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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

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

 THE NATIONAL ASSEMBLY PAPER 1 AND	
DATE: 11 APR 2023	DAY: TUESDAY
TABLED BY:	HON. GEORGE MURUGARA MR. CHAIRPERSON, JLAC
CLERK AT THE TABLE:	RUTHER NGINJO

Published by:-

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

March, 2023

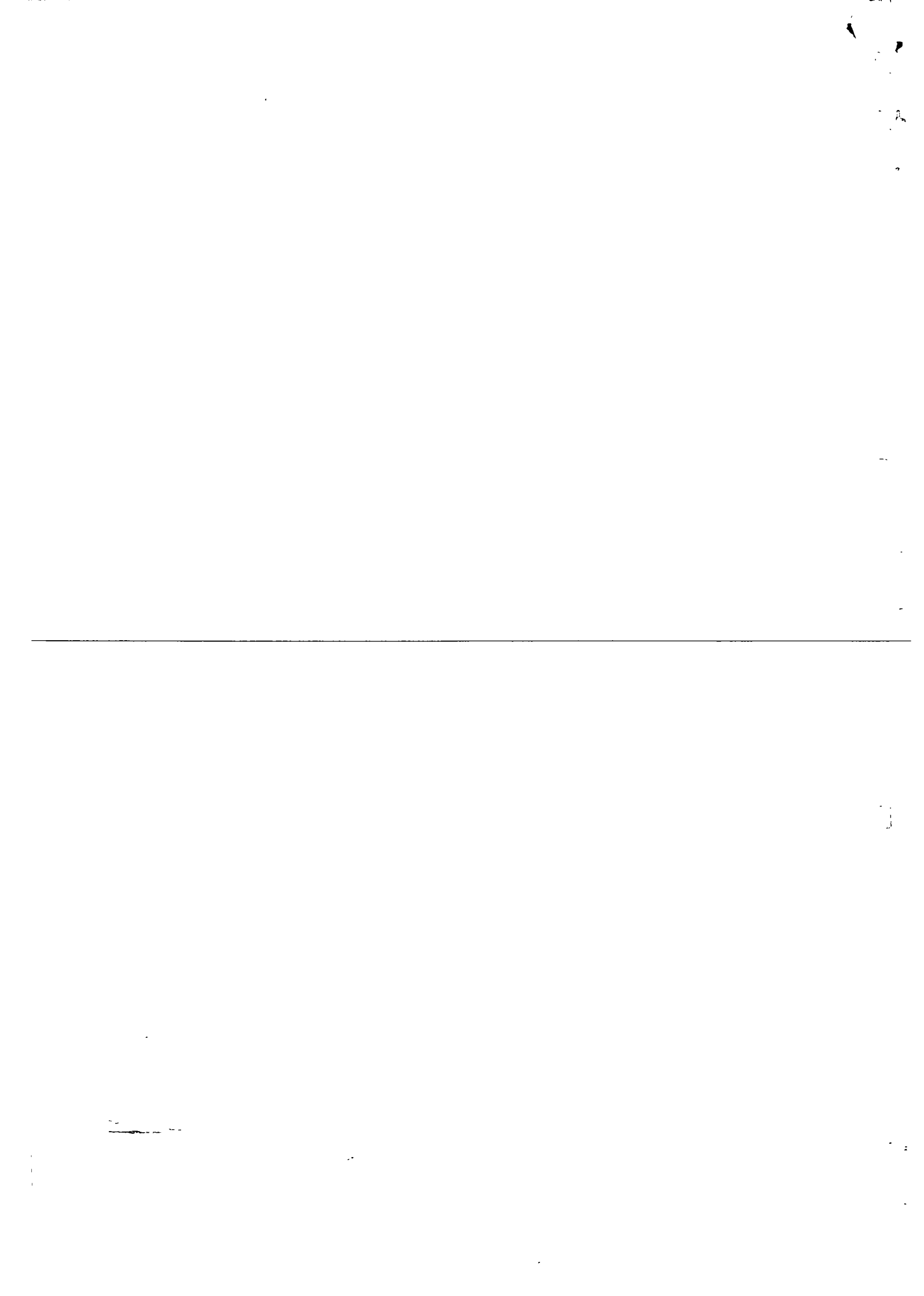


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PART I

1 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Sports and Culture is one of the twenty (20) Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
 - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - iii. On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
 - iv. **To study and review all the legislation referred to it;**
 - v. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - vi. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - vii. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
 - viii. To examine treaties, agreements and conventions;
 - ix. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - x. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - xi. To examine any questions raised by Members on a matter within its mandate.

1.2 Oversight

2. In line with the assigned subject matter, and in executing this mandate, the Committee oversees the following Ministries, Departments and Agencies (MDAs):
3. The State Department for Sports and Arts and its Autonomous and Semi-Autonomous Government Agencies which include;
 - i. Sports Kenya (Kenya Sports Authority Act, 2012)
 - ii. Kenya Anti-Doping Agency Sports Kenya (Sports Act, No. 25 of 2013)
 - iii. Sports Arts and Social Development Fund (PFM Act)
 - iv. Kenya Academy of Sports
 - v. Registrar of Sports
 - vi. Kenya Film Classification Board (Cap. 222)
 - vii. Kenya Film Commission (Legal Notice No. 10 of 2005)
 - viii. Kenya Copyrights Board (Kenya Copyright Act, 2001)
 - ix. Kenya National Library Services Board (Kenya National Library Services Act, Cap. 225)
 - x. Kenya Cultural Centre (Kenya Cultural Centre Act, Cap. 218)
 - xi. Kenya National Theatre

xii. Permanent Presidential Music Commission

4. The State Department for Culture and Heritage and its Autonomous and Semi-Autonomous Government Agencies which include;
- i. The National Heroes Council;
 - ii. Kenya National Archives and Documentation Service (Cap 19);
 - iii. National Museums of Kenya (Museums and Heritage Act, 2006)
 - iv. Bomas of Kenya;
 - v. Kenya National Commission for Culture and Social Services;
 - vi. Ushanga Kenya Initiative;

CHAIRPERSON'S FOREWORD

5. The Statute Law (Miscellaneous Amendment) Bill, 2022 (National Assembly Bill No. 60) was read a first time on 8th December, 2022 and was subsequently committed to respective Departmental Committees for consideration and facilitation of public participation pursuant to Standing Order 127. The Bill seeks to, among other Statutes; amend the National Museums and Heritage Act, No. 6 of 2006 and the Copyright Act, Cap. 130.
6. The Clerk of the National Assembly placed advertisements in the print media on 16th December, 2022 seeking comments from the public on the Bill pursuant to Article 118 of the Constitution. The Committee received written memoranda from five (5) stakeholders.
7. The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee, Committee Secretariat and all those who responded to the National Assembly's advertisement inviting the public to present their views on the Bill.
8. On behalf of the Committee and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Statute Law (Miscellaneous Amendment) Bill, 2022.

HON. DANIEL SITATI WANYAMA, M.P.

CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE

1.3 Committee Composition

7. The Departmental Committee on Sports and Culture was constituted by the House on 27th October, 2022 and comprises of the following members:

Chairperson

Hon. Daniel Wanyama Sitati, MP
Webuye West Constituency

UDA Party

Vice-Chairperson

Hon. James Githua Wamacukuru, MP
Kabete Constituency

UDA Party

Members

Hon. Naomi Jillo Waqo, MP
Marsabit County

UDA Party

Hon. Mary Emaase Otucho, M.P
Teso South Constituency

UDA Party

Hon. Stephen Mutinda Mule, MP
Matungulu Constituency

WDM-K Party

Hon. Chege Njuguna, MP
Kandara Constituency

UDA Party

Hon. Catherine Nakhabi Omanyo MP
Busia County

ODM Party

Hon. Paul Ekwom Nabuin, MP
Turkana North Constituency

ODM Party

Hon. BSP. (EM) Dr. Jackson Kipkemoi Kosgei, MP
Nominated

UDA Party

Hon. Samuel Gonzi Rai, MP
Kinango Constituency

PAA Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency

WDM –K Party

Hon. Janet Jepkemboi Sitienei, MP
Turbo Constituency

UDA Party

Hon. Richard Kipkemoi Yegon, MP
Bomet East Constituency

UDA Party

Hon. Caroli Omondi
Suba South Constituency

ODM Party

Hon. Robert Ngui Basil, MP
Yatta Constituency

WDM-K Party

1.4 Committee Secretariat

8. The Committee has the following technical staff, representing the Office of the Clerk:

Mr. John Mugoma
Clerk Assistant II/Head of Secretariat

Ms. Mary Kinyunye
Clerk Assistant III

Mr. Vitus Owino
Research Officer II

Ms. Christine Odhiambo
Senior Legal Counsel

Mr. Wilson Mwangi
Fiscal Analyst III

Mr. Eugene Luteshi
Audio Officer III

Mr. Luka Mutua
Serjeant-At-Arms I

Mr. Calvin Njoroge
Media Relations Officer III

Ms. Nancy Chepkemai
Legal Counsel II

2.0 CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022

2.1 Background Information

9. The Statute Law (Miscellaneous Amendment) Bill, 2022 seeks to among other statutes, amend the National Museums and Heritage Act, No. 6 of 2006 and the Copyright Act, Cap. 130.

2.2 Summary of the Bill

10. The Bill seeks to amend the National Museums and Heritage Act, No. 6 of 2006 to align the Act with Article 157(9) of the Constitution which provides that the powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions.
11. The Bill also seeks to amend various sections of the Copyright Act, Cap. 130 to among others—
 - (a) provide for the process of registration, licensing and approval of a collective management organization;
 - (b) provide for the power of a licensed collective management organization to appoint an agency to collect and distribute royalties;
 - (c) provide for the power of a collective management organization to open bank accounts to be authorized and monitored by the Kenya Copyright Board;
 - (d) extend the validity period for a registration certificate issued to a collective management organization, from twelve months to thirty six months; and
 - (e) provide for the equitable remuneration of performers and copyright holders.

2.3 Public Participation in the Review of the Bill

12. Article 118 (1) (b) of the Constitution of Kenya provides as follows—

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

Standing Order 127(3) provides as follows—

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

13. In line with the Constitution and Standing Orders, the National Assembly in the local daily newspapers of 16th December, 2022 invited the public to make representations on the proposed amendments in the Bill as per annexure 2 of the report. The Committee received written submissions on the proposed amendments to the National Museums and Heritage Act, No. 6 of 2006 and the Copyright Act, Cap, 130
14. The following Stakeholders were requested to submit their views to the Committee and they submitted their memoranda for consideration to the Committee—
 - a) State Department for Sports and the Arts
 - b) State Department for Culture and Heritage

- c) The Office of the Attorney General
- d) The Office of Director of Public Prosecutions
- e) The Kenya Law Reform Commission
- f) The Music Copyright Society of Kenya
- g) The Kenya Association of Music Producers

3.0 SUBMISSIONS FROM STAKEHOLDERS

3.1 The National Museums and Heritage Act, No. 6 of 2006

15. In their written submissions—

- a. the State Department for Culture and Heritage stated that they were in concurrence with the proposed amendment;
- b. the Office of the Director of Public Prosecutions stated that they were in concurrence with the proposed amendment; and
- c. the Kenya Law Reform Commission stated that they were in concurrence with the proposed amendment.

3.2 The Copyright Act, Cap. 130

16. In their written submissions, the Music Copyright Society of Kenya submitted that there was need for a deletion of the proposed amendments for the following reasons—

- a. the creation of a single collective management organization disenfranchises the guaranteed rights of the copyright owners;
- b. there was lack of adequate public participation in the formulation of the proposed amendments;
- c. the introduction of licence fees as payment for the use or exploitation of rights is legally and grammatically wrong; and
- d. the constitutionality of section 46 is still pending before the Court of Appeal at Nairobi, Civil Appeal No. E888 of 2022; MCSK vs. KECOBO & Others.

17. In their written submissions, the Kenya Association of Music Producers submitted that there was need for a deletion of the proposed amendments for the following reasons—

- a. the collective management organizations would no longer collect royalties but will be obligated to cede the responsibility to third parties;
- b. there was lack of extensive stakeholder engagement and public participation;
- c. copyright is an exclusive right which is supreme to equitable remuneration, and the amendments would be prejudicial to copyright owners;
- d. the proposed amendments portend to gloom the industry;
- e. the amendments would lead to bureaucracy in the registration and licensing of collective management organizations; and
- f. the proposed amendments would result in the usurpation of the role of collective management organizations in regards to the collection and distribution of royalties.

18. In their written submissions, the Kenya Law Reform Commission submitted that—

- a. there was need to redraft the proposed amendments to eliminate the possibility of vagueness and ambiguity in interpretation;
- b. there was need to specify the rights and obligations of all parties to ensure that all relevant creators are fairly compensated for the use of their works;
- c. the actual percentages to be paid to performers and producers should not be contained in parent legislation but should be prescribed in subsidiary legislation; and
- d. the requirement of the issuance of registration certificates and operating licenses would lead to bureaucracy.

19. The Office of the Director of Public Prosecutions stated that the proposed amendments to sections 2, 30AA, 30B, 46, 46A, 46B, 46C and 46E were not within the mandate of the Office of the Director of Public Prosecutions.
20. The Office of the Attorney-General stated that they had sought the policy guidance of the Ministry of Tourism, Wildlife and Heritage, and would share guidance when received.

3.3 Additional submissions from stakeholders

The Committee invited the Kenya Copyright Board and the Music Copyright Society of Kenya for a public hearing on the Bill, on Friday 3rd March, 2023.

21. The Kenya Copyright Board made its oral submissions before the Committee and stated that after extensive consultation with the Cabinet Secretary, the Kenya Copyright Board had made the decision to withdraw all the proposed amendments to the Copyright Act, Cap. 130 as contained in the Bill. They stated that the withdrawal was necessary to pave way for a comprehensive overhaul of the Copyright Act, after engagement with all relevant stakeholders. To this end, they stated that there was need to repeal the current Act and enact new legislation that would take into account emerging issues like the use of technology in matters of copyright.

4.0 COMMITTEE OBSERVATIONS

The Committee in considering the Bill made the following key observations—

- 1) While the Committee agrees with the proposed amendment to the National Museums and Heritage Act, No. 6 of 2006, there is need to redraft the subsection for clarity purposes, so that it expressly provides that the Director of Public Prosecutions shall have the power to appoint persons as prosecutors;
- 2) The proposed amendments to the Copyright Act, Cap. 130 if passed would result in implementation challenges and ambiguity in regards to the aspect of remuneration of copyright;
- 3) There is need to engage all the relevant stakeholders in the process of amending the legislation that would have an impact on their operations;
- 4) The Kenya Copyright Board, after consultation with the Ministry, made the decision to withdraw the proposed amendments to the Copyright Act, Cap. 130 to allow for the process of a comprehensive overhaul of the Act.

5.0 COMMITTEE RECOMMENDATIONS

Having considered the Bill and the views by the stakeholders, the Committee recommends—

- 1) THAT, the proposed amendment to the National Museums and Heritage Act, No. 6 of 2006 as contained in the Statute Law (Miscellaneous Amendment) Bill, 2022 be redrafted to expressly provide that the Director of Public Prosecutions shall appoint the heritage wardens as prosecutors.

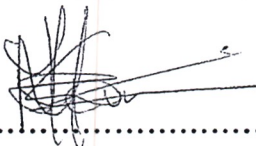
Justification

The amendment is necessary for clarity purposes, so as to align the Act with Article 157(9) of the Constitution which gives the Director of Public Prosecutions the power to instruct persons to act as prosecutors. Further, the amendment will align the subsection with section 29(1) of the Office of the Director of Public Prosecutions Act, No. 2 of 2013 which provides that the Director may appoint any qualified person to prosecute on his or her behalf.

- 2) THAT, the proposed amendments to the Copyright Act, Cap. 130 be deleted from the Statute Law (Miscellaneous Amendment) Bill, 2022.

Justification

The deletion of the proposed amendments to the Copyright Act, Cap. 130 is necessary to allow for a comprehensive overhaul of the Act after consulting all relevant stakeholders. The overhaul of the Act is necessary so as to include emerging issues like the importance of technology in copyright matters.

SIGNED.......... DATE.....*9th March 2023*.....

HON. DANIEL SITATI WANYAMA, M.P.

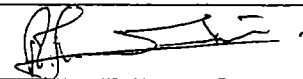

CHAIRPERSON, THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE



THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION - 2023
DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE
REPORT ADOPTION SCHEDULE

DATE..... 14 Nov 2023 VENUE..... BORDA - NH.....

No	HON. MEMBER	SIGNATURE
1.	The Hon. Daniel Wanyama Sitati, M.P. – Chairperson	
2.	The Hon. James Githua Wamacukuru, M.P. – Vice Chairperson	
3.	The Hon. Naomi Jillo Waqo, M.P.	
4.	The Hon. Mary Emaase Otucho, M.P.	
5.	The Hon. Janet Jepkemboi Sitienei, M.P.	
6.	The Hon. Samuel Gonzi Rai, M.P.	
7.	The Hon. Stephen Mutinda Mule, M.P.	
8.	The Hon. Charles Ngusya Nguna, M.P.	
9.	The Hon. Catherine Nakhabi Omanyo, M.P.	
10.	The Hon. Caroli Omondi, M.P.	
11.	The Hon. Chege Njuguna, M.P.	
12.	The Hon. Paul Ekwom Nabuin, M.P.	

No	HON. MEMBER	SIGNATURE
13.	The Hon. Richard Kipkemoi Yegon, M.P.	
14.	The Hon. Robert Ngui Basil, M.P.	
15.	The Hon. BSP. (EM) Dr. Jackson Kipkemoi Kosgei, M.P.	

MINUTES OF THE 12TH SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE HELD ON FRIDAY 4TH MARCH 2023 AT 10:30 AM IN THE AMANI CONFERENCE ROOM, BOMA INN HOTEL, NAIROBI

PRESENT

1. The Hon. Daniel Wanyama Siatati, M.P -Chairperson
2. The Hon. Githua Wamacukuru, M.P. – Vice Chairperson
3. The Hon. Stephen Mule Mutinda, M.P
4. The Hon. Charles Nguna Ngusya, M.P.
5. The Hon. Janet Sitienei Jepkemboi, M.P.
6. The Hon. Samuel Rai Gonzi, M.P.
7. The Hon. Caroli Omondi, M.P
8. The Hon. Catherine Omanyo Nakhabi, M.P.
9. The Hon. Chege Njuguna, M.P.
10. The Hon. Paul Nabuin Ekwom, M.P.
11. The Hon. Robert Basil Ngui, M.P
12. The Hon. Richard Yegon Kipkemoi, M.P.
13. The Hon. BSP.(EM) Dr. Jackson Kipemoi Kosgei, M.P

APOLOGY

1. The Hon. Naomi Jillo Waqo, M.P.
2. The Hon. Mary Otucho Emaase, M.P.

IN-ATTENDANCE

Committee Secretariat

1. Mr. John Mugoma - Clerk Assistant II
2. Ms. Mary Kinyunye - Clerk Assistant III
3. Ms. Christine Odhiambo - Senior Legal Counsel
4. Mr. Vitus .O. Owino - Research Officer II
5. Mr. Wilson Mwangi - Fiscal Analyst III
6. Mr. Eugene Luteshi - Audio Officer
7. Ms. Santana Lekorere - Legal Pupil

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Adoption of the Agenda;
 - ii. Confirmation of Minutes of the previous Sittings
 - iii. Matters Arising.
3. Consideration and Adoption of a Report on the Statute Law (Miscellaneous Amendment) Bill, 2022:
4. Any Other Business; and
5. Adjournment.

MIN.NO. DC/SC/2023/054: PRAYER AND PRELIMINARIES

The meeting commenced at 10.30 a.m. with the Prayer followed welcoming remarks from the Chairperson.

The Chairperson then informed the Committee that the main agenda of the meeting was to consider and adopt the report on the Draft Report on BPS and the Statute Law (Miscellaneous Amendment) Bill, 2022

MIN.NO. DC/SC/2023/055: ADOPTION OF THE AGENDA

The Agenda was adopted without amendments, having been proposed and seconded by the Hon. Charles Nguna Ngusya, M.P. and the Hon. Janet Sitienei Jepkemboi, M.P. respectively.

