

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 24<sup>th</sup> July 2018

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]*

### PRAYERS

**Hon. Speaker:** Hon. Members, I will make the Communication later on.

### MESSAGE

#### NOMINATION OF PERSONS FOR APPOINTMENT TO OFFICES OF PRINCIPAL SECRETARIES, HIGH COMMISSIONERS AND AMBASSADORS

**Hon. Speaker:** Hon. Members, I have a Message from the President. Pursuant to the provisions of Standing Order No.42, I wish to convey the following Message from His Excellency the President relating to his nomination of the following persons for appointment to the offices of Principal Secretary, High Commissioner and Ambassador.

- (a) Principal Secretaries.
  - (i) Dr. Francis O. Owino – State Department of Youth.
  - (ii) Ms. Esther Koimett – State Department of Transport.
- (b) Ambassadors and High Commissioners.
  - (i) Ms. Sarah Serem – China.
  - (ii) Lt. Gen. Samuel Thuita – Israel.
  - (iii) Mr. Francis Ndegwa Muhoro – Malaysia.
  - (iv) Mr. Manoah Esipisu – United Kingdom.
  - (v) Mr. Paddy Ahenda – Qatar.
  - (vi) Amb. Peter Nicholas Oginga Ogego – Saudi Arabia.
  - (vii) Mr. Johnson Kimani Ondieki – Turkey.
  - (viii) Mr. Chris Karumba Mburu – Juba, South Sudan.
  - (ix) Hon. Benjamin Langat – Namibia.

Hon. Members, His Excellency the President, having exercised his powers under Article 132(2)(e) and 155(3)(b) of the Constitution, is now seeking the National Assembly's approval of the said persons for appointment to the respective offices. In this regard, and in accordance with the provisions of Standing Order No.145 (1) which requires that upon receipt of notification of nomination for appointment, such nominations shall stand committed to the relevant Departmental Committees for consideration.

The Departmental Committee on Labour and Social Welfare will consider the nominee for appointment as the Principal Secretary for Youth while the Departmental Committee on Transport, Public Works and Housing will consider the nominee proposed for appointment as the Principal Secretary for Transport. Further, the Departmental Committee on Defence and Foreign

Relations shall consider the nominees proposed for appointment as High Commissioners and Ambassadors.

Hon. Members, Section 8 of the Public Appointments (Parliamentary Approval) Act requires that a Committee shall consider a nomination and table a Report for debate and decision in the House within 14 days from the date of notification. In this regard, and in accordance with the provisions of Article 259(5)(a) of the Constitution read together with Section 5 of the said Act, the seven days' notification to the public shall start running on the day following the day when the notice is published in the dailies.

Hon. Members, it is advisable that the three Departmental Committees expeditiously proceed to notify the respective nominees and the public, commence the approval hearings after the seven day notification period and table their reports on or before Tuesday, 7<sup>th</sup> August 2018 to enable the House to consider the matter within the statutory timelines. This Message, together with the curriculum vitae of the nominees therefore stands committed to the said three Departmental Committees as specified above for consideration.

Thank you.

Hon. Members making their way in should do so quickly. Before I read the first Public Petition, allow me to recognise the presence, in the Speaker's Gallery, of officials from the Germany Embassy, Nairobi and Students from St. Bakhita Kiangini Girls, Makueni Constituency, Makueni County; Anathema Schools, Mavoko Constituency, Machakos County and Kimende High School, Lari Constituency, Kiambu County.

Those in the Public Gallery are from the following institutions:

Kimunye Secondary School from Gichugu Constituency, Kirinyaga County; Umoja Primary School from Thika Town, Kiambu County; Koknotendwa Primary School from Sigor Constituency, West Pokot County and those from Lelit Day and Boarding School from Moiben Constituency, Uasin Gishu County.

They are all welcome to observe proceedings of the National Assembly this afternoon.

*(Hon. Junet Nuh and Hon. (Ms.) Gathoni Wamuchomba walked into the Chamber)*

Member for Suna East and Member for Kiambu County, take your seats.

## PETITIONS

### ENACTMENT OF ADMIRALTY COURT LAW

Hon. Members, I have a Petition, which, according to Standing Order No. 225 (2) (b), the Speaker is required to report to the House any Petition other than those presented through a Member. I, therefore, wish to convey to the House that my Office has received a Petition signed by one Derrick Otieno Okandia, an Advocate of the High Court of Kenya, seeking enactment of the Admiralty Court Law.

The Petitioner submits that the Admiralty Court as currently constituted under the Judicature Act overly relies on the admiralty laws and practises of the United Kingdom. He notes that this matter has occasionally elicited pronouncement from courts in their judgements over the years, which may not necessarily match the Kenyan context.

Hon. Members, the Petitioner therefore prays that the National Assembly considers repealing sections of the statutes that confer jurisdiction on the Admiralty Court

based on the United Kingdom laws or the laws of any other jurisdiction other than the Kenyan laws and enacts an Admiralty Court law.

Pursuant to the provisions of Standing Order No. 227, this Petition is hereby committed to the Departmental Committee on Justice and Legal Affairs. The Committee is requested to consider the Petition and report its findings to the House and the Petitioner in accordance with Standing Order No. 227 (2). I also encourage the Committee and indeed any other Member of this House to understand the legislative lacuna identified by the Petitioner with a view to introducing a Bill for consideration by the House in response to this very insightful Petition.

I thank you, Hon. Members.

There is another Petition by Hon. Mariru.

LAIKIPIA WEST CONSTITUENCY MUHOTETU BLOCK 4 (MUKURWEINI) ON  
PARCELS OF LAND ALLOCATED TO THE COMMUNITY

**Hon. Patrick Mariru** (Laikipia West, JP): Thank you, Hon. Speaker. I have a public Petition by the residents of Laikipia West Constituency, Muhotetu Block 4 (Mukurweini) on parcels of land allocated to the community.

I, the undersigned, on behalf of the residents of Laikipia West Constituency, draw the attention of the House to the following:

THAT, aware that Gituamba/Muhotetu Block 4 (LR No. 9862) (Mukurweini) area is located in Laikipia West Constituency;

THAT, the residents of Gituamba/Muhotetu Block 4 (Mukurweini) were allocated parcels of land and some were issued with title deeds in 2002;

THAT, many other parcels of land have had their titles not issued to date;

THAT, in subsequent times, the residents have established that there are many cases of double allocation and that this has raised tension among the residents of the area;

THAT, although some residents had titles issued to them, the land office records indicate that there were no mutations that were done on that parcel of land;

THAT, in many instances, the title acreage on paper is not matching with the actual ground measurements therefore indicating a conflict of what is in the land office records, ownership titles and realities on the ground;

THAT, efforts to resolve this matter through the District Adjudication Office have been futile;

THAT, the matter in respect of which this Petition is made is not pending before any court of law.

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands:

- (i) Makes appropriate recommendations and ensure that the plight of the Petitioners is addressed.
- (ii) Makes any other order or direction that it deems fit in the circumstances of the case, and

- (iii) Investigates the circumstances under which Muhotetu Block 4 (Mukurweini) has such myriad of conflict, confusion and possible illegalities.

And your Petitioners will ever pray.

**Hon. Speaker:** I will allow few limited comments on the two Petitions. Let us start with the Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me an opportunity to comment on the first Petition where the Petitioner is seeking amendments on the Judicature Act so that the dealings with the Admiralty and Mercantile Courts generally in the country is made specific or is improved. I want to state that while the Committee looks at that, there are quite a number of laws which deal with that. Today, we even have the copyright law which is also part of the trademark issues. This is generally the area of trade. I agree with the Petitioner that this is an area we need to relook into because most of the activities that take place in the Coast where ships dock. Recently, we had a case of a ship disappearing while it had some contraband goods. This is an area we should look at as a country and improve that law so that Kenyans can be served better.

I thank you, Hon. Speaker.

**Hon. Speaker:** Member for Igembe Central.

**Hon. Kubai Iringo** (Igembe Central, JP): Thank you, Hon. Speaker. I want to comment on the second Petition. We have myriads of problems in the lands office. This confusion is brought about by the land committees, the adjudication officers and the registrars in the offices. Most of the title deeds as it is said, especially when the Government has crush programmes, appear without correct spelling of the names of the owners. Others come in the names of those who have sold their land to other people. More so, there are others which come where the acreage is not indicated as per what is on the ground. Therefore, land disputes arise and because land is an emotive issue, disputes escalate and people end up in courts. These problems need to be solved. I think the Petition is timely and it should be looked into across the nation and not only in Laikipia, so that we can resolve these issues.

**Hon. Speaker:** Member for Kangundo.

**Hon. Fabian Muli** (Kangundo, Muungano): Thank you, Hon. Speaker. I would like to debate on the second Petition on the issue of land. If we want to exercise our supreme powers in this country, we have to respect Chapter 5 of our Constitution which describes the use of land. Our Kenyan citizens are suffering all across the whole country because of the issue of allocation of land. We have challenges when some of our people having titles and others not having them. Sometimes, we are not able to know who have that title deeds and the right to use the land. If that Petition can go accordingly, this House can come up with laws to save our Kenyan citizens because they are suffering due to issues which are not described in the issuance and use of the land.

**Hon. Speaker:** Member for Samburu North.

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you, Hon. Speaker. Hon. Speaker, I support the second Petition on land. Land is a very emotive issue and Kenyans are really experiencing a lot of problems in terms of acquisition of documents for acquisition of land. We need to urge county governments and also the National Land Commission (NLC) to ensure that there is speedy allocation of land whenever people apply for it.

Secondly, I also want to raise an issue on a Petition that I tabled in this House some time back on the social safety and protection for elderly disabled persons through the Committee. It

has taken so long for the Departmental Committee on Labour and Social Welfare to bring that Petition that I raised last time.

**Hon. Speaker:** Let us have the Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. Before I comment, I want to thank you. I can see the new gadgets are now in Parliament. This will improve the efficiency and effectiveness of parliamentarians. Under your chairmanship, we thank you. My neighbour says he wants a bit of training. There are colleges offering some training for those who are not computer literate.

I want to comment on the issue of lands. They know themselves. There are so many Petitions being referred to the Departmental Committee on Lands. My humble request, Hon. Speaker, is that you approve some extra sittings. Some time back, you indicated that Petitions must be dealt with in less than 60 days. There are so many Petitions which have been tabled and are still in Committees. As you can see, we receive Petitions almost on a daily basis. Matters of land are very critical.

I had also tabled a Petition on Bikeke in Kiminini Constituency where people were displaced. Up to now, they have nowhere to go. I tabled another Petition on some land in my constituency called Meso Farm. Up to now, we have not got any solution on the way forward. I am also aware there was a Petition in this House pertaining to Chepchoina Farm which is in Trans-Nzoia County. It seems this Committee is overloaded. Maybe, you can approve some extra sittings so that if a Petition is tabled, it is expedited and completed within that period of 60 days.

**Hon. Speaker:** Let us have the Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. I wish to comment on the second Petition concerning the issue of land. The provisions of the Land Registration Act (No.3) of 2012, are very clear on the system of registering land, guaranteeing security titles and how to treat the issue of double allocation. Honestly speaking, in this modern era, the issue of double allocation should not arise unless it is an unethical practice or a mischievous attempt by the Registrar to mislead and defraud an owner of their parcel of land.

The issue of land is emotive. I laud the attempts by the State Department of Lands to digitalise the land records. I urge them to hasten so that all parcels of land in this country are digitalised to ensure the cases of double allocation do not arise. I am aware that there are quite a number of Petitions from very many sources, people and groups in this country that the Department is saddled with. Probably, as my colleagues have said, we might have to be a bit more innovative to ensure that we process all the Petitions. Otherwise, we stand a chance of being seen as an insensitive House that does not address the concerns of Kenyans.

**Hon. Speaker:** I hear you and Hon. Chris Wamalwa. If you want to make amendments, you just have to go back to your Standing Orders and make the relevant suggestions. It would not be fair to just extend sittings for only one Committee. The better way would be to seek how to extend the sittings not just of the Committees, but also of the plenary because then we may end up having one Committee being overworked. Remember, Committees are also entitled to form Sub-Committees. In the meantime, that could be the better rule that one could suggest to the Departmental Committee on Lands. I appreciate that there are quite a number of Petitions and other issues that have been presented to the House touching on land matters.

Let us move to the next Order.

## PAPERS LAID

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notice No. 164 relating to the Excise Duty Act adjustment of the inflation rates and the Explanatory Memorandum;

Annual Report and Financial Statements of the Office of the Controller of Budget for the Financial Year 2016/2017;

The Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2017 and the certificates therein:

- (a) The Judiciary;
- (b) Kenya Rural Roads Authority;
- (c) National Museums of Kenya;
- (d) Kenya Civil Aviation Authority;
- (e) Kenya National Highways Authority;
- (f) Kenya Industrial Property Institute;
- (g) Occupational Safety and Health Fund;
- (h) Energy Regulatory Commission;
- (i) Ewaso Ng'iro South River Basin Development Authority; and,
- (j) Public Complaints Committee.

**Hon. Speaker:** Let us have Hon. Katoo ole Metito.

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the 49<sup>th</sup> Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium on March 20<sup>th</sup> - 22<sup>nd</sup>, 2018.

**Hon. Speaker:** Hon. Metito, I thought you were to table two reports? One on the ACP-EU and the other on the Inter-Parliamentary Union (IPU). Hon. Kamket, are you the one tabling the one on the IPU?

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the 138<sup>th</sup> Assembly of the IPU and related meetings held in Geneva, Switzerland on 22<sup>nd</sup> – 28<sup>th</sup> March 2018.

## NOTICES OF MOTION

## REPORT OF THE ACP-EU JOINT PARLIAMENTARY ASSEMBLY

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House notes the Report of the 49<sup>th</sup> Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in Brussels, Belgium on March 20<sup>th</sup> - 22<sup>nd</sup>, 2018, laid on the Table of the House, today, Tuesday 24<sup>th</sup> July, 2018.

## REPORT OF THE IPU ASSEMBLY MEETING

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House notes the Report of the 138<sup>th</sup> Assembly of the IPU and related meetings held in Geneva, Switzerland on March 22<sup>nd</sup> -28<sup>th</sup>, 2018, laid on the Table of the House, today, Tuesday 24th July, 2018.

**Hon. Speaker:** Let us move to the next Order.

## COMMUNICATION FROM THE CHAIR

### IMPLEMENTATION OF PAPERLESS SOLUTION

**Hon. Speaker:** Hon. Members, I wish to make this Communication on the progress of implementing the paperless solution for Members of Parliament. Hon. Members, you recall that when I took oath of office upon my election as the Speaker on 31<sup>st</sup> August 2017, one of the undertakings that I made was to ensure a paperless House that embraces modern innovation in its processes.

*(Applause)*

In this regard, Hon. Members, during the short recess that commenced on Thursday, 5<sup>th</sup> July 2018 and after procurement of equipment by the Parliamentary Service Commission, the Office of the Clerk of the National Assembly and the Parliamentary Joint Services commenced on a process of installing the necessary equipment needed to actualise the paperless solution in the Chamber. This included installation of tablets at the places designed for all Members and at the Table of the House.

