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Presented by
Sp of the chair
Departmental Committee
on energy, communication
and information
Jambek
on Tuesday
2/8/2016
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ELEVENTH PARLIAMENT
FOURTH SESSION
2016

THE DEPARTMENTAL COMMITTEE ON ENERGY,
COMMUNICATION AND INFORMATION

REPORT OF THE COMMITTEE ON THE CRISIS FACING THE MUSIC
INDUSTRY ON PAYMENTS OF ROYALTIES AND REVIEW OF THE
LEGAL FRAMEWORK FOR THE MUSIC INDUSTRY

CLERK'S CHAMBERS,
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JULY, 2016

Contents

LIST OF ABBREVIATIONS2

1.0 CHAIR’S FORWARD.....3

2.0 EXECUTIVE SUMMARY.....4

 2.1. MANDATE OF THE COMMITTEE5

 2.2. OVERSIGHT5

 2.3. MEMBERS OF THE COMMITTEE6

 2.5. RECOMMENDATIONS7

3.0 INVESTIGATIONS – BACKGROUND INFORMATION.....8

4.0 SUBMISSIONS FROM STAKEHOLDERS.....8

 4.1 SUBMISSIONS FROM MUSICIANS8

 4.2 SUBMISSIONS BY KAMP AND PRISK9

 4.3 SUBMISSIONS BY MCSK9

 4.3.1 The Proposals9

 4.3.2 Problem Statement10

 4.4 SUBMISSIONS BY ENTERTAINMENT DEALERS ASSOCIATION.....11

5.0 DELIBERATIONS BY THE COMMITTEE12

 5.1 LEGISLATIVE.....12

 5.2 ADMINISTRATIVE ISSUES20

6.0 FINAL RESOLUTIONS.....21

7.0 ADOPTION LIST23

LIST OF ABBREVIATIONS

CMO	-	Collective Management Organization
KAMP	-	Kenya Association of Music Producers
PRISK	-	Performers Rights Society of Kenya
MSCK	-	Music Copyright Society of Kenya
KECOBO	-	Kenya Copyright Board
DJ	-	Disco Jockey
KICA	-	Kenya Information and Communication Act
CA	-	Communication Authority
CEO	-	Chief Executive Officer
KRA	-	Kenya Revenue Authority
AG	-	Attorney General

1.0 CHAIR'S FORWARD

On Friday 29th January, 2016, the Committee on Energy, Communication and Information received a letter from the Collective Management Organizations (CMO's) which include, the Music Copyright Society of Kenya (MCSK), the Kenya Association of Music Producers (KAMP) and the Performers Rights Society of Kenya (PRISK) requesting the Committee to inquire into why musicians have not been receiving their rightful share of Skiza tunes royalties.

Pursuant to Standing Order 216 (5) (e) the Committee on its own motion opened an inquiry into the matter. In considering the matter, the Committee held various meeting with the stakeholders and musicians. The meetings were aimed at inquiring into issues raised in the petition.

During the Committee invited the Ministry of Sports, Culture and the Arts, Communications Authority of Kenya, Safaricom Ltd, Kenya Copyright Board, The Media Owners Association, The Kenya Revenue Authority, Copyright Society of Kenya (MCSK), the Kenya Association of Music Producers (KAMP) and the Performers Rights Society of Kenya (PRISK) for a series of meetings. The Committee finally appointed a technical team to fully engage with the musicians and other stakeholders to handle the matter of the musicians and report back to the Committee for consideration and adoption. Having deliberated the submissions by the stakeholders, the Committee has made its findings in the body of this report.

The Committee therefore appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

On behalf of the Committee and Pursuant to Standing Order 216(5) it is my duty to table on the Floor of the House the Report of the Committee on the Petition.

THE HON. JAMLECK KAMAU, EGH, M.P.

2.0 EXECUTIVE SUMMARY

The purpose of this report was to present the findings of the Departmental Committee on Energy Information and Information on the crisis facing the Music Industry on Payments of Royalties and review of the legal framework to the Music Industry.