MIN.NO. DC/SC/2023/056: CONFIRMATION MINUTES OF THE PREVIOUS OF SITTING

Confirmation of the Minutes of the previous sitting was deferred to the next sitting.

MIN.NO. DC/SC/2023/057: CONSIDERATION AND ADOPTION OF A REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022

The Committee considered and adopted the report on the Statute Law (Miscellaneous Amendment) Bill, 2022 and made the following observations and recommendations having been **proposed by the The Hon. Caroli Omondi, M.P. and Seconded by the Hon. Stephen Mule, M.P.:-**

COMMITTEE OBSERVATIONS

The Committee in considering the Bill made the following key observations—

- 1) That there is need to redraft the subsection of the proposed amendment to the National Museums and Heritage Act, No. 6 of 2006 for clarity purposes, so that it expressly provides that the Director of Public Prosecutions shall have the power to appoint persons as prosecutors;
- 2) That the proposed amendments to the Copyright Act, Cap. 130 if passed would result in implementation challenges and ambiguity in regards to the aspect of remuneration of copyright;
- 3) That there is need to engage all the relevant stakeholders in the process of amending the legislation that would have an impact on their operations;
- 4) That the Kenya Copyright Board, after consultation with the Ministry, made the decision to withdraw the proposed amendments to the Copyright Act, Cap. 130 to allow for the process of a comprehensive overhaul of the Act.

COMMITTEE RECOMMENDATIONS

Having considered the submissions from the key stakeholders, the committee recommended that:-

1. The proposed amendment to the National Museums and Heritage Act, No. 6 of 2006 as contained in the Statute Law (Miscellaneous Amendment) Bill, 2022 be redrafted to expressly provide that the Director of Public Prosecutions shall appoint the heritage wardens as prosecutors.

Justification: That the amendment is necessary for clarity purposes, so as to align the Act with Article 157(9) of the Constitution which gives the Director of Public Prosecutions the power to instruct persons to act as prosecutors. Further, the amendment will align the subsection with section 29(1) of the Office of the Director of Public Prosecutions Act, No. 2 of 2013 which provides that the Director may appoint any qualified person to prosecute on his or her behalf.

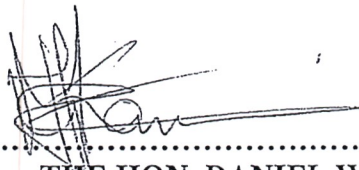
2. The proposed amendments to the Copyright Act, Cap. 130 be deleted from the Statute Law (Miscellaneous Amendment) Bill, 2022.

Justification: That the deletion of the proposed amendments to the Copyright Act, Cap. 130 is necessary to allow for a comprehensive overhaul of the Act after consulting all relevant stakeholders. The overhaul of the Act is necessary to include emerging issues like the importance of technology in copyright matters.

MIN.NO. DC/SC/2023/058: ADJOURNMENT/DATE OF THE NEXT SITTING

There being no other business, the meeting was adjourned 12.30 p.m. until 2.30 p.m., same day, same venue.

SIGNED:



**THE HON. DANIEL WANYAMA SIATATI, M.P.
(CHAIRPERSON)**

DATE:

MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE HELD ON FRIDAY 3RD MARCH 2023 AT 10:00 AM IN AMANI CONFERENCE ROOM, BOMA INN HOTEL, NAIROBI

PRESENT

1. **The Hon. Stephen Mule Mutinda, M.P** - Ag. Chairperson
2. The Hon. Janet Sitienei Jepkemboi, M.P.
3. The Hon. Samuel Rai Gonzi, M.P.
4. The Hon. Charles Ngusya Nguna, M.P.
5. The Hon. Catherine Omanyo Nakhabi, M.P.
6. The Hon. Caroli Omondi, M.P.
7. The Hon. Chege Njuguna, M.P
8. The Hon. Paul Nabuin Ekwom, M.P.
9. The Hon. Richard Yegon Kipkemoi, M.P.
10. The Hon. Robert Ngui Basil, M.P
11. The Hon. BSP.(EM) Dr. Jackson Kipemoi Kosgei, M.P

APOLOGY

1. **The Hon. Daniel Wanyama Siatati, M.P** -Chairperson
2. **The Hon. Githua Wamacukuru, M.P.** -Vice Chairperson
3. The Hon. Naomi Jillo Waqo, M.P.
4. The Hon. Mary Otucho Emaase, M.P.

IN-ATTENDANCE

Committee Secretariat

1. Mr. John Mugoma - Clerk Assistant II
2. Ms. Mary Kinyunye - Clerk Assistant III
3. Mr. Vitus O Owino - Research Officer II
4. Mr. Wilson Mwangi - Fiscal Analyst III
5. Mr. Eugene Luteshi - Audio Officer
6. Ms. Daisy Lekorere - Legal Pupil

The State Department for the Youth Affairs and the Arts

1. Mr. Maurice Okoth - CEO, Kenya Association of Music Producers
2. Mr. Edward Sigei - Executive Director (KECOBO)
3. Mr. Nyakweba Morara - Deputy Executive Director (KECOBO)
4. Mr. Richard Sereti - Ag. Operations Manager MCSK
5. Mr. Felix Khagali - Music Copyright Society of Kenya

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Introductions;
 - ii. Adoption of the Agenda;
 - iii. Communication from the Chairperson;
 - iv. Confirmation of Minutes of the Previous Sitting;
 - v. Matters Arising

3. Meeting with the Ministry of Youth Affairs, Sports and the Arts, Music Copyright Society of Kenya and Kenya Association of Music Producers regarding the Statute Law (Miscellaneous Amendment) Bill, 2022;
4. Any Other Business; and
5. Adjournment.

MIN.NO. DC/SC/2023/050: PRAYER AND PRELIMINARIES

The meeting commenced at 10.05 a.m. with the Prayer followed by introductions and welcoming remarks.

Pursuant to the provisions of the Standing Orders 188, the Hon. Members present nominate the Hon. Stephen Mule Mutinda, M.P as the Session Chairperson.

The Ag. Chairperson then informed the Committee that the main agenda of the meeting was to deliberate on the amendments to the Statute Law (Miscellaneous Amendment) Bill, 2022 with the key stakeholders and thereafter submit a report to Justice and Legal Affairs Committee for compilation.

MIN.NO. DC/SC/2023/051: ADOPTION OF THE AGENDA

The Agenda was adopted without amendments, having been proposed and seconded by the The Hon. Stephen Mule Mutinda, M.P. and the The Hon. Charles Ngusya Nguna, M.P respectively.

MIN.NO. DC/SC/2023/052: SUBMISSIONS BY STAKEHOLDERS

I. KENYA COPYRIGHT BOARD

Mr. Edward Sigei, the Executive Director for Kenya Copyright Board appeared before the Committee on 3rd March and submitted that:-

1. That the amendments were done in 2021 and that the amendments have been overtaken by time.
2. After extensive consultation with the Cabinet Secretary, they made a decision to withdraw all the proposed amendments to the Copyright Act, Cap. 130 as contained in the Bill.
3. That the withdrawal was necessary to pave way for a comprehensive overhaul of the Copyright Act, after robust engagement with all relevant stakeholders.
4. There was need to repeal the current Act and enact new legislation that would take into account emerging issues like the use of technology in matters of copyright.

II. SUBMISSIONS BY KENYA ASSOCIATION OF MUSIC PRODUCERS

Mr. Maurice Okoth, the Chief Executive Officer for Kenya Association of Music Producers appeared before the Committee and submitted that:-

1. They were working on new strategies to streamline the association. That some of the strategies include devolving their services to regions to effectively provide services to the artists.
2. That most broadcasting station are not paying royalties hence crippling the activities of the association.
3. That the biggest challenge they are facing is compliance by the stakeholders hence making them unable to to achieve the 70% distribution of royalties to the artists.

4. The association is working closely with KECOBO who are mandatory signatory to monitor the expenditures so as to guard against the wastage.

WAY FORWARD

Having received a letter from the Kenya Copyright Board and considered their oral submissions withdrawing the amendments to the Kenya Copyright Act, Cap 130, the Committee resolved that the proposed amendments to the Copyright Act, Cap. 130 be deleted from the Statute Law (Miscellaneous Amendment) Bill, 2022.

MIN.NO. DC/SC/2023/053: ADJOURNMENT/DATE OF THE NEXT SITTING

There being no other business, the meeting was adjourned at 12.30 p.m. until Saturday, 4th March 2023 at 10.30 a.m., same venue.



SIGNED:

THE HON. DANIEL WANYAMA SIATATI, M.P.
(CHAIRPERSON)

DATE:

MINUTES OF THE 7TH SITTING OF THE DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE HELD ON THURSDAY 23RD FEBRUARY 2023 AT 11:15 AM IN THE HIBISCUS CONFERENCE ROOM, PANARI HOTEL, NAIROBI

PRESENT

1. **The Hon. Daniel Wanyama Siatati, M.P -Chairperson**
2. The Hon. Rai Samuel Gonzi, M.P.
3. The Hon. Mule Stephen Mutinda, M.P
4. The Hon. Nguna Charles Ngusya, M.P.
5. The Hon. Otucho Mary Emaase, M.P.
6. The Hon. Omanyo Catherine Nakhabi, M.P.
7. The Hon. Caroli Omondi, M.P.
8. The Hon. BSP.(EM) Dr. Jackson Kipemoi Kosgei, M.P

APOLOGY

1. **The Hon. Githua Wamacukuru, M.P. -Vice Chairperson**
2. The Hon. Naomi Jillo Waqo, M.P.
3. The Hon. Chumel Samwel Moroto, M.P.
4. The Hon. Sitienei Janet Jepkemboi, M.P.
5. The Hon. Yegon Richard Kipkemoi, M.P.
6. The Hon. Nabuin Paul Ekwom, M.P.
7. The Hon. Basil Robert Ngui, M.P.

IN-ATTENDANCE

Committee Secretariat

- | | | |
|---------------------------|---|----------------------|
| 1. Mr. John Mugoma | - | Clerk Assistant II |
| 2. Ms. Mary Kinyunye | - | Clerk Assistant III |
| 3. Ms. Christine Odhiambo | - | Senior Legal Counsel |
| 4. Mr. Eugene Luteshi | - | Audio Officer |
| 5. Ms. Daisy Lekorere | - | Legal Pupil |

AGENDA

1. Prayers;
2. Preliminaries;
 - i. Adoption of the Agenda;
 - ii. Communication from the Chairperson;
3. **Consideration of the Statute Law (Miscellaneous Amendments) Bill, – No. 60 of 2022**
4. Any Other Business; and
5. Adjournment.

MIN.NO. DC/SC/2023/30: PRAYER AND PRELIMINARIES

The meeting commenced at 11.15 a.m. with the Prayer followed welcoming remarks from the Chairperson.

The Chairperson then informed the Committee that the main agenda of the meeting was to get a brief from the Legal Counsel regarding the Statute Law (Miscellaneous Amendment) Bill, 2022.

MIN.NO. DC/SC/2023/031: ADOPTION OF THE AGENDA

The Agenda was adopted without amendments, having been proposed and seconded by the Hon. Stephen Mule Mutinda, M.P. and the Hon. BSP. (EM) Dr. Jackson Kipemoi Kosgei, M.P. respectively.

MIN.NO. DC/SC/2023/032: CONSIDERATION OF STATUTE LAW(MISCELLANEOUS AMENDMENTS) BILL, 2022- NO. 60 OF 2022.

The Legal Counsel briefed the Committee on Bill highlighting the following key areas:-

1. That the Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to amend two Acts under the purview of the Committee:
 - i. The National Museums and Heritage Act, No. 6 of 2006; and
 - ii. The Copyright Act, Cap. 130

2. The National Museums and Heritage Act, No. 6 of 2006

That the Bill seeks to amend the Section 57(2) of the Act to align it with Article 157(9) of the Constitution which provides that the powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

3. The Copyright Act, Cap. 130

That the Bill seeks to amend various Sections of the Copyright Act, Cap. 130 to among others;

- i. Provide for the process of registration, licensing and approval of a collective management organization;
- ii. Extend the validity period for a registration certificate issued to a collective management organization, from twelve months to thirty six months and
- iii. Provide for the equitable remuneration of performers and copyright holders.

4. Stakeholders Submissions

The Committee was taken through the submissions from the following stakeholders:-

- a) State Department for Sports and the Arts
- b) State Department for Culture and Heritage
- c) The Office of the Attorney General
- d) The Office of Director of Public Prosecutions
- e) The Kenya Law Reform Commission
- f) The Kenya Association of Music Producers

5. Submissions on the National Museums and Heritage Act, No. 6 of 2006

That the following Stakeholders were in concurrence with the proposed amendments;

- a. the State Department for Culture and Heritage;
- b. the Office of the Director of Public Prosecutions; and
- c. the Kenya Law Reform Commission

6. Submissions on the Copyright Act, Cap. 130

- i. That the Music Copyright Society of Kenya submitted that there was need for a deletion of the proposed amendments for the following reasons—
 - a) The creation of a single collective management organization disenfranchises the guaranteed rights of the copyright owners;
 - b) There was lack of adequate public participation in the formulation of the proposed amendments;
 - c) The introduction of licence fees as payment for the use or exploitation of rights is legally and grammatically wrong; and
 - d) The constitutionality of section 46 is still pending before the Court of Appeal at Nairobi, Civil Appeal No. E888 of 2022; MCSK vs. KECOBO & Others.

- ii. That the Kenya Association of Music Producers submitted that there was need for a deletion of the proposed amendments for the following reasons—
 - a) The collective management organizations would no longer collect royalties but will be obligated to cede the responsibility to third parties;
 - b) There was lack of extensive stakeholder engagement and public participation;
 - c) Copyright is an exclusive right which is supreme to equitable remuneration, and the amendments would be prejudicial to copyright owners;
 - d) The proposed amendments portend to gloom the industry;
 - e) The amendments would lead to bureaucracy in the registration and licensing of collective management organizations; and
 - f) The proposed amendments would result in the usurpation of the role of collective management organizations in regards to the collection and distribution of royalties.

- iii. That the Kenya Law Reform Commission submitted that—
 - a. There was need to redraft the proposed amendments to eliminate the possibility of vagueness and ambiguity in interpretation;
 - b. There was need to specify the rights and obligations of all parties to ensure that all relevant creators are fairly compensated for the use of their works;
 - c. The actual percentages to be paid to performers and producers should not be contained in parent legislation but should be prescribed in subsidiary legislation; and
 - d. The requirement of the issuance of registration certificates and operating licenses would lead to bureaucracy.

- iv. That the Office of the Director of Public Prosecutions stated that the proposed amendments to sections 2, 30AA, 30B, 46, 46A, 46B, 46C and 46E were not within the mandate of the Office of the Director of Public Prosecutions.

- v. That the Office of the Attorney-General stated that they had sought the policy guidance of the Ministry of Tourism, Wildlife and Heritage, and would share guidance when received.

Committee Observations

The Committee observed that the proposed amendments to the Copyright Act, Cap. 130 if passed would result in implementation challenges and ambiguity in regards to the aspect of remuneration of copyright and that there is need to engage all the relevant stakeholders in the process of amending the legislation that would have an impact on their operations.

Way Forward

The Committee therefore resolved to invite to a meeting the following stakeholders to extensively deliberate on the proposed amendments to the **Copyright Act, Cap. 130**;- the State Department for Youth Affairs and the Arts, the Kenya Association of Music Producers and Music Copyright Society of Kenya.

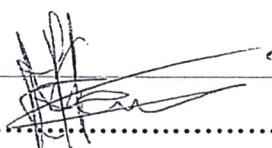
MIN.NO. DC/SC/2023/033: ANY OTHER BUSINESS

No Any Other Business Arose

MIN.NO. DC/SC/2023/034: ADJOURNMENT/DATE OF THE NEXT SITTING

There being no other business, the meeting was adjourned at 12.20 p.m. The date of the next meeting will be communicated by notice.

SIGNED:



**THE HON. DANIEL WANYAMA SIATATI, M.P.
(CHAIRPERSON)**

DATE:



REPUBLIC OF KENYA



MINISTRY OF TOURISM, WILDLIFE AND HERITAGE
STATE DEPARTMENT FOR CULTURE AND HERITAGE
Office of the Principal Secretary

Tel: +254-020-2251164/005, 2250576

Fax: +254-020-316187

Website: www.nationalheritage.go.ke

Email: info@nationalheritage.go.ke

When replying please quote:

REF: SDCH 9/9 Vol. I

KNLS Building,
P.O. Box 49849-00100
Nairobi, Kenya

Jeremiah Ndombi, MBS
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

John Mwangi 11th January 2023
pls facilitate
2/3/23

RE: DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022

Reference is made to your letter Ref. No.NA/DCC/SC/2022/009 dated 21st December 2023.

The Ministry is in concurrence with the proposed amendments to the National Museums and Heritage Act. No.6 of 2006 *vide* The Statute Law (Miscellaneous Amendment) Bill, 2022 in so far as it seeks to harmonise the provisions of National Museums and Heritage Act with the functions of the Director of Public Prosecutions under Article 157(2) of the Constitution.

Ummi Mohamed Bashir, (Ms.)
PRINCIPAL SECRETARY

DD c-14
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02/03

Copy to: **Cabinet Secretary**
Ministry of Tourism, Wildlife and Heritage
Nairobi

The Attorney General
Office of the Attorney General & Department of Justice
Nairobi - Attn: **Samson Davies Maundu**

NATIONAL ASSEMBLY
RECEIVED
02 JAN 2023
DEPUTY CLERK



Music Copyright Society of Kenya Limited

NON-PROFITMAKING-NO SHARE CAPITAL-LIMITED BY GUARANTEE-AFFILIATED TO THE INTERNATIONAL CONFEDERATION COPYRIGHT SOCIETY - CISAC

HEAD OFFICE

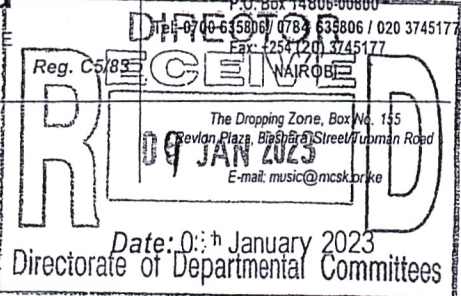
Slip Road, Off Waiyaki Way, Westlands

P.O. BOX 14806-00800

TEL: 0700-645806 / 0784-638806 / 020 3745177

Fax: 254 20 3745177

Reg. C5/83



DLPS
Please deal
09/01/23

Our Ref: MCSK/CEO/NA/2

Your Ref: TBA

CLERK OF THE NATIONAL ASSEMBLY,
PARLIAMENT BUILDINGS,
P.O. BOX 41842-00100,
NAIROBI.
CULTURE

Attn: DEPARTMENTAL COMMITTEE ON SPORTS AND

Dear Mr. Samuel Njoroge,

Mr Mugoma
Please deal
2/1/23

RE: MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENT) BILL, 2022 - AMENDMENTS TO THE COPYRIGHT ACT, 2001.

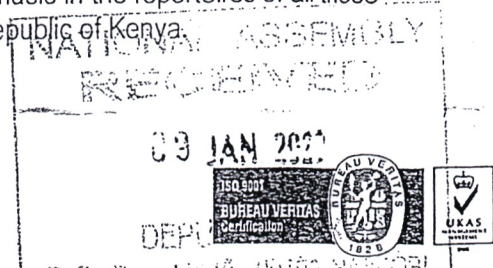
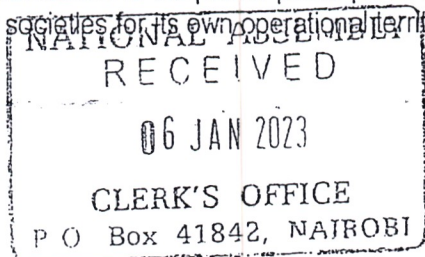
1.0 Introduction

The Music Copyright Society of Kenya (MCSK) is a Collective Management Organization (CMO) as defined under the provisions of the Copyright Act No. 12 of 2002 Laws of Kenya. It is mandated by Right Holders to administer, exercise and enforce the exploitation of performances in public places, broadcasting and communication to the public and mechanical reproduction rights in copyrighted musical works. The rights and mandate of the MCSK are protected under Article 40(5) of the Constitution of Kenya and outlined and articulated in the Copyright Act No. 12 of 2001. The MCSK represents more than 15,000 Kenyan (local) rights holders and by extension over one (1) million foreign right holders.

