

REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION
AND INNOVATION

REPORT ON THE CONSIDERATION OF STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILL, 2018 (NATIONAL ASSEMBLY BILL NO.12)

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI-KENYA

JUNE, 2018

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ABBREVIATIONS

KICA Kenya Information Communication Authority

KECOBO Kenya Copyright Board

ICT Information Communication and Technology

CHAIRPERSON'S FOREWORD

The Departmental Committee on Communication, Information and Innovation is established and mandated under Standing Order No. 216 to *inter alia*; 'Study and review all the legislation referred to it'.

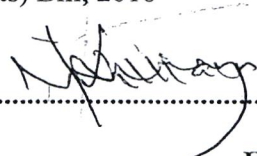
The Statute Law (Miscellaneous Amendments) Bill, 2018 sponsored by Hon. Aden Duale, MP was read a first time on 18th April, 2018 and subsequently referred to the Departmental Committee on Communications, Information and Innovation for consideration and thereafter report to the House pursuant to Standing Order No.127(1).

The Committee placed an advert in the local dailies on 7th May, 2018 and wrote to the key stakeholders inviting them to submit their views on the Bill. The Committee held meetings with Kenya Copyright Board and Communication Authority of Kenya to consider their memoranda.

The Committee appreciates the assistance provided by the Office of the Speaker and of the Clerk of the National Assembly that enabled it to discharge its functions in considering the Statute Law (Miscellaneous Amendments) Bill, 2018. I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the submissions by different stakeholders on the Bill.

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee Communication, Information and Innovation, it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Statute Law (Miscellaneous Amendments) Bill, 2018

SIGNED.....



DATE:.....

07/06/2018

HON. WILLIAM KISANG, MP
(CHAIRPERSON)

1.0 PREFACE

1.1 Committee Mandate

The Departmental Committee on Communications, Information and Innovation is established under *Standing Order 216* whose mandate pursuant to the Standing Order 216 (5) is as follows;

- a. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b. Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. Study and review all legislation referred to it;
- d. Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e. 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;
- f. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
 - f (a) examine treaties, agreements and conventions;
- g. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;

- i. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- j. Examine any questions raised by Members on a matter within its mandate.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to oversee Communication, Information, media and broadcasting (except for broadcast of parliamentary proceedings), Information Communications Technology (ICT) development and advancement of technology and modernization of production strategies.

1.2 Committee Membership

1. The Hon. Kisang William Kipkemoi, M.P - **Chairperson**
2. The Hon. George Macharia Kariuki, M.P - **Vice Chairperson**
3. The Hon. Liza Chelule Chepkorir, M.P.
4. The Hon. Alfah O. Miruka, M.P.
5. The Hon. Annie Wanjiku Kibeh, M.P.
6. The Hon. Joshua Kimilu Kivinda, M.P.
7. The Hon. Marwa Kitayama Maisori, M.P.
8. The Hon. Mwambu Mabongah, M.P.
9. The Hon. Maritim Sylvanus, M.P.
10. The Hon. Mwangaza Kawira, M.P.
11. The Hon. Jonah Mburu, M.P.
12. The Hon. Gertrude Mbeyu Mwanyanje, M.P.
13. The Hon. Wamuchomba Gathoni, M.P.
14. The Hon. (Eng) Mark Nyamita Ogola, M.P.
15. The Hon. John Kiarie Waweru, M.P.
16. The Hon. Erastus Nzioka Kivasu, M.P.
17. The Hon. Innocent Momanyi Obiri, M.P.
18. The Hon. Godfrey Osotsi Atieno, M.P.
19. The Hon. Anthony Tom Oluoch, M.P.