Having deliberated and in agreement with the stakeholders of the music industry, the Committee recommends that KECOBO be tasked to develop amendments to the Copyright Act and other relevant laws to be effected by parliament at the shortest opportune time.

The Ministry of Sports, Culture and Arts, in consultation with relevant stakeholders including the AG, develop a new law christened “The Music Bill” to handle all matters of the music industry and forward the same to Parliament for enactment.

Being the Chairperson of the Committee, I take this opportunity to thank all the Members of the Committee for their useful contributions during the long hours under tight schedules which enabled us to complete the task within the stipulated period.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Energy, Communication and Information, to present this report to the House pursuant to the provisions of Standing Orders 216(5) of the National Assembly.

2.1. MANDATE OF THE COMMITTEE

The Departmental Committee on Energy, Communication & Information is one of the twelve Departmental Committees of the National Assembly established under *Standing Order 216*.

The Committee under Standing Order 216 (5) is mandated to:-

- 1 investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- 2 study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- 3 study and review all the legislation referred to it;
- 4 study, access and analyse the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- 5 investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;
- 6 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); and
- 7 make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

The Committee is mandated to consider the following subjects, Fossil fuels exploration, Development of energy, Production of energy, Maintenance and regulation of energy, Communication, Information, Broadcasting and Information Communications Technology (ICT) development and management.

2.2. OVERSIGHT

The Committee oversees the following Government Ministries and State Departments under them;

1. Ministry of Energy and Petroleum
2. Ministry of Information, Communication and Technology

2.3. MEMBERS OF THE COMMITTEE

Chairperson	The Hon. Jamleck Kamau, EGH, MP
Vice –Chairperson	The Hon. Jackson Kiptanui, MP
Members	The Hon. Mohammed Elmi, EGH, MP
	The Hon. Edick Anyanga, MP
	The Hon. Cecily Mbarire, MP
	The Hon. Joseph Magwanga,MP
	The Hon. (Eng.) James Rege, MP
	The Hon. Mithika Linturi, MP
	The Hon. Zebedeo Opore, MP
	The Hon. Mary N. Mbugua, HSC, MP
	The Hon. Aburi Mpuru, MP
	The Hon. Aramat Lemanken, MP
	The Hon. Arthur Odera, MP
	The Hon. Banticha Abdullahi, MP
	The Hon. Esther Gathogo, MP
	The Hon. Fathia Mahbub, MP
	The Hon. James Lomenen, MP
	The Hon. Nicholas Ngikor, MP
	The Hon. OnesmusNjuki, MP
	The Hon. Rachael Amolo, MP
	The Hon. Roba Duba, MP
	The Hon. Ndung’u Gethenji, MP
	The Hon. (Eng.) Vincent Musau, MP
	The Hon. William Kisang, MP
	The Hon. Richard Tongi, MP
	The Hon. Moses Kuria, MP
	The Hon. Silverse Anami,MP
	The Hon. Charles Nyamai,MP
	The Hon. Willy Mtengo,MP

2.4 COMMITTEE SECRETARIAT

Clerk Assistant-Team leader	Mr. Amos Kiangwe
Clerk Assistant	Mr. Jimale Mohamed
Clerk Assistant	Ms. Lauren Wesonga
Legal Officer	Ms. Jemimah Waigwa
Research & policy Analyst	Mr. Donald Manyala
Fiscal Analyst	Mr. Abdirahman Gorod

2.5 RECOMMENDATIONS

Having deliberated and in agreement with the stakeholders of the music industry, the Committee therefore recommends as follows:

1. That KECOBO is tasked to develop amendments to the Copyright Act and other relevant laws to be effected by parliament at the shortest opportune time.
2. That the Ministry of Sports, Culture and Arts, in consultation with relevant stakeholders including the AG, develop a new law christened "The Music Bill" to handle all matters of the music industry and forward the same to Parliament for enactment.
3. That KECOBO should request National Assembly through the relevant the departmental Committee and the National Treasury for more funding, to enable them adequately handle all matters administrative as regards Music and Copyright.
4. That the AG be compelled to fully constitute the KECOBO board as per the provisions of the law.