I now wish to report that tremendous progress has been realised although we underestimated the time it would take to install the software and mount the tablets since the work was to be done in both Houses. A total of 350 tablets have been delivered and 109 tablets have been installed with customised applications for Members to receive Order Papers, Votes and Proceedings, committee schedules, the Constitution, statutes Bills, Acts of Parliament, committee reports among other key parliamentary documents.

The contractor has undertaken to work overtime to ensure he installs 30 tablets every day after the rise of the House. He hopes to complete the project by Thursday, 16<sup>th</sup> August 2018. However, Members will only be allowed to use the tablets once all of them are installed and training is done and completed.

Hon. Members, this is a project that will not only enhance paperless operations within the Chamber, but also reduce the cost of our operations and save the environment. I wish to, therefore, request for your patience as the Clerk and his team completes the exercise. Thereafter, a short-user training will be mounted as soon as the exercise is concluded. I wish to assure the House that the gadgets will be user friendly. I am certain that you will embrace this slight technological interruption.

I thank you, Hon. Members.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, before we continue to Order Nos. 8, 9 and 10 which are Bills which have been referred to this House by the Senate... When you read the Message, you referred these Bills to the relevant committees of this House to make a determination in accordance with Article 114(2) of the Constitution which says:

“ If, in the opinion of the Speaker of the National Assembly, a Motion makes provision for a matter listed in the definition of a money Bill, the Assembly may proceed only in accordance with recommendation of the relevant committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.”

When you read the Message, you referred these Bills to the Budget and Appropriations Committee to give us that determination. Article 109 of the Constitution is on exercise of legislative powers. Article 109(1) of the Constitution says Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President.

Article 109(5) of the Constitution says that a Bill may be introduced by any Member or Committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly in accordance with Article 114 of the Constitution. Before we deal with Order Nos. 8, 9 and 10, we want your guidance on whether the Chair of the Budget and Appropriations Committee has tabled a report before this House in accordance with Article 114(2) of the Constitution because these are money Bills. What is the position of the Budget and Appropriations Committee? If they have not submitted a report to the House, then Order Nos. 8, 9 and 10 are misplaced. I need your guidance to remove them from the Order Paper until the Chair of the Budget and Appropriations Committee tables the relevant departmental committee report, so that we move on.

In exercising our legislative powers, we must always respect the Constitution and what it says in terms of the demarcation of roles and mandate of the two Houses. The Clerks-at-the-Table cannot read these Bills for the first time, if the Budget and Appropriation Committee has not tabled its report.

Hon. Speaker, I need your guidance.

**Hon. Speaker:** Hon. John Mbadi, do you want to contribute on the same issue?

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, I want to support the point of order that was raised by the Leader of the Majority Party. Article 109 of the Constitution is on the exercise of legislative powers. Article 109 (5) says that a money Bill may be introduced only in the National Assembly in accordance with Article 114 of the Constitution.

The question that we need to determine is at what point is a Bill considered to have been introduced in the National Assembly. First Reading of the Bill introduces the Bill in the National Assembly. That can only be done in accordance with Article 114 of the Constitution which requires that money Bills can only originate from the National Assembly, but not from the Senate. So, if some of the Bills that have listed for First Reading turn out to be money Bills, then certainly they cannot be introduced for the First Reading because they have come from the Senate. That is fidelity to the Constitution and rule of law.

Allow me to mention something that I mentioned outside Parliament because it is important. I was misunderstood when I said it. The Clerk of the Senate did not understand me well or what was reported by the media was wrong. The Office of the Clerk of the Senate needs to advise the Senators accordingly when they are introducing Bills, so that we do not get into this kind of circus. I expect the Senate to respect the advice of parliamentary staff because Members are advised many times by the technical people, but they ignore the advice. So, the Clerk of the Senate through his office needs to advise our Senators properly, so that we do not end up as if



there is a war between the two Houses. The Constitution is clear. A money Bill cannot originate from the Senate. The Constitution is clear that the Senate only exercises oversight role on that portion of money that is allocated to counties. Any money that is allocated to the national Government cannot be overseen by the Senate. Senators call witnesses from national Government institutions to account for revenue that is allocated to the national Government, but not to a county government. I went to school reasonably well. The reading of the Constitution is plain under Article 96 that the Senate only exercises oversight power on the revenue that is allocated to counties. So, if money is allocated to a national institution or to national Government departments, agencies, and ministries, then what role does the Senate have in overseeing it and it is not provided for in the Constitution? This is something that the Office of the Clerk can help the Senators understand. The Senators need to take advice from the Office of the Clerk seriously, so that we avoid these unnecessary fights. I have not seen a member of the National Assembly attempting to summon governors from any quota or any member of the County Executive Committee (CEC) because we know that is not our responsibility. We can talk in funerals and churches condemning how money is being misappropriated in counties, but we do not have a direct role in overseeing the counties.

Thank you, Hon. Speaker.

**Hon. Speaker:** Apparently, all of you want to contribute to this. Let me dispose of with the first issue raised by the Leader of the Majority Party relating to the three businesses appearing as Orders Nos. 8, 9 and 10.

Hon. Members, as you know, under Article 110 of the Constitutions, there is consultation that happens between the two Speakers. This happens often regarding all Bills. With respect to these three, they were also taken through our technical staff particularly our Budget Office and were examined. For instance, the first one, the County Governments (Amendment) (No.2) Bill, 2017, the long title is: "An Act of Parliament to amend the County Governments Act to provide for the procedure for the disposal of a report of a commission of inquiry established under Article 192(2) of the Constitution and provide for the termination of a suspension of county government under Article 192(4) of the Constitution and for connected purposes." The long title explains why when it went through our Budget Office, they advised both of us that, indeed, it is not a money Bill. The next one, the National Flag, Emblems and Names (Amendment) Bill, Senate Bill No.8 makes provision for people to have flags and emblems without involving any expenditure. It can safely be said to be something that is covered in the Fourth Schedule of the Constitution. The other one under Order No. 10 is the Assumption of Office of the County Governor Bill. Again, this is to provide for governors when they assume office without any financial outlay. It is for that reason that when the consultations happened and with advise from our Budget Office, it was found that it does not involve expenditure of public resources which may not have been appropriated or provided for in the normal budget process. That should resolve the first issue raised by the Leader of the Majority Party.

Hon. John Mbadi has raised a different yet fundamental issue relating to provisions of Article 109(5) of the Constitution read together with Article 114 of the Constitution. I imagine that other Members may want to contribute to what Hon. John Mbadi has just raised.

Of course, Hon. John Mbadi, I wish to say that if you look at Article 250 - and I am sure that is why you sparingly referred to oversight of some other state officers--- Article 260 of the Constitution defines what a state office is and who a state officer is. Among the people included there are governors, Members of County Assemblies, County Executive Committee members, who I hear these days they are called ministers in funerals. They are CECs. They too are defined

in Article 260 as state officers. Hon. John Mbadi rightly said that if you look at the provisions of Article 95(5)(a) and (b), the oversight authority of state officers, starting with the President, Deputy President and all other state officers and other public officers, is the exclusive domain of the National Assembly. It is very clear about that. If you go to paragraph (b) of Article 95 (5), the oversight of state organs is reposed in the National Assembly. Sometimes, Hon. John Mbadi - and we have said this many times - but we cannot gag anybody from entertaining themselves, if they desire to do so, using the authority granted by Article 125 which says that Parliament or any of its committees can summon any person. So, that has been used generally to mean that you can call people to come and entertain yourselves in committees. I suspect, that is what could be happening because if you have no oversight role over a state organ, Hon. T. J. Kajwang', or a state officer, of what business is it telling them that they will see you? See you where? If you go and write a report, who is going to implement it? Say if somebody goes to court and argues that a report recommends some things against a particular state officer is made by a body outside the law acting *ultra vires* obviously, that is something that is likely to find favour with the courts. Sometimes, you do not understand but in keeping with the spirit of something that has been popular since March 9<sup>th</sup>, that is what could be happening. Therefore, everybody is at liberty to feel free to entertain themselves. But I do not know whether that is the same issue which Hon. Junet wanted to address.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker. I also stand to add my voice to the issue you have very well elaborated. Parliament cannot run like this! What the Senate is doing in this matter should not be trivialised. It is a very important matter in the functioning of Parliament, the Senate and the National Assembly. The Constitution and the Standing Orders are there to guide us. This is a matter that was canvassed in the House in the 11<sup>th</sup> Parliament when you were the Speaker. We thought that the matter will end and everybody will adhere to the Constitution. I used to hear of people who wanted to expand their land, but I have now seen people who want to take other people's functions and duties without any law.

The Constitution is very clear. Every House has been given its function under Articles 95 and 96. Article 95 of the Constitution says that the National Assembly enacts legislation and laws. Article 96 of the Constitution says that the Senate participates in law making. They do not make law.

*(Laughter)*

I am reading from the Constitution. They participate in law making; they do not enact laws. It is the way Bills are taken for public participation. That is the same way the Senate participates. I am not the one who wrote the Constitution. It is here. Article 96 (2) says that the Senate participates in law making functions of Parliament concerning the counties; not even laws concerning other issues. I am saying this because it has now become too much. They summon anyone under the sun using Article 125 of the Constitution. Article 125 should be used to summon someone according to your functions. You cannot just summon whom you do not have authority over. You have been told expressly in the Constitution that you have no authority over State organs.

Their legislative powers have been defined under Article 109 to 113. Specifically, Article 110 has told them that they are supposed to deal with Bills that concern counties. The other day, there was a *harambee* in Kilifi where funds to translate the Bible into Giriama language were being raised. It is high time we translated the Constitution into our vernacular languages so that

people in the Senate can understand. It looks like there is a problem of understanding the Constitution in the Senate. We need to translate it so that every Member of that House can understand the Constitution in mother tongue. They are only 67. I am sure there are not more than seven communities. The Parliamentary Service Commission (PSC) can afford that. For example, a day before we went on recess, the Committee on Lands presented a report to this National Assembly on the Ruaraka Land and we passed it. The same guys went ahead and summoned other people. What powers do they have? If they wanted to discuss the Ruaraka Land, why could they not take the report of the National Assembly, table it in their House and discuss it and amend it if they wanted.

**An hon. Member:** And participate?

**Hon. Junet Nuh** (Suna East, ODM): And participate.

*(Laughter)*

They do not have a standing committee on lands. It is the Public Accounts Committee (PAC) of the Senate that is discussing matters on land. What has PAC got to do with lands? What I am talking about must be addressed for posterity. There are people who are going to serve in these Houses after us. There must be a committee that is formed within both houses to address this matter.

State officers are defined in Article 260. A Senator is a State officer. He is a Member of Parliament and a state officer. That means we should form a standing committee in this House to manage the Senate because we are supposed to oversee State officers. Senators are State officers! The role of overseeing State officers and state organs are in this House, not in the Senate. That means we must form a committee that will address and oversee the Senate. That is what the Constitution has given us.

I am not saying all this to trivialise anything. I am saying this so that we can have order. Very soon, you will provide accommodation inside this Chamber. People from the Executive are invited to this House left, right and centre. Some of them are almost coming with blankets because they have to finish with the committee of the National Assembly because the Senate is waiting for them at 5 o'clock in the evening. As the Chairman of PSC, you must call this matter to order. Summon the Speaker of the Senate and his team as the Chairman of PSC and sit down with them. It is not a small matter. We can take this participation directly to the public and not through the Senate. They are supposed to participate just like my mother in the village. They will be asked whether the law under consideration is good or bad. That is what the Senate is supposed to do.

I am not trying to demean the House; I am trying to tell them where their jurisdiction begins and ends. They have constituted standing committees that have no work to do! For example, they have the standing committee on foreign relations. When are counties travelling? They also have the Chairman of National Security. Which national security are you handling? National security is a function of national Government. There are no *askaris*. There are only county *askaris* in the villages. Are you going to summon the inspectorate of the county *askaris*? This is a very serious matter. It is not joke. It is a matter that we must address.

As Hon. Mbadi puts it, have you seen us summoning governors, or ministers as they are called in funerals, or chief officers or Members of County Assemblies (MCAs)? No! We have left that function to be handled by the Senate. The Senate has been put in place just to protect the

interest of counties. Period! In the last Parliament, they were investigating Kenya Airways (KQ). Have you seen KQ flying to Migori or to Kakamega? This is a national asset. The other day, they were investigating Kenya Pipeline Company (KPC). What business does KPC got to do with the Senate? The other day, they were calling these independent offices: the Director of Public Prosecutions (DPP), Ethics and Anti-Corruption Commission (EACC) and other bodies. This is a House that has gone rogue and we must put sense into their heads.

I am not going to pass that route going into my office. I will use the back route. They can slap me on the road. This is a House that has gone rogue. We must send a clear message to them. We have sent many Bills to the Senate. They have not looked at them. Six of them have been lying there for many months. Why? Just because we have refused to give them oversight money. Monies that they were supposed to go preach issues in the funerals, hold *barazas* and buy people *maandazi* in the villages. They are saying they cannot look at our Bills until we pass that money. That is holding us hostage. It is blackmail. Very soon, before a Bill is brought to this House to wind up the Senate, it is better they behave. I am foreseeing a situation where this House will wind up the Senate. We just pass the Bill and send it to the President for assent. Before we go there because we want devolution to work, they need to know where their jurisdiction begins and ends. Let us form a team from this House and their House so that we can agree on the boundaries.

We do not want to take our problems to the Judiciary because the Judiciary misinterpreted the law the other time. They said we must sit with the Senate to agree on how to divide national revenue. Monies collected in the counties never come to the national kitty. Why should you sit down with people who are not contributing anything? Money is collected in the markets. Do they come to Nairobi? No. They end up going to their kitty. Now, they want us to sit down so that we can agree on how to share the money collected nationally. That is how the Supreme Court interpreted the law the other day. I am not a lawyer to tell whether a review can be done, Kaluma will tell us. We will not go to the Supreme Court again to decide for us where our boundaries are. We will not go to the Executive to ask them where the boundaries between the Senate and us are. We want some of the Senators and some Members of this House to sit down and draw the boundaries. Otherwise, Parliament will become a laughing stock because you will see Senators calling the same Cabinet Secretaries (CS), the same Permanent Secretaries (PSs), and the same State officers for the same issues that have been canvassed and discussed in the National Assembly. Very soon, you will see them investigating the sugar. They are just waiting for the two committees to finish their work so that they can start their investigations on the sugar consumed six months ago. You will see them calling for those kinds of meetings.

With those few remarks, Hon. Speaker, give a ruling on this matter if possible. They may think that you are undermining them, but we have agreed as a House that boundaries must be drawn.

Thank you.

