

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 223 (Senate Bills No. 36)*

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**SENATE BILLS, 2020**

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**NAIROBI, 4th December, 2020**

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CONTENT

Bill for Introduction into the Senate—

PAGE

The National Flag, Emblems and Names (Amendment) Bill, 2020. .... 885



**THE NATIONAL FLAG, EMBLEMS AND NAMES  
(AMENDMENT) BILL, 2020**

**A Bill for**

**AN ACT of Parliament to amend the National Flag,  
Emblems and Names Act and for connected  
purposes**

**ENACTED** by the Parliament of Kenya, as follows —

**1.** This Act may be cited as the National Flag, Emblems and Names (Amendment) Act, 2020. Short title.

**2.** The National Flag, Emblems and Names Act is amended by inserting the following new section immediately after section 3— Insertion of new section 3A in Cap. 99.

Copyright in the National Anthem. **3A.** Copyright in the National Anthem, other national symbols and any works or music relating to the National Anthem or national symbols and eligible for copyright shall vest in the Government.

**3.** Section 25 of the Copyright Act is amended by inserting the following new subsection immediately after subsection 4 — Amendment of section 25 of No. 12 of 2001.

Cap. 99. (5) Notwithstanding the provisions of this Act, copyright in the National Anthem and other national symbols shall be subject to the National Flags, Emblems and Names Act.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to amend the National Flag, Emblems and Names Act, Cap. 99 Laws of Kenya to ensure that the National Anthem is safeguarded.

The National Flag, Emblems and Names Act, Cap. 99 Laws of Kenya was enacted in 1963 to among others, prevent the improper use of the National Flag and of certain emblems, names, words and likenesses for professional and commercial purposes and to prohibit the display of certain flags. On the other hand, the Copyright Act, No. 12 of 2001 makes provision for copyright in literary, musical and artistic works, audio-visual works, sound recordings, broadcasts.

Section 25 of the Copyright Act, 2001 provides copyright in works of Government and international bodies. Section 25 (2) provides that copyright conferred on a literary, musical, dramatic or artistic work of the Government and international bodies shall subsist until the end of the expiration of fifty years from the end of the year in which it was first published.

The Bill therefore seeks to amend the National Flag, Emblems and Names Act, Cap. 99 Laws of Kenya and the Copyright Act, 2001 so as to safeguard the National Anthem from abuse upon the expiry of fifty years. The Bill seeks to ensure that the National Anthem's copyright is vested in the Government.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

### **Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 110 (1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Constitution. The National Anthem is a symbol of national unity and a unifying factor at the national and county levels of government and it would hence be in the interest of both levels of government to protect this symbol.

The Bill is therefore a Bill concerning county governments in terms of Article 110 (1) (a) of the Constitution.

**Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 17th November, 2020.

AGNES ZANI,  
*Senator.*

*Section 25 of No. 12 of 2001 which it is proposed to amend—*

**Copyright in works of Government and international bodies**

**25.** (1) Copyright is conferred under this section on any work eligible for copyright which has been created pursuant to a commission from the Government or such international body or non-governmental body as may be prescribed, and on which no copyright has been conferred under section 23(1) or 24(1).

(2) Copyright conferred by this section on a literary, musical, dramatic or artistic work, shall subsist until the end of the expiration of fifty years from the end of the year in which it was first published.

(3) Copyright conferred by this section on any audio-visual work, photograph, sound recording or broadcast shall have the same duration as is provided for by section 23 in relation to a similar work.

(4) Sections 23 and 24 shall not confer copyright on works to which this section applies.