenya Association of Manufacturers and Public Interest Stakeholder Group in Scrap Metal Trade submitted their memoranda on the Bill.

The Committee was further informed that the received memoranda had been consolidated and a report compiled. The Committee went through the draft report and resolved to invite the stakeholders to clarify on the proposed amendments they wanted introduced. The consolidated amendments are itemized as follows:

**CLAUSE 2**

THAT clause 2 be amended by inserting the following definition:-

“dealer”, means a person who buys scrap metal for the sole purpose of selling in its original form and excludes generators and users of metal by products

**Justification**

The Scrap Metal Bill covers scrap metal dealers. The generators and smelters are not dealers in scrap metal but produce or use scrap metal as a byproduct and raw material for their manufacturing processes. The inclusion of generators and smelters in the application of the Bill will impact negatively on the industry as they do not deal in scrap metal as a prime business but buy scrap metal as a raw material. Scrap metal is produced by the Industry as a process generated waste.

**CLAUSE 4**

THAT clause 4 be amended as follows

- (a) In subclause 1(a) by inserting the words “or Private Sector” after the word “sector”

**Justification**

This expands the qualification of the chairperson to the Council to include an individual with ten years experience in both the public and the private sector rather than limit it to only the public sector as provided in the Bill.

- (b) By deleting sub-clauses 4(e)(i) to (iv) by deleting them and replacing therefor with:
- (i) one person nominated by the Scrap Metal Dealers Association
  - (ii) one person nominated by the Metal cottage industry
  - (iii) one person nominated by the Kenya Association of Manufacturers
  - (iv) one person nominated by large Utility companies / Agencies in charge of infrastructure on rotational basis
  - (v) one person nominated by the Kenya Private Sector Alliance
  - (vi) one person nominated by the Consumer Federation of Kenya

Justification

This brings on board a more representative body of the private sector (KEPSA) in the nomination of the representatives of the private sector into the council rather than limiting it to the Kenya Association of Manufacturers as is the case in the Bill.

- (c) In sub-clause 4(e) by inserting the following sub-clause 4(1)(f) immediately after 4(1)(e)(iv):

*the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialization or a representative*

Justification

This brings on board the Principal Secretary for industrialization under whose docket the council will be domiciled

CLAUSE 6

THAT clause 6 of the Bill be amended as follows-

- (a) By deleting Sub-clause 6(1)(a) and replacing it with the following

*The appropriate measures and mechanisms for regulating the scrap metal industry to ensure long term economic growth, while protecting public health and high levels of environmental stewardship in scrap metal recycling industry as required by the Basel Convention in the case of hazardous waste*

- (b) In Sub-clause (b) by adding the following words immediately after the word "infrastructure"

*"and private property; Such measures to be in conformity with EAC legislations"*

- (c) In Sub-clause (d) by inserting the following new sub-clause 4(e) immediately after sub-clause (d)

*The methods of attracting investors to utilize excess scrap materials available in the Kenyan market; and / or supporting existing users of scrap to increase their capacity;*

Justification

The functions of the Council appear shallow and self serving yet the regulatory role of the Council should be a mechanism to ensure economic growth, protection of public good, like employee safety and safeguarding public health and ensure consistent applications of regional and international conventions which Kenya is a signatory to, such as the Basel Convention that regulates handling of hazardous waste like scrap automotive batteries, and trans-boundary movement of such scrap materials as provided for in the Bamako Accords. Equally important is the National Environmental Management and Coordination Act, and the East African Common Market agreements.”

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following words immediately after the word “council”

“and is member of scrap metal association”

Justification

To provide that it is an offence to deal with scrap metal if an individual is not a member of the scrap metal association.

CLAUSE 26

THAT clause 26 of the Bill be amended by deleting sub-clauses 1, 2, 3, and 4 and replacing therefore with the following:

26(1)(a) There shall be no exports of scrap metal in any form.

(b) No export of scrap automotive batteries, scrap lead, semi recycled lead, crude lead or semi processed lead in any form.

(2) Under very special instances, in dealing with unforeseen circumstances, the Cabinet Secretary responsible for matters relating to finance, in consultation with the Cabinet Secretary responsible for Industrialization, and with the recommendation of the Council, may authorize the export of an amount of specific scrap for a specified period. This however does not include items in (b) above.

(3) Any export allowed under subsection (2) shall be with respect to—

- (a) a certain type of non-ferrous metals upon written proof from each of the registered millers in Kenya confirming that there is no demand or capacity for the excess volume of scrap available
- (b) a specific licensee and for a specific quantity and period

Justification

To prohibit export of scrap metals and provide for the rare circumstances under which metals could be exported.

**MIN.NO.DCF/177/2014: ADOPTION OF THE DRAFT REPORT ON THE BUSINESS REGISTRATION SERVICES BILL, 2014**

The Committee unanimously adopted the draft report. The secretariat was asked to prepare the report for tabling.