2.0 History, Registration & Functioning

MCSK was formed by the right holders of Copyrighted Musical Works and registered in 1983 (C. 5/83), as a company limited by guarantee (not for profit) under the Companies Act, Laws of Kenya, and by the provisions of the then Copyright Act CAP 130 Laws of Kenya, as the pioneer CMO with its main mandate as prescribed by law to collect royalties and distribute to its registered rights-holders. With the advent repeal of the Act in 2001, the New Copyright Act No. 12 of 2001 classified the various rights holders into bundles of rights and established the other two copyright related CMOs in the music sector: The Kenya Association of Music Producers (KAMP) and the Performers' Rights Society of Kenya (PRISK) in the category of Producer rights and those of the Performers, respectively. This left MCSK to administer rights associated with the original copyright owners – Authors, Composers, Arrangers and Publishers. The three CMOs were initially collecting and distributing to their respective members separately, until 2019 when the Regulator, Kenya Copyright Board (KECOBO) directed through regulation, for joint collections matrix by the three CMOs.

Through Exclusive Deeds of Assignment, MCSK is mandated to administer and enforce compliance in Kenya, for Kenyan rights holders, for the exploitation of copyrighted musical works in performances in public places (PPP), communication to the public (CTP), broadcast, mechanical reproduction and adaptation. Furthermore, MCSK is affiliated with similar societies all over the world, and through a system of reciprocal Agreements, it authorizes all those societies to administer these rights in the music of Kenyan Authors, Composers and Publishers in their countries. Conversely, MCSK acquired the rights of broadcasting and communication to the public/ public performance in the great store of music in the repertoires of all those other societies for its own operational territory which consists of the Republic of Kenya.



DIRECTORS:

P.O. Box 41842-00100, NAIROBI

REGIONAL OFFICES

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WESTLANDS KENYA
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NAIROBI
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EASTERN KENYA
Bank Bldg
1st Floor, Room 7
OMARIA
020-261-1240

EASTERN KENYA
Building
1st Floor
AKOS
020-261-430-921

Regarding the call for proposals by the Clerk of the National Assembly, published in the national daily on 16th December 2022, MCSK makes the following proposals:

CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION FOR THE PROPOSED AMENDMENT
Section 2	Delete the proposed amendment.	<ol style="list-style-type: none"> 1) The amendment proposes to have one CMO collecting for all Copyright Owners whose rights must be collectively administered without giving clear parameters on how that is going to be actualized and without public participation. The amendment would disenfranchise guaranteed Rights and Fundamental Freedoms protected by the Constitution 2) The only consideration for Copyright Owners to authorise/ license any form of use/exploit of their Intellectual Property being paid Royalties and not License Fees, as per the proposed amendment.
Section 30AA	Delete the proposed amendment.	Due to lack of public participation when initially introduced through a Misc. Amendment to the Copyright Act, Section 30A was declared unconstitutional by the High Court of Kenya at Malindi (Constitutional Petition No. 05 of 2016; Mercy Muneo & Another-Vs-Safaricom Ltd & Others) and was subsequently deleted from the Copyright Act.
Section 30B	Delete the proposed amendment.	Lack of adequate and reasonable Public Participation with all Right Holders and stakeholders in Kenya and Internationally in a constitutionally and administratively fair procedure before the enactment of the proposed amendments.
Sections: - 46(4)d. 46(3). 46(4). 46(13). 46(14) & (15) New Section. 46(A). 46(B)(1A) New Sub Section. 46(B)(5) New Sub Section. 46(B)(6-8) New Sub Sections; 46(C)(1A) New Section. 46(F)(h) New Sub Section. 46(F)(8) New Sub Section.	Delete the proposed amendment.	<ol style="list-style-type: none"> 1) Removes/changes the definition of ROYALTIES as the payment received for the use/exploitation of Rights in copyrighted works and related rights. Introducing LICENSE FEES as a payment for use/exploitation of rights in copyrighted works is legally and grammatically wrong. The proposed changes also disenfranchise the Right Holders of copyrighted works and related rights to make the payment made for the use/exploitation of their copyrighted works and related rights seem like a government levy to be administered at the discretion of the government and not a payment received for authority to use a private Intellectual Property (IP). 2) The Constitutionality of Section 46, 46A-G is pending before the Court of Appeal at Nairobi, Civil Appeal No. E888 of 2022; MCSK-Vs-KECOBO & Others. The proposed further Amendments to this Sections of the Copyright Act, 2001 raises legal issues on the principal of Sub Judice. KECOBO is forum shopping for a favourable legislation that is in its personal exclusive best interest without regard to the negative implications that are detrimental to the economic rights of Right Holders.

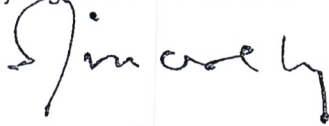
CONCLUSION AND RECOMMENDATION

It should be noted that a Statute Law (Miscellaneous Amendments) Bill, by its very nature should deal with minor changes to the law.

The proposed amendments to the copyright act in The Statute Law (Miscellaneous Amendments) Bill, 2022, (National Assembly Bills No 60) have major implications in the operation of CMOs (MCSK, KAMP, PRISK) as they are currently constituted.

MCSK acknowledges that the proposed amendments to The Copyright Act, 2001 present important reform questions on issues of law. However, the selected and highlighted proposed amendments presented directly take away Rights and Fundamental Freedoms provided and protected by the Constitution of Kenya, 2010.

Yours



Dr. Ezekiel Mutua, MBS.
CHIEF EXECUTIVE OFFICER



DL5
① Please deal
Sci
09/01/23



STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

PRESENTED TO

THE NATIONAL ASSEMBLY
THE THIRTEENTH PARLIAMENT (FIRST SESSION)

SUBMITTED TO

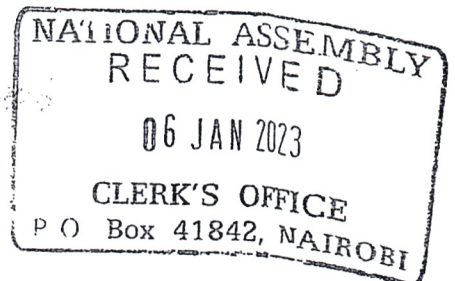
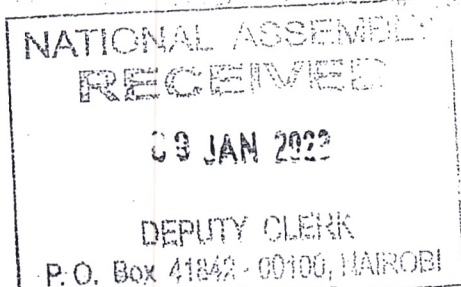
CLERK OF THE NATIONAL ASSEMBLY P.O. BOX 41842-00100, NAIROBI

6TH JANUARY, 2023

IN THE MATTER OF CONSIDERATION BY NATIONAL ASSEMBLY OF THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) BILL; (NATIONAL ASSEMBLY BILL NO. 60
OF 2022

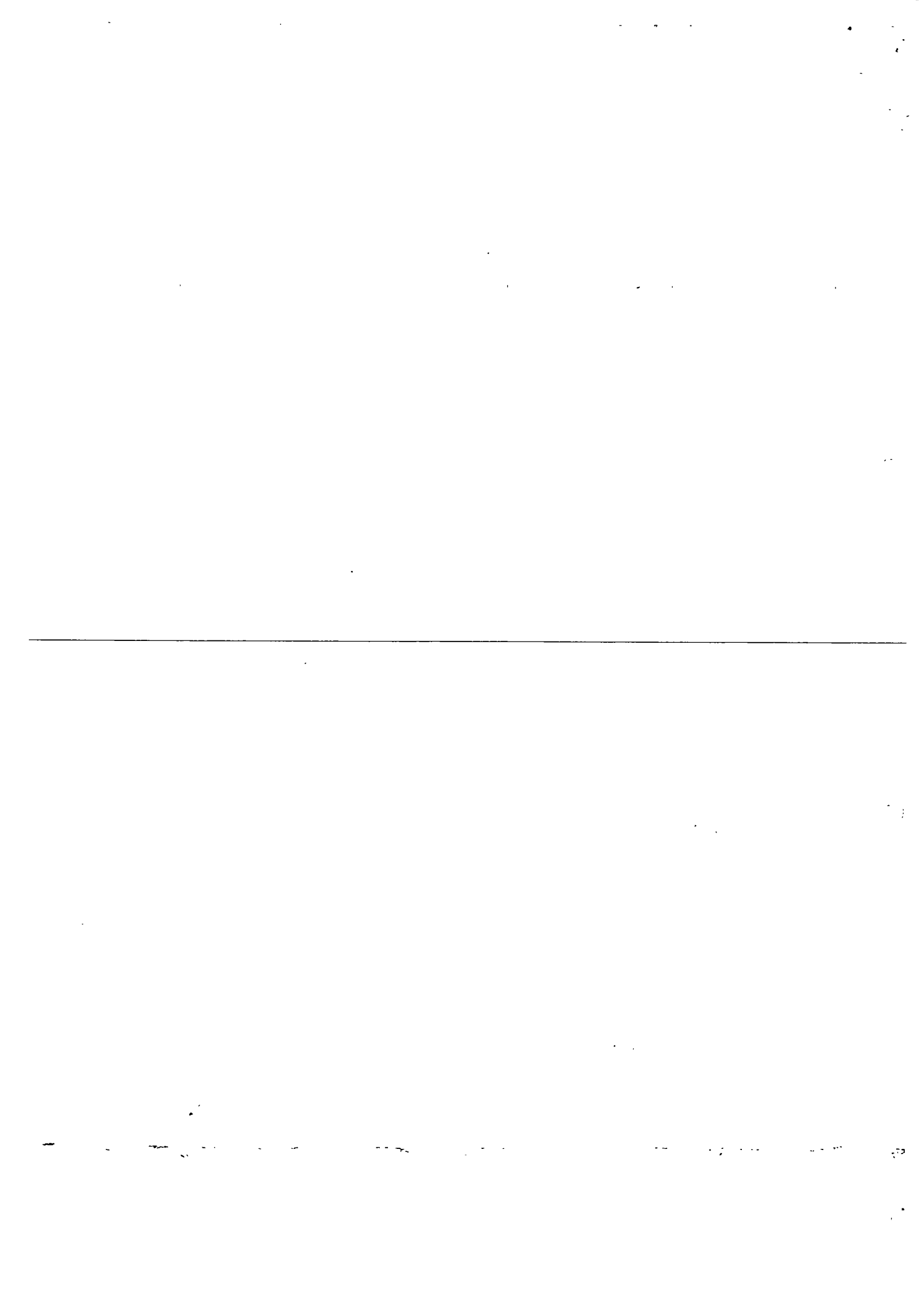
SUBMITTED BY:

KENYA ASSOCIATION OF MUSIC PRODUCERS
MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED



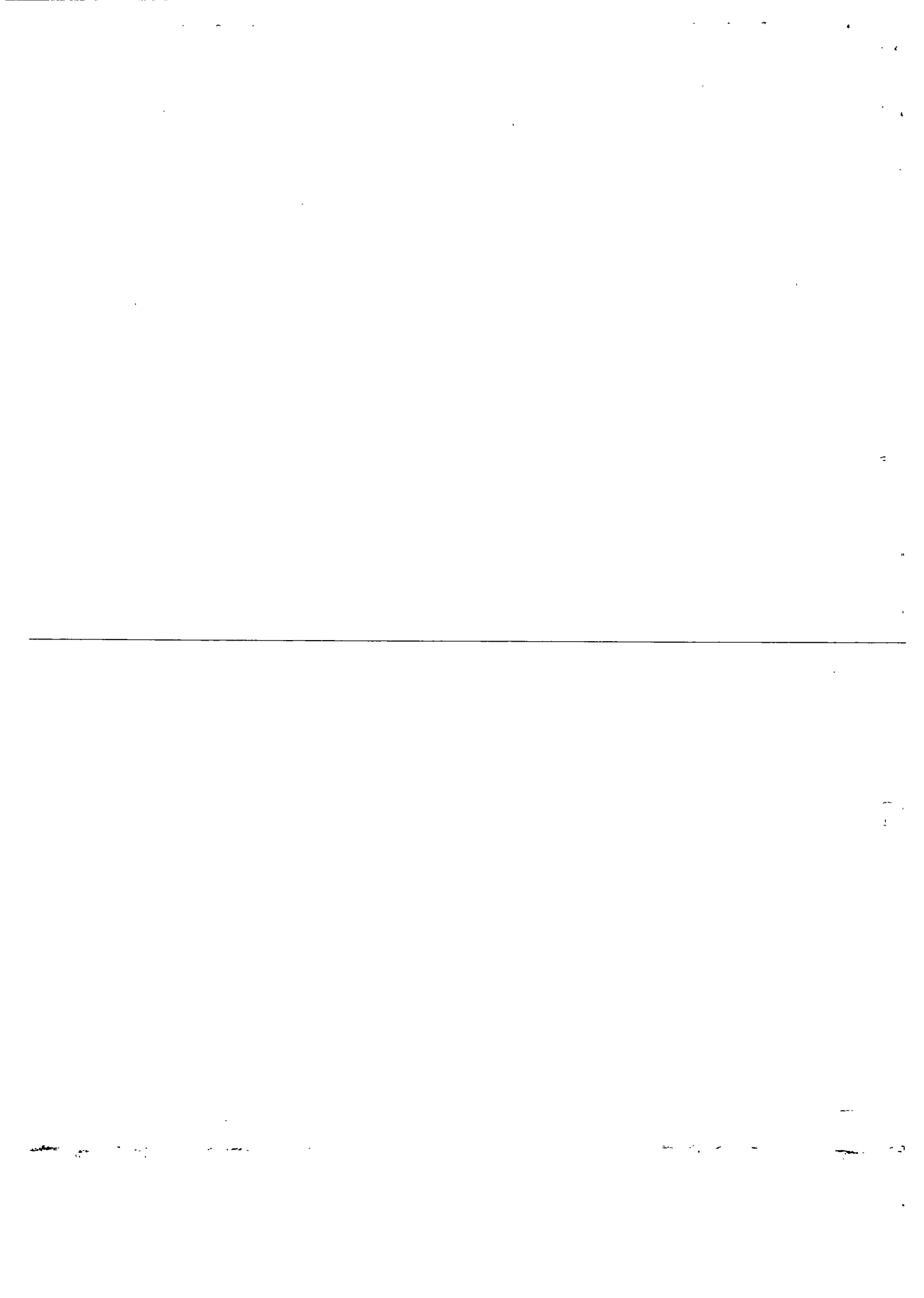
KAMP P.O. Box 51149 - 00200 City Square, Nairobi | Email: info@kamp.or.ke | Website: www.kamp.or.ke | Tel: +254 710 309 695, +254 738 646 041
MCSK P.O. Box 14806 - 00800 Westlands, Nairobi | Email: music@mcsk.or.ke | Website: www.mcsk.or.ke | Tel: +254 722 800 872, +254 733 200 872

② *Mr Muganyizi*
ZAK
Alor/20



Contents

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2.0 BACKGROUND.....	3
3.0 MEMORANDUM BY THE JOINT BOARD.....	4
4.0 THE OBSERVATIONS, COMMENTS AND SUGGESTIONS.....	4
5.0 CONCLUSION.....	9



1.0 INTRODUCTION

The Kenya Association of Music Producers (KAMP and the Music Copyright Society of Kenya (MCSK) are collective management organizations (CMOs) Incorporated/registered under the Companies Act as Private Companies Limited by Guarantee. Their main objectives are to administer, exercise and enforce the exploitation of economic rights in copyrighted works (Intellectual Property) of its members who are Producers of Sound Recordings (KAMP) and Authors, Composers, Arrangers and Publishers (MCSK).

Through Exclusive Licenses, Deeds of Assignment and Reciprocal Agreements, and other agreements of representation, KAMP-MCSK are mandated to issue prior authority for any exploitation of Public Performance, Broadcasting, Communication to the Public (Making available), Reproduction, Adaptation Rights of any copyrighted works in their Local and International catalogue.

The Fundamental Rights and mandate of the CMOs are protected under Article 40(5) of the Constitution of Kenya as also outlined and articulated in the Copyright Act No. 12 of 2001. KAMP-MCSK administer the economic rights in copyrighted works of more than 20,000 local (resident) and immeasurable number of International Right Holders with over a million combined catalogues of Sound Recording, Audio Visual and Musical works.

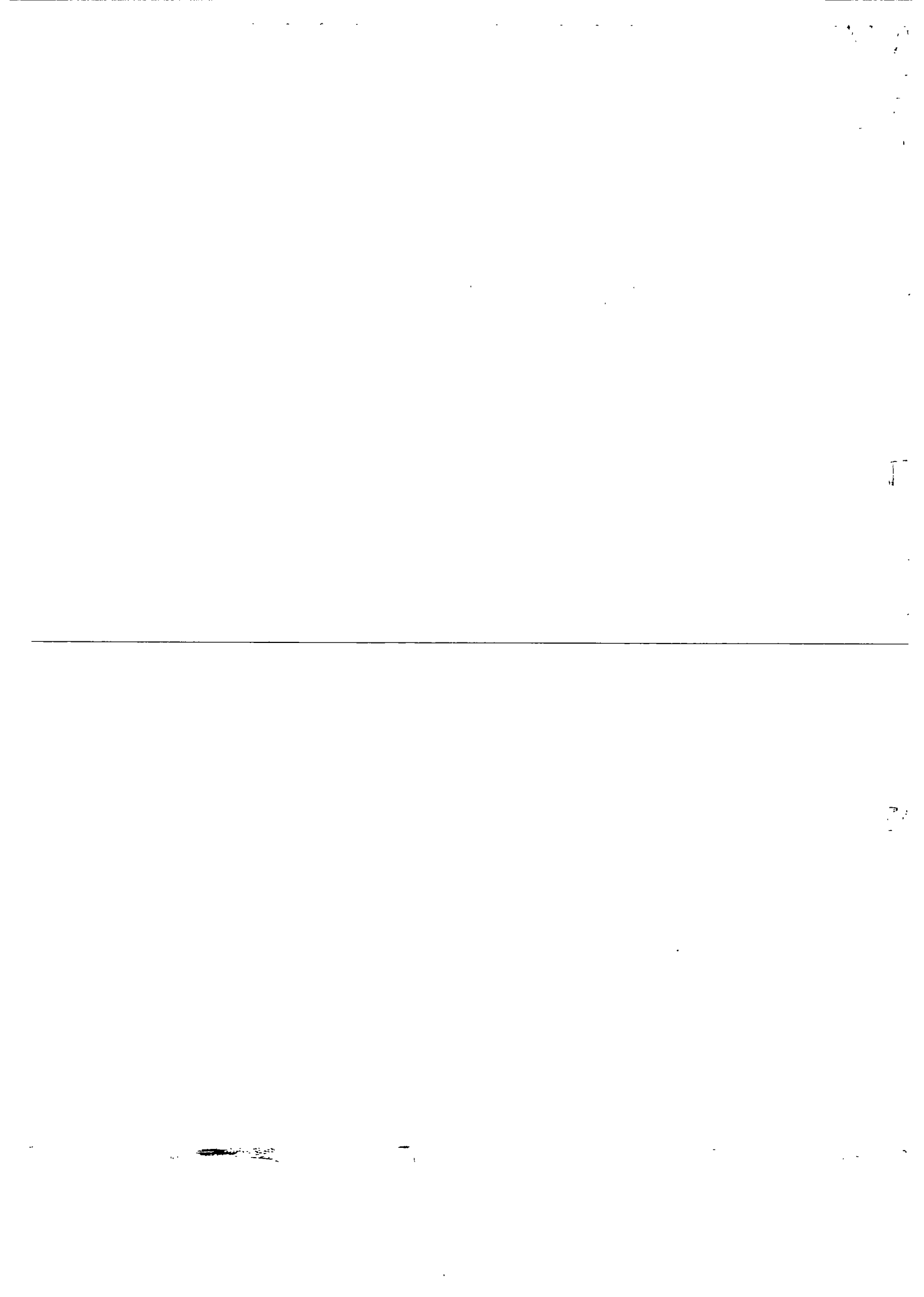
1.1 Mission of Collective Management Organizations

Kenya Association of Music Producers: (KAMP) is mandated by both resident and non-resident Producers of Sound Recording to administer, exercise and enforce the exploitation of public performances, broadcasting and communication to the public Rights in sound recordings in their catalogues/repertoire.