*(Applause)*

**Hon. Speaker:** I can see an intervention from the Member for Kikuyu. Is it on the same?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Yes, Hon. Speaker, it is on the same. As much as you have given your guidance on the Orders No. 8,9 and 10 and clearly guided the House that they are not money Bills, it is also important because we have seen it. I am sure there are certain other messages that have come to the Senate on matters that touch on money bills. As the Leader

of the Minority Party has indicated, it is quite clear that all money-related bills must start or begin here, and not in the other House. I fully concur with the Hon. Member for Suna East, Hon. Junet, that this matter goes beyond just the small fiefdoms that people may assume; that, the National Assembly is in a turf war with the national Senate.

Hon. Speaker, consider the Report on the Ruaraka Land by the Departmental Committee on Lands of the National Assembly which we adopted and have, in fact, made recommendations on. Those recommendations are to be implemented by agencies of Government. The same matter is now under consideration by ‘the Public Accounts and “Something” Committee of the Senate. What will happen if that Committee comes up with recommendations that are counter those of this House? That is why I want to agree with Hon. Junet that, indeed, the best and most tidy thing to do is to participate in the process within the National Assembly. I have seen them summon members of Government who are serving in parastatals. It goes to the heart of our Constitution.

Hon. Speaker, I must thank you as Chairman of the Parliamentary Service Commission (PSC) for these gadgets.

Article 96(2) is quite clear that the Senate represents the counties and serves to protect the interests of the counties and their governments. Sub-article 3 is clear that the Senate determines the allocation of national revenue among counties as provided in Article 217 and exercises oversight over national revenue allocated to the county governments. So, I wonder what would happen when the Senate summons the Kenya Pipeline Company Limited (KPC), the Kenya Power and Lighting Company (KPLC) or any other parastatal that has been allocated money from this Assembly; money that is not going to counties but to serve national interests. The Senate has no business overseeing those parastatals! That work should be left to the National Assembly. The National Assembly, we have said this before and made it clear in this Parliament and even in the 11<sup>th</sup> Parliament, with regard to the Public Investments Committee (PIC) and Public Accounts Committee (PAC) deals with post-audit.

Look at the issues that the Senate is dealing with. There is nothing that has come out of an audit report. It is things that people pick up in the media and elsewhere. Therefore, it is a matter that you also may need to rule on much as you say you have consulted on how we introduce Bills and even on how they deal with other issues outside matters to do with Bills. When do they summon people and over what in Government? We should not end up with two conflicting reports because agencies of Government like the DCI and the EACC will not know who to investigate or not on the Ruaraka issue. We have been reading in the media that the EACC and the DCI, probably following the recommendations of the Departmental Committee on Lands from this Assembly, has already investigated the matter and it is about to charge people in courts. Maybe, the only reason we have not seen people being charged last Friday – hopefully they do it this Saturday– is because they have been waiting for the other Committee in Senate to finish its report and make recommendations. It is imperative we all remain true to the provisions of Article 95 and Article 96 of the Constitution.

Let what is the work for the National Assembly remains in it and what is work for the Senate, the same. There is a lot of work. In this fight against corruption, the President called on Parliament and that is why he addresses a Joint Sitting where Members of the National Assembly and Senators are present, to help him in the fight against corruption. It is this House to oversight the national Executive and its agencies, ministries and departments. For the county governments, as Hon. John Mbadi has said, you will never see any Committee of this House summoning a Governor on any issue even if it is on lands. The Committee on Lands could also summon the Governor of Narok, for instance, on the Mau Narok issue because it is an issue on lands or of the

Departmental Committee on Environment and Natural Resources. But, we leave that to the Senate.

There are very many issues pertaining to loss of public funds in the counties. The recent directive by His Excellency the President on stalled projects is an example. The counties had the largest turnover of governors who lost the elections. There are very many stalled projects across all the counties. Nobody has been able to oversight and ensure that those projects are completed. That is because our Senators are now busy running after the KPLC, the KPC and Ruaraka instead of going to oversight what is provided for by the Constitution under Article 96(3) - that the Senate will oversight monies allocated to county governments. If they did that, I am sure those people could be busy 365 days in a year. The only problem is that the other House, with all due respect, tends to be very idle. They sit only one, two or three sittings a week; they are not busy the rest of the time. They need to take cue from what we have done as the Budget and Appropriations Committee (BAC). With the support of this House, we have allocated money this Financial Year for their monitoring and evaluation as much as we are waiting for regulations on how they will utilise that money. Theirs is to use that money to offer meaningful oversight over resources that have been allocated to the county governments and leave this other work to the National Assembly and the other agencies of Government.

With that, I state that matters that touch on Money Bills, as the BAC, we shall never allow anything to emanate from the Senate and come to this House. We must remain true to the Constitution so that all those things that relate to Money Bills emanate from this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, I thought the Hon. Junet made some specific appeal which does not require a ruling.

Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker. This is on a separate issue because I believe the one which was being transacted by the House has been ably exhausted. I am seeking your guidance as the leader of the House and our president in Parliament. It is on your interpretation of the provisions of Section 62 of the Anti-Corruption and Economic Crimes Act. More so, it is in so far as that provision relates to the vetting of public officers subjected to Parliament for approval, or otherwise, to hold public offices. That Section 62 provides that a public officer or a State officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case. That is provided that the case shall be determined within twenty-four months; a period of two years. The interpretation of some lawyers, including myself, is that the spirit of Section 62 is to the effect that you cannot hold public office during the pendency of a criminal charge being prosecuted against you relating to corruption or economic crime. I think that is the spirit.

Yesterday, in the course of our normal business as a Parliament, an event occurred in the House. It pricked the conscience of the nation more so considering the renewed battle against corruption championed by none other than His Excellency the President. It is a battle in which you know, even the leader of the minority side, His Excellency Raila Odinga joins President Uhuru. It is a battle in which those leaders requested all leaders and citizens to join them. The President of the Republic of Kenya, in good faith, let me say in utmost good faith, nominated a Kenyan to be considered for appointment into a public office. Before vetting, that individual was investigated and charged with a corruption and economic crime and is being actively prosecuted. Around midday yesterday, news broke out. I remember we were sitting somewhere, not in

Russia but within Nairobi, transacting the businesses which we are elected to transact as members of the Departmental Committee on Justice and Legal Affairs. We took time and adjourned to watch what was happening. The news which came from mainstream and social media was how Parliament can be sitting down taking their time, engaging public resources to vet a potential holder of a public office they know is charged and is being actively prosecuted before the court of law. I believe this is something which all of us know.

A Kenya seated somewhere paused this question to me. A criminal suspect undergoing active prosecution for corruption before a court of law being vetted for suitability to hold public office by Parliament in a nation which claims to fight corruption? I found myself very antagonised in terms of my duties as a Parliamentarian and, of course, as a leader. I am seeking your guidance on this matter in terms of how the committee proceeds, particularly on two issues. One, it being the case that in our Standing Orders, we do not have provisions for summary process of procedure, and it being the case that once a person is remitted to this House for consideration for approval or otherwise for appointment to public office, we have timelines within which we have to execute that mandate vested upon us by the Constitution. How do we proceed in a situation such as this? Is there need for us to amend the Standing Orders to be in line with the mood of the nation on particular issues which stand on our national values and the Constitution or what do we do in the situation we are in? Absent in that direction, the general public is not seeing us to be pulling along in the direction of the national leadership, which His Excellency the President wants us to.

Two, if it is the case that the innocence of that public officer would be upheld as provided under Article 50 of the Constitution against the provisions and the spirit of Section 62 that I have cited, how do we facilitate such a nominee charged before a court of law, remanded and not granted bail somewhere like Kamiti or Industrial area, to attend parliament, be vetted, and return to Industrial Area to be in remand pending trial. It is a fundamental question because in our series of benchmarking, there was a time we were in Philippines and we were told that when a public officer is charged with corruption...

*(Hon. Aden Duale consulted loudly)*

We will report on Russia officially. This is a serious matter; I do not want to be destructed. In Philippines, when you are charged with an economic crime or corruption, first there is no right to bail. You will stay in remand during your trial until such time as the case is concluded. They did mention to us that the trial span for an economic crime or a corruption case is between five to ten years. At the time we were in Philippines, two Senators, were serving remand for embezzling CDF funds like the one we have in Russia. Essentially, they served that entire term during trial in remand. All I am saying is this: If, indeed, we are obligated to vet a person who is charged, assuming that person is in remand, how do we facilitate them to come with the remand clothes? I do not know whether there is any. How do we facilitate them to go back? Lastly, if, indeed, it is the case that we do not have summary process, when you are vetting a person to hold public office, which by the spirit of the provisions of Section 2 cannot hold upon appointment following approval by Parliament, to what end are we engaging public time as Parliament undertaking the vetting. Those are the issues for which I was seeking and humbly craving your guidance, so that we may not be seen by the public on whose behalf we sit in this Parliament, to be antagonising the spirit of the nation, but be properly understood.

**Hon. Speaker:** Hon. Members, for reasons that are in Standing Order No. 86, I think I will not allow debate on that particular point. Hon. Kaluma has raised serious issues and they are true. But, of course, because of Standing Order No. 86, it will be inappropriate for me to allow further debate. Hon. Kaluma consider the provisions of the Public Appointment Parliamentary Approval Act because the name(s) come to the House just like the ones I have just referred a while ago to the relevant committees. The Committees are time bound within a period to bring their reports. The Public Appointments Parliamentary Approval Act is also clear that if within the timeframe given the House has not expressed itself one way or the other, the nominee would be deemed to have been duly appointed. That is why I am saying that what the Hon. Kaluma has raised is a serious matter. I imagine that the committee was in those kinds of difficulties. Yes, they are aware of certain facts. I do not want to delve in to those facts. If the House does not bring a Report either approving or recommending disapproval, the nominee stands appointed.

I imagine that the committee must have been grappling with those issues because the House was not going to proceed without the Report of the committee and if the committee just sat on the name, then the nominee would be appointed. I think this is a matter that, perhaps, we need to rethink through. We also look at the necessity to look at what exactly is contemplated in Section 62 which deals with serving State officers. Is there a corresponding provision about a person proposed to be appointed into a State office? Perhaps Hon. Kaluma, since it is within our power to make provisions relating to those things, save of course for the presumption of innocence which everybody seems to want to run to, the issue you have raised is of great moment because you have a nominee and the Statute provide that within a given period, you must express yourself one way or the other regarding the nominee on their suitability or otherwise.

I think it is within us as a House, charged with the responsibility of making legislation as ably demonstrated by Hon. Junet earlier, when he was dealing with the other matter, when he said that you make but you do not participate. Because of the issues you have raised begin looking at Section 62 especially with regard to situations such as the current one which you have just described. I know that you are not alone in making that observation. There have been a lot of concerns raised by many Kenyans. I am sure what the Committee is doing is guided by Article 124 of the Constitution which states that:

When a House of Parliament considers any appointment for which its approval is required under this Constitution or an Act of Parliament—

- (a) The appointment shall be considered by a committee of the relevant House;
- (b) The committee's recommendation shall be tabled in the House for approval; and,
- (c) The proceedings of the committee and the House shall be open to the public.

So, even as much as we look at Section 62 of the EACC Act, we will obviously be required to look at our own Standing Orders alongside the Public Appointments (Parliamentary Approval) Act when we have those kinds of issues. We should consider all three: both the Acts and our own Standing Orders regarding a situation such as this one, which has not arisen in the past, save for what the House did in 2013. I would advise Members to look at what indeed happened in that particular matter of 2013. What were the recommendations of the committee? Of course, the committee did not recommend appointment, it is the House, you Members here on the Floor - fortunately, as you know, under Article 122, I do not have a vote - who moved



amendments to the report of the committee, notwithstanding their reservations, to move that that particular citizen be appointed to the particular office he had been nominated to. Again, you as the House have the final authority on this matter.

Because of Standing Order No.86, let me stop at that point. Hon. Kaluma, I know you are very active in these matters and I thank you for raising this matter on the Floor of the House. It is a matter that is weighty and needs very serious consideration by the House and its committees. So, let me not allow further debate on that. We will obviously advise accordingly once we see the report of the committee. Do not forget that the report also passes through my hands before it comes to the House. Thank you for raising that matter, Hon. Kaluma.

Hon. Wamalwa, you still have something else on this? Not on this, please.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): It is not on that, Hon. Speaker, but may be a bit of some relevance. This is in line with Standing Order No.1 which stipulates that where a matter is not provided for or is a matter of precedence, precedence has been set in Parliament. So, as you will be looking at that, I kindly request you, because this is a House of traditions... Sometimes back when we were vetting Hon. Mututho for NACADA, I remember there was rejection and he had a matter in court. Out of the principle of innocent until proven guilty, which is under Article 50, you can also look at that. But this Plenary has veto powers. So, it is the highest time that committee members listened as they do their report. This Plenary is the one going to make a decision.

I thank you.

**Hon. Speaker:** The Member for Rarieda, I can see you have an intervention.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I think this House is moving too fast to keep with the thoughts and interventions, because you have covered three - all of which I had interventions on. So I will not speak to this, because I had wanted to point out, as you properly ruled that, perhaps, under Standing Order Nos.85 and 86, particularly 85, what my brother Hon. Kaluma was raising was actually anticipating debate. But I do agree with him except our solution cannot lie in Section 62 because subsection (1) restricts it to serving members while subsection (6) excludes any office for which there is provision for removal. And there is already provision in the Constitution, so it will not help us.

I wanted to suggest that, perhaps, where our solutions will come from is in the Constitution itself, from Article 73. Perhaps, the Committee would consider that. If the matter is of such a fundamental nature, you could invoke your jurisdiction because, as you properly ruled before, a matter of constitutionality, whether before the House or a committee, can be raised at any time. Therefore, the question of constitutionality of that process can actually be used to bring it forth for discussion.

I had actually wanted to offer... I do not know whether you have closed the debate. In terms of what the Leader of the Majority Party and Leader of the Minority Party spoke to, which I agree with, what we did not do is to provide for some sort of way forward. We have left it open. I had wanted to indicate that there are certain avenues that the Senate could seek to use in terms of the role of Parliament generally in Article 94, which talks of democratic governance and Article 96 which talks of oversight, but in terms of impeachment of the President. But it is Article 125 and the ruling by the Supreme Court that the Senate has sought to use.

I agree with the Members who have said that a proper, narrow interpretation of the Constitution will truly restrict the jurisdiction of the Senate. But how do we move forward. I was going to suggest two ways. The reason we have to do this is because Kenyans are going to be very confused if there is any one matter in which a National Assembly committee comes to one

conclusion and then the Senate comes to a different conclusion yet we are both Parliament. Even the Executive will ask: So, which one do we follow? I was going to suggest that we consider this a matter that would fall under Article 124(2) for establishing a joint committee to really consider it, before appearing to disagree and speak forth to each other, and narrow the areas that the Senate can look at, beforehand, and which ones can they cannot.

If that cannot happen, the second option is that, fortunately, Hon. Speaker, you are the Chair of the PSC. Article 127 establishes the Commission for precisely these kinds of matters. In Article 127(6), it is a fundamental function of the PSC to ensure “efficient and effective functioning of Parliament.” And that is an area of efficient and effective function of Parliament. I wanted to suggest that we could adopt either of those two. I would actually prefer the second, so that as an independent constitutional organ, the PSC would then give us guidance on this.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well spoken. Thank you for drawing our attention to that. Even for the first one, there is no reason for not having a joint committee, if there is will. Please allow me the opportunity to explore either of the two options.