1.3 Committee Secretariat

- | | |
|----------------------------|------------------------------------|
| 1. Mr. Nicholas Emejen | Deputy Director Committee Services |
| 2. Ms. Ella Kendi | Clerk Assistant III |
| 3. Mr. Ronald Walala | Legal Counsel II |
| 4. Ms. Lorna Okatch | Research Officer III |
| 5. Ms. Catherine Gati | Fiscal Analyst III |
| 6. Mr. Wilson Angatangoria | Sergeant at arms |
| 7. Ms. Deborah Mepusi | Media Relations |

2.0 INTRODUCTION

2.1 Background

1. Statute Law (Miscellaneous Amendments) Bill, 2018, was published on 10th April 2018, and read a first time on 18th April, 2018, and thereafter committed to various Departmental Committees for consideration pursuant to Standing Order 127.
2. The Bill proposes several amendments to various Acts of Parliament. The Departmental Committee on Communication, Information and Innovation considered the proposed amendments to the Kenya Information and Communications Act, 1998(No.2 of 1998) and the Copyright Act, 2001 (No.12 of 2001).
3. The Bill seeks to amend Kenya Information and Communications Act 1998 to provide for the mode of appointment of the Chairperson of the Communication Authority. Further it proposes to amend the Copyright Act, 2001 to streamline the composition and number of members of the Kenya Copyright Board.

3.0 CONSIDERATION OF THE PROPOSED AMENDMENTS TO KENYA INFORMATION AND COMMUNICATIONS ACT, 1998

3.1 Proposed amendments to the Kenya Information and Communications Act, 1998

4. The Bill proposes to amend Section 6 and 6B of Kenya Information and Communications Act (KICA) to change the appointment procedure for the Chairperson and members of the Board of the Communications Authority.
5. Currently, the Act requires the President to appoint the Chairperson. The Cabinet Secretary is empowered to appoint seven members after the eight persons recruited by a selection panel. The amendments propose that only the persons to be appointed by the Cabinet Secretary be subjected to the selection panel process with the President directly appointing the Chairperson.

The proposed amendment is as follows;

- s.6(1)(a) Delete the expression “in accordance with section 6B”.
- s.6B(1) Delete the introductory part and substitute therefor the following –
“within fourteen days of the occurrence of a vacancy in the office of member, the Cabinet Secretary shall –

- (1)(b) Delete the expression “chairperson or”
- (8) Delete paragraph (a)
Delete the expression “the president or” “as the case may be”
- (9) Delete and substitute therefor the following –
“(9) The Cabinet Secretary shall, within fourteen days of receipt of the names under subsection (8), appoint the members.”
- (10) Delete the expression “chairperson and” and “the President and”

3.2 Submissions from the Communications Authority of Kenya

6. The Committee met with the Communications Authority on 25th May, 2018 and received both their written and oral submissions on the proposed amendment. In their submissions, the Authority noted that the amendments propose different methods of selection and appointment of the Chairperson and members of the Board which is not ideal. The Authority proposed three options on the mode of appointment, as follows–

- (a) direct appointment of the Chairperson and members by President and Cabinet Secretary, respectively;
- (b) direct appointment of the Chairperson and members by President and Cabinet Secretary, respectively, subject to a selection panel convened by the Public Service Commission; or
- (c) appointment of Chairperson and members for direct appointment by President and the Cabinet Secretary, respectively, subject to approval by the National Assembly.

Committee observations

7. **The Committee observed that:-**

- (i) Having different procedures for appointment of the Chairperson and other Board Members was inequitable.
- (ii) The issue of the selection panel being convened for the appointment or replacement of Board members had seriously hampered efforts to appoint or replace Board members. There was therefore need to establish an equitable appointment procedure which does not inordinately hamper the operations of the Authority and safeguards the independence of the Authority as required by Article 34 (5) of the Constitution.

- (iii) The criteria for appointment of members of the board by the Cabinet Secretary should take into consideration interests of all sections of society including persons with disabilities, marginalized groups and gender.

4.0 CONSIDERATION OF THE PROPOSED AMENDMENTS TO THE COPYRIGHT ACT, 2001

4.1 Proposed Amendments the Copyright Act, 2001

- 8. The Bill proposes to amend section 6 of the Copyright Act, 2001 to streamline the membership of the Kenya Copyright Board (KECOBO) from the current twenty-one (21) to nine (9) members.