Music Copyright Society of Kenya (MCSK): is mandated by both resident and non-resident Authors, Composers, Arrangers and Publishers of Musical Works administers, exercises and enforces the exploitation of public performances, broadcasting, communication to the public, and mechanical reproduction Rights of copyrighted musical works in their catalogues/repertoire.

2.0 BACKGROUND

The National Assembly through a notice published in the daily newspaper invited stakeholders to submit a Memoranda to give their views and comments on the Proposed Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No. 60 of 2022). The Bill proposes to amend the Copyright Act, 2001 to make provisions for equitable remuneration of performers and producers of sound recordings and expand the responsibilities of Collective Management Organisations towards



the authors and performers. It also proposes to bring Collective Management Organisations under regulation by the Board in order to enhance their efficiency.

3.0 MEMORANDUM BY THE JOINT BOARD

The Board of KAMP-MCSK has reviewed and considered proposals contained in the amendment. The Board together with the Management are dedicated to enhancing efficiency, transparency and accountability in exercising their mandate of administration and enforcing issuance of authority to individuals, institutions and corporations prior to their exploitation of copyrighted works in their catalogues/repertoires to ensure that there is compliance to the Constitution of Kenya and all other enabling Laws of Kenya. This is geared towards the growth and development of the creative industry in Kenya for the economic and social welfare benefit of the Right Holders.

The CMOs take this opportunity to thank the National Assembly for the opportunity to submit comments to the proposed Amendments to the Copyright Act, 2001, Laws of Kenya. With certain important adjustments, the proposed amendments by National Assembly could go a long way in ensuring that the creative sector in Kenya is vibrant and responsive to the needs and expectation of CMOs members, users of copyrighted works. We have incorporated our suggested amendments in this memorandum.

4.0 THE OBSERVATIONS, COMMENTS AND SUGGESTIONS

Section	Provision	Legal Implication	Comment
Section 2	Definition Clause: The deletion of 'collection'	This means that CMOs will no longer collect royalties but will be obligated to cede this responsibility to third parties.	CMOs reject <i>in toto</i> the proposed changes given that it will render them into mere paper tigers. The proposed change would introduce a single CMO to collect royalties for both copyright and related rights. This a substantive change to the Copyright Ac, 2001, that would require extensive stakeholder engagement and public participation of Right Holders from across Kenya and internationally. Further, internationally, the one of the roles of the CMOs is usually to provide a mechanism for

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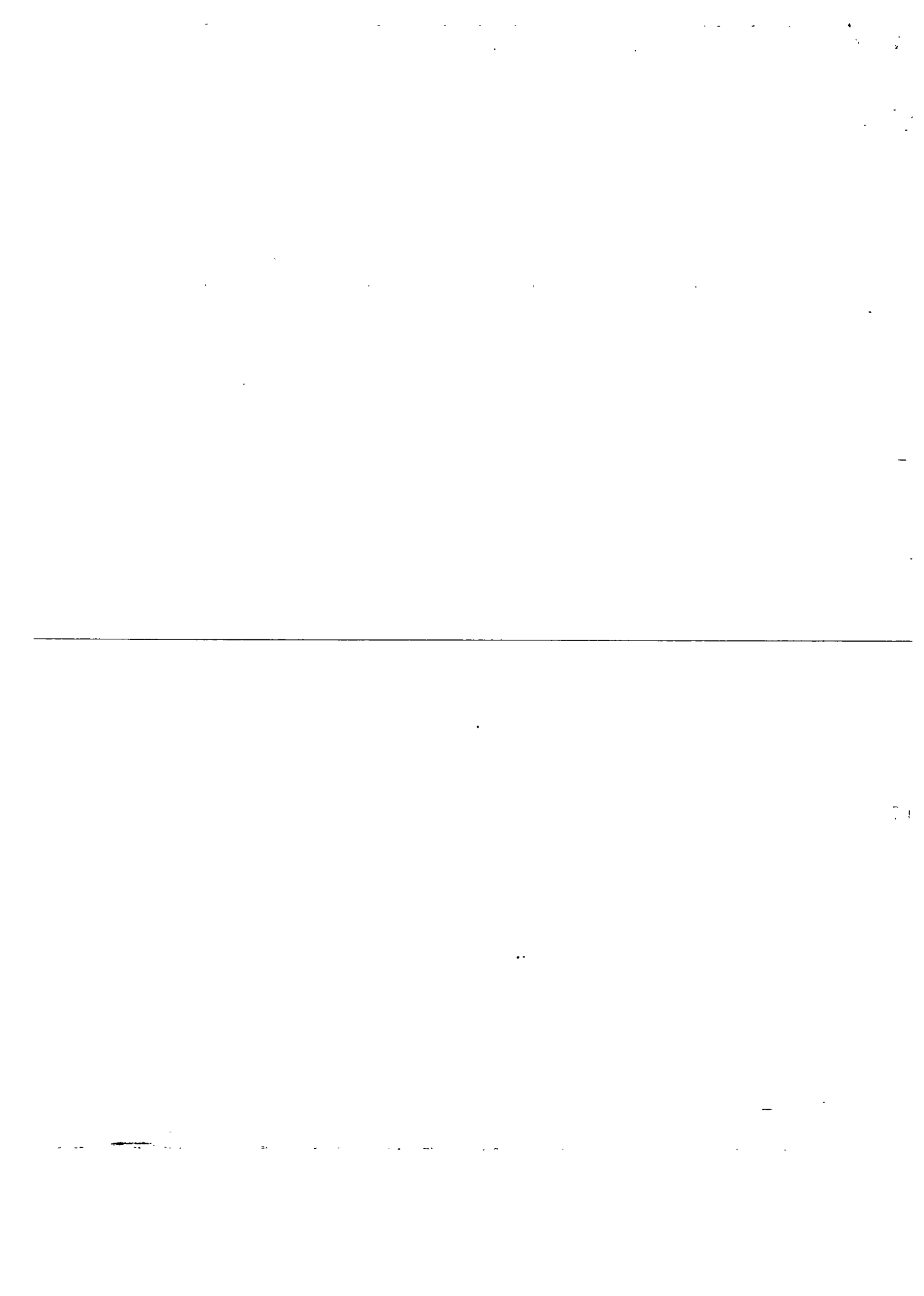
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			obtaining permission to use copyright materials, as well as for paying the corresponding fees for certain uses of such materials, through an efficient system of collection and distribution of the license fees.
Section 30A	Equitable Remuneration-The amendment proposes to reintroduce equitable remuneration for performers and producers of sound recording.	The provision is unwelcome	KAMP and MCSK are opposed to introduction of equitable remuneration as copyright is an exclusive right which is supreme to equitable remuneration being introduced herein. Equitable remuneration should not be applicable to producers of sound recording as it will be prejudicial to the producers' investment in recordings and exclusive rights currently held.
Section 30B	Blank Tape Levy: The proposed changes include authors as beneficiary of blank tape levy alongside performers and owners of Sound Recordings	The provision is welcome since it promotes principle of inclusivity and equity to authors, performers and producers.	The proposed change is good for the industry. The proviso should be included in a substantive Copyright Bill for consideration by the National Assembly. Further, it is in compliance with the provisions of the Berne Convention and TRIPS Agreement to be in tandem with the universal practice in administration of Private Copying Levy (Blank tape Levy). In addition, the section should be amended to state that the body that should be responsible for collection of this Levy should be designated by the Collective Management Organisations not by Kenya Copyright Board.
Section 46 (1)	Certificate of Registration: The Amendments seeks to amend the current provision,	A certificate of registration will no longer suffice. A CMO will first seek	The proposed change portends gloom to the industry and should be rejected <i>in toto</i> .

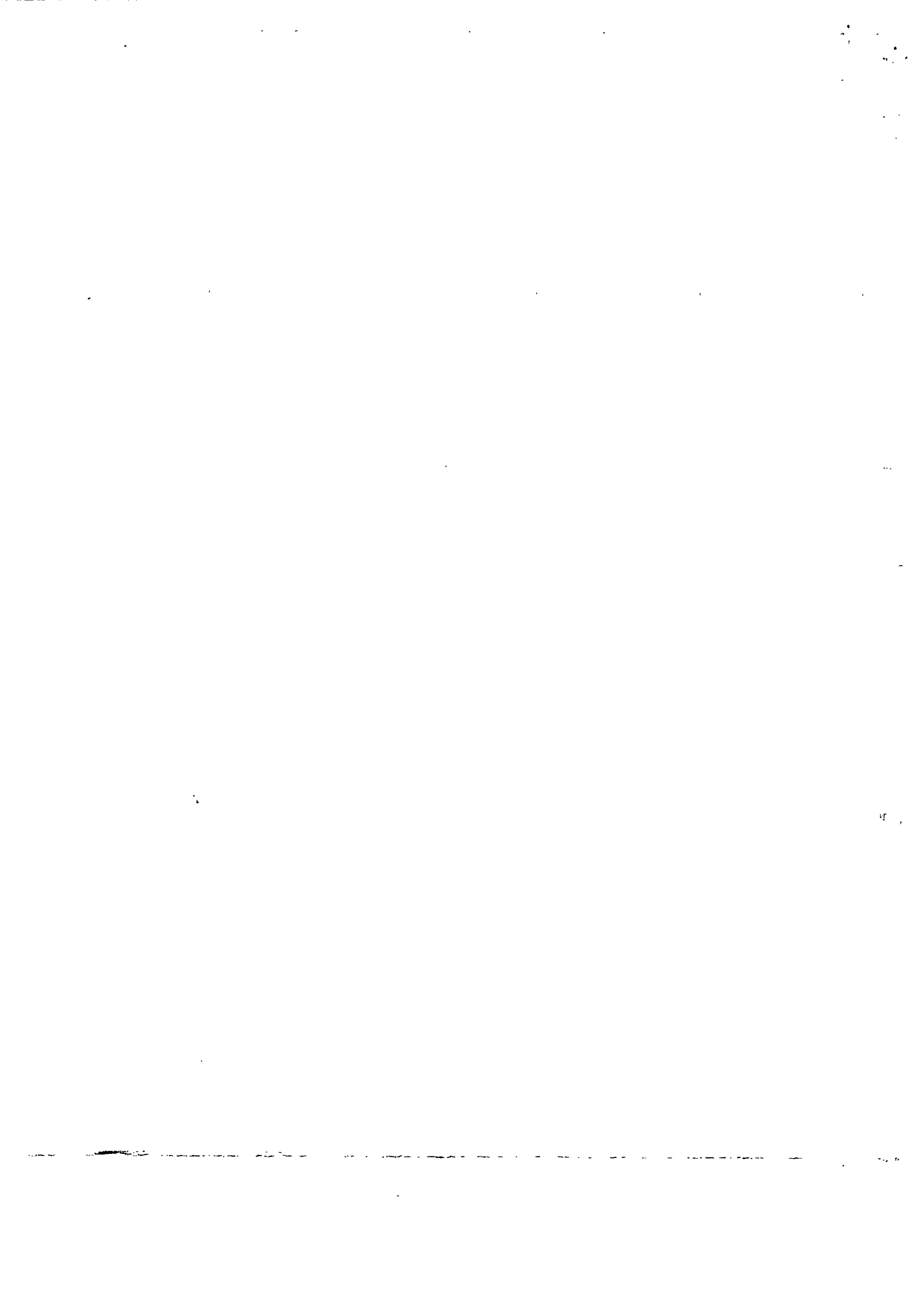


	<p>which reads, “No person or association of persons shall commence or carry on the business of a copyright collective management organization except under or in accordance with a certificate of registration granted under this section.” The highlighted part now reads, “<i>Unless registered as such by the Board and granted operating License.</i>”</p>	<p>registration from KECOBO before being issued with an operation license.</p>	
Section 46 (3)	<p>Duration of operating license extended from 1 to 3 years.</p>	<p>This will allow CMOs to have uninterrupted operations from the regulator.</p>	<p>This is a welcome move but three years is not sufficient. Kenya Should borrow a leaf from South Africa and Ghana where CMOs are granted a five (5) year license. The proviso should be included in a substantive Copyright Bill for consideration by the National Assembly.</p>
Section 46 (4)	<p>A CMO will no longer rely on Company’s Act, which require it to be registered as a company limited by guarantee since section (a) will add KECOBO’s registration as a mandatory requirement.</p>	<p>The implication of this provision is that the process of establishing a CMO will be tedious, bureaucratic and lacking efficiency and effectiveness.</p>	<p>The proposed change is unwelcome since it adds bureaucracy and does not conform with world best practices where CMOs are normally formed as private companies limited by guarantee. A license therefore will suffice but not another registration certificate.</p>
	<p>Section (d) seeks to delete the word ‘COLLECTION’</p>	<p>The implication of this has been discussed above.</p>	<p>The proviso is unwelcome and should be rejected <i>in toto</i>.</p>
46 (13) New section	<p>Registration of CMOs: Only organisation meeting new registration criteria will be granted the license.</p>	<p>This means that CMOs will be required to regularize their registration requirements.</p>	<p>The proviso is unwelcome and should be rejected <i>in toto</i>. Rationale – ignores the earlier licensed CMOs and associated history</p>
46 (14) and	<p>Revocation of a License:</p>	<p>Transfer of private rights</p>	<p>The proviso is unwelcome and</p>

(15) New section	Upon revocation of license KECOBO will transfer the role of CMOs to an agent who will operate in conjunction with KECOBO during the period of license revocation.	granted to CMOs without reference to rights holders.	should be rejected <i>in toto</i> .
46 (A)	Outsourcing of Collection Services: The Section has renumbered existing provision on approval for imposition and collection of levy (tariffs) as subsection 1 and added a new provision under section (2) which reads in part, “A licensed CMO SHALL appoint an agency approved by the Board to collect and distribute royalties on their behalf through the NATIONAL RIGHTS REGISTRY. ”	The new provision usurps the role of CMOs and render inoperable. What is import of having a CMO if it cannot collect and distribute royalty? What will happen to the current repertoire held by CMOs if right owners will be required to use national rights registry? The idea of having an agency to collect and distribute royalties on behalf of CMOs should not be made a mandatory requirement but should be left to CMOs to decide whether they can use such agents or not.	The proviso is unwelcome and is inimical to CMOs and members’ interests. The new provision is likely to place heavy burden on CMOs operational cost. Further, it is worthy to note that the level & scope of data, its accuracy and currency held by CMOs and their international affiliates is not available to NRR.
	Section (3) The agency is expected to operate under supervision of both CMOs and KECOBO.	This arrangement will only add to existing confusion and unnecessary bureaucracy.	
46 (B) (1A) new sub section	Co-option of Board members: The new section makes it mandatory for CMOs Board to co-opt not less than 4 professional into their Board.	Whereas this is a welcome move obligating Board to co-opt is not fair. What if the Board membership have professionals elected in an AGM? Such provision should not be mandatory but should be left at the discretion of Board to decide.	Retain current provision. The rights holders ought to be consulted extensively as the CMOs are member based organisations whose constitution of the board is based on the members.
46(B) (5)	Directors Remuneration: The	This is fine however, it	The proviso should be included



New subsection	proposed subsection provides that directors will be eligible to paid such allowances, salaries, honorarium as members may decide at AGM and endorsed by the Board	should be limited to the directors being eligible to allowances in line with principles of corporate governance.	in a substantive Copyright Bill for consideration by the National Assembly with the proposed amendments. However the only remuneration that the Directors should be eligible for is allowances only.
46(B) (6) (7) (8) new subsections	Criminal offenses: The new provisions bar Board and staff members against holding office when accused of criminal matters. The accused individuals are expected to step down and receive half salaries during this period. If convicted the officials should no longer hold a CMO office.	This is should be dealt with in accordance to relevant statutes touching on employment / labour laws and criminal matters.	This proviso is unwelcome as the CMOs are private companies thus in the event of any criminal matter, the company should be left to handle the criminal matters in line with the Employment Act and the Criminal Procedure Code.
Section 46 (C)(1A) New section	Single CMO to manage rights: Section (1) provides that Authors, producers, performers, visual artists and publishers may form a collective management organization to collect, manage and distribute royalties and other remuneration accruing to their members. The new section (1A) empowers KECOBO notwithstanding section (1) to issue licence to one entity to represent the rights of all parties within a sector.	KECOBO in its discretion may decide to issue a license at peril of existing CMOs. What safeguards have been put in place to ensure that such law is not applied arbitrarily by the regulator. The existing relationship between KAMP-PRISK-MCSK (KPM) already addresses this issue.	The proviso is unwelcome and is inimical to CMOs and members' interests.
Sections 46 (E) (h) new subsection	Powers of KECOBO: The Board is now empowered to exercise power to inspect CMOs at any time it deems fit to do so. Approval of Monies Beyond KECOBO Approved limits: Subsection (7). It is an offense	This amounts to micro-management of CMOs operations. CMOs should be left to manage their operations within dictates of good corporate governance, AGM resolutions and approved policies. Criminal matters should also	The proviso is unwelcome and is inimical to CMOs and members' interests. Further, the Copyright Act has already provided for annual audits, thus introduction of inspections at any time by Kenya Copyright Board will cripple the proper functioning of the CMOs.



	that attracts 3 months imprisonment and fine not exceeding five times in excess of the allowed amount or both..	be dealt with within the relevant statutes such as the penal code.	
Sections 46 (E) (8) new subsection	Subsection 8-Bank Accounts-CMOs are barred against operating bank accounts without the approval of KECOBO. Additionally KECOBO should have powers to monitor the Accounts.	This amounts to micro-management of CMOs operations. CMOs should be left to manage their operations within dictates of good corporate governance, AGM resolutions and approved policies.	The proviso is unwelcome and is inimical to CMOs and members' interests.

5.0 CONCLUSION

Considering the above observations, we Kenya Association of Music Producers (KAMP) and Music Copyright Society of Kenya (MCSK) acknowledge that the Statute Law (Miscellaneous Amendments) Bill, 2022 has presented important reform questions on issues of law. Save for the sections that we have highlighted and given our justifications on, we opine that the changes if effected will be to the detriment of the interests of right holders.

Yours faithfully,

For and on Behalf of KAMP:



CS MAURICE OKOTH
CEO, KAMP

For and on Behalf of MCSK:



Dr. EZEKIEL MUTUA, MBS
CEO, MCSK



② Mr. Mugoma
TNA
al/23

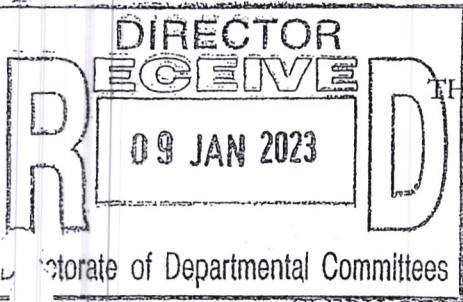
① D/DC
PLS
Please deal.
09/01/23



STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

PRESENTED TO

THE NATIONAL ASSEMBLY
THE THIRTEENTH PARLIAMENT (FIRST SESSION)



SUBMITTED TO

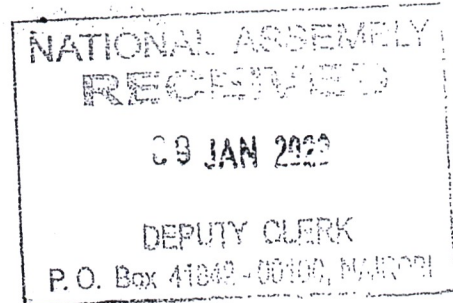
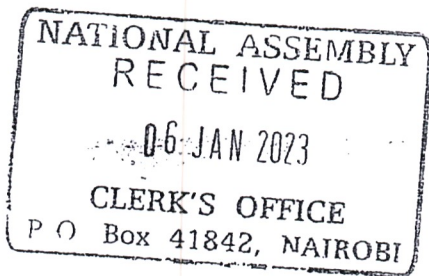
CLERK OF THE NATIONAL ASSEMBLY P.O. BOX 41842-00100, NAIROBI

6TH JANUARY, 2023

IN THE MATTER OF CONSIDERATION BY NATIONAL ASSEMBLY OF THE STATUTE
LAW (MISCELLANEOUS AMENDMENTS) BILL; (NATIONAL ASSEMBLY BILL NO. 60
OF 2022

SUBMITTED BY:

KENYA ASSOCIATION OF MUSIC PRODUCERS



11



1.0 INTRODUCTION

The Kenya Association of Music Producers (KAMP) is a collective management organization (CMO) incorporated/registered under the Companies Act as Private Companies Limited by Guarantee. Their main objective is to administer, exercise and enforce the exploitation of economic rights in copyrighted works (Intellectual Property) of its members who are Producers of Sound Recordings.