**MIN.NO.DCF/178/2014: CONSIDERATION OF THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) BILL, 2013**

The Committee considered some of the material differences between the legislative proposal by the National Treasury and the Bill by Hon. John Mbadi, MP that is undergoing Second Reading. The following were identified as the major differences:

	proposal by the National Treasury	Bill by Hon. John Mbadi, MP
Entitlements	<ul style="list-style-type: none"> <li>• Prime Minister</li> <li>• Deputy President</li> <li>• Vice president</li> <li>• Speaker of the National Assembly</li> <li>• Speaker of the Senate</li> <li>• Chief Justice</li> </ul>	<ul style="list-style-type: none"> <li>• Prime Minister</li> <li>• Vice President</li> <li>• Deputy President</li> <li>• Speaker of the National Assembly</li> <li>• Speaker of the Senate</li> </ul>
Monthly Pension	65% of last monthly salary	80% of last Monthly salary
Lump-sum payment on retirement	One year salary of each term in office	One and half year salary of each term in office
vehicles	Deputy President/Prime Minister – one saloon of max 2000 cc replaceable after 6 years, one four wheel drive replaceable after 8 years	Deputy President /Prime Minister – two cars saloon max 2000 cc, one four wheel drive max 3000 cc each replaceable after 4 years
Fuel Allowance	Fuel Card for mileage not exceeding 20,000KM per	15% of current monthly salary of office holder




	annum	
Staff	2 drivers, one Personal Assistant, one secretary, one senior support staff	Deputy President/Prime Minister- three drivers, one Personal Assistant, one accountant, two secretaries, two house Keepers, two senior support staff, two gardeners, two cooks, two cleaners  Speakers- two drivers, one Personal Assistant, One secretary, one housekeeper, one senior support staff, one gardener, one cleaner
Effective date	A person should have retired from office after 1 <sup>st</sup> January 2008. The person should not hold office in any political party or actively engage in politics at any time after expiry of six months after ceasing to hold office (clause 6.1)	A person should have retired from office after 15 <sup>th</sup> January 2008 and don't engage in elective politics (clause 3)
Term office service to qualify for benefits	Chief justice, Speakers and the Prime Minister should have served for 2 terms or ten years	Not provided

The Committee observed that this being a money Bill, it was important to process it alongside the provisions of Article 114 of the Constitution. The Committee further resolved that it can only consider the Bill that is properly before the House (Hon. Mbadi's Bill) and not the legislative proposal from the National Treasury. The Secretariat was therefore asked to liase with the National Treasury for input before the committee compiles its report.

**MIN.NO. DCF/179/2014                      ADJOURNMENT AND DATE OF NEXT MEETING**  
The Chairperson adjourned the meeting at 12.30 p.m. The next meeting will be held on Tuesday 17<sup>th</sup> June, 2014.

Signed.....

**Chairperson**

Date.....

MINUTES OF THE 19<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE, PLANNING & TRADE HELD ON TUESDAY 15<sup>TH</sup> APRIL, 2014 IN THE  
COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, AT 10.00 A.M

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**Present**

1. Hon. Benjamin Langat, MP - Chairperson
2. Hon. Nelson Gaichuhie, MP - Vice-Chairperson
3. Hon. Sakwa John Bunyasi, MP
4. Hon. Iringo Cyprian Kubai, MP
5. Hon. Timothy Bosire, MP
6. Hon. Joseph Limo, MP
7. Hon. Mary Emase, MP
8. Hon. Ogendo Rose Nyamunga, MP
9. Hon. Anyanga Andrew Toboso, MP
10. Hon. Ronald Tonui, MP
11. Hon. Dr. Oburu Oginga, MP
12. Hon. Kirwa Stephen Bitok, MP
13. Hon. Eng. Shadrack Manga, MP
14. Hon. Joash Ohum, MP
15. Hon. Jones Mlolwa, MP
16. Hon. Sammy Mwaita, MP
17. Hon. Alfred Sambu, MP
18. Hon. Sakaja Johnson, MP
19. Hon. Daniel Epuyo Nanok, MP

**Apologies**

1. Hon. Patrick Makau King'ola, MP
2. Hon. Shakeel Shabbir Ahmed, MP
3. Hon. Sammy Koech, MP
4. Hon. Lati Lelelit, MP
5. Hon. Jimmy Nuru Angwenyi, MP
6. Hon. Sumra Irshadali, MP
7. Hon. Abdul Rahim Dawood, MP
8. Hon. Tiras Ngahu, MP
9. Hon. Dennis Waweru, MP
10. Hon. Abdullswamad Sheriff, MP

**IN ATTENDANCE**

**Kenya National Assembly**

Mr. Evans Oanda - Clerk Assistant

Ms. Esther Nginyo - Clerk Assistant

## MINISTRY OF INDUSTRIALIZATION AND ENTERPRISE DEVELOPMENT

Aden Mohamed - Cabinet Secretary  
Dr. Wilson Songa - Principal Secretary  
John Munguti - Assistant Director  
Ann Kaiga - Legal Officer  
Charles Muhinda

### MIN.NO. DCF/91/2014 PRELIMINARIES

The Vice Chairperson called the meeting to order at 10.30 am followed by a word of prayer. After apologizing to the Cabinet Secretary for the late start of the meeting, the vice chairperson led the introductions of the Members present and the team from the Ministry.