The proposed amendment is as follows;

Delete and substitute therefor the following new section –

s.6 Composition of the Board

- 6. (1) The Board shall consist of –
 - (a) a Chairperson appointed by the President
 - (b) the Principal Secretary in the National Treasury or a designated representative;
 - (c) the Principal Secretary in charge of matters relating to culture and heritage or a representative;
 - (d) the Attorney General or a representative;
 - (e) three persons each nominated by associations recognized by the Government as representing stakeholders in music, film and publishing respectively;
 - (f) one person nominated by the Law Society of Kenya by virtue of their knowledge and experience in matters related to Copyright; and
 - (g) the Executive Director appointed under section 11

(2) Appointments under paragraph (1) (e) and (f) shall be by the Attorney-General

4.2 Submissions from the Kenya Copyright Board

- 9. The Committee met with KECOBO on 4th June, 2018 and received their oral submissions on the proposed amendment. KECOBO was agreeable to the proposal subject to the inclusion of

the Principal Secretary in the Ministry responsible for Information and Communications Technology (ICT) to assist the Board effectively discharge its mandate.

Committee observation

10. The Committee observed that:

- (i) There is need for a representative from the ICT sector to be in the board;
- (ii) The Board, when reconstituted as proposed would comprise more than two legal professionals, including the Executive Director, without any representation from the ICT sector.

5.0 RECOMMENDATIONS

The Committee therefore recommends that the Bill be amended –

1. In the proposed amendments to the **Kenya Information Communications Act, 1998 (No. 2 of 1998)** by–

(a) inserting the following new rows immediately after the proposed amendment to section 6(1)(a)–

s. 6(1) (e) Delete the expression “in accordance with section 6B”.

s. 6 Insert the following new subsection immediately after subsection (1)–

“(2) In appointing the members of the Board under subsection (1) (e) the Cabinet Secretary shall ensure—

(b) deleting the proposed amendments to section 6B and substituting therefor the following new row–

(a) that the appointees to the Board reflect the interests of all sections of society;

(b) equal opportunities for persons with disabilities and other marginalised groups; and

(c) that not more than two-thirds of the members are of the same gender.”

s. 6B Delete.

Rationale:

To empower the President and the Cabinet Secretary to directly appoint the Chairperson and other members of the Board, respectively. Further, to require that the cabinet secretary ensure

the Principal Secretary in the Ministry responsible for Information and Communications Technology (ICT) to assist the Board effectively discharge its mandate.

Committee observation

10. The Committee observed that:

- (i) There is need for a representative from the ICT sector to be in the board;
- (ii) The Board, when reconstituted as proposed would comprise more than two legal professionals, including the Executive Director, without any representation from the ICT sector.

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s. 6(1) (e) Delete the expression “in accordance with section 6B”.

s. 6 Insert the following new subsection immediately after subsection (1)–

“(2) In appointing the members of the Board under subsection (1) (e) the Cabinet Secretary shall ensure—

(b) deleting the proposed amendments to section 6B and substituting therefor the following new row–

(a) that the appointees to the Board reflect the interests of all sections of society;

(b) equal opportunities for persons with disabilities and other marginalised groups; and

(c) that not more than two-thirds of the members are of the same gender.”

s. 6B Delete.

Rationale:

To empower the President and the Cabinet Secretary to directly appoint the Chairperson and other members of the Board, respectively. Further, to require that the cabinet secretary ensure

equal representation in his or her appointments in line with Constitutional requirements on diversity, inclusion of marginalized groups and gender representation. The removal procedures set out under section 6D of the Act which requires the formation of a Tribunal will act to safeguard the independence of the Board and the Authority.

2. in the proposed amendments to the **Copyright Act, 2001 (No. 12 of 2001)** by—

(a) inserting the following new paragraph immediately after the proposed new paragraph 6(1)(c)—

“(ca) the principal Secretary in the Ministry responsible for matters relating to information and communications technology or a designated representative”

(b) deleting the proposed new paragraph (6)(1)(f); and

(c) deleting the expression “paragraphs (1)(e) and (f)” appearing in the proposed new section 6(2) and substituting therefor the expression “paragraph (1)(e)”.

Rationale:

To replace the representative of the Law Society of Kenya with the Principal Secretary in the Ministry responsible for ICT in order to assist the Board in the effective discharge of its functions. The Board, as proposed to be reconstituted comprises the Attorney general or a representative and the Executive Director who is an Advocate of the High Court with proven experience in copyright matters. There is no proposed representation from the ICT sector.



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