Through Exclusive Licenses, Deeds of Assignment and Reciprocal Agreements, and other agreements of representation, KAMP is mandated to issue prior authority for any any copyrighted works in their Local and International catalogue.

The Fundamental Rights and mandate of KAMP is protected under Article 40(5) of the Constitution of Kenya as outlined and articulated in the Copyright Act No. 12 of 2001.

1.1 Mission of Collective Management Organizations

Kenya Association of Music Producers: (KAMP) is mandated by both resident and non-resident Producers of Sound Recording to administer, exercise and enforce the exploitation of public performances, broadcasting and communication to the public Rights in sound recordings in their catalogues/repertoire.

2.0 BACKGROUND

The National Assembly through a notice published in the daily newspaper invited stakeholders to submit a Memoranda to give their views and comments on the Proposed Statute Law (Miscellaneous Amendments) Bill, (National Assembly Bill No. 60 of 2022). The Bill proposes to amend the Copyright Act, 2001 to make provisions for equitable remuneration of performers and producers of sound recordings and expand the responsibilities of Collective Management Organisations towards the authors and performers. It also proposes to bring Collective Management Organisations under regulation by the Board in order to enhance their efficiency.

3.0 MEMORANDUM BY THE KAMP BOARD

The Board of KAMP has reviewed and considered proposals contained in the amendment. The Board together with the Management are dedicated to enhancing efficiency, transparency and accountability in exercising their mandate of administration and enforcing issuance of authority to individuals, institutions and corporations prior to their exploitation of copyrighted works in their catalogues/repertoires to ensure that there is compliance to the Constitution of Kenya and all other enabling Laws of Kenya. This is geared towards the growth and development of the creative industry in Kenya for the economic and social-welfare benefit of the Right Holders.

100



KAMP takes this opportunity to thank the National Assembly for the opportunity to submit comments to the proposed Amendments to the Copyright Act, 2001, Laws of Kenya.

It is important to highlight that while some of the amendments are in line with best practices, we opine that it would be more appropriate to have a more comprehensive copyright reform process with adequate stakeholder inclusion and improvement to the copyright framework, rather than a piecemeal (and broadly negative) set of proposals that are pushed through via a Miscellaneous Amendments Bill.

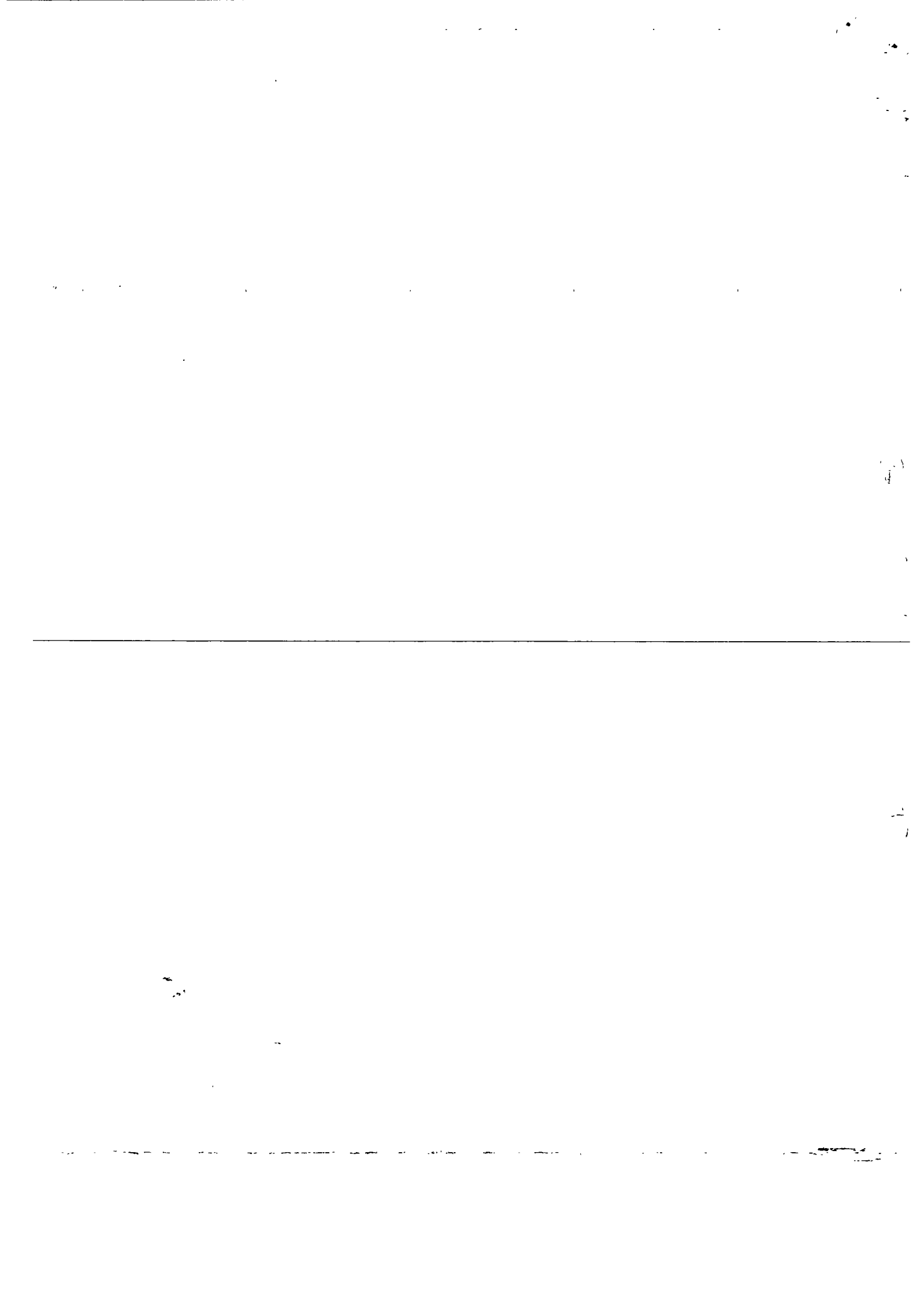
Finally, we note that the proposed amendments do not include certain long overdue improvement to the protection of Kenyan Producers of Sound Recordings, including the extension of term for protection for works of sound recording to 70 yrs.

4.0 THE OBSERVATIONS, COMMENTS AND SUGGESTIONS

Section	Provision	Legal Implication	Comment
Section 2	Definition Clause: The deletion of 'collection'	This means that KAMP will no longer collect royalties but will be obligated to cede this responsibility to third parties. By its very definition a CMO is a COLLECTIVE MANAGEMENT ORGANIZATION and amending this core function will render KAMP nugatory.	KAMP rejects <i>in toto</i> the proposed changes given that it will render them into mere paper tigers. The proposed change would introduce a single CMO to collect royalties for both copyright and related rights. This is a substantive change to the Copyright Act, 2001, that would require extensive stakeholder engagement and public participation of Right Holders from across Kenya and internationally. Further, KAMP through its affiliation with the International Federation of the Phonographic Industry (IFPI) has a role to provide a mechanism for obtaining permission to use copyright materials, as well as for paying the corresponding fees for certain uses of such materials, through an efficient system of collection and distribution of the



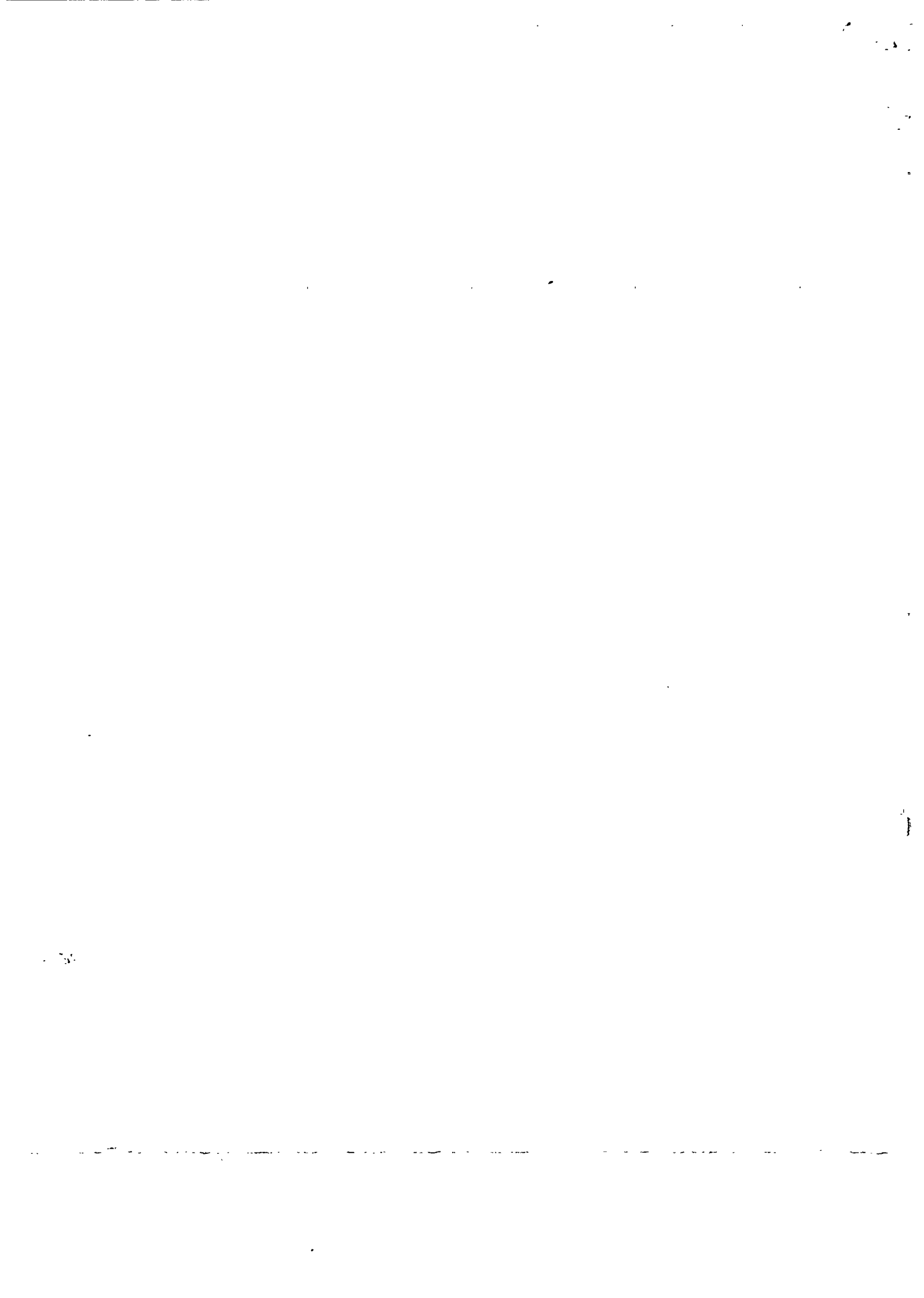
			license fees.
Section 30A	Equitable Remuneration-The amendment proposes to reintroduce equitable remuneration for performers and producers of sound recording.	The provision is unwelcome	Equitable remuneration should not be applicable to producers of sound recording as it will be prejudicial to the producers' investment in recordings and exclusive rights currently held. Introducing the same would mean downgrading the rights already existing for owners of sound recordings which is not agreeable .
Section 30B	Blank Tape Levy: The proposed changes include authors as beneficiary of blank tape levy alongside performers and owners of Sound Recordings	The provision is welcome since it promotes principle of inclusivity and equity to authors, performers and producers.	The proposed change is good for the industry. The proviso should be included in a substantive Copyright Bill for consideration by the National Assembly. Further, it is in compliance with the provisions of the Berne Convention and TRIPS Agreement to be in tandem with the universal practice in administration of Private Copying Levy (Blank tape Levy). In addition, the section should be amended to state that the body that should be responsible for collection of this Levy should be designated by the Collective Management Organisations not by Kenya Copyright Board.
Section 46 (1)	Certificate of Registration: The Amendments seeks to amend the current provision, which reads, "No person or association of persons shall commence or carry on the business of a copyright collective management organization except under or	A certificate of registration will no longer suffice. KAMP will be required to first seek registration from KECOBO before being issued with and operation license which is in effect a double registration .	The proposed change is unnecessary and should be rejected <i>in toto</i> .



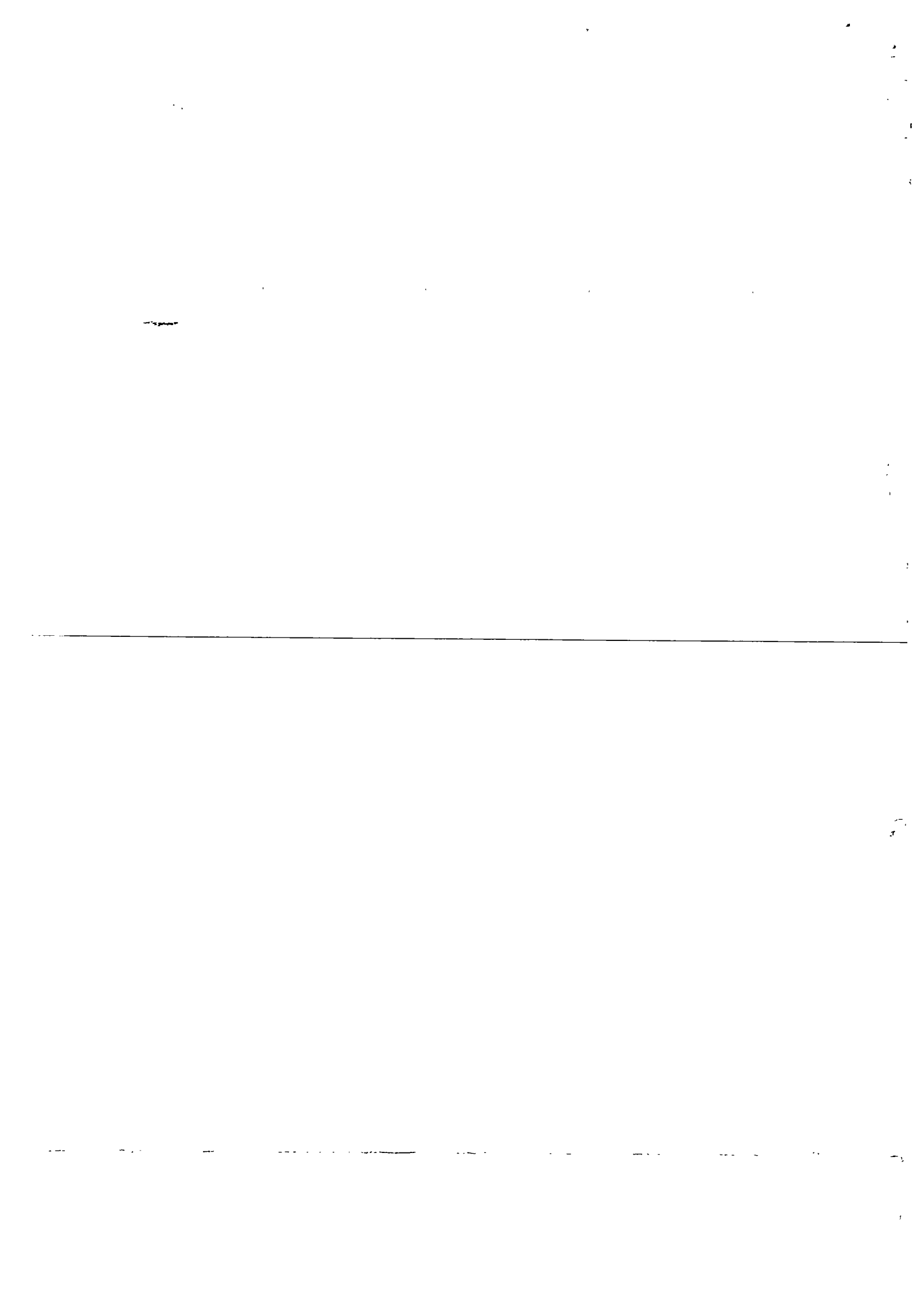
	<p>in accordance with a certificate of registration granted under this section.”</p> <p>The highlighted part now reads, “Unless registered as such by the Board and granted operating License.”</p>		
Section 46 (3)	Duration of operating license extended from 1 to 3 years.	This will allow KAMP to have uninterrupted operations from the regulator.	This is a welcome move but three years is not sufficient. Kenya Should borrow a leaf from South Africa and Ghana where CMOs are granted a five (5) year license. The proviso should be included in a substantive Copyright Bill for consideration by the National Assembly.
Section 46 (4)	A CMO will no longer rely on Company’s Act, which require it to be as a company limited by guarantee since section (a) will add KECOBO’s registration as a mandatory requirement.	The implication of this provision is that the process of establishing a CMO will be tedious, bureaucratic and lacking efficiency and effectiveness.	The proposed change is unwelcome since it adds bureaucracy and does confirm with world best practices where CMOs are normally formed as private companies limited by guarantee. A license therefore will suffice but not another registration certificate.
	Section (d) seeks to delete the word ‘COLLECTION’	The implication of this has been discussed above.	The proviso is unwelcome and should be rejected <i>in toto</i> .
46 (13) New section	Registration of CMOs: Only organisation meeting new registration criteria will be granted the license.	This means that KAMP will be required to regularize their registration requirements.	The proviso is unwelcome and should be rejected <i>in toto</i> . Rationale – ignores the earlier licensed CMOs and associated history
46 (14) and (15) New section	Revocation of a License: Upon revocation of license KECOBO will transfer the role of CMOs to an agent who will operate in conjunction with KECOBO	Transfer of private rights of producers of sound recording granted to KAMP without reference to rights holders.	The proviso is unwelcome and should be rejected <i>in toto</i> .



	during the period of license revocation.		
46 (A)	Outsourcing of Collection Services: The Section has renumbered existing provision on approval for imposition and collection of levy (tariffs) as subsection 1 and added a new provision under section (2) which reads in part, “A licensed CMO SHALL appoint an agency approved by the Board to collect and distribute royalties on their behalf through the NATIONAL RIGHTS REGISTRY. ”	The new provision usurps the role of KAMP and renders inoperable. What is import of having a CMO if it cannot collect and distribute royalty? What will happen to the current repertoire held by KAMP if right owners will be required to use national rights registry? The idea of having an agency to collect and distribute royalties on behalf of KAMP should not be made a mandatory requirement but should be left to KAMP and its members to decide whether they can use such agents or not.	The proviso is unwelcome and is inimical to KAMP’S and members’ interests. The new provision is likely to place additional heavy burden on KAMP operational cost. Further, it is worthy to note that the level & scope of data, its accuracy and currency held by CMOs and their international affiliates are not available to NRR.
	Section (3) The agency is expected to operate under supervision of both CMOs and KECOBO.	This arrangement will only add to existing confusion and unnecessary bureaucracy.	
46 (B) (1A) new sub section	Co-option of Board members: The new section makes it mandatory for CMOs Board to co-opt not less than 4 professional into their Board.	Whereas this is a welcome move obligating Board to co-opt is not fair. What if the Board membership have professionals elected in an AGM? Such provision should not be mandatory but should be left at the discretion of Board to decide.	Retain current provision. The rights holders ought to be consulted extensively KAMP is a member based organisation whose constitution of the board is based on the articles and memorandum of association .
46(B) (5) New subsection	Directors Remuneration: The proposed subsection provides that directors will be eligible to be paid such allowances, salaries, honorarium as	This is in order however, it should be limited to the directors being eligible to allowances in line with principles of corporate	The proviso should be included in a substantive Copyright Bill for consideration by the National Assembly with the proposed amendments .



	members may decide at AGM and endorsed by the Board	governance.	
46(B) (6) (7) (8) new subsections	Criminal offenses: The new provisions bar Board and staff members against holding office when accused of criminal matters. The accused individuals are expected to step down and receive half salaries during this period. If convicted the officials should no longer hold a CMO office.	The amendment should be in line with employment and labour laws whilst also taking into account the penal code .	This proviso is unwelcome as KAMP is a private company thus in the event of any criminal matter, the company should be left to handle the criminal matters in line with the Employment Act and the Criminal Procedure Code.
Section 46 (C)(1A) New section	Single CMO to manage rights: Section (1) provides that Authors, producers, performers, visual artists and publishers may form a collective management organization to collect, manage and distribute royalties and other remuneration accruing to their members. The new section (1A) empowers KECOBO notwithstanding section (1) to issue license to one entity to represent the rights of all parties within a sector.	KECOBO in its discretion may decide to issue a license at peril of existing CMOs. What safeguards have been put in place to ensure that such law is not applied arbitrarily by the regulator.	The proviso is unwelcome and is inimical to KAMP and members' interests.
Sections 46 (E) (h) new subsection	Powers of KECOBO: The Board is now empowered to exercise power to inspect CMOs at any time it deems fit to do so. Approval of Monies Beyond KECOBO Approved limits: Subsection (7). It is an offense that attracts 3 months imprisonment and fine not exceeding five times in excess of the allowed amount or	This amounts to micro-management of KAMP operations. KAMP should be left to manage their operations within dictates of good corporate governance, AGM resolutions and approved policies.	The proviso is unwelcome and is inimical to KAMP's and members' interests. Further, the Copyright Act has already provided for annual audits, thus introduction of inspections at any time by Kenya Copyright Board will cripple the proper functioning of the KAMP .






	both.		
Sections 46 (E) (8) new subsection	Subsection 8-Bank Accounts- CMOs are barred against operating bank accounts without the approval of KECOBO. Additionally KECOBO should have powers to monitor the Accounts.	This amounts to micro-management of KAMP's operations. KAMP should be left to manage their operations within dictates of good corporate governance, AGM resolutions and approved policies.	The proviso is unwelcome and is inimical to CMOs and members' interests.