### MIN.NO. DCF/92/2014: TIMELINES FOR THE SALE AND REOPENING OF PANPAPER FACTORY

The Cabinet Secretary submitted that:

1. Panpaper was placed under receivership by the government after buying off the short term creditors to. As at the time of receivership, the factory owed its creditors about Khs. 3 billion.
2. Though the Kenya government owns about 30% of the factory, the fate of the factory lies with its five (5) long term creditors i.e as to whether to accept any sale offer or not.
3. The government is committed to the sale of the factory as paper manufacturing entity and has been actively negotiating with the debenture holders and prospective to realize the same. Towards this end, six companies had expressed interest after international advertisements were made by the Ministry. There are however concerns on the availability of market for the papers and raw materials.
4. There are however many more challenges that have to be navigated before the sale is done. For instance, there must be negotiations with NEMA, the Ministry of Environment and Energy, and assurance to protect the factory from cheap imports of paper among others.
5. The government has no intention of injecting any capital into the factory since a similar move was made on two occasions in the past without much success in terms of the operations of the factory.
6. Proceeds from the sale of the sale (if it was to happen) will accrue to the debenture holders.
7. As of now, most of the machines in the factory are idle.
8. The Ministry will report to the Committee on the progress made by the end of May, 2014.

#### Committee Concerns

1. After the sale and reopening of the factory, diversification possibilities should be explored especially sale of burggase, and development of an industrial park among others.



2. Cheap raw materials can be available by leasing land and planting trees. Farmers can also be encouraged to plant trees by being provided with the seedlings.
3. To expedite the process of sale and reopening the factory, the Committee is willing to mediate the divergent views that may be advanced between the creditors and the prospective investors.

MIN.NO. DCF/93/2014:                      CONSIDERATION OF THE SCRAP METAL BILL, 2014

The Cabinet Secretary highlighted the following about the Bill:

1. The Bill has been published after a wide range of consultations with the stakeholders
2. The main objective of the Bill is to provide for the regulation of dealings in scrap metal and establish and provide for the functions of the Scrap Metal Council
3. The establishment of the council in part II of the bill will be critical in licensing of any scrap metal dealer (clause 10) and advising the cabinet secretary from time to time
4. The Bill makes it an offence in clause 24 for any person to destroy any metal intended for government infrastructure project while clause 26 provides for the export of scrap metal
5. Part IV of the Bill deals with enforcement provisions especially on appointment of inspectors as provided for in clause 26 and their powers in clause 30
6. The Bill finally empowers the Cabinet Secretary in Clause 33 to make rules while clause 34 provides for the repeal of the Scrap Metal Act, Cap 503.

**Committee concerns**

1. The Bill should target vandalism of the telcom cables, signage, and transformers rather than being general
2. Limitations of trading scrap metals between 6:30am and 6:30 Pm goes against vision 2030 economic pillar of making Kenya a 24 hour economy
3. It is not practical for a dealer to provide all the details of each scrap metal outlined under clause 17 especially the weight, dimensions and general descriptions of minute scrap metals.
4. The huge number of inspectors to be appointed to effectively administer the regulations will highly increase the public wage bill. As to whether we have enough qualified inspectors in the country is another challenge that need to be addressed.
5. The Composition of the council under clause 4 excludes important players in the industry especially the Principle secretary for the Ministry of Industrialization.
6. What constitutes an excess scrap metal under clause 6(1)(a)?

The Cabinet Secretary undertook to relook at the Bill and advise the Committee on the issues raised at the opportune time.



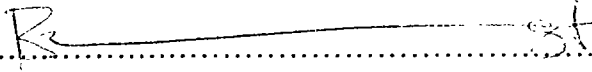
MIN.NO. DCF/94/2014      COFEK PETITION ON OPERATIONALIZATION SECTION  
94 OF THE CONSUMER PROTECTION ACT, 2012

In its petition, the Consumer Federation of Kenya had prayed for operationalization of Section 94 the consumer protection Act, 2012. Section 94 provides for consumer representation on all regulatory bodies and mandates the appointing authorities to have due regard to accredited consumer organizations and the advisory committee making such appointments.

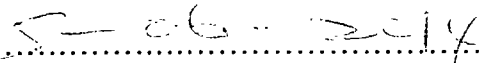
After deliberations, it was resolved as follows that though the petition appears justified, the consumer organization envisaged in the Consumer Protection Act is nonexistent at the moment. Considering that membership of all regulatory bodies in Kenya are public entities, their services are construed to mean protecting consumer interests.

MIN.NO. DCF/95/2014      ADJOURNMENT

The Chairperson adjourned the meeting at 12. 26 p.m.

Signed.....  .....

Chairperson

Date.....  .....