Let us move to the next order.

## BILLS

### *First Readings*

THE COUNTY GOVERNMENTS (AMENDMENT) (NO. 2) BILL, 2017

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL, 2017

THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL, 2018

*(Orders for the First Readings Read - read the First Time and ordered to be referred to the relevant departmental committees)*

**Hon. Speaker:** Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Speaker (Hon. Justin Muturi) left the Chair]*

### IN THE COMMITTEE

*[The Temporary Deputy Chairlady  
(Hon. (Ms.) Soipan Tuya) took the Chair]*

THE COPYRIGHT (AMENDMENT) BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Members, we are

considering the Copyright (Amendment) Bill (Bill No.33 of 2017).

*Clause 3*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 3 of the Bill be amended by deleting paragraph (b).

This is to delete the proposed requirements that the board register all dealers of copyright. That is an impossible task. So, we agreed to delete this provision because it will not be possible for the board to register all dealers because they come in daily and they are in hundreds of thousands.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Do I take it that the list we have here is for Members who would like to contribute?

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): What is it, Hon. Wamalwa?

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): The Departmental Committee Chair is talking about deleting the paragraph. I expected him to give the gist of the amendment. Members should know the gist of proposed amendment so that we decide whether to support or oppose. I listened carefully to my good friend from Marakwet. He did not go further to explain the justification of the proposed deletion. Therefore, I humbly request that you allow him do so. Ordinarily, that is supposed to be the procedure.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Fair enough. Chair, may be, you can give a brief highlight of the gist of the amendment.

**Hon. William Kisang** (Marakwet West, JP): They had proposed that the Kenya Copyright Board (KCB) registers all copyright owners on a yearly basis. However, when we had a meeting with KCB and all the authorities that register copyrights and do collections for them, they told us that it will be impossible to register these copyright owners because they are so many across the country and requested that it will not be possible considering that the KCB is a small organisation. They said that it could be possible to do so in for the future but not for now. That is why we, as a Committee, took the amendments that they gave us in that direction.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Wamalwa, I hope it is now clear. Let us have Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you. I am standing on a point of information. The KCB would have had to remove the clause calling for registration of copyright owners. We can then refer to Clause 9, which provides for voluntary registration. I doubt that the reason was because there were too many copyright works. It was because it was calling for mandatory registration of copyright works. Copyright works are considered automatic rights. Copyright ownership is automatically conferred on the owner. One needs not register it. This section is being deleted so that voluntary registration can be introduced later on. It is not because there are so many works, and that the Board is unable to register them all at once.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Well said. I proceed to put the Question.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 3 as amended agreed to)*

*Clause 4*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): There is no amendment on this one.

*(Clause 4 agreed to)*

*Clause 5*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 5 of the Bill be amended—

(a) in paragraph (a) by inserting the words “through a competitive process” immediately after the words “appointed by the Board” appearing in the proposed new subsection 11(1);

(b) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) by deleting subsection (2) and substituting therefor the following new subsection—

“(2) A person shall qualify for appointment under this section if he or she—

(a) is as an advocate of the High Court of Kenya of not less than five years’ standing or has held judicial office in Kenya;

(b) has at least five years managerial experience; and,

(c) has, at least, five years’ experience in matters relating to copyright and other related rights”

I need to give the recommendations of the Committee as to why we came up with this one. One such is that on the appointment of the Executive Director of the KCB, we needed this process to be very competitive. We need to introduce reasonable qualifications for appointments of the Executive Director. They requested that one has to be an advocate of the High Court with not less than five year’s standing with, at least, five of those years being in managerial experience and experience in copyright matters. This is due to the technical nature of copyright matters. We took in those amendments.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Chairlady. I was to comment on another matter.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Members, I would advise that you remove your cards and only insert them if you want to contribute on this one to avoid confusion.

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 5 as amended agreed to)*

*(Clauses 6 and 7 agreed to)*

*Clause 8*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Mover.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Amendment of section 22 of No. 12 of 2001.                      8. Section 22 of the principal Act is amended in subsection (1) by—

- (a) inserting the words “or related rights” immediately after the word “copyright” in the opening statement;
- (b) inserting the following new paragraph immediately after paragraph (c).  
“(ca) dramatic works”

The team that came to see us said there was an oversight and they wanted to include dramatic works as part of copyright. We discussed and agreed that dramatic works are eligible as part of works that can be copyrighted. We agreed to amend the Act to cover dramatic works under the copyright and related rights.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Hon. Maanzo. Hon. Wachira Kabinga.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 8 as amended agreed to)*

*(Clause 9 agreed to)*

*Clause 10*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Mover.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 10 of the Bill be amended in the proposed new section 26 by deleting subsection (1) and substituting therefor the following new subsection—

(1) Copyright in a literary, musical, artistic, dramatic or audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts—

- (a) the reproduction in any material form of the original work;
- (b) the translation or adaptation of the work;
- (c) the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement;
- (d) the communication to the public of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original;
- (e) the making available of the work of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original; and
- (f) the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original.

When we went through the Bill, there were some missing words in Clause 10. So, we inserted them in paragraph 1 (d) and 1(e) of the proposed Section 26 of the Act to make it complete and sensible.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Nangabo, are you on this one.

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia CWR, JP): Thank you, Hon. Temporary Deputy Chairlady. I agree with the Chair on this amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Chairlady. I want to seek a clarification on what the missing words were.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Chair.

**Hon. William Kisang** (Marakwet West, JP): If you look at Clause 10 (1)(d) and (e)---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Maybe you should refer Hon. Nyikal to the Order Paper.

**Hon. William Kisang** (Marakwet West, JP): Hon. Nyikal look at Clause 10 on the Order Paper, in 1(d) and (e) the word 'original' was missing.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Nyikal, I hope that is clear.

**Hon. (Dr.) James Nyikal** (Seme, ODM): I can see Clause 10 (1)(d) is on communication and (1)(e) is on distribution. They are significantly different.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Is there any other Member?

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 10 as amended agreed to)*

### Clause 11

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chair.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 11 of the Bill be amended—

- (a) In the proposed new section 26C(1) by deleting paragraph (b) and substituting therefor the following new paragraph—  
“(b) to make, import, distribute, lend or share accessible format copies by a beneficiary person or authorised entities or persons acting on behalf of a beneficiary person, including the circumvention of any technological protection measures that may be in place, subject to the terms and conditions set out under Regulations.”
- (b) In the proposed new section 26D by—
- (c) inserting the word “of” immediately after the word “work” appearing in subsection (1);
- (d) deleting subsection (4) and substituting therefor the following new subsection—  
“(4) The resale royalty shall be payable at the rate of five percent of the net sale price on the commercial resale of an artwork and the seller, the art market professional, the seller’s agent and the buyer shall be jointly and severally liable to pay the resale royalty.”

This is cleaning of this particular Clause because there are some typographical errors and inserting missing words. This is just polishing this Clause similarly to Clause 10.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I want to seek clarification from the Chair on Clause 11 because the Memoranda of Objects and Reasons says that the Bill amends the Act by inserting a new Section 26 A to D to provide for an artist resale right for visual rights. Is this the position or was it just grammatical errors?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Chair.

**Hon. William Kisang** (Marakwet West, JP): I did not get what the Member said. We have Clause 11 and New Clause 11 A. I was on Clause 11. We have not yet started the new Clauses.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla, I think you are fine.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 11 as amended agreed to)*

#### Clause 12

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chair.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 12 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

“(ba) the making available of the sound recording in whole or in part either in its original form or in any form recognisably derived from the original.””

(b) by inserting the following new paragraph immediately after paragraph (a)—

“(aa) by deleting subsection (3) and substituting therefor the following new subsection:

“(3) The rights of an owner of a copyright in a sound recording are not infringed by the making of a single copy of the recording for the personal and private use of the person making the copy; and in respect of such use the owner of copyright in the sound recording shall have the right to receive fair compensation consisting of a royalty levied on audio recording equipment or audio blank tape suitable for recording and other media intended for recording, payable at the point of first manufacture or entry in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.

We are amending Section 28(1) of the Act to introduce a new Paragraph to include sound recordings as part of the Act that fall under the exclusive rights of a copyright owner. Second, is to amend and correct the proposed amendment to Section 28(3) to align it with the proposed deletion of sub-section 4 and 5.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*



*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 12 as amended agreed to)*

*(Clauses 13 and 14 agreed to)*

### Clause 15

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 15 of the Bill be amended in the proposed new section 30B by—

- (a) inserting the word “royalties” immediately after the word “collect” appearing in subsection (1);
- (b) inserting the word “the” immediately after the words “recordings and” appearing in subsection (3);
- (c) deleting subsection (4) and substituting therefor the following new subsection—  
“(4) The Board shall determine and, by notice in the Gazette, publish the share of the private copying remuneration applicable to the respective rights holders.”

This is to correct some typographical errors which we can see in the Order Paper. Also, the amendment requires the Board to determine and publish the shares of the blank tape levy that the producers and performers of sound recordings will be entitled to. We said, because of piracy, that we levy a particular amount to all blank tapes that are coming through the port of Mombasa and any other entry. These are CDs and flash disks so that, at least, the producers will get some amount from this and they can collect it either through the Kenya Revenue Authority (KRA) or any Collective Management Organisation (CMO). They will agree on how to share the amounts that they will have collected. I propose that we amend as proposed.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 15 as amended agreed to)*

*(Clause 16 agreed to)*

*Clause 17*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 17 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a)—

“(aa) in subsection (2) by deleting the words “competent authority” appearing immediately after the words “conditions as the” and substituting therefor the word “Board”;

Hon. Temporary Deputy Chairlady, this is to change the words “competent authority” that are appearing in the Bill to the word “Board”. This is the Kenya Copyright Board. It is ambiguous to have the words “competent authority” here and we have already changed everywhere else to “Kenya Copyright Board,” which is basically “the Board” in the definitions. This is basically to make it clearer and not be ambiguous. I propose that we amend as proposed.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 17 as amended agreed to)*

*Clause 18*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 18 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) Copyright or related rights shall be infringed by a person who, without the license of the owner of the copyright or related rights—

(a) does, or causes to be done, an act the doing of which is controlled by the copyright or related rights; or,

(b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.”

(b) by inserting the following new paragraphs immediately after paragraph (b)—

“(c) in subsection (3) by deleting the word “technical” wherever it appears and substituting therefor the words “technological protection”;

(d) in subsection (9) by inserting the word “dramatic” immediately after the word “literary”;

(e) in subsection (11) by inserting the word “dramatic” immediately after the word “musical”;

Hon. Temporary Deputy Chairlady, on one of them, there is an omission in the proposed amendment to Section 35 (1) of the Act to correct an omission which is spelt there on the Order Paper. Secondly, it is to delete the word “technical” and replace it with the words “technological

protection” to align it with the proposal. They have given a proposal that we replace the word “technical”. Technical is just a word but we want to include other technological protection measures. So, we have replaced that word.

Thirdly, it is to amend the Act to cover dramatic works under copyright and related rights as I had said earlier on in Clause 3. So, basically, everywhere we have the word “copyright” mentioned and it is not covering dramatic works, we are including the words “dramatic works” so that it also covers our artists who are actors and who do drama work. I propose that we amend as proposed.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairlady, I think it is okay to include dramatic works but the difference between technical and technological protection is not clear to me. Something tells me it may be quite significant but I do not know what really the difference is.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Let us have the Chair.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, the word “technical” in the dictionary is very clear. We can read it from the dictionary and get the meaning of this particular word but what we are saying here is we want to cover all technological works which includes technical. This is because when we say “technical” we just narrow it down. I believe those who are very good in English will be able to explain to us the difference between “technological” and “technical”, but we saw in our wisdom that the word “technological” is broader than just leaving it as “technical”. Maybe some of my colleagues can add more.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Is it clear, Hon. Nyikal? Maybe, you can clarify further with your dictionary.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Technically is like repairing something that has broken down. That is technical but if you are talking of technological, then you are talking of applications, innovations and many things that come in. So, I think it is looking at technological innovations. I think it makes sense to me.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Chairlady. I think the reference to technological protection here was because we were seeking to protect copyright items which are done online, which one of the institutions which appeared before us, that is Aga Khan University, insisted that we need to also look at the provisions of online copyright. I think it made more sense than just making a reference to technical. We were very specific on the technological measure that we are going to take to protect online copyright.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla, do you want to add your voice on this?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): I think Hon. Osotsi has put it correctly. Technical refers to a specific topic whereas technological is for the protection of copyright online of using technological means.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): That is fair enough. I go on to put the Question.

*(Question, that the words to be left out)*

*be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 18 as amended agreed to)*

*Clause 19*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 19 of the Bill be amended—

(a) in the proposed new section 35A(1)(c)(iii) by inserting the word “business” immediately after the words “forty-eight”;

(b) in the proposed new section 35B by—

(i) inserting the following new subsection immediately after subsection (3)—

“(3A) An Internet Service Provider shall, upon receipt of a valid takedown notice, notify the person responsible for making available the alleged infringing content and provide them with a copy of the notice as soon as is practicable.”

(ii) deleting subsection (4) and substituting therefor the following new subsection—

“(4) An Internet Service Provider shall disable access to the material within forty-eight business hours unless it receives a counter notice fulfilling the requirements set out for a takedown notice and contesting the contents of the takedown notice.

(iii) deleting the word “The” appearing in subsection (5) and substituting therefor the word “An”;

(iv) deleting subsection (6) and substituting therefor the following new subsection—

“(6) An Internet Service Provider which contravenes the provisions of subsection (4) commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.”

(v) deleting the word “of” appearing immediately after the word “term” in subsection (7) and substituting therefor the words “not exceeding”;

(vi) deleting the word “The” appearing in subsection (8) and substituting therefor the word “A”;

(vii) by inserting the following new section immediately after the proposed new section 35C—

35D. (1)A person may apply to the High Court for the grant of interim relief where he or she has reasonable grounds to believe that his or her copyright is being or may be infringed by a person situated in or outside

Application for  
injunction

Kenya

(2) The High Court may, upon application under subsection (1), grant an order requiring—

(a) a person enabling or facilitating the infringement of copyright, or whose service is used by another person to infringe copyright, to cease such enabling or facilitating activity or disable that person's access to its service for the infringing purpose;

(b) a person hosting or making available an online location, service or facility situated in or outside Kenya which is used to infringe copyright or which enables or facilitates the infringement of copyright, to disable access to such online location, service or facility as replaced, amended or moved from time to time; or

(c) an internet service provider to prevent or impede the use of its service to access an online location, service or facility situated in or outside Kenya that is used to infringe copyright as replaced, amended or moved from time to time.