5.0 CONCLUSION

Considering the above observations, we Kenya Association of Music Producers (KAMP) acknowledge that the Statute Law (Miscellaneous Amendments) Bill, 2022 has presented important and substantive reform questions on issues of law that can be addressed at a more comprehensive copyright reform process as opposed to through Miscellaneous Amendments . Save for the sections that we have highlighted and given our justifications on, we opine that the changes if effected will be to the detriment of the interests of right holders.

Yours faithfully,

For and on Behalf of KAMP:

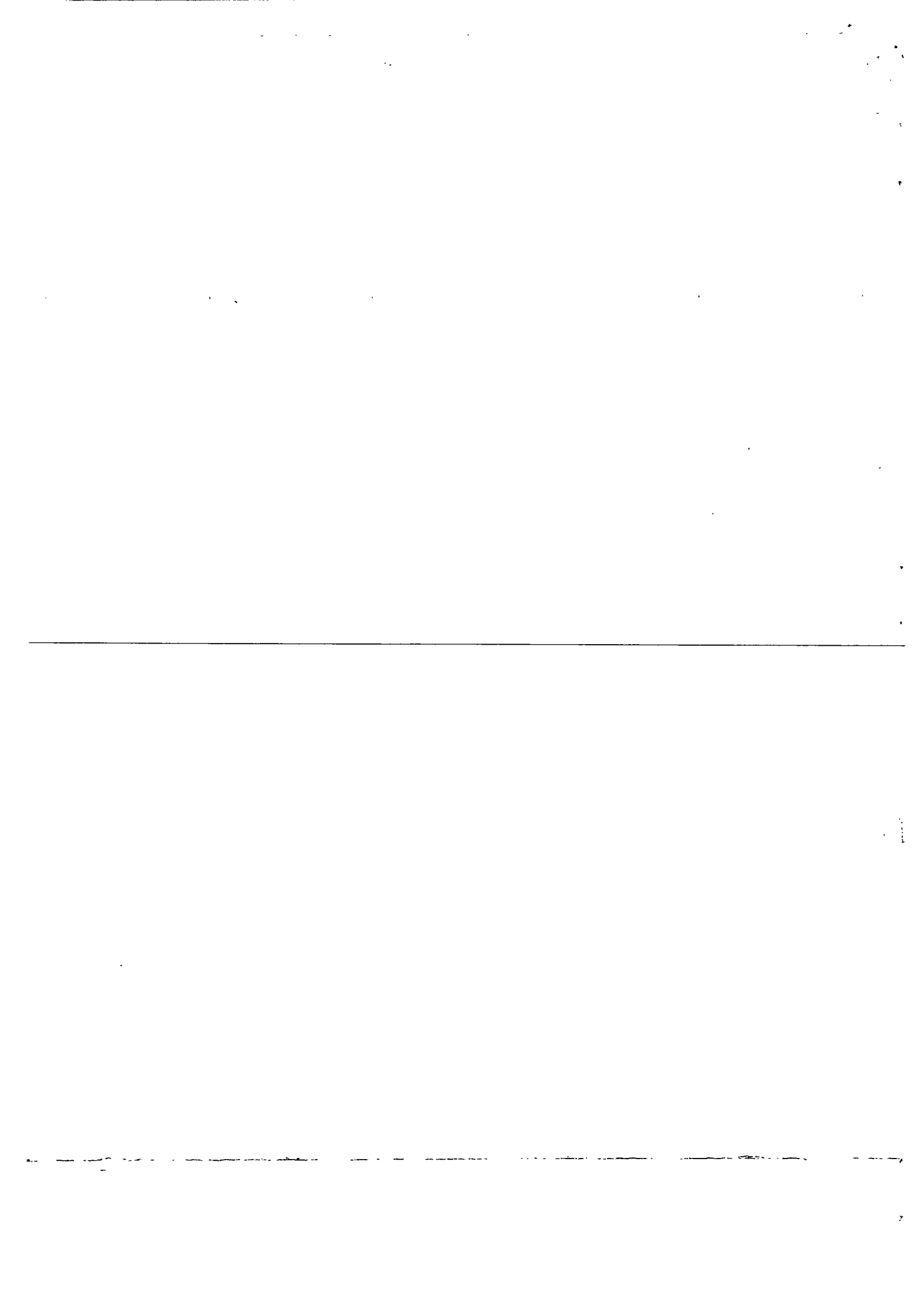

ANTHONY KARANI
 CHAIRMAN





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1.0 INTRODUCTION	3
2.0 BACKGROUND	3
3.0 MEMORANDUM BY THE KAMP BOARD	3
4.0 THE OBSERVATIONS, COMMENTS AND SUGGESTIONS	4
5.0 CONCLUSION	9





2/7
Mr Mugona
Please deal
12/1/23

REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/190/1/84
Your Ref. NA/DDC/SC/2022/008

30th December, 2022

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

(Attn: Mr. Jeremiah Ndombi MBS)

RE: DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE:
CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2022

This has reference to your letter dated the 21st December, 2022 under Ref. NA/DDC/SC/2022/008 requesting our views on the proposed amendments to the Copyright Act (No. 12 of 2001) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Youth Affairs, Sports and the Arts, which is responsible for the policy relating to the aforementioned statute and shall share the results of that guidance as and when we receive it.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

Copies to: Hon. J.B.N. Muturi EGH
Attorney-General

Mr. Kennedy Ogeto CBS
Solicitor-General

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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M.N. Nzioka (Mrs.)
Deputy Solicitor-General



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Mr Mugoma
Dear
21/12/22

31/12/22
for attention of
relieving committee
5/1/23

Our Ref: AG/LDD/190/1/84
Your Ref. NA/DDC/SC/2022/009

30th December, 2022

The Clerk of the National Assembly
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National Assembly
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(Attn: Mr. Jeremiah Ndombi MBS)

RE: DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE:
CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2022

This has reference to your letter dated the 21st December, 2022 under Ref. NA/DDC/SC/2022/009 requesting our views on the proposed amendments to the National Museums and Heritage Act (NO. 6 of 2006) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Tourism, Wildlife and Heritage, which is responsible for the policy relating to the aforementioned statute and shall share the results of that guidance as and when we receive it.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

NATIONAL ASSEMBLY
RECEIVED
04 JAN 2023
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

DIRECTOR
RECEIVED
06 JAN 2023
Directorate of Departmental Committees

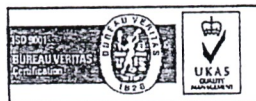
Copies to: Hon. J.B.N. Muturi
Attorney-General

Mr. Kennedy Ogeto CBS
Solicitor-General

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P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
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DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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M.N. Nzioka (Mrs.)
Deputy Solicitor-General

D/DC

Please deal.
[Signature]

18/01/23



SPK

PUBLIC SERVICE COMMISSION

PSC/LEG/GEN/006/056/VOL.XIX/74

16th January 2023

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

Lilian
Kindly distribute copies to relevant committees
18/1/23

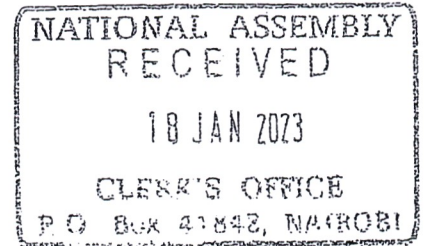
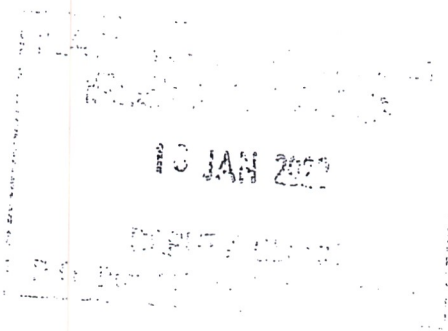
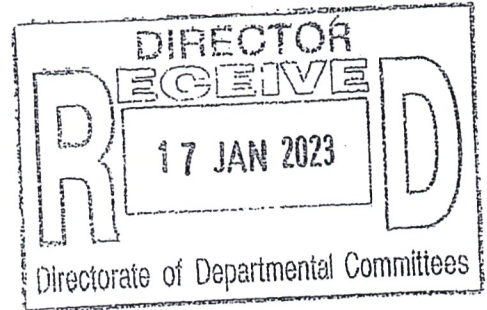
RE: INVITATION TO SUBMIT VIEW ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

This has reference to your letter dated 21st December 2022.

The Commission supports the proposed amendment which is aimed at extending the period for submitting annual reports from three to six months.

dm

DR. SIMON K. ROTICH, CBS
SECRETARY/CEO
PUBLIC SERVICE COMMISSION





KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote

Ref. No. **KLRC/RES/93 VOL.VI (38)**
and Date

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear Jeremiah,

RE: DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

The Clerk to the National Assembly requested KLRC to review the proposed amendment to the National Museums and Heritage Act, 2006 (No.6 of 2006) in the Statute Law (Miscellaneous Amendments) Bill, 2022 via a letter dated 21st December, 2022 and referenced as NA/DDC/SC/2022/009. This is in line with the Commission's mandate under section 5(6)(b) of the Sixth Schedule to the Constitution and section 6 of the Kenya Law Reform Commission Act, No. 19 of 2013.

The National Museums and Heritage Act, 2006 consolidates the law on National Museums and Heritage. It also provides for the establishment, control, management and development of national museums and the identification, protection and transmission of cultural and national heritage. The only amendment proposed is under section 57 (2) of the Act by deleting the expression "Attorney-General" and substituting therefor the expression "Director of Public Prosecutions."

The said section 57 (2) of the Act states as follows:-

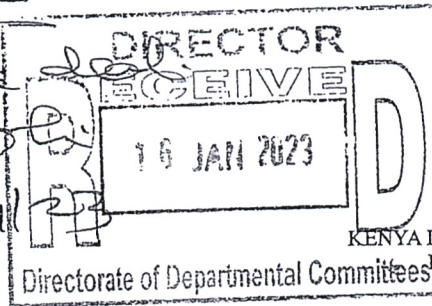
"A heritage warden appointed under subsection (1) may with the leave of the Attorney-general be appointed prosecutor for purposes of prosecuting offences under the Act."

Under the Constitution, the Attorney-General does not have State powers of prosecution and cannot therefore grant leave to any officer to prosecute cases on behalf of the State.

D/DC

Please see

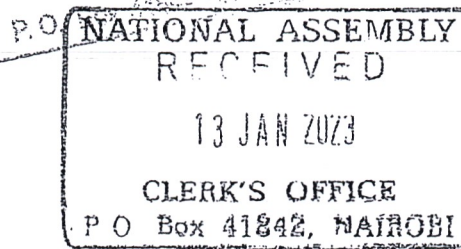
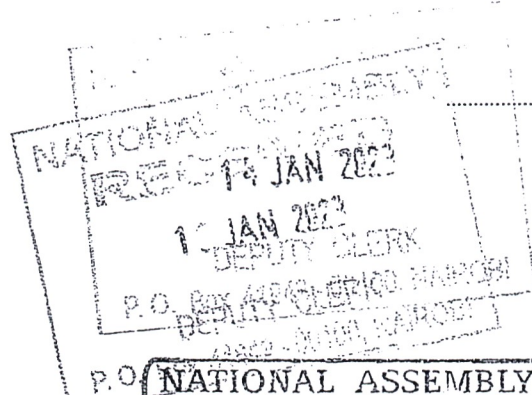
16/01/23



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

13th January, 2023

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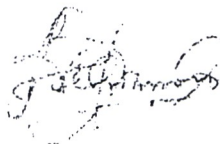
John Mugoma
pls facilitate
4/1/23
17/1/23

We agree with the proposed amendment since it is necessary to harmonize the provisions of the Act with those of the Constitution.

Consequently, the proposed amendment is in order because according to Article 157 (6) of the Constitution the Director of Public Prosecutions (DPP) has the State powers of prosecution. Further under Article 157 (9) the DPP may exercise the State powers of prosecution either in person or by subordinate officers according to the DPP's general or specific instructions. Article 157 (12) also allows parliament to enact legislation conferring powers of prosecution on authorities other than the DPP.

As always, we want to thank you for your continued support and cooperation.

Yours Sincerely,



Joash Dache, MBS
SECRETARY/CEO

Start

KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"

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Telephone: Nairobi, +254-20-2241186/2241201
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NAIROBI, KENYA

When replying please quote

KLRC/RES/93 VOL.VI (38)

Ref. No. _____
and Date

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear *Jerem,*

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

We acknowledge with thanks receipt of your letter Ref.No.NA/DDC/JLAC/2022/010 dated 20th December, 2022 on the above subject.

Enclosed herein please find the Commission's comments on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No.60 Of 2022) for further action.

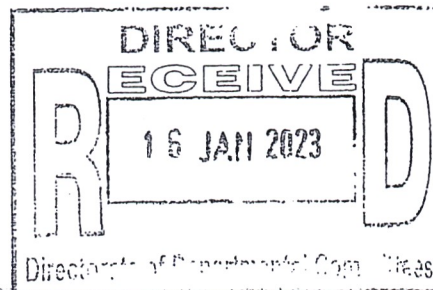
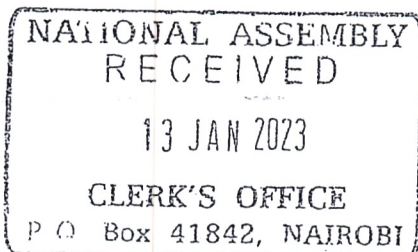
As always, we are grateful for your continued support and collaboration.

Yours

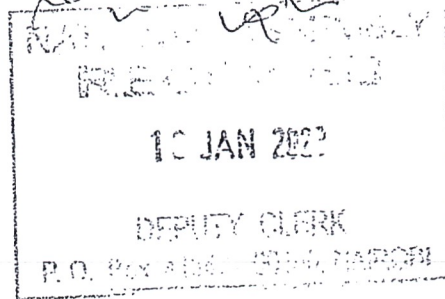
Joash Dache

Joash Dache, MBS
Secretary/Chief Executive Officer

Encl.



Lilian Seurel
make copies and distribute to see relevant committees involved
17/1/23







THE KLRC COMMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

I. INTRODUCTION

This memorandum is issued in furtherance of the Kenya Law Reform Commission's mandate under section 6 of the Kenya Law Reform Commission Act, No, 19 of 2013, to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The Kenya Law Reform Commission (KLRC) is in receipt of a letter from the National Assembly dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) seeking its comments on the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bill, No. 60 of 2022. The Bill seeks to "amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of several separate Bills". The National Assembly has sought KLRC's comments on the Bills under the purview of the Departmental Committee on Justice and Legal Affairs.

Against this background and pursuant to the KLRC's mandate, KLRC has undertaken an analysis of the relevant Bills as set out below.

II. ANALYSIS

	LAW	S.	PROPOSED AMENDMENT	KLRC COMMENT	JUSTIFICATION
1.	The Judicature Act (Cap.8)	7(1)	Delete the word "thirty" and substitute therefor the word "seventy".	No objection to the proposed amendment.	Increasing the number of judges at the Court of Appeal will facilitate speedy delivery of justice.
2.	The Appellate Jurisdiction Act (Cap. 9)	59(7)	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Court of Appeal Rules in the requisite	The proposed amendment would align the Rules to Article 157(6) of the Constitution which provides that the Director of Public Prosecutions is the one to exercise State powers of prosecution.

				manner and not through the amendment of the Appellate Jurisdiction Act.	
	The Appellate Jurisdiction Act (Cap. 9)	73	Delete the expression "Attorney-General" wherever it appears and substitute therefor the expression "Director of Public Prosecutions".	This section does not exist in the Act and is instead found in the Court of Appeal Rules. KLRC has no objection to the amendment of the Rules in the requisite manner and not through the amendment of the Appellate Jurisdiction Act.	The proposed amendment would align the Rules to Article 157 of the Constitution.
3.	The Vexatious Proceedings Act (Cap. 41)	4	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157(6) of the Constitution.
4.	The Penal Code (Cap. 63)	146	Delete the words "idiots or imbeciles" wherever they appear and substitute therefor the words "persons with mental disabilities".	No objection to the proposed amendment.	The proposed amendment aligns the Code with the constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No. 14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
5.	The Criminal Procedure Code (Cap.75)	2	Delete the expression "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	No objection to the proposed amendment.	The proposed amendment would align the Code to the Office of the Director of Public Prosecutions Act, 2013.

	<p>Delete the definition of “police officer” and substitute therefor the following new definition—</p> <p>“police officer” has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
	<p>Delete the definition of “police station” and substitute therefor the following new definition—</p> <p>“police station” has the meaning assigned to it under the National Police Service Act, 2012.</p>	No objection to the proposed amendment.	The proposed amendment would align the Code to the National Police Service Act, 2012.
83	<p>Delete and substitute therefore the following new section—</p> <p>83.(1) The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by sections 81 and 82, and by Part VIII, be vested for the time being in the Secretary of Prosecution Services, the Deputy Director of Public Prosecutor, the Senior Assistant Director of Public Prosecutions, the Senior Principal Prosecution Counsel, Senior Prosecution Counsel and Prosecution Counsel, and the exercise of those powers by the specified officers shall then operate as if they had been exercised by the Director of Public Prosecutions.</p>	No objection to the proposed amendment.	The proposed amendment would align the Act to the Office of the Director of Public Prosecutions Act, 2013.

			(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.		
		90(3)	Delete the words "a Sunday" and substitute therefor the words "any day of the week including Sunday".	No objection to the proposed amendment.	The proposed amendment clarifies the provision.
		123(1)	Delete the words "other than a person accused of murder, treason, robbery with violence, attempted robbery with violence and any related offence".	No objection to the proposed amendment.	The proposed amendment aligns the Code to Article 49(1) (h) of the Constitution which provides that ... offences are bailable.
		131(2)	Delete the word "movable".	No objection to the proposed amendment.	The proposed amendment widens the scope of property that may be attached. This may, in turn, act as a deterrent to a person bound by a recognizance.
		137	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
6.	The Extradition (Commonwealth) Countries Act (Cap. 77)	7	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		8	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
		9	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.