3.0 INVESTIGATIONS – BACKGROUND INFORMATION

After receiving the letter from CMOs, the Committee held several meetings with stakeholders in the industry including the Collective Management Organizations (MCSK, KAMP & PRISK) and musicians/artists, from the meetings, several issues arose and the Committee deemed it necessary to dig deeper into the inquiry so that the problems faced by both the musicians and CMOs are solved once and for all.

A sub-committee headed by Hon. Moses Kuria, MP was nominated in order to go through the documents submitted to the Committee by the CMOs with a view to establish issues of accounting and financial reporting, it was further resolved that a technical working group should be appointed in order to prepare a legal framework aimed at solving the problems in the industry. The technical committee comprised of representatives from the following institutions, The National Assembly, Office of the Deputy President, The Ministry of Information, Communication and Technology, The Ministry of Sports, Arts and Culture, The Kenya Copyright Board, CMOs and Musicians/Artists.

4.0 SUBMISSIONS FROM STAKEHOLDERS

4.1 SUBMISSIONS FROM MUSICIANS

Musicians made the following submissions, that;

1. The communication service providers sell music through phones but the music owners do not get their rightful share. The Petitioners recommend that the federation of all the music and copyright owners be given a platform with the help of government to renegotiate the tariffs of paying *Skiza* tunes and other music products.
2. The Committee should use its power to stop all the premium rates services providers from operations because their businesses are illegal and the income is raised as an infringing of the law in particular section 46(5) of the Copyright Act.
3. The committee should Petition the Attorney-General to reconstitute the Kenya Copyright Board which currently has 7 members instead of 21 because the music stakeholders are missing.
4. Pursuant to section 48 of the Copyright Act a competent authority should be appointed by the Cabinet Secretary.
5. The Kenya music content in the media both Radio and TV should be gazette at 90%;
6. The Kenyan musician's civic education committee should be paid by the government to do civic education on peace, patriotism and voter's registration;
7. The Committee on Energy, Communication and Information should carry out a lifestyle audit of all the directors and staff of the CMO's;
8. The Ministry of Information and Communication should work with the Energy, Communication and Information Committee to negotiate with music and internet platforms like You-tube, *Shika Ngoma*, *Mdundo* and others doing internet trading.

9. The Kenya Revenue Authority should work to enforce the authentication device as stated in the Copyright Act;
10. The expensive/administration cost of all the Collective Management Organizations should be regulated and the percentage be reduced accordingly
11. The CMOs should be stopped from doing the sales business as it creates unfair competition in sales transaction of music with its members;
12. The International performances be licensed by civic education committee;
13. All awards shows should submit nomination voting process/system to the federation for monitoring and should get a license from the federation for the awards.
14. Any contract involving an artist, the federation shall be involved at the request of the artist at the federation's cost.

4.2 SUBMISSIONS BY KAMP AND PRISK

The Kenya Association of Music Producers (KAMP) and Performers Rights Society of Kenya (PRISK) made the following submissions, that;

1. Low levels of awareness about the CMOs which has resulted to high levels of ignorance amongst users ultimately leading to high levels of resistance.
2. Challenges with monitoring usage of rights owners' works that consequently affects distribution processes.
3. A regulatory/oversight authority whose function/mandate has been undermined by underfunding by the Government.
4. Weak laws with regard to enforcement of rights at the level of collective management.
5. High cost of implementing enforcement exercises owing to non-compliance/resistance by users.
6. High cost of setting up basic requisite structures which has seen the CMOs struggle to meet the 70/30% distribution to administration costs set threshold.
7. Inadequate support from interlinked state agencies in enforcing copyright matters with respect to the CMOs mandate.
8. Largely outdated copyright legal framework.
9. Ignorance by the rights' holders pertaining their own rights and the functions of the CMOs. This has led to skewed/negative notions and perceptions with respect to the operations of the CMOs.