This is to amend the proposed new Sections 35A and 35B to require an internet service provider (ISP) to disable access to infringing copies within 48 business hours of receiving a takedown notice. If any infringing rights have been noted and reported, the ISP is given 48 business hours. In case it is reported on a Friday, it is pushed to the following Monday, so that they can take down what is infringing.

Secondly, this is to amend the proposed new Section 35A to require an ISP to notify an alleged person who has infringed upon receipt of a valid takedown notice. We tell them that we will take it down in the next 48 hours.

Thirdly, to amend the proposed Section 35B to allow any person to file a counter-notice to a takedown notice. In case you are not satisfied with the takedown notice, you can give reasons why you do not want to take down the infringement. The amendment also seeks to correct some typographical errors to allow a person to apply to the High Court for the grant of an injunction especially with regard to live events.

I seek that we amend the Bill as proposed.

*(Question of the amendment proposed)*

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Deputy Chairlady, this is meant to further enhance the protection of online works, so that organisations that are involved in disseminating online works, which are mainly the ISPs, are able to take some actions. If there is any infringement, we know where we can go to. It also provides mechanisms for one to file a counter-notice to a takedown notice by the ISP.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Let us have Hon. Mwangi Mburu.

**Hon. Jonah Mwangi** (Lari, JP): Hon. Temporary Deputy Chairlady, I also support this amendment because it gives the ISPs enough time to provide information to the investigative agencies so that they can know where the subscriber of the corporate infringement is.

I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Let us have Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairlady, it makes sense that we are giving time, but how does it read? It reads ‘Upon receipt of takeover notice acts to remove or disable access to allegedly infringing content in the manner provided under this within 48 hours business. Is that how it is supposed to read?’

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, there is a mistake there. It is supposed to read ‘within 48 business hours’. Business hours are basically between Monday to Friday, from 8 a.m. to 5 p.m.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): It is the order of the words.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
Thereof be inserted, put and agreed to)*

*(Question, that the words to be inserted be  
inserted, put and agreed to)*

*(Hon. (Dr.) James Nyikal spoke off the microphone)*

You have been overtaken by events, Hon. Nyikal. Order, Hon. Nyikal. You are not even addressing me properly. You do not have the microphone. Let me finish. We are still debating. You can go on to say something on the Bill.

*(Clause 19 as amended agreed to)*

What is out of order, Hon. Nyikal?

**Hon. (Dr.) James Nyikal** (Seme, ODM): Maybe for my guidance, we said that changing the order of the wording makes sense. So, have we changed the order of the wording? I could be guided on that. It was agreed that changing the order of the wording makes sense, but have we in our process changed the order? That is why I wanted guidance.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Tuya): What is the position, Chair?

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I believe we said that the actual amendment is correct. If it is not correct, we need to amend it to read ‘48 business hours’ as we have said. Business hours are Monday to Friday from 8 a.m. to 5 p.m. When we do the final clean-up of the Bill before it goes for signing, we will change it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Nyikal, in my own reading, we are talking about ‘within 48 business hours’. As it is, it passes the message. I do not think we need to go into amending the wording on top of another amendment.

We can proceed.

*(Clause 20 agreed to)*

*Clause 21*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 21 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) by deleting subsection (1) and substituting therefor the following new subsection—

(1) A person who, at a time when copyright or the right of a performer or producer subsists in a work, knowingly-

(a) makes for sale or hire an infringing copy;

(b) sells or lets for hire or by way of trade, exposes or offers for sale an infringing copy;

(c) distributes infringing copies;

(d) possesses otherwise than for his private and domestic use, an infringing copy;

(e) imports into Kenya otherwise than for his or her private and domestic use an infringing copy;

(f) makes or has in his or her possession a contrivance used or intended to be used for the purpose of making an infringing copy;

(g) causes a broadcast to be rebroadcast or transmitted in a diffusion service, knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright;

(h) causes a program carrying signals to be distributed by a distributor for whom they were not intended, knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright;

(i) circumvents a technological protection measure or manufactures or distributes devices designed for circumventing technological protection measures; or

(j) removes or alters rights management information or imports or distributes or makes available to the public a copy of a work from which electronic rights management information has been removed or altered, commits an offence.”;

(b) in paragraph (c) by deleting the proposed new subsection (4) and substituting therefor the following subsection—

“(4)A person convicted of an offence under subsection (1) (a), (b), (c), (d) or (e) shall be liable to—

(a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and

(b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both.”

(c) in paragraph (d) by deleting the words “Any person guilty” appearing in the proposed new subsection (5) and substituting therefor the words “A person convicted”;

(d) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) by deleting subsection (6).”

(e) by inserting the following new paragraph immediately after paragraph (e)—

“(ea) by deleting the words “Any person guilty” appearing in subsection (7) and substituting therefor the words “A person convicted”;

This one is to correct some typographical areas and harmonise conflicting penalties appearing in Sections 38 (4) and 38 (6) in relation to the same offences. We are trying to harmonise so that in case anybody goes to court, he does not confuse the charges on which penalties will apply. We needed to harmonise and that is what we have done in Clause 21 and nothing else.

I propose that we amend as the Bill it is in the Order Paper.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Osotsi, you clearly do not need to say anything.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 21 as amended agreed to)*

*Clause 22*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 22 of the Bill be amended in the proposed new section 38A—

(a) by deleting subsection (1) and substituting therefor the following new subsection:

“(1) Where a body corporate is convicted of an offence under this Act, every person who at the time the offence was committed was in charge of or was responsible to the body corporate for the conduct of its business and affairs is also deemed to have committed the offence and shall be liable to prosecution.”

(b) by deleting subsection (2) and substituting therefor the following new subsection:

“(2) Where it is proven that a body corporate committed an offence under this Act with the consent, connivance or willful lack of due diligence by a person in charge of or responsible to the body corporate for the conduct of its business and affairs, the person shall be guilty of the offence.”

We are deleting the whole of Clause 22 and recasting the proposed new Section 38A on the criminal liability for body corporates to cover for the presumption of innocence of their staff and officers as guaranteed by Article 50 of the Constitution.

*(Question of the amendment proposed)*



**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Mburu.

**Hon. Jonah Mwangi** (Lari, JP): Hon. Temporary Deputy Chairlady, I want to add on that. Initially, we wanted the directors and employees of a company to be liable for the corporate offences or infringement that they may incur. So, the investigative agencies will go all the way to the directors and employees who are responsible for the infringement.

Thank you.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 22 as amended agreed to)*

*(Clause 23 agreed to)*

*Clause 24*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 24 of the Bill be amended—

- (a) in paragraph (d) by deleting the words “shorter period” appearing immediately after the words “for a” in the proposed new subsection (3A) and substituting therefor the words “period not exceeding six months”;
- (b) by deleting paragraph (j) and substituting therefor the following new paragraph—
  - “(j) in subsection (9), by—
    - (i) inserting the words “and two daily newspapers of national circulation” immediately after the word “Gazette”;
    - (ii) deleting the words “collecting society” wherever they appear and substituting therefor the words “collective management organisation”;
- (c) in paragraph (k) by—
  - (i) deleting the proposed new subsection (10) and substituting therefor the following new subsection—
    - “(10) Before deregistering a collective management organisation, the Board shall, notify the organisation in writing and invite it and any of its members to make written representations against deregistration within twenty one days from the date of the notice.”
  - (ii) inserting the word “If” immediately before the word “After” appearing in the proposed new subsection (11);

Hon. Temporary Deputy Chairlady, we want to amend proposed Section 46(3)(a) to provide that the board may grant a provisional licence which does not exceed six months. If the CMOs apply for a licence, before it is granted, we said that it is prudent for them to get interim

licence for six months, as they go through the process to get the actual licence, so that they do not stop doing business.

Secondly, before the board registers a CMO, it should publish it in two daily newspapers of national circulation, in addition to the Kenya Gazette and their own website.

Thirdly, the board is required to invite representations from a CMO and its members prior to its registration. Finally, the last amendment seeks to clean up and correct some typographical errors. I propose that we amend the clause as we have proposed.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Question, that the words to be inserted be inserted,  
put and agreed to)*

*(Clause 24 as amended agreed to)*

#### Clause 25

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 25 of the Bill be amended—

(a) by deleting the proposed new section 46B and substituting therefor the following new section—

Qualification and  
tenure of Directors and  
Chairpersons of  
collective management  
organisations.

46B. (1) A member of a collective management organisation shall be eligible for election as a director if he holds a post-secondary qualification recognised in Kenya.

(2) A director elected under this section shall serve for a term of three years and shall be eligible for re-election for one further term.

(3) A director elected as a chairperson of a collective management organisation shall hold office for a term of three years and shall be eligible for re-election for one further term.

(4) A chief executive officer of a collective management organisation shall hold office for a term of

four years and shall be eligible for reappointment for one further term upon satisfactory performance as evaluated by the directors.

- (b) by inserting the following new section immediately after the proposed new section 46C—

Submission and  
publication of  
information royalties.

46CA. (1) A collective management organisation shall submit to the Board information on its total collection and distribution of royalties annually.

(2) The Board shall, by notice in the Gazette, publish information submitted under subsection (1).

- (c) in the proposed new section 46D—

- (i) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) The Executive Director may authorise a person, in writing, to inspect the books of accounts and records of a collective management organisation.”

- (ii) by deleting the words “Any failure” appearing in subsection (3) and substituting therefor the words “A person who willfully fails”;

- (iii) by deleting subsection (4) and substituting therefor the following new subsection—

“(4) The person authorised to inspect a collective management organisation shall report to the Board on—

- (a) any breach or non-observance of the requirements of this Act or regulations;
- (b) any irregularity in the manner of conduct of the business of the organisation;
- (c) any apparent mismanagement or lack of management skills in the organisation; or
- (d) any other matter warranting remedial action or a forensic audit.”

- (iv) by deleting subsection (6) and substituting therefor the following new subsection—

“(6) The powers conferred by subsection (1) may be exercised in the following circumstances—

- (a) where a petition for inspection has been made by not less than forty five percent of the membership specifying breach of instruments establishing the collective management organisation, the regulations or the Act;
- (b) failure by a collective management organisation to account for monies to at least twenty percent of its members;

- (c) failure by a collective management organisation to offer an account of the exploitation of the copyright works assigned or licensed to it;
  - (d) where a collective management organisation has acted beyond its powers in administering the rights to which it is assigned or licensed;
  - (e) where a collective management organisation has altered its memorandum or other internal rules to exclude a section of its members in participating in its affairs or as to alter its core business;
  - (f) where a collective management organisation has persistently failed to adhere to its set administrative budget without a reasonable cause ; or
  - (g) where a collective management organisation has failed to comply with request for information or records from its members or the Board.”
- (d) in the proposed new section 46E(1) by deleting the words “finds that an organisation conducts” appearing immediately after the word “report” in the opening statement and substituting therefor the words “that a collective management organisation”;
  - (e) by deleting the proposed new section 46F;
  - (f) by deleting the proposed new section 46G and substituting therefor the following new section—

Record keeping and attendance of meetings by Board representatives.

46G. (1) The directors of a collective management organisation shall cause minutes of all resolutions and proceedings of their meetings to be entered and updated in books kept for that purpose.

(2) The Board may, through a designated representative, attend and advise a meeting of the directors of a collective management organisation where matters affecting member’s interests are proposed for discussion.

We are proposing to amend new Section 46B to make a person with a minimum of post-secondary qualifications from a recognised institution eligible for election as a CMO member. We are alive to the fact that some of these members might not have gone to school or past Form Four. Since they are the ones who have the talent, it is important for them to be directors in the CMOs.

We have also said that we need to allow the CMOs directors to serve for a term of three years which is renewable once and the Chief Executive Officer to serve for a renewable term of four years. This is in line with the *Mwongozo*, which is a policy that is in place that we are trying to align the Bill with.

Thirdly, we want to amend the proposed new section 46D to specify that failure of a CMO to account for, at least, 20 per cent of its members, constitutes a ground for inspection of its books. In case a CMO is not able to account for its books properly, then, 20 per cent of the

members can petition, so that the books can be inspected by Kenya Copyright Board (KECOBO) or external auditors.

Fourthly, the amendment seeks to provide that failure to furnish information or records that constitute grounds for an inspection should relate to a request from KECOBO or members of a CMO.

Fifthly, we are proposing to delete the proposed Section 46F on rules for purposes of recasting it as an amendment in Section 49 of the Act, which provides for regulations to be made by the Cabinet Secretary. This is basically delegating the powers.

Sixthly, the amendment seeks to reword the proposed Section 46G for purposes of clarity. Seventh, the amendment seeks to require the annual publication of information on CMO collections and distributions. This is like audited accounts of the CMO. They publish them, so that the members can see, audit and query them.

Thank you, Hon. Temporary Deputy Chairlady.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Nangabo.

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia CWR, JP): Hon. Temporary Deputy Chairlady, it seems as if I am lost. I want to ask the Chair to go step by step, so that I can catch up with him.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chair.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I do not know if the Member has just walked in. I do not know what is not clear. She needs to ask me which particular section is not clear.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Nangabo, is it the audibility or substance of what the Chair is presenting?

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia CWR, JP): It is the substance of what the Chair is presenting.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Do you want to understand what he is saying?

**Hon. (Ms.) Janet Nangabo** (Trans Nzoia CWR, JP): Yes.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, it is important for the Member to note that when we are in the Committee of the whole House, we assume that Members have read the Bill. We debated this particular Bill last year. Members have good knowledge of this Bill. From the next clause, I will go slowly and explain more. Some of the Members can contribute to make it clear for other Members to understand.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I am seeking clarity from the Chair again.

I appreciate and understand the fact that a member of an CMO will be eligible for election as the director if he holds a post-secondary qualification which is recognised in Kenya. I appreciate that the membership of CMOs are generally artists. I am concerned that you have not defined the education requirements for the CEO of a CMO. If you look at the Copyright Board, the CEO has to be an advocate of not less than five years standing. The CMOs deal with hundreds of millions of shillings for and on behalf of their members. So, I will appreciate an explanation. What are the requirements for the chief executive officer of the collective

management organisation? Is it in the Act? Is it defined or what is defined is the chief executive officer of the Kenya Copyright Board?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Mburu then the Chair who will respond to Hon. Shamalla's question.

**Hon. Jonah Mwangi** (Lari, JP): Hon. Temporary Deputy Chairlady, let me react to Hon. Shamalla. In this clause, we are talking more about the directors. Most of them being artistes, we noted that most of them do not have degree certificates. But there is a missing link for the CEO. We need to set qualifications for him or her to have a degree certificate. So, let the Chairman confirm from his papers and let us know.

To expound more on Clause 25, it mainly takes care of the many collective management organisations who have many artistes. Recently, a judgment was made in court about a collective management organisation called the Music Publishers Association of Kenya (MPAKE) and another one called the Copyright Music Society of Kenya, which was collecting revenue. The clause is purely to protect the artistes and prevent their revenue from being mishandled. The clause says that an audit can be made instantly by the Kenya Copyright Board. In the proposed new section, the Executive Director of the Kenya Copyright Board may inspect any collective management organisation at any time and recommend remedial action. That is in the same Clause 25. The artists or musicians out there are complaining that they are not receiving their money and we do not have remedial action to take a collective management organisation under statutory management. We need this. We need good guidelines for the Kenya Copyright Board and every collective management organisation.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Chair, Hon. Shamalla has directed a question at you. Do you need to further clarify your question?