		10	Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
7.	Official Secrets Act (Cap. 187)	10(1). 49(1)	Deleting the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
8.	The Evidence Act (Cap. 80)	3	Insert the following definition in proper alphabetical sequence— "photograph" means an image created by light falling on a light sensitive surface, either photographic film or an electronic medium and made visible and permanent by chemical treatment or stored digitally,	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		78(1)	Insert the words "or an electronic and digital medium" immediately after the word "film".	No objection to the proposed amendment.	The proposed amendment takes into account technological advances in photography.
		125 (2)	Insert the word "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	No objection to the proposed amendment.	The proposed amendment aligns the Act with constitutional provisions on persons with disabilities, the Persons with Disabilities Act (No.14 of 2003) and the conventions that Kenya has ratified on persons with disabilities.
9.	The Vetting of Judges and Magistrates Act (No. 2 of 2011)		Delete the expression "Attorney-General" and substitute therefor the expression "Director of Public Prosecutions".	No objection to the proposed amendment save that the citation of the Act is wrong. It should read No. 2 of 2011 and not 2010).	The proposed amendment would align the Act to Article 157 of the Constitution.

10.	The Judicial Service Act (No. 1 of 2011)	38	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) of the Constitution which requires constitutional commissions and independent offices to submit a report to the President and to Parliament. In addition, the proposed amendment contravenes section 38(4) of the Judicial Service Act which requires the report to be tabled before the two Houses of Parliament.</p>
				<p>Consider standardizing the provision for all constitutional commissions and independent offices.</p>	<p>This ensures consistency in legislation.</p>
11.	Independent Electoral and Boundaries Commission Act (No. 9 of 2011)	24(1)	<p>Delete the word "three" and substitute therefor the word "six".</p>	<p>No objection to the proposed amendment.</p>	<p>Three months is too short a period to file the annual report in view of the magnitude of work involved.</p>
12.	The Kenya National Commission on Human Rights Act, (No. 14 of 2011)	53	<p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The Commission shall submit the annual report in subsection (1) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>No objection to the spirit of the proposed amendment to provide a reasonable time frame for the submission of the annual report. However, the proposed amendment should read "Parliament" instead of "National Assembly" in accordance with Article 254(1) of the Constitution.</p>	<p>The proposed amendment contravenes Article 254(1) which requires constitutional commissions and independent offices to submit a report to the President and to Parliament.</p>

				Consider standardizing the provision for all constitutional commissions and independent offices.	This ensures uniformity in legislation.
13.	Ethics and Anti-Corruption Commission Act (No. 22 of 2011)	27(2)	Delete the word "three" and substitute therefor the word "six".	No objection to the proposed amendment.	Three months is too short a period to file the annual report in view of the magnitude of work involved.
14.	Anti-Corruption and Economic Crimes Act (No. 3 of 2003)	25A.	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendments.	The proposed amendment would align the Act to Article 157 of the Constitution.
		37(6)			
		62(5)			
		62(6)	(6A) Notwithstanding the provisions of any other law, where a state officer is under investigation for, or has been charged with corruption or economic crime, the Commission may, by an <i>ex parte</i> application in the High Court, seek for an order barring the officer from accessing his or her office or exercising the powers of that office including participating in decision making, voting and supervising staff. (6B) The provisions of subsection (6A) shall apply where the Commission upon preliminary investigations has established grounds to reasonably suspect that the public or state officer is likely to— (a) conceal, alter, destroy, or remove	No objection to the proposed amendment. However, consider including the expression "public officer" in subsection (6A) as has been proposed in subsection (6B).	This offence should apply to both State and public officers. In addition, the proposed amendment is in line with the Court of Appeal decision in the case of <i>Moses Kasaine Lenolkulal vs Republic</i> , Criminal Appeal No. 109 of 2019.

			<p>records, documents or other evidence;</p> <p>(b) intimidate, threaten or otherwise interfere with witnesses; or</p> <p>(c) interfere with investigations in any other manner.</p>		
15.	Sexual Offences Act (No. 3 of 2006)	40	Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
16.	International Crimes Act (No. 16 of 2008)		Deleting the expression "Attorney-General" and substituting therefore the expression "Director of Public Prosecutions".	No objection to the proposed amendment.	The proposed amendment would align the Act to Article 157 of the Constitution.
17.	Leadership and Integrity Act, 2012 (No. 19 of 2012)	12A.	New subsections to mandate the EACC vet all the shortlisted candidates.	Considering the number of requests that the EACC may receive from the various public entities, it would be prudent for the Commission to be mandated to vet only those who are considered for appointment, that is, those who have undergone the interview process.	This would save the EACC time and money.
18.	The Kenya Law Reform Commission Act (No. 19 of 2013)			Although the National Assembly's letter dated 20 December 2022 (ref: NA/DDC/JLAC/2022/010) and the Memorandum to the Public indicates that the Statute Law (Miscellaneous Amendment) Bill, 2022, seeks to amend the Kenya Law Reform Commission	

			Act to provide for clarifications on the attendance of the <i>ex officio</i> members at the Commission meeting, the Bill does not contain any proposed amendments. Further, the Kenya Law Reform Commission Act is erroneously cited as Act, No. 35 of 2013 instead of No. 19 of 2013.	
19. Bribery Act (No. 47 of 2016)	1.	Delete the expression "Bribery Act" and substitute "Anti-Bribery Act".	No objection to the proposed amendment.	The proposed amendment describes what the Act is about and avoids any misrepresentation.
	5.	Delete the word "who" and substitute therefore the word "if the person offering, promising or giving knows".	The word "who" appears in both subsection (1) and (2), hence there is need for clarity on where the phrase "if the person offering, promising or giving knows" is to be inserted.	This will clarify the provision.



REPUBLIC OF KENYA THIRTEENTH PARLIAMENT (FIRST SESSION) 2022 THE NATIONAL ASSEMBLY

In the Matter of Consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022)

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) is sponsored by the Leader of Majority Party, Hon. Kimalan Ichung'wah, CBS, MP is an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of separate Bills.

The Statute Law (Miscellaneous Amendments) Bill, 2022 contains proposed amendments to the following statutes-

- 1. The Appellate Jurisdiction Act (Cap 9)
2. The Vexatious Proceedings Act (Cap 41)
3. The Extradition (Commonwealth Countries) Act (Cap 77)
4. The National Flag, Emblems and Names Act (Cap 99)
5. The Official Secrets Act (Cap 187)
6. The Geneva Conventions Act (Cap 198)
7. The Pharmacy and Poisons Act (Cap 244)
8. The Mental Health Act (Cap 248)
9. The Land Consolidation Act (Cap 283)
10. The Land Adjudication Act (Cap 284)
11. The Marine Insurance Act (Cap 390)
12. The Local Manufacturers (Export Compensation) Act (Cap 482)
13. The Capital Markets Act (Cap 485A)
14. The Architects and Quantity Surveyors Act (Cap 525)
15. The Prevention of Fraud (Investments) Act, 1977 (No. 10 of 1977)
16. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
17. The Retirement Benefits Act, 1997 (No. 3 of 1997)
18. The Co-operatives Societies Act, 1997 (No. 12 of 1997)
19. The Central Depositories Act, 2000 (No. 4 of 2000)
20. The Sexual Offences Act, 2006 (No. 3 of 2006)
21. The National Museums and Heritage Act, 2006 (No. 6 of 2006)
22. The Labour Institutions Act, 2007 (No. 12 of 2007)
23. The Accountants Act, 2008 (No. 15 of 2008)
24. The International Crimes Act, 2008 (No. 16 of 2008)
25. The Biosafety Act, 2009 (No. 2 of 2009)
26. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)
27. The Tourism Act, 2011 (No. 28 of 2011)
28. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)

The Bill seeks to amend these Acts in order to harmonize their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.

- 29. The Judicial Service Commission Act, 2011 (No. 1 of 2011)
30. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)
31. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)
32. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)
33. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)
34. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)
35. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)
36. The National Police Service Commission Act, 2011 (No. 30 of 2011)
37. The National Land Commission Act, 2012 (No. 5 of 2012)
38. The Teachers Service Commission Act, 2012 (No. 20 of 2012)
39. The Controller of Budget Act, 2016 (No. 26 of 2016)
40. The Public Service Commission Act, 2017 (No. 17 of 2017)

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

42. The Excise Duty Act, 2015 (No. 23 of 2015)
The Bill seeks to amend the First Schedule to the Excise Duty Act to correct mistakes in a tariff number.

43. The Judiciary Act (Cap 8)
The Bill proposes to amend the Act to increase the number of Judges of the Court of Appeal from Thirty to Seventy.

44. The Penal Code (Cap 63)
The Bill seeks to amend Section 246 of the Act by deleting expressions therein which may be perceived to be discriminatory towards persons with mental disabilities.

45. The Criminal Procedure Code (Cap 75)
The Bill seeks to amend the statute to harmonize terms therein with the provisions of the Constitution of Kenya, 2010 and the National Police Service Act, 2011. It also seeks to allow the Director of Public Prosecutions to delegate powers to specified officers and to delete offences provided for in the Sexual Offences Act, 2006.

46. The Evidence Act (Cap 80)
The Bill seeks to amend the Act to expand the definition of "photograph" by allowing the presentation and admissibility of digital photographs in line with the current technological advancements. It also seeks to delete expressions which may be perceived to be discriminatory to persons with mental disabilities.

47. The Public Holidays Act (Cap 110)
The Bill proposes to amend the Public Holidays Act to provide that 10th October be Huduma Day and 26th December be Utamaduni Day.

48. The Copyright Act 2001 (No. 12 of 2001)
The Bill seeks to amend the Act to provide for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organizations towards authors and performers. It also seeks to bring collective management organizations under regulation by the Board in order to enhance their efficiency.

49. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)
The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also proposes to amend the Act to allow the Commission to seek a court order for a state officer under investigation charged with corruption or economic crimes to be barred from accessing office or exercising powers of that office where the public officer is likely to interfere with investigations.

50. The Merchant Shipping Act, 2009 (No. 4 of 2009)
The Bill seeks to amend the Act by deleting section 16 which restricts ship owners from providing crewing agencies, pilots, clearing and forwarding, port facility operator and shipping agencies among other services in the maritime industry. This is after the High Court in September, 2020 declared the section unconstitutional and to allow for the revival of the Kenya National Shipping Line.

50. The Prevention of Organized Crimes Act, 2010 (No. 8 of 2010)
The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also seeks to enhance the penalty for organized crimes and to extend the period in which an order obtained in relation to the tracing of property shall lapse.

51. Leadership and Integrity Act, 2012 (No. 19 of 2012)
The Bill seeks to amend the Act to allow the Ethics and Anti-Corruption Commission to verify the suitability of candidates seeking public service appointments and make recommendations.

52. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)
The Bill seeks to amend the Act to provide for the appointment of the Director-General, for a renewable period of five years instead of three.

53. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)
The Bill seeks to amend the Act to clarify the provisions on the attendance of ex-officio members at the Commission meetings.

54. The Water Act, 2016 (No. 43 of 2016)
The Bill seeks to amend the Act to include the Attorney-General as a member of the Water Resources Management Board and to require the appointments of Chief Executive Officers under the Act to be in line with guidelines issued by the Salaries and Remuneration Commission. The Bill further seeks to allow the designation of representatives to sit in Boards in place of designated officer holders and the introduction of new members to the Water Works Development Agencies, the Water Services Regulatory Board and the Board of Trustees.

55. The Bribery Act, 2016 (No. 47 of 2016)
The Bill seeks to amend the Act to include both private and public entities in the scope and application of the Act and to make other minor amendments.

56. The Scrap Metal Act, 2015 (No. 1 of 2015)
The Bill seeks to amend the Act to provide for the issuance of a special license for dealing in copper, aluminium, and their alloys. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely: Numerical Machining Complex and the Kenya Shipyard Limited and the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act in order to deter vandalism and other prohibited acts.

57. The Energy Act, 2019 (No. 1 of 2019)
The Bill proposes to amend the Act to give effect to the recommendations of the "Presidential Task Force on the Review of Power Purchase Agreements". The recommendations include addressing the overlapping functions between the Energy Petroleum Regulatory Authority and the Ministry responsible for Energy matters.

58. The Housing Act (Cap 17)
The Bill seeks to amend the Act by placing definitions of terminologies in proper alphabetical sequence.

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22nd November 2022 and read a First Time in the House on 8th December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE table with columns for Bill Number, Act Name, and Departmental Committee.

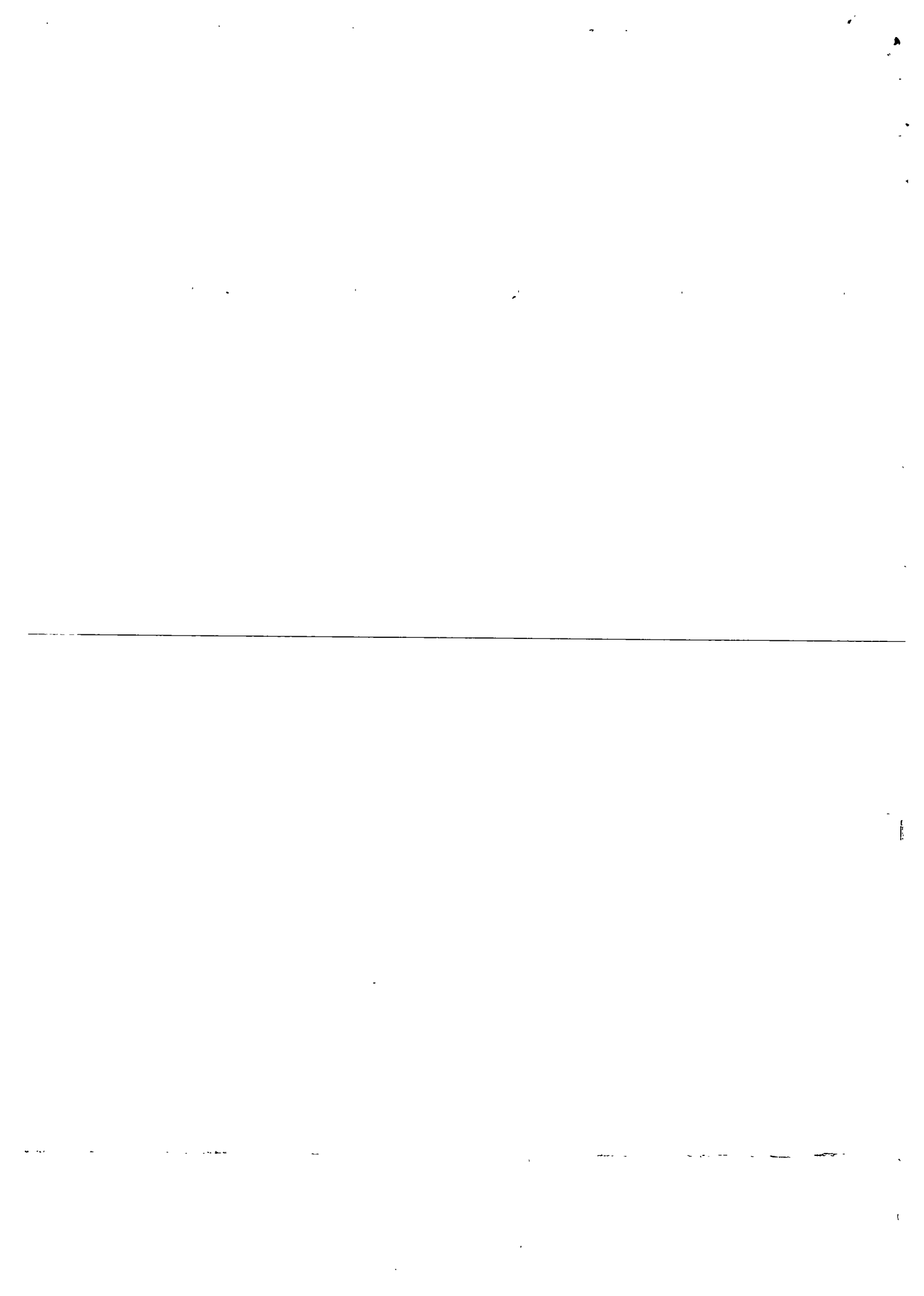
Main table listing amendments to various Acts and their corresponding Departmental Committees.

IN COMPLIANCE with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Departmental Committees hereby invite the public and interested stakeholders to submit memoranda on the Bill.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building or on www.parliament.go.ke. The national assembly website is www.parliament.go.ke.

The memoranda may be forwarded to the Clerk of the National Assembly, P.O. Box 41042-00100, Nairobi, or hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi, or emailed to cl@parliament.go.ke to be received on or before Friday, 6th January, 2023 by 5.00 pm.

SAMUEL NJOROGE
CLEK OF THE NATIONAL ASSEMBLY
16th December, 2022





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (FIRST SESSION)
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

In the Matter of Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

and
In the Matter of Consideration by the National Assembly of:

- 1) The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 2) The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
- 3) The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Pursuant to Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the following Agreements were submitted to the Speaker of the National Assembly on 29th November, 2022 and consequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House:

1. Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
2. The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
3. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer sets out to significantly limit future production and consumption of hydrofluorocarbons (HFCs). It also contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment further includes target baselines and emission levels that states in agreement with it are to achieve.

The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa aims to prohibit the import into Africa of any hazardous waste and to specifically ban the transboundary movement of hazardous wastes.

The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities aims to enhance the management of the marine and coastal environment and natural heritage including its biological diversity for the sustainable use and benefits of present and future generations.

The Departmental Committee on Environment, Forestry and Mining hereby invites the public and stakeholders to submit Memoranda on the three Agreements. The full text of the Agreements and the accompanying Memorandum to Parliament may be accessed at <http://www.parliament.go.ke/the-national-assembly/house-business/paper-laid>

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to ena@parliament.go.ke; to be received on or before Friday, 6th January, 2023.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

16th December, 2022

For the Welfare of Society and the Just Government of the People



KENYA LAW REFORM COMMISSION



"A Vibrant Agency for Responsive Law Reform"
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www.info@klrc.go.ke

When replying please quote

Ref. No. KLRC/RES/93 VOL.VII(4)
and Date



KENYA LAW REFORM COMMISSION
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TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

19th January, 2023

D/DC
Please deal
Soni
19/01/23

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

John Mugoma
to facilitate
up with
20/1/23

Dear

RE: DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

Please refer to the above subject and your letter Ref.No.NA/DCC/SC/2022/008 dated 21st December, 2022.

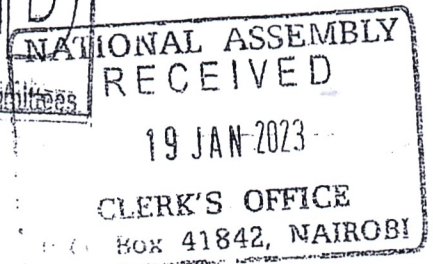
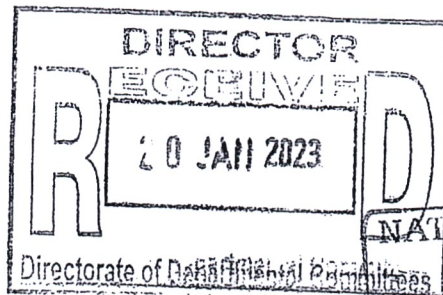
Enclosed herein please find the Commission's comments of Statute Law (Miscellaneous Amendments) Bill on the Copyright Act (No. 12 of 2001) for further action.

As always, we want to thank you for your continued support and cooperation.