4.3 SUBMISSIONS BY MCSK

The Music Copyright Society of Kenya (MCSK) made the following submissions;

4.3.1 The Proposals

1. That Copyright Act be made the superior law in all copyright issues second only to the constitution of Kenya
2. That all laws on copyright, relating to copyright and or touching on copyright be brought together under the Copyright Act.

4.3.2 Problem Statement

The committee was informed that the industry has suffered many huddles and problems due to lack the following:-

1. Legal guidelines/framework to enforce payment of license to CMOs
2. Legal guidelines/framework to set license tariffs for CMOs
3. Legal guidelines/framework to enable CMOs get log sheets from music users
4. Legal guidelines/framework to enable copy right owners to access data on the use of their works from mobile phone providers.
5. Legal guidelines/framework to allow negotiations between mobile phone service providers and copyright owners on the amounts chargeable on use of their works in mobile phones and the percentage sharing thereof.
6. Legal guidelines/framework to allow negotiations between PRSPs and copyright owners on the amounts chargeable on the downloads of their works and percentage sharing thereof
7. Provision for direct representation of CMOs in KECOBO as stakeholders for easier and smooth administration of copy right especially on the side of CMO's roles.
8. Clear legal guidelines/framework on prevention of piracy and curbing of the same
9. Proper legal guidelines/framework to enable KECOBO conducts effective civic education on copyright to copyright owners and music content users.
10. Legal guidelines/framework on the minimum qualification and the maximum period of service of CMO's General Managers/CEOs to curb impunity
11. Legal guidelines/framework on the minimum qualifications of CMOs directors and the maximum period of service to curb impunity
12. Lack of legal guidelines/framework on the minimum qualifications of Chairmen and Vice Chairmen of CMOs and the maximum period of service to curb impunity.
13. Proper legal guidelines/framework to enable all musicians and other copyright owner's free access to mobile phone provider's platforms of ring back tones and ring tones without discrimination.
14. Lack of proper legal guidelines/framework to enable all musicians and other copyright owners to have their music in a common server accessible by all broadcasters and other music users for fairness in access to air plays in radios, TVs and other public communication mediums.
15. Proper legal guidelines/framework to promote transparency and accountability by CMOs in distribution of royalty.
16. Proper legal guidelines/framework to save the copyright owners from unfair legislations like the copyright act amendments 2015 (regulations) which imposes a percentage on the CMOs collection as license fee which amounts to unfair taxation
17. Proper legal guidelines/framework to ensure that all international works are assigned to genuine people through a legally controlled process to curb piracy by ensuring that every work sold and or used in is legally protected.

18. Proper legal guidelines/framework to ensure that DJs do not alter the frequencies of music works / sound recordings when they do their mixes to ensure proper and accurate monitoring of use of works through digital platforms for royalty distribution.
19. That all CMOs be incorporated under the Copyright Act and be totally independent of the companies Act.
20. That a provision be made in the Copyright Act (in the Schedules) for transition period to enable the existing CMOs to fully comply with the provision proposed in 21 herein above.

4.4 SUBMISSIONS BY ENTERTAINMENT DEALERS ASSOCIATION

The Entertainment Dealers Association made the following submissions; that:

1. A regulatory body (self-regulation) should be entrenched in the Copyright Law to oversee and punish errant traders who engage in unethical business practices like piracy. The body should be mandated to give consent whenever a business person applies for a business permit from the County Government like other professional bodies or media association.
2. Special courts should be established to deal with copyright issues.
3. KECOBO does not have enough funds for enforcement.
4. The Communications Authority of Kenya should pass a regulation that requires broadcasters to comply with the percentages of local content and the payment of royalties to the relevant CMO before renewal of their licenses.
5. KRA should be compelled to collect private copy remuneration levy (blank media) on top of the normal duty payable on goods that attract the levy and remit it to the relevant CMO less an agreeable percentage to cover their costs.