**Hon. (Ms.) Shamalla Jeniffer** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. Clause 25 says that the chief executive officer of a collective management organisation shall hold office and defines the term. The Member has defined the role of the chief executive officer of the board, which is the oversight body of the collective management organisation. My question is that you have only defined the term the chief executive officer of the collective management organisation and have not defined the qualifications. Collective management organisations are highly technical bodies. Whereas I appreciate the fact that a member of the board of directors is a post-secondary one, what is the qualification of the chief executive officer of a collective management organisation?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla, do you want to amend the clause as it is?

**Hon. (Ms.) Shamalla Jeniffer** (Nominated, JP): That is the clarification I am seeking.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Maybe, the Chair can explain. I do not know whether he can change anything on his feet. Chair, make a clarification on Clause 25.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, what we have put here is on appointment of the CEO for a term of four years renewable once, subject to performance as per the Mwongozo. We do not have qualifications here because we thought the collective management organisations have their own terms of reference on how to engage CEOs. We did not want to encroach too much, but if Members feel that we need to guide them so that they can employ competent CEOs, we do not have an issue with that. We can bring an amendment to that effect.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): What is your point of order, Hon. Millie?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. This is an amendment Bill and maybe the definition that Hon. Shamalla is asking for is in the parent Act. So, perhaps, if there is a technical person from the respective ministry could indicate whether there is such a definition in the Act. But if there is no definition in the Act, it will be a glaring omission that the Chair could propose an amendment on his feet because he has the authority by our Standing Orders. I am sure you have a technical person who is supporting you, who can give us information as to whether this is there. Alternatively, we are online, as Parliament. So, why can we not confirm whether that is there or not?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Very well put, Hon. Millie. As I have other Members ventilate on it, the Chair can go on to do the necessary consultation with the technical people.

Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Chairlady. I want a clarification on what the Chair means when he says that a director elected under this section shall serve for one term of three years and shall be eligible for re-election for one further term. Does he mean he will not seek re-election? It is not clear. He needs to clarify whether they will be allowed to serve mandatory two terms.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): The Departmental Committee Chair is consulting. Hon. Barasa, let the Chair finish his consultations. In the meantime, let us have Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Deputy Chairlady, one of the things you may have noticed is that this is probably one of the longest amendment Bill we have brought to this House. Next time, when we will be doing an amendment Bill, we must come up with standards so that if there are many things to be amended, we come up with a fresh Bill rather than come up with many amendments that are confusing. The matter that has been raised here, about the qualifications of the CEO, is actually in the parent Act.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): I will have the Chair respond to the issue of the CEO of the collective management organisations. What has come out clearly is that there are many collective management organisations, but we have one umbrella body, a regulator, the Kenya Copyright Board, which has a CEO whose credentials are clearly spelt out in the parent Act. Hon. Chair, you may want to add something, whether it will be satisfactory or not.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, we have checked and it is not in the parent Act. When members of the CMOs appeared before our Committee, we brought out this issue and they said they are private members coming together and agreeing who is going to be their CEO to run their affairs. If we amend this particular clause and introduce qualifications like degree certificate in law, accounts or any relevant business field, the members might not be comfortable with it because they said that their business is private and they decide who their CEO is going to be. We cannot stipulate for them by prescribing minimum qualifications. Suppose one of their member who wants to be CEO is a Form Four leaver, are we going to deny them the right to choose their leader?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Yes, Hon. Millie, what is out of order?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Chairlady, with due respect to the Chair of the Committee, I think he is confusing issues when talking about these groups. You must differentiate between elective positions and technical positions. What Hon. Shamalla is saying is that it does not matter what level of organising you have, so long as you are doing technical work, there needs to be some level of technical qualifications, but if it is an elective position, you can elect anyone. You can elect even a person who did not go to a nursery school, but when it comes to technical issues and you are putting the interest of your group on the line, it has to be somebody who understands basic things like basic accounting. Some of the issues that the artists have been complaining about are people misusing their own collection. That is something that even if he cannot deal with it here, it is something that we can reconsider. If possible, we recommit it. As we go on, there is always room to recommit after further consultations. So that we do not take too much time, I would urge that we move on, but they consult between themselves and the technical people whether you need qualifications.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Millie, the Chair is just stating the reality. If there is need for a further amendment, we have provision for that so that we can dispense with that. I would want to throw it back to the Chair to give us direction.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I was saying that what we need to do is that since it was silent in the parent Act, we leave it silent. Secondly, we have given a proposal to KECOBO and the Attorney-General's office to repeal this law because the initial law was about thirty-something pages and with the amendments, we are having around 65 pages. So, there was no need to do these amendments. We should have done an overhaul. We should have repealed this law. They have said that as soon as we pass this, they are going to engage consultants to repeal the law. We can become silent on the qualifications as they start the process of repealing this law so that within six months, we come back to the House with a totally new law.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I am sorry, Hon. Temporary Deputy Chairlady, I am raising too many points of order. The Chairman has raised a fundamental issue without realising. He is saying that the amendments that have been raised by the Committee are more than 50 per cent. So, substantively by the rules of this House, we should not even be discussing these amendments. If that is his position, would I be in order to say that the proceedings at this stage be stayed until he gets further direction? We need a substantive Bill as was suggested by Hon. Osotsi. By the rules of this House, you cannot bring amendments that are more than 50 per cent of the Bill. If that is the position of the Committee, I do not even know how the technical team allowed them to bring so many amendments.

Thank you.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): I do not think that is the position of the Committee. Chair, is that where you want to direct the House?



**Hon. William Kisang** (Marakwet West, JP): No, Hon. Temporary Deputy Chairlady. I said the original Bill was around 38 pages and this is about 60 pages. The percentage of the amendment is less than 50. When we went through it, it was around 30 per cent. That is why we gave that proposal that they need to sit down so that in the course of the year, they can come back after they have done the Bill. It is less than 50 per cent. It is about 28 per cent.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla, are you a Member of the Committee?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): I am not a Member of the Committee. I want to echo the sentiments of Hon. Millie Odhiambo. I do not want us to be the Parliament where the blame will be put upon as having allowed anybody and everybody to manage the money and the royalties of artists in this country. These artists are not just musicians. There are various areas of CMOs. It is a deep concern where you say that anyone with secondary qualification qualifies. I have no problem with you being an elected representative, but to say that it can be anybody, yet in the memorandum of objects, you state that the Bill addresses the collective administration of copyright by introducing provisions on the title for organisations reflecting current system position, is inappropriate. The provisions also address corporate governance requirements. Which corporate governance requirements are these if this committee states that it can be anybody? The CMOs require highly specialised skills combined. Not just in the area of law, but in the area of copyright and related rights and accountancy.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Chair, this is a Bill which has gone through public participation. You need to guide the House that the position of the stakeholders is actually in line with what we are deliberating on.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, the CMOs came to our Committee. There are also Members who came as individuals. They said that it is up to CMOs to set up the qualifications for their CEOs. It is not up to this House to prescribe the qualifications because this is not a public body. That is the reason we put in the requirements for the executive director for KECOBO because KECOBO is a parastatal. This is why we put it in. They requested that they wanted somebody with a degree in law and experience also in intellectual property. For the CMOs, it is not in our purview to prescribe their qualifications. When the CMOs are formed, they should advertise and indicate the qualifications that they need. If they need expertise in intellectual property, I believe KECOBO and their own lawyers should assist.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Fair enough. Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairlady, there are two different organisations. There is the board that he is talking about, which is an overall board of a parastatal. For that, if you look at the Act, there is educational requirement, but what they are talking about are small organisations that have been formed and are managed by the bigger board. It is these organisations whose CEOs we are talking about. I find it acceptable that at that level, they can organise themselves. If the parastatal has that requirement, it protects it adequately. I would let this part stay.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): It is quite clear now.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 25 as amended agreed to)*

*(Clause 26 agreed to)*

**Clause 27**

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting clause 27 and substituting therefor the following new clause—

Amendment  
of section 48  
of No. 12 of  
2001.

**27.** The principal Act is amended by repealing section 48 and substituting therefor the following new section—

Appointment and  
duties of  
Copyright  
Tribunal.

**48.** (1) There shall be a Copyright Tribunal appointed by the Chief Justice for the purpose of exercising jurisdiction under this Act where any matter requires to be determined by such Tribunal.

(2) The Copyright Tribunal shall consist of not less than three and not more than five persons, one of whom shall be an Advocate of not less than seven years standing or a person who has held judicial office in Kenya as Chairperson, appointed by the Chief Justice where any matters requires to be determined by the Tribunal.

(3) No person shall be appointed under this section, nor shall any person so appointed act as a member of the Copyright Tribunal, if he, his partner, his employer body (whether statutory or not) of which he is a member has a pecuniary interest in any matter which requires to be determined by the Tribunal

(4) Subject to subsection (5), the Copyright Tribunal shall have jurisdiction to hear and determine—

- (a) a dispute over registration of copyright; and
- (b) an appeal against—

- (i) the Board's refusal to grant a certificate of registration to a collective management organisation;
- (ii) imposition of unreasonable terms or conditions by the Board for the grant of a certificate of registration;
- (iii) unreasonable refusal by a collective management organisation to grant a licence in respect of a copyright work; or
- (iv) Imposition of unreasonable terms or conditions by a collective management organisation for the grant of a licence in respect of a copyright work;

(5) Before determining a matter referred to it under this section, the Copyright Tribunal shall, in accordance with such procedure as may be prescribed, give both parties an opportunity to present their respective cases, either in person or through representatives, both orally and in writing.

(6) The Copyright Tribunal may order the grant of a certificate of registration or the grant of a license in respect of a copyright work subject to the payment of the applicable fees.

The reason is that we want to amend Section 48 of the Act to include the arbitration of disputes between right holders in the mandate of the proposed copyright tribunal and to place the tribunal under the Judiciary as contemplated in Article 169(1)(d) of the Constitution. Initially, this tribunal had been placed under a ministry, but we said it should go to the Judiciary instead of being under the Office of the Attorney-General. I propose that we amend as proposed by the Committee.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Hon. Millie.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Whereas I have no objection to the proposed amendment, I just want to encourage the Chairman. If I had seen this much earlier, I would have brought an amendment, but as per the normal practice now, we should be sensitive to gender issues. Is it possible for the Chairman to move that some of the members or a given number of members will be of the opposite gender so that we can have representation of both men and women in this body?

**Hon. William Kisang** (Marakwet West, JP): The reason we did not specify here is because we thought it is already in the Constitution. All these bodies know one gender cannot be more than two thirds. It is silent but already in the law. Going forward, we will be alive to it and specify so that those who are mischievous do not take advantage and exclude either gender.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuyu): Hon. Mburu.

**Hon. Jonah Mwangi** (Lari, JP): Thank you, Hon. Temporary Deputy Chairlady. I think that one has passed. I was just in support of Clause 27 on the change of names to the Copyright Tribunal which will be solving disputes rather than just saying ‘a competent authority’. We need a tribunal by itself which will be composed of men and women as enshrined in our Constitution.

Thank you.

**Hon. Godfrey Osotsi** (Nominated, ANC): *Off-record.*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Do you want to inform Hon. Mburu?

**Hon. Godfrey Osotsi** (Nominated, ANC): I just wanted to support what my colleagues have said. Initially, the tribunal was under the Attorney-General. Given that there are so many disputes in this area, some very complicated, we thought it was important that the members of the tribunal are appointed and the tribunal is under the jurisdiction of the Chief Justice. That is to make it a proper court in dealing with matters to do with copyright. Those matters are increasingly becoming more complex.

I support.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 27 as amended agreed to)*

#### Clause 28

**Hon. William Kisang** (Marakwet West, JP): I beg to move:

THAT, the Bill be amended by deleting clause 28 and substituting therefor the following new clause—

Amendment  
of section 49  
of No. 12 of  
2001.

28. The principal Act is amended by repealing section 49 and substituting therefor the following new section—

Regulations.

49. (1) The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act, including the extension of its application.

(2) Without prejudice to the generality of subsection (1) the regulations made under this section may—

(a) prescribe—

(i) the audit of collective management organisations;

- (ii) the annual and special general meetings of collective management organisations;
  - (iii) guidelines on the gender representation and participation of persons with disability and other marginalised groups on the boards of collective management organisations;
  - (iv) the procedure of handling complaints made to the Board;
  
  - (v) ratios of distributable income to administrative costs including deductions applicable to collective management organisations;
  - (vi) the manner of approval of distribution rules;
  - (vii) the manner of approval of cash reserves;
  - (viii) the manner of approval of membership to a collective management organisation;
  - (ix) a system for the identification of copyright works and monitoring of payment, collection and distribution of royalties; and
  - (x) anything required by this Act to be prescribed;
- (b) extend the application of this Act in respect of any or all of the works referred to in section 22 (1)—
- (i) to individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under the laws of Kenya or a country which is a party to a treaty to which Kenya is also a party and which provides for the protection of copyright and related rights in works to which the application of this Act extends;
  - (ii) to works, other than sound recordings, first published in Kenya or a country which is a party to a treaty to which Kenya is also a party and which provides for the protection of copyright and related rights in works to which the application of this Act extends; or
  - (iii) to sound recordings made or published in Kenya or a country which is a party to a treaty to which Kenya is also a party and which provides for the protection of copyright and related rights in works to which the application of this Act

extends; and

- (c) restrict the right to control the translation or the reproduction of a work up to the extent permitted by any Copyright Convention for the time being in force in Kenya:

Provided that the work belongs to or is first published or first made in or first made available to the public by individuals or bodies

corporate who are citizens of, domiciled or resident in or incorporated under laws of a country which is a party to a treaty, convention or international agreement which Kenya is a party to and which provides for the protection of copyright and related rights as Kenya.

(3) For the purposes of Article 94 (6) of the Constitution—

- (a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act and to enable the Board to discharge its functions more effectively;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;
- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

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*No. 23 of 2013*

Our proposal as the Committee and also the stakeholders is to amend Section 49 of the Act to include the mandate contained in the proposed Section 46(f) as part of the regulations to be made by the CS. Basically, the Attorney-General, who is the designated CS for copyright works, is supposed to make regulations under delegated legislation so that the CMOs and the Copyright Board can function and actualise this law.

We also intend to include the formulation of a system for the identification of copyright works so that it is easy to identify what is copyrighted or not and also monitor payments, collections and distribution of royalties as part of the regulations to be made by the Attorney-General, who is the CS in this area. The CMOs require these regulations so that beneficiaries or owners of the copyrights benefit from the royalties that will accrue from their works.

We are also trying to align Section 49 with Article 94(6) of the Constitution on the purpose and limits of the exercise of delegated powers which this House delegates to the CSs and respective organisations to make regulations to function well.

I move and ask Members to support this amendment as proposed.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Barasa?