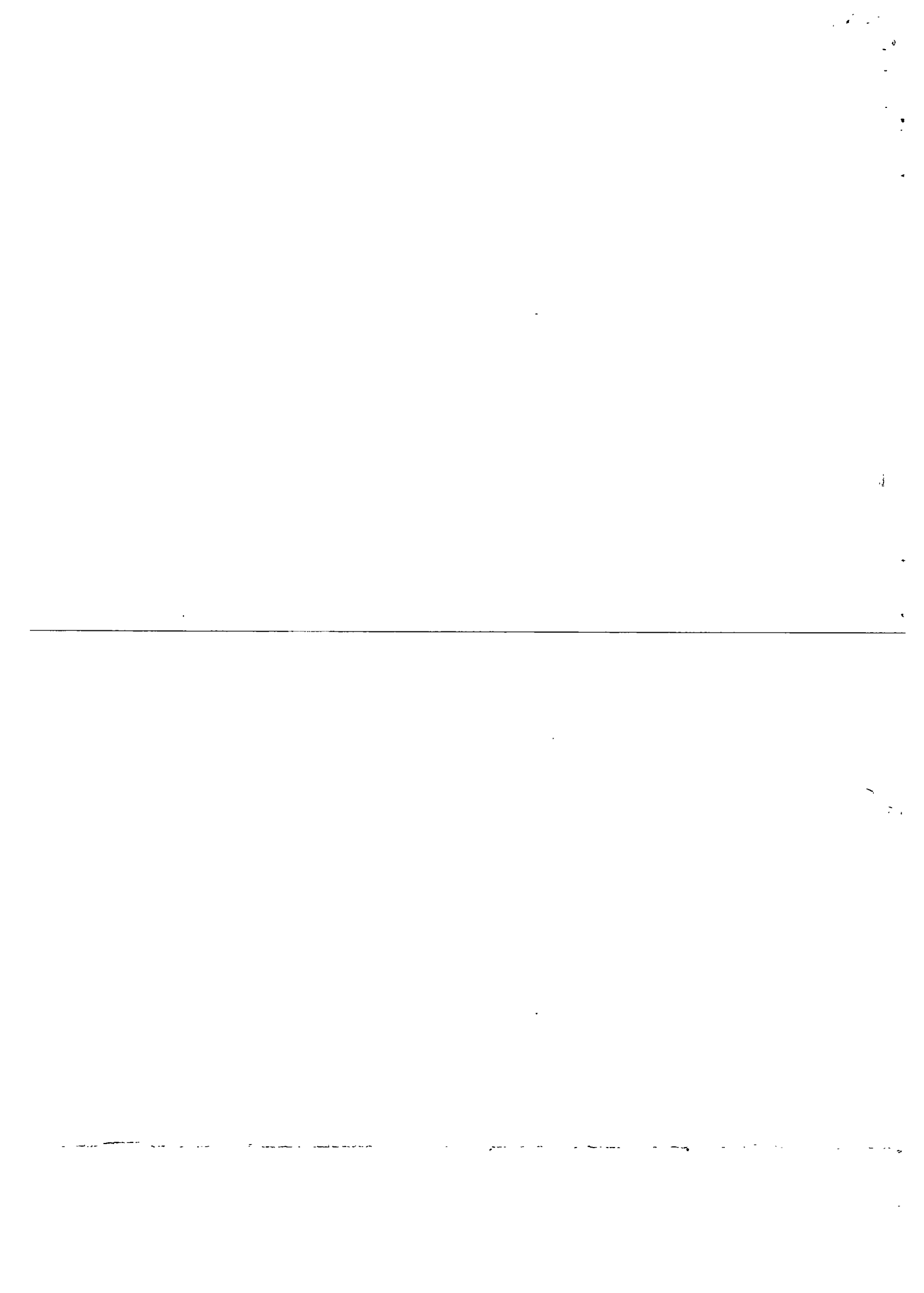
Yours *sincerely,*
Joash Dache

Joash Dache, MBS
SECRETARY/CEO

Encls.



19 JAN 2023



KENYA LAW REFORM COMMISSION



Vibrant Agency for Responsive Law Reform"

ograms: "LAWREFORM" NAIROBI
phone: Nairobi, +254-20-2241186/2241201
+254-20-2225786
w.info@klrc.go.ke

en replying please quote

KLRC/RES/93 VOL.VII(4)

No.
and Date



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

19th January, 2023

.....20.....

The Clerk of National Assembly
Clerk's Chambers
National Assembly
Parliament Building
P.O Box 41842 -00100
Nairobi

(Attn: Mr. Jeremiah W. Ndombi, MBS)

Dear

RE: DEPARTMENTAL COMMITTEE ON SPORTS AND CULTURE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

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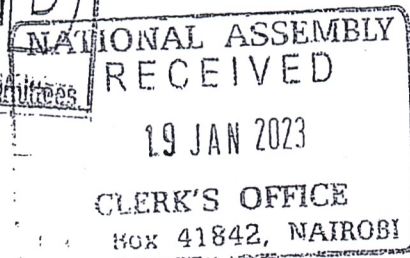
Sincerely,
Joash Dache

Joash Dache, MBS
SECRETARY/CEO

Encls.

D/DC
Please deal
soon
19/01/23

John Mugoma
to facilitate
up with
20/1/23



20 JAN 2023



REVIEW OF THE COPYRIGHT (AMENDMENT) BILL, 2022

I. INTRODUCTION

The Bill proposes to amend the Copyright Act, 2001 to make provisions for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organisations towards the authors and performers. It also proposes to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

II. SPECIFIC COMMENTS

PROVISION	ISSUE	PROPOSAL
30AA. (1) Where a sound recording is published commercial purposes, or a reproduction of such phonograms is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.	<ol style="list-style-type: none"> 1. It is not clear what is meant by "published for commercial purposes" or "used directly for broadcasting or other communication to the public." 2. The paragraph only mentions the payment of equitable remuneration to the performer or performers and the producer of the sound recording. It is not clear if this applies to other types of creators or rightsholders, such as songwriters or composers. 	<p>The expression "commercial purposes" could be defined more clearly to avoid confusion</p> <p>It would be helpful to specify the rights and obligations of these other parties in order to ensure that all relevant creators are fairly compensated for the use of their works.</p>
30AA. (2) Unless otherwise agreed between the performers and the	<ol style="list-style-type: none"> 1. As earlier stated, a potential issue with the paragraph is it only specifies that half of the 	<p>It would be helpful to specify the rights and obligations of these other parties in order to ensure</p>

producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

amount received by the producer should be paid to the performer or performers. It is not clear if this applies to other types of creators or rightsholders, such as songwriters or composers.

that all relevant creators are fairly compensated for the use of their works.

2. The rate of 50% is on very high end and not backed by industry practice.

On our independent research, we have identified the percentage of royalties paid by a producer to a performer or performers vary depending on the specific industry and the terms of the individual contract. In general, the percentage paid can range from as low as 5% to as high as 50% or more.

In the music industry, for example, the standard royalty rate for recorded music is around 10-15% of the retail price of the album for the performer. However, some performers, especially established ones, may negotiate higher royalty rates.

In the film and television industry, actors typically receive a percentage of the film's or show's profits, known as a "backend" or "residual" payment. The percentage can vary widely, depending on the

Delete the paragraph and delegate the matter of percentage to be handled under subsidiary legislation

	<p>actor's level of fame and experience, and the success of the project.</p> <p>In the book publishing industry, authors usually receive a royalty percentage of around 15-25% of the net price of the book.</p> <p>In all of these industries, the percentage paid can also be influenced by factors such as the type of contract, the format of the release and the distribution channels used. It's important to note that, these are general information and the specific percentage can vary greatly, depending on the agreement between the parties involved.</p> <p>It is therefore not advisable to have this percentage in a statute and should be left for subsidiary legislation.</p>	
<p>30AA. (3) A performer shall have the unwaivable and untransferable rights to receive equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of his performance fixed in an audiovisual</p>	<p>In the context of copyright law, "unwaivable and untransferable rights" refer to certain rights that are granted to creators of copyrighted works, such as the right to be credited for their creations or the right to object to certain uses of their works. These rights are typically considered to be fundamental to the protection of creators' interests and cannot be waived or transferred to someone else.</p>	<p>Delete the words "have the unwaivable and untransferable"</p>

<p>fixation to be managed through the relevant</p>	<p>However, other rights, such as to receive payment can be assigned through contract or agreement or acts of the law (such as succession). This paragraph is therefore legally incorrect.</p>	
<p>s.46(1) No person or association of persons shall commence or carry on the business as a collective managements organization unless registered as such by the Board and granted operating license.</p>	<p>This provision imposes huge cost for the CMOs by having a regulatory measure of both registration and licensing.</p> <p>Having both registration and licensing requirements in a procedure like this is excessive bureaucracy, as it could create additional administrative burdens and costs for CMOs.</p> <p>Additionally, the statement implies that the Board has discretion over who can and cannot participate in the business of collective management, which could lead to potential abuse of power, lack of transparency and arbitrariness. This is equally unconstitutional as it curtails the rights of association as was stipulated in in the case of <i>Mercy Munee Kingoo & Anor v. Safaricom Limited & Anor</i> [unreported]</p> <p>Lastly having both the word "person or association" is repetitive.</p>	<p>Redraft in positive language as follows:</p> <p>"A person seeking to carry on the business as a collective management organization may register as such with the Board."</p>
<p>s.46(13) "Application to the Board in the prescribed manner for an operating licence"</p>	<p>We refer the above observation. Having requirement of both registration and operating</p>	<p>Delete the condition of having the operating license.</p>

	license is unnecessary bureaucracy	
1A) In addition to the members provided for under subsection (1) there shall be coopted into the board of directors of a collective management organization at least four persons who hold professional qualifications recognized by a professional body established under the relevant law.	<p>The requirement that at least four persons who hold professional qualifications recognized by a professional body established under the relevant law must be co-opted into the board of directors of a collective management organization could be seen as discriminatory against individuals who do not hold such qualifications.</p> <p>This could be seen as a form of discrimination on the basis of education or profession, In addition, the requirement of professional qualifications recognized by a specific professional body established under the relevant law could be seen as a form of restriction and may limit the ability of other professional bodies or individuals to participate in the management of collective management organizations.</p> <p>Furthermore, we note the requirement for professional qualifications is unnecessary for fulfilling the role of a board member and could be seen as a form of unnecessary bureaucracy.</p>	Delete the words "at least four persons who hold professional qualifications recognized"
(6) A person who has been convicted of an offence under this Act or any law relating to the management of any company or	<p>This paragraph could be seen as a form of discrimination on the basis of criminal record.</p> <p>This statement is a form of blanket ban on individuals who have been convicted of</p>	Delete the paragraph

<p>organization or of a felony shall not be eligible to hold office as a director or to be employed as a member of the staff of a collective management organization.</p>	<p>certain offences without taking into consideration the nature of the offence, the length of time since the conviction and the relevance of the offence to the position in question.</p> <p>It could also be argued that the statement is overly broad and may include minor offences that are not relevant to the position in question.</p> <p>Furthermore, it could also be argued that the statement does not take into account the possibility of rehabilitation and that it could be seen as a form of punishment after the completion of the sentence.</p>	
<p>(7) Where a person who is a member of the board of a collective management organization or a member of its staff is charged with an offence under this Act or any other law relating to the management of any company or organization or of a felony such person shall step aside from his or her position until the matter is heard and determined.</p>	<p>The paragraph specifies that a person who is charged with an offence under this Act or any other law relating to the management of any company or organization, or with a felony, must "step aside" from their position until the matter is heard and determined.</p> <p>However, it is not clear what is meant by "step aside" and how this requirement should be implemented.</p> <p>"Step aside" is a popular literature term for "suspension" in Kenyan public service and should not be construed to have a legal import.</p>	<p>Delete the paragraph</p>
<p>(8) A person to whom subsection (7) applies shall during the hearing</p>	<p>This paragraph could be seen as a form of discrimination against individuals who are</p>	<p>Delete the paragraph for the matter to be handled</p>

<p>of the case be entitled to receive half of his or her basic pay and if acquitted of the offence shall be paid the outstanding amount, and may with the concurrence of the members of the organization be reinstated to his or her respective position in the Board.</p>	<p>accused of an offence but not yet convicted, as it implies that they are guilty until proven innocent.</p> <p>This could be seen as a violation of the principle of presumption of innocence, which is a fundamental principle of criminal law. Additionally, the statement also provides for the possibility of reinstatement to the position in the Board with the concurrence of the members of the organization. This could be seen as a violation of the principle of impartiality, as it implies that the members of the organization may be influenced by personal bias or prejudice in making their decision.</p> <p>Furthermore, it could also be argued that the statement does not take into account the possibility that the individual may not be able to return to their position even if they are acquitted of the offence, due to the stigma associated with being accused of an offence.</p> <p>It would also be advisable to consider the possibility that the individual may not be able to return to their position even if they are acquitted of the offence.</p>	<p>through the Constitutions of CMOs.</p>
<p>s.46 E (7) Any member or director of a collective management organization who approves accounts</p>	<p>The issue with the above statement is that it may be seen as a form of strict liability, which is a legal concept where an individual can be held liable</p>	<p>Restructure the paragraph to insert the element of <i>mens rea</i> with words such as "knowingly or with intent"</p>

<p>beyond the limits directed by the Board commits an offence and shall on conviction be liable to a fine not exceeding five times the amount in excess of the allowed amount or imprisonment for a term not exceeding three months or to both.</p>	<p>for an offence regardless of whether they had intent or knowledge of committing the offence.</p> <p>It does not take into account the intent or knowledge of the individual in approving the accounts beyond the limits directed by the Board.</p> <p>This could be seen as a violation of the principle of mens rea (guilty mind) which is a principle that states that an individual must have had intent or knowledge of committing an offence in order to be held liable for it.</p> <p>Additionally, the statement also provides for the possibility of a fine of five times the amount in excess of the allowed amount or imprisonment, which could be seen as a severe punishment and may not be proportionate to the offence.</p>	<p>to make it an enforceable penal provision.</p>
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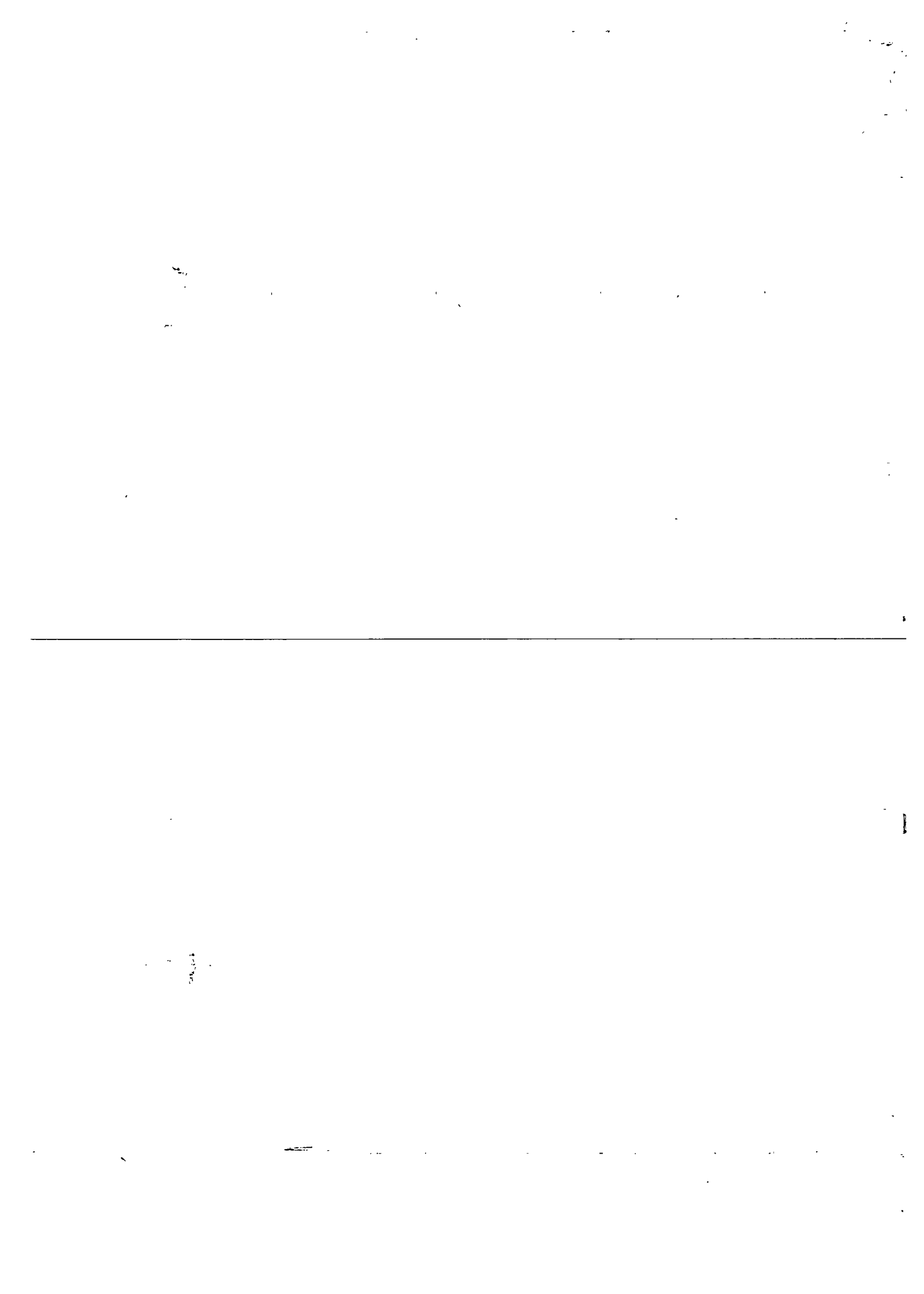
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II. SPECIFIC COMMENTS

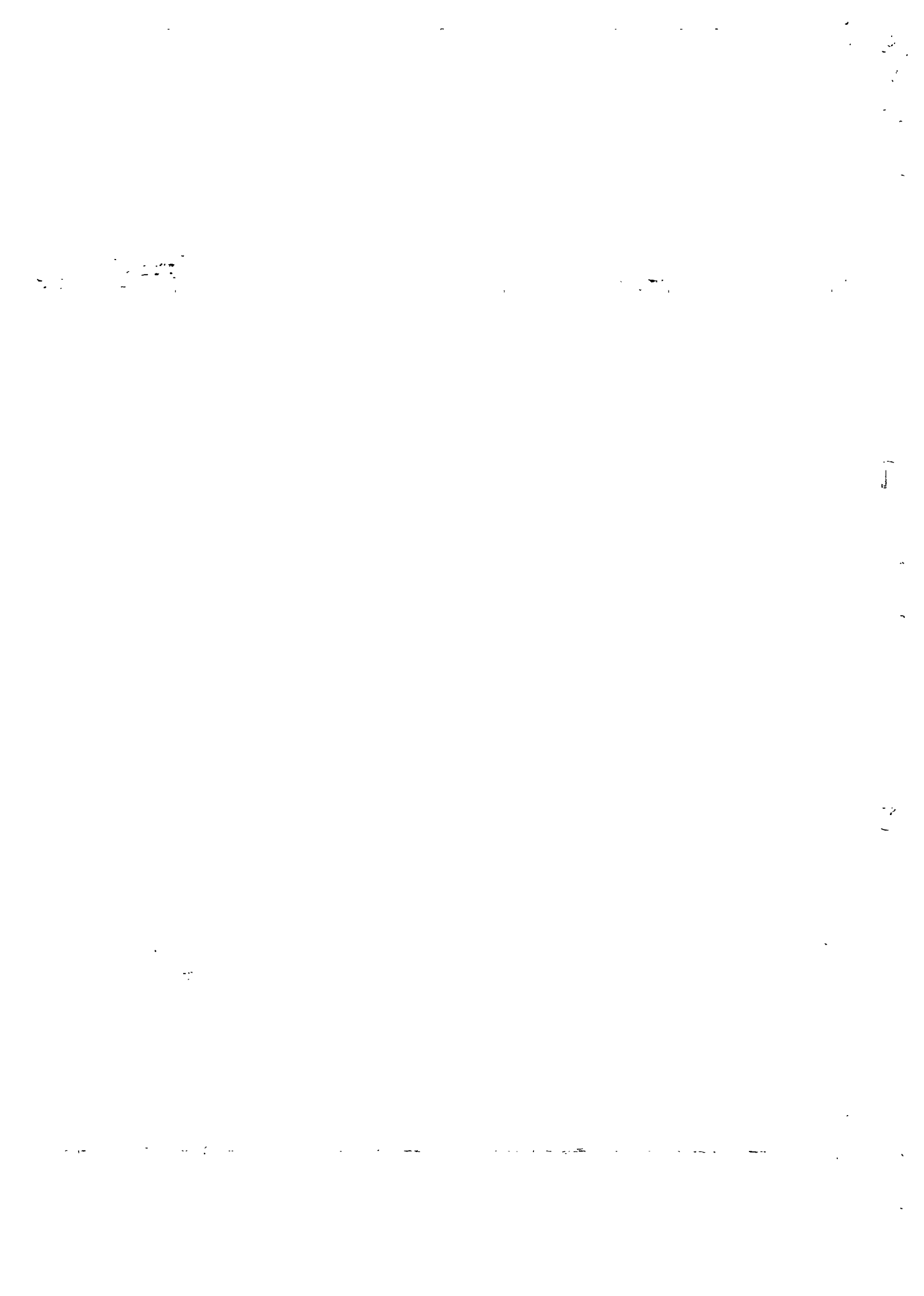
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