5.0 DELIBERATIONS BY THE COMMITTEE

The Committee having considered the submissions from various stakeholders noted a number of issues that were Legislative and Administrative or both and considered them as follows:-

5.1 LEGISLATIVE

NO.	Legislative	Way Forward/Resolutions Of The Committee
1.	<p>That the communication service providers sell music through phones but the music owners do not get their rightful share. The Petitioners recommend that the federation of all the music and copyright owners be given a platform with the help of government to renegotiate the tariffs of paying <i>Skiza</i> tunes and other music products.</p>	<p>Clarify and specify things that the CMOs can do to protect the members therefore amend S.46A of the Copyright Act where the music owners can negotiate for tariffs before the AG Gazettes them.</p> <p>Amend S. 46 by adding a clause that allows the copyright owners to negotiate for tariffs on payment before the Attorney General publishes and gazettes the charges.</p> <p>Add the function of a Competent Authority under the Copyright Act to solve disputes within the music industry.</p> <p>These rights are personal and individual rights so there should be a balance between providing for the individuals</p> <p>Premium Rates Service Providers handle the income of music owners therefore since we have no standards on whether CMOs or Premium Rates Service Providers there be a proposal to have an independent arbitrator to negotiate for the individuals who are not necessarily the CMO'S and PRSPS.</p> <p>Come up with a neutral negotiator in the law to cater for the individual music owners on <i>Skiza</i> tunes.</p> <p>Copyright Act to provide that mobile service providers must negotiate with the owners of the works individually or with CMO's on how much will be charged especially on <i>skiza</i> tunes.</p> <p>S. 7 Copyright Act on powers and functions of the board to slot the power of the copyright board to register a federation that may act as a negotiator.</p>

		<p>S.48 of the Copyright Act to be amended by enhancing the mandate of the competent authority to give the competent authority “teeth” to do its work with regards to handling negotiations and disputes arising between the copyright owners and companies for artists. Look at the USA negotiations tribunal on issue of tariffs</p> <p>Proposal to separate the issue of music from copyright and base it in the arts sector, under the relevant ministry as opposed to housing it at the AG’s office. In essence come up with a new law to handle the issues of <i>Skiza</i> and rights of the musicians, look at the fair play Act of the USA that protects musicians.</p> <p>KECOBO to license digital & online management rights CMOs.</p> <p>-International treaties can be used to develop one or more acts to regulate the copyright and music sector. This then makes a case for having a new law.</p>
2.	<p>That the Committee should use its power to stop all the premium rates services providers from operations because their businesses are illegal and the income is raised as an infringing of the law in particular section 46(5) of the Copyright Act.</p>	<p>Clarify and define the powers and functions of the CMO’s vide the Amendment of the Copyright Act S.46 of the Copyright Act</p> <p>AGM’s of CMO’s are supervised by KECOBO (See proposed amendment from KECOBO). Premium Rates Service Providers are licensed under KICA but are registered under the Company’s Act.</p> <p>PRSP’s are not consulting the artists as they sell the owner’s rights.</p> <p>Regulations and provisions under KICA, to impose reporting obligations for PRSP’S and broadcasters on proceeds of sales.</p> <p>Expand the mandate of the competent authority to handle issues of dispute resolution between parties.</p>
3.	<p>That the committee should Petition the Attorney-General to reconstitute the Kenya Copyright Board which currently has 7 members instead of 21</p>	<p>S.6 of the Copyright Act.</p> <p>Factor in <i>Mwongozo</i> provisions on size of Boards.</p> <p>The Committee to direct the AG to fully constitute</p>