**Hon. Didmus Barasa** (Kimilili, JP): I support. This is a very good amendment especially where it talks about outlining what should be done from Section 2 so that operations of such CMOs will be much more objective.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Akoth.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairlady. I wish to support this amendment, specifically the one that provides that regulations shall provide guidelines on gender representation and participation of persons with disability and other marginalised groups on the boards of CMOs. I encourage the Chairman of the Committee that, in subsequent ones, they need to be as clear as where they are providing for smaller organisations. They should provide for the same on the boards. As a writer and a person who did intellectual property rights for my masters, I think most of the amendments they are providing are very progressive.

Lastly, you will excuse me as a Johnny-come-lately or Jannie-come-lately, it has just been brought to my attention that we are having computers on my right-hand side and left-hand side, but not where I am sitting.

*(Laughter)*

I do not know whether this is part of discrimination because I am a permanent feature here. Maybe you can advise on the fact that there are no computers where I am sitting yet there are some in other areas. No wonder I was not able to get the information I wanted as fast as I wanted.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Millie, even if it was discrimination, it would be equal on both sides. You missed a Communication from the Speaker earlier this afternoon that we are awaiting completion of operationalisation of the gadgets. Even if they are appearing there, I do not think they are functioning. I do not think they are in use until all of them have been operationalised and everybody taken through the necessary training. So, do not worry. There is no discrimination.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 28 as amended agreed to)*

*(Clause 29 agreed to)*

*New Clause 7A*

**The Temporary Deputy Chairlady** (Hon. Soipan Tuya): I now call the Mover to move the Second Reading of New Clause 7A. It is on Page 812 on the Order Paper, Hon. Chair.

**Hon. William Kisang** (Marakwet West, JP): Thank you, Hon. Temporary Deputy Chairlady. Before I move, I just wanted to inform Hon. Millie Odhiambo that the House is going digital.

**The Temporary Deputy Chairlady** (Hon. Soipan Tuya): Hon. Chair, just move the clause first for Second Reading.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Repeal and  
replacement of  
section 21 of No. 12  
of 2001.

7A. The principal Act is amended by repealing Section 21 and substituting therefor the following new section—

Appeals.

21. (1) A person aggrieved by the decision of the Board under this Act may, within sixty days from the date of the decision, appeal to the Copyright Tribunal.

(2) The Board shall provide written comments on any matter over which an appeal has been submitted to the Copyright Tribunal under this section upon request from the Copyright Tribunal.

(3) The Copyright Tribunal shall issue a decision on the appeal within thirty days from the date of an appeal.

We are doing this so that in case somebody goes to the tribunal and there is an appeal, the tribunal needs to make a decision within the shortest time possible. Money is involved here and it is important that timely decisions are made because the value of money is time bound. That is why we say that it is important that decisions are made within a short time.

I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause  
be read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*



*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 9A*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 9—

Amendment of section 23 of No. 12 of 2001.

9A. Section 23 of the principal Act is amended—

(a) in subsection (2) by inserting the word “dramatic” immediately after the word “musical”;

(b) in subsection (3) by inserting the word “dramatic” immediately after the word “musical”;

Amendment of section 24 of No. 12 of 2001.

9B. Section 24(1)(a) of the principal Act is amended by inserting the word “dramatic” immediately after the word “musical”.

Amendment of section 25 of No. 12 of 2001.

9C. Section 25(2) of the principal Act is amended by inserting the word “dramatic” immediately after the word “musical”.

If you remember, in the earlier amendments, dramatic works were not included as copyrighted work. That is why it is important to include it here. Basically, we are introducing dramatic works in the Bill, so that those who are acting also benefit from the works. I remember the late *Mzee Ojwang'* used to act in *Vitimbi* in the Kenya Broadcasting Corporation (KBC). He used to move around acting in hotels all over the country, but he died a poor man. We need to reward the talents of the people.

I beg to move.

**The Temporary Deputy Chairlady** (Hon. Soipan Tuyu): Hon. Chair, you have gone ahead of us. You have gone to 9(B) and (C). I will propose the Question on 9A, then we can move faster on the other two because you have already spoken to them.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be*

*read a Second Time, proposed)*

*(Question, that the new clause be read  
a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to  
the Bill, put and agreed to)*

*New Clauses 9B and 9C*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 9—

Amendment of  
section 24 of No.  
12 of 2001.

9B. Section 24(1)(a) of the principal Act is amended by inserting the word “dramatic” immediately after the word “musical”.

Amendment of  
section 25 of No.  
12 of 2001.

9C. Section 25(2) of the principal Act is amended by inserting the word “dramatic” immediately after the word “musical”.

I beg to move.

*(Question of the new clauses proposed)*

*(New clauses read the First Time)*

*(Question, that the new clauses be  
read a Second Time, proposed)*

*(Question, that the new clauses be read  
a Second Time, put and agreed to)*

*(The new clauses were read a Second Time)*

*(Question, that the new clauses be added to  
the Bill, put and agreed to)*

*New Clause 11A*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 11—

Amendment of  
section 27 of No.  
12 of 2001.

11A. Section 27 of the principal Act is amended—

- (a) in subsection (1) by inserting the word “dramatic” immediately after the word “musical”;
- (b) in subsection (2) by deleting the words “competent authority” appearing immediately after the words “determined by the” and substituting therefor the words “Copyright Tribunal”.

We have basically changed competent authority to a tribunal that will be administered from the Judiciary as the rest of the tribunals as per the Constitution. I, therefore, move that the New Clause 11A be read a Second Time.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*New Clause 20A*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 20—

Amendment of  
section 37 of No.  
12 of 2001.

20A. Section 37(1) of the principal Act is amended by deleting the words “competent authority” wherever they appear and substituting therefor the words “Copyright Tribunal”.

This is basically meant to ensure that in this particular section, where competent authority appears, we substitute with tribunal as we had said earlier because this particular tribunal will be administered from the Judiciary. This is basically a clean-up of the section. I urge and ask Members to support this new insertion so that we can start using this law as soon as we complete the amendments.

I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*Clause 2*

**The Temporary Deputy Chairlady** (Hon. Soipan Tuya): Mover.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 2 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in the definition of author by—

- (i) inserting the word “dramatic” immediately after the word “musical” appearing in paragraph (a);
- (ii) deleting the word “film” appearing in paragraph (d) and substituting therefor the word “work”;
- (iii) deleting the word “working” appearing in paragraph (h) and substituting therefor the word “making”;
- (b) in paragraph (e) by deleting the word “folklore” and substituting therefor the word “folklore”;
- (c) in paragraph (f)(ii) by inserting the words “which constitutes an infringement of any rights protected by this Act” immediately after the words “a work or live performance” appearing in the proposed paragraph (aa);
- (d) in paragraph (g) by deleting the proposed new definition of “musical work” and substituting therefor the following new definition—

“musical work” means a work consisting of music, irrespective of musical quality, and includes a graphical notation of such work and works composed for musical accompaniment”

(e) by deleting paragraph (j) and substituting therefor the following new paragraph—

“(j) by deleting the definition of “school” and substituting therefor the following new definition—

“school” means an institution registered or accredited under the Universities Act, 2012, the Basic Education Act, 2013 or the Technical and Vocational Education and Training Act, 2013”;

(f) In paragraph (k) in the proposed new definition of “work” by inserting the word “dramatic” immediately after the word “artistic”;

(g) by deleting paragraph (l) and substituting therefor the following new paragraph—

“(l) by deleting the definition of “technical measure” and substituting therefor the following new definition—

“technological protection measure” means any device, product or component incorporated into a work that effectively prevents or inhibits the infringement of any copyright or related right”;

(h) by inserting the following new paragraphs immediately after paragraph (l)—

“(m) by inserting the following new definitions in their proper alphabetical sequence—

“accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including permitting the person to have access as feasibly and comfortably as a person without visual impairment or other print disability;

“art market professional” includes an auctioneer, owner or operator of a gallery, museum, an art dealer or any other person involved in the business of dealing in artworks;

“artwork” means an original work of visual art created by an artist or artists, or produced under their authority;

“authorised entity” means an entity that is authorised or recognised by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis and includes a government institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities or institutional obligations;

“beneficiary person” means a person who—

(a) is blind;

(b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially

equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability;  
or

- (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, regardless of any other disabilities;

“buyer” means a person to whom ownership is transferred in an artwork under commercial resale;

“commercial resale” means the subsequent re-transfer of ownership in artwork from one person to another for monetary consideration with the involvement of an art market professional;

“Copyright Tribunal” means the tribunal established under section 48 of the Act;

“exclusive licence” means a licence in writing signed by or on behalf of an owner or prospective owner of copyright or related rights, authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which by virtue of this Act would apart from the licence be exercisable exclusively by the owner of copyright or related rights;

“information system” means a system for generating, sending, receiving, storing, displaying or otherwise processing data and includes internet;

“information system services” includes the provision of connections, the operation of facilities for information systems, the provision of access to information systems, the transmission or routing of data between or among points specified by a user and the processing and storage of data, at the individual request of the recipient of the service;

“Internet Service Provider” means a person providing information system services or access software that provides or enables computer access by multiple users to a computer server including connections for, the transmission or routing of data;

“collective management organisation” means an organisation approved and authorised by the Board which has as its main object, or one of its main objects, the negotiating for the collection and distribution of royalties and the granting of licenses in respect of the use of copyright works or related

rights;

“owner of the copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright;

“performance” means the representation of a work by such action as dancing, playing, reciting, singing, declaiming or projecting to listeners by any means whatsoever;

“performer” means an actor, singer, declaimer, musician or other person who performs a literary, musical or dramatic work or a work of folklore and includes the conductor of the performance of any such work;

“public display” means the showing of original or a copy of a work—

- (a) directly;
- (b) by means of a film, slide, television image or otherwise on screen;
- (c) by means of any other device or process;
- (d) in the case of an audio-visual work, showing of individual images consequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present irrespective of whether they are or can be present at the same place and time or at different places or times, where the work can be displayed without communication to the public;

“publication” means a work or a sound recording, copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies:

Provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a sound recording, with the consent of the producer of the sound recording or his successor in title;

“public performance” means—

- (a) in the case of work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;

- (b) in case of an audio-visual work, the showing of images in sequence and the making of accompanying sound audible; and
- (c) in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performance can be perceived without the need for communication to the public;

“record” means any device in which sounds or the representations of sounds are embodied which are capable of reproduction there from with or without the aid of another instrument;

“related rights” mean rights neighboring on copyright, including those subsisting under sections 27(2), 28, 29 and 30 of this Act;

“resale royalty right” means the right of artist or group of artists or successors to receive resale royalty on commercial resale of an artwork;

“seller” means the person who transfers ownership of the artwork under commercial resale; and

“specialised formats” means Braille, audio, or digital text or any other media which is exclusively for use by visually impaired or other persons with disabilities, and with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by visually impaired or other persons with disabilities.

(n) by deleting the definition of “competent authority”

One, we have proposed, as I said earlier, to include dramatic works as works covered under this particular law. We are also cleaning it up. If you go through the Bill, there are some typographical errors. We have made some changes to delete the definition of technical measure to technological measures. This is to include online transactions. We are also deleting the definition of the word “organisation” and substituting with “collective management organisation” (CMO) for clarity so that the Bill is consistent. We are also deleting the definition of “original work of art” which is unnecessary because it is obvious. We are also amending the definition of “publication” to apply to intangible works. We are also amending the Act to delete the definition of “competent authority” wherever it appears and substitute it with copyright tribunal.

These are the changes that we have proposed. I urge the Members to agree with the Committee and approve the amendments. Thank you, Hon. Temporary Deputy Chairlady.

I move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. Soipan Tuya): Hon. Nyikal.



**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairlady, whereas I support this amendment, there is one major introduction I have seen of “dramatic works”, which I have a problem with in terms of the word and I could be guided. It sounds more like an adjective rather than naming the acts of drama. I think there should be a definition in this clause. I am particularly more concerned because musical work has been clearly defined while for dramatic work, I have not seen any definition. Maybe the Chair or the Members of the Committee can enlighten me on that, if they really do not need to define dramatic works as well.

**The Temporary Deputy Chairlady** (Hon. Soipan Tuya): Chair.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, let me just check. In the amended Bill, drama is not mentioned anywhere. That is why we proposed to include the words “dramatic works”. These are like what I was saying about the late Ojwang’. What he was doing can be described as dramatic works. I thought this is basically very clear and we have defined it. Maybe Hon. Nyikal can repeat his concern and then I can respond to it.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Temporary Deputy Chairlady, I would have wished to have an inclusion of the definition of ‘dramatic works’ like has been done for ‘musical work’. It would probably be something like ‘dramatic work means work of drama irrespective of drama quality and includes work graphic’. Even drama can be in graphic form. But if we cannot do it now, then, probably that is something that will come later. I think it may have been necessary. I would not push hard because the context is understood even without the definition, but it should have been nice to have a definition.

**The Temporary Deputy Chairlady** (Hon. Soipan Tuya): Chair.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, as the Member has said, we assumed that dramatic work is obvious, but now that it is coming out that it might not be very obvious, going forward, as we have said, as we repeal the Act, we will carry on and define dramatic works, so that it is clear to everybody so that we do not leave it ambiguous. It has been noted.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. I would like to add and say that dramatic works are so obvious. It is works such as play, radio or television scripts. It is even choreographing and pantomimes, which are accompanied by music. Because copyright has a lifespan of up to 50 years after your death, if it could be proven that a dance like the Isukuti Dance belongs to a particular person and the movements of that dance, that is part of drama. We can break it down and say that words are the poetry, the actual musical instrument is the music and the movement is the dramatic form. So, I want to agree that it is extremely important that we have a definition for what dramatic works are. They are not just plays on television.

**The Temporary Deputy Chairlady** (Hon. Soipan Tuya): Chair, do you have anything else to add to what you said earlier?

**Hon. William Kisang** (Marakwet West, JP): No, Hon. Temporary Deputy Chairlady, but only to say that we have noted and going forward, we will define this and put all the descriptions, so that, at least, it is very clear. And we have not said it is only what appears on television. I only mentioned one particular actor, the late Ojwang’, but there are many dramas, even in churches and villages. I was in Nyakach this weekend and we had some very good *isukuti*. Going forward, we will ensure it is very clear and not ambiguous by defining it.

*(Question, that the words to be left out*

*be left out, put and agreed to)*

*(Question that the words to be inserted be inserted, put and agreed to)*

*(Question that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Soipan Tuya): We have no amendments on Clause 1.

*(Clause 1 agreed to)*

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee does report to the House its consideration of the Copyright (Amendment Bill) (Bill No.33/2017) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Jessica Mbalu) in the Chair]*

## REPORT AND CONSIDERATION OF REPORT

### THE COPYRIGHT (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Can we have the Chairperson to report to the House.

**Hon. (Ms.) Soipan Tuya** (Narok CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Copyright (Amendment) Bill (Bill No.33/2017) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Can we have the Mover of the Bill to move a Motion for agreement with the Report?

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Speaker, I beg to move that the House does agree with the Committee in the said Report.

I request the Deputy Chair of the Departmental Committee to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. George Kariuki** (Ndia, JP) seconded.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Members, we have no Quorum to make a decision on this Motion. Therefore, I order that putting of Question to this Report be deferred to the next appropriate time.

*(Putting of Question deferred)*

Next Order.

## BILL

*Second Reading*

THE LAND VALUE INDEX LAWS (AMENDMENT) BILL

*(Hon. A.B. Duale on 4.7.2018)*

*(Resumption of Debate interrupted on 4.7.2018)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, this is resumption of debate interrupted on Wednesday, July 4<sup>th</sup> 2018, afternoon sitting. The Member for Mumias East had a balance of eight minutes.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Temporary Deputy Speaker. It is true that the debate on this Bill adjourned when I had an opportunity to contribute for two minutes. I still have about eight minutes. The adjournment gave me an opportunity to look at this Bill better.

The importance of this Bill cannot be overemphasised. For those Members who are yet to contribute, I would like them to ask themselves a few questions. For example, why is the Standard Gauge Railway (SGR) terminal that is supposed to be serving Nairobi Central Business District (CBD) outside Nairobi? Like in many other countries, the terminal of a national railway system like the SGR should be serving Kenyans up to the CBD of a city like Nairobi. Members should ask themselves why the SGR terminal is in Embakasi and not the CBD. In Mombasa, the terminal is at Miritini instead of being right in the heart of Mombasa City.

Members should ask themselves why the extension that we already have from Embakasi runs through the Nairobi National Park all the way to Naivasha instead of passing through Nairobi City on its way to Naivasha. This is a clear sign that the SGR could be running away from the expensive compensation that the Government would experience were the SGR to pass through the CBD. The Land Bill Index should cater for this situation. The Bill should stop prospective land buyers who speculate from buying land, especially when already a survey has been done.

It has been a tradition that whenever the Government announces commencement of a major project, individuals flood that area, especially those connected to the Government. Right now, there is a plan of extending the SGR from Naivasha all the way to Kisumu through Narok and beyond. There is a place in Western Kenya, in Matungu, where someone from Nairobi has

bought a chunk of land to the tune of 30 acres. The price at which he bought the land was very attractive. It made people move away from Matungu. I suspect that eventually, this could be the place that may have been designed to be the SGR terminal that would serve that area.

The people who designed the SGR revealed this information to a few people who ended up sharing the benefits that come with it. This is another way of corruption. As the Land Index Bill dictates, we should in future take care of this kind of corrupt practices. We risk the Big Four Agenda, which has to do with housing, manufacturing, food security and development of infrastructure for universal healthcare because all these programmes are associated with land. If we do not pass the Land Value Index Laws (Amendment) Bill, this will definitely affect the Big Four Agenda. As a Member of this House, I do not want to see this go down the drain. The Vision 2030 is also endangered. You all know that the projects of Konza City and the Lamu Port-South Sudan-Ethiopia (LAPPSET) transport corridor are dependent on availability of land. If we do not do anything at this point, we run the risk of losing the good ideas that we have in the Vision 2030.

The investors must be protected. I know of a project that is about to start in my Kakamega County. An investor has requested for some land to develop, operate and then hand over to the county after some period in Mudiri and Otiende estates in Kakamega. If this House approves this Bill, I am sure this will comfortably facilitate the developer to sort out the housing problem in Kakamega. As I finish, I realise an observation was made by quite a number of Members that land valuers and players in the real estate sector were not involved in this. As we go to the Third Reading, I ask the Committee to find time to get their opinions so that we can develop a Bill that is all inclusive.

I wish to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Kimilili, are you in the House? Next on my request list is Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill because it seeks to cure the compensation problems we have experienced for a very long time in this country. It also sets a timeline upon which such compensation should be effected upon land being acquired for public use.

As you will recall, in this country people have suffered waiting for compensation until they died. Even their grandchildren continue waiting for compensation. Therefore, this Bill seeks to provide a solution to this matter. It also sets out guidelines for valuation of land so that no one wakes up and decides to determine the price of land. Also, there will be no discrepancies of prices of land in similar areas. It will not depend on who owned the land before. This will prevent some people from selling land at higher prices than others in the same region. Therefore, it will address equity in terms of the land value regardless of whether it was owned by Didmus Barasa, Member of Parliament, a peasant farmer or a woman who sells tomatoes along the roadside.

It also seeks to set up the Land Acquisition Tribunal. People who are not satisfied with decisions and scenarios followed prior to their land being taken over for public use will take their grievances to the tribunal. Many Kenyans are suffering in the hands of the National Land Commission (NLC). Some officers collude with people to disenfranchise land owners. Therefore, this Bill seeks to provide an avenue where such disputes can be addressed.

It also sets timelines for that tribunal to listen to grievances and dispense of matters. This is very important because matters taken before many tribunals drag for very many years ranging from five to 10 years. However, this Bill sets a timeline upon which such matters should be

resolved by the tribunal. Therefore, I support this Bill. It is timely. I urge my colleagues to support it for the benefit of this country.

It will also speed up acquisition of such land for public use. There are very good projects seeking to benefit Kenyans, but they have stalled because of land matters. Many disputes have arisen and lack of a dispute resolution mechanism makes such projects to take ages. In such a scenario, the general public loses money. By the time the project takes off, many factors have changed like environmental and financial aspects. Therefore, Kenyans do not get value for their money, owing to the time taken by the Government. The amount of money pumped into such projects is wasted because of such land disputes ranging from ownership to the community not supporting such projects.

For these reasons, I beg to support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Funyula, Hon. Ouda Ojiambo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. From the outset, let me indicate or declare that I have been involved in land acquisition both under compulsory acquisition and under the resettlement action plans as a valuer and land economist.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Are you declaring interest or you just want to inform the House?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): I just want to bring to the attention of the House so it is not construed in any way. Also, as members of the Institution of Surveyors of Kenya (ISK), we were not consulted. I have not been given an opportunity to make a presentation in respect of this matter. Nevertheless, the amount of suffering people who own land have undergone through as a result of compulsory acquisition has been harrowing. Many of us remember the Ndakaini Dam and the Thiba Dam matters which have dragged on from 2012. We also remember many cases that have dragged on endlessly without conclusion.

I have perused through the Bill and there are fundamental bridges of the Constitution and normal practise that the LSK and I will seek amendments at the right time. Specifically, it is unfair and extremely out of the ordinarily to propose that compensation for people who do not have right to land can only be made to those who have occupied land for uninterrupted period of 12 years. Many of us know that in this country, land transactions are done everyday. We buy land especially in rural and peri-urban areas and never conclude the transaction for one reason or another because of succession cases, lack of money to pay the Stamp Duty, legal fees and others. To literally legislate that we will only consider people after 12 years is a complete breach of the law, the Constitution and a contradiction of the best practices by the World Bank Operational Policy 4.12 and other operational policies that govern resettlement action plans all over the World.

Obviously, I appreciate the need to have some form of capping and sanity in the acquisition process that will indeed violate the rest of the people contrary to Article 40(3) of the Constitution. It is, indeed, being unfair punishing the people and the genuine land owners for mistakes and excesses committed by Government officials' fraudulent actions that are actionable in another area. Obviously, the process of determining the value of land or any asset is simple and clear. The practice all over the world is based on willing buyer willing seller and the forces of supply and demand. I hope those in the tribunal, who will be involved in setting values - and there is no provision how often it should be set - will obviously not distort the land market and generally discourage dealings in the land market. The Government draws a lot of revenue from

land transactions. Any action that generally distorts or discourages land transactions will obviously hurt this economy and kill investor interest. I am happy and pleased there is a provision that will punish any Government official who is privy to information to the intended acquisition of land by public bodies who will take advantage of that information. Again, it is a tall order to prove that anybody acted in bad faith.

Of course, it is also a progressive action to set up the Land Acquisition Tribunal, but the composition of that tribunal seems also to be skewed to the same people who have been involved in malpractices in the Government cycle. Obviously, we will have to seek either a complete review or an expansion of the Land Acquisition Tribunal. Many of the people who suffer are the ordinary squatters and land owners who end up suffering for many years to come. I also feel the one-year period provided to pay full compensation and even to contemplate paying compensation in instalments is generally to deprive the owner of the land. The basis of the acquisition is to leave the land owner whose land is being taken in a similar or not worse position than you found him. Holding on to payment for one year is not good. By the time that person seeks purchase of land elsewhere, chances are that the land value will have doubled or even tripled. As is the practice, you should never displace somebody and take him far away from his natural environment or the environment he has been used to because land acquisition for public purposes should not punish a typical land owner, peasant or trader.

Definitely, we must put a provision that one year is too long. We should seek a shorter provision. I do not believe, unless in emergency cases, that a State corporation or organ will wake up all of a sudden and decide it must acquire land. It must have been budgeted and planned for adequately. So, before the Government or the NLC accepts to commence land acquisition process, adequate funds should have been put aside to allow for compensation. There are basic tools of budgeting. It should not be a problem for any typical State organ to budget.

I support the proposed Bill but at the appropriate time, I will move necessary amendments to align it to the Constitution, other laws and best practices in the profession and safeguard the welfare of land owners. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Wachira Kabinga, Member for Mwea Constituency.

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Temporary Deputy Speaker. I also stand to support this Bill. I thank the Member who spoke before me for particularly mentioning the experiences that he had with what we refer to as the Thiba Dam compensation where people gave out their titles in the year 2012 and to date, we are about 60 per cent in the compensation.

Once enacted, this Bill will correct a number of irregularities and illegalities that have characterised compensation processes in our country for quite some time. I contribute to this Bill with a lot of experiences especially on the Thiba Dam, where our people are really suffering. The compensation that started in 2012 has denied our people a number of rights. They gave out their titles. They cannot go to banks. They cannot get legal ways of acquiring finances and in the process, some people have taken advantage. They have lent money to these farmers and they end up extorting a lot of money from them. Therefore, having this particular Bill is very important for this country.

Section 2 of this Bill stipulates that within 12 months, the beneficiary must be compensated. I think this will go a long way in correcting some of the problems that we have been having. The Bill is not only going to benefit the beneficiaries. It is also going to play a big role in ensuring that the Government does not lose a lot of money that has also gone to fraudulent valuation and/or information leakages from Government officials out there. We are

aware that whenever there is this kind of compensation, there is a lot of conspiracy that doubles up or triples the would-be for compensated. This is why the Government gets constrained whenever we have this kind of compensation. I hope Clause 157 will be strengthened even much more so that it can be more punitive for anybody to conspire to escalate valuation of some of these properties that the Government would be compensating.

Another problem that we have observed that I hope this Bill will correct - and it will - is that in the past, some people were being compensated, but titles would still remain in their hands. In the process, whatever compensation they get, they would probably sell the land they are given and remain on the original land. We have these kinds of cases in my constituency in a place called Kagio and Kutus where schools and churches are still suffering more than 20 years after some people were compensated. Therefore, this Bill is coming at the right time so that we can correct some of these anomalies and ensure that once compensated, you do not stay or remain where the projects are intended to take place. You would probably move out and go to where you have been compensated.

This Bill is very important. I hope it will also address some of the past issues that are there. Currently, there are many court cases in this regard. If in this country we could ask or make a call for people who have cases relating to compensation to come out you, will be surprised by the number of people who would come out.

Therefore, I stand to support the Bill. We need it like yesterday. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, the Member for Mwea. The next on my request list is the Member for Kwanza, Hon. Wanyonyi Kevin.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Temporary Deputy Speaker. I think this is long overdue and they should have enacted this sometimes back. Looking at the Bill, it is very timely. I have a very recent experience. Only two days ago, the Chinese came to my constituency to construct a road. Before that, they were looking for a place where they could put up a camp. Because there was nothing in writing, the owner of the land kept on changing the rates within two months. In fact, they are currently not able to set up the camp. At one time, they were talking about a rate they came up with out of the blues. This is because there is no way of determining what rate one would offer the land. There is no harmonised rate. The owner of the land kept on increasing the rates. When I got involved, he got scared. Even when we negotiated, he raised the rate behind my back. This will stabilise and harmonise the value of land and land rates.

Given that this country wants to industrialise, we can only do that by attracting investors. Therefore, if you can have a fall-back in case of confusion, land is the most important factor in terms of investment. This country is yearning for investment. Most Members have travelled to other countries and some countries that we thought were behind in terms of development are almost 300 years ahead of us. In China, I had the opportunity to go around three cities. I was very impressed because China is very developed. When you move from one area to another, you know exactly how much land costs. There are harmonised rates.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Member for Kwanza, Hon. Wanyonyi. There is an intervention by the Member for Likoni Constituency, Hon. Khamisi Mboko.

## QUORUM

**Hon. Mishi Mboko** (Likoni, ODM): Thank you, Hon. Temporary Deputy Speaker. This is a very important Bill and there is a lot of interest in it. We have so many challenges in this country. Right now, we do not have proper Quorum to execute this Bill. I beg that we first raise proper Quorum.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Which Standing Order are you rising on? She says there is a lot of interest. Before I get to the Member for Likoni - and I will rightly guide her - let us have the Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): The Member has a point. This is a very important Bill. For the benefit of this House, I quite agree with the Hon. Member. This House should be full for us to prosecute this because it helps us to send a message to our electorate. That notwithstanding, this Bill is very timely.

Hon. Temporary Deputy Speaker, I have another very practical example, if you will allow me. We wanted to expand the Kitale Airstrip because of the unfortunate case where nine lives were lost. The airstrip is not very good. It only handles small planes which are not pressurised. Therefore, we wanted to expand the airstrip because of the huge volume of traffic from the North Rift, particularly Kitale. I took part in the negotiations of the expansion of the airstrip.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Kwanza, Hon. Wanyonyi Kevin, let us prosecute the procedure in Standing Order No.35, which Hon. Mishi raised, on the issue of Quorum. Since it was raised when you were on your feet, I want to attend to it.

Hon. Mishi, do you want to confirm your Standing Order?

**Hon. Mishi Mboko** (Likoni, ODM): Yes, Hon. Temporary Deputy Speaker. I confirm that it is Standing Order No.35.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, the Hon. Member for Likoni is in order to rise on Standing Order No.35 seeking adjournment because of lack of Quorum. Given the interest in the matter, I order that the bell be rung. Hon. Member for Kwanza, you will have your six minutes in the next sitting.

Order, Members! You cannot leave the Chamber. You are not the Whip. Let the Whips do their work.

*(The Quorum Bell was rung)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I order the Quorum Bell to be stopped. Hon. Members, Hon. Mboko rose under the Standing Order No.35 for lack of Quorum. Pursuant to the same Standing Order No.32 (2)(a), I adjourn the House. Hon. Member, you will have your six minutes to debate on the same.

Hon. Members, the time being 6.26 p.m., this House stands adjourned until Wednesday, 25<sup>th</sup> July 2018 at 9.30 a.m. I thank you all.

The House rose at 6.26 p.m.