	because the music stakeholders are missing.	the board as per the law
4.	That the Kenya music content in the media both Radio and TV should be gazetted to 90%;	Broadcasting Regulations of KICA to be amended to provide that 60% airplay of music content must be Kenyan.
5.	That the Ministry of Information and Communication should work with the Energy, Communication and Information Committee to negotiate with music and internet platforms like You-tube, Shika Ngoma, Mdundo and others doing internet trading.	What does the copyright Act say on this matter? This is a private property. The Committee cannot negotiate; the Ministry has to deal with its policy issues. S.33 of the Copyright Act states that the copyright board should make regulations on licensing terms. Provide for minimum amount of payment at 30% where there is no agreement
6.	That the expenses/administrative cost of all the Collective Management Organizations should be regulated and the percentage be reduced accordingly;	KECOBO to amend regulations to cap the administrative costs vis-à-vis royalty distribution amount
7.	That the CMOs should be stopped from doing the sales business as it creates unfair competition in sales transaction of music with its members;	There is a proposal to amend the copyright Act on delineation of the functions of the CMO's
8.	That the International performances be licensed by civic education committee;	The proposed Music Bill to handle this issue.
9.	That all awards shows should submit nomination voting process/system to the federation for monitoring and should get a license from the federation for the awards.	Proposed Music Bill to factor this in terms of what are the best practices and if there other relevant laws that govern this process.
10.	That any contract involving an artist, the federation shall be involved at the request of the artist at the federation's cost.	Proposed Music Bill to handle the matter.
11.	Low levels of awareness about the CMOs which has resulted to high levels of ignorance amongst users ultimately leading to high levels of resistance.	Shared mandate of the copyright Act and the Proposed Music Bill.

12.	Challenges with monitoring usage of rights owners' works that consequently affects distribution processes.	Segmentation of the functions of the CMO's in the proposed amendments on functions of the CMO's under the Copyright Act. Shared mandate of the CMO's to monitor the usage of rights on distribution. KICA through CA to allow for monitoring of records by KECOBO that has a role to playing the music industry for onward transmission to the CMO's and all music stakeholders.
13.	A regulatory/oversight authority whose function/mandate has been undermined by underfunding by the Government.	KECOBO to request for more funds
14.	Weak laws with regard to enforcement of rights at the level of collective management.	Copyright Act S.38 by inserting section 38A to be amended. See the proposed amendments by KECOBO.
15.	High cost of implementing enforcement exercises owing to non-compliance/resistance by users.	Not a legal issue. Move to Administrative issues
16.	Inadequate support from interlinked state agencies in enforcing copyright matters with respect to the CMOs mandate.	Inspectors appointed by the board in the Copyright Act. Create capacity within the Board S. 6 of the Copyright Act with people who are well versed in the sector to enforce copyright matters
17.	Largely outdated copyright legal framework.	Proposed amendments to the Copyright Act.
18.	Ignorance by the rights holders pertaining to their own rights and the functions of the CMOs. This has led to skewed/negative notions and perceptions with respect to the operations of the CMOs.	Awareness of issues shared by the Board and the CMO's. Funds for sensitization should be made available to KECOBO
19.	Entrenchment of a regulatory body (self-regulation) in the Copyright Law to oversee and punish errant traders who engage in unethical business practices like piracy. KECOBO should be mandated to give consent	The roles of the Board be expanded to include stakeholders in the licensing of all dealers in issues of copyright to deal with issues of piracy All persons dealing with music business be vetted and cleared by KECOBO even as they get licenses or

	whenever a business person applies for a business permit from the County Government like other professional bodies or media association.	approvals from other bodies. Bring in the stakeholder bodies as part of the approvers in the licensing framework.
20.	Establishment of special courts to deal with copyright issues/establish copyright police.	MOVE TO ADMINISTRATIVE ISSUE
21.	The Communications Authority of Kenya to pass a regulation that requires broadcasters to comply with the percentages of local content and the payment of royalties to the relevant CMO before renewal of their licenses.	KICA to impose a re-licensing obligation. S46 (i). To be amended, delete respect and substitute with "obtain clearance" Insert an independent section on clearance of copyrighted material under KICA. Transition on licensing of broadcasters has not taken place under KICA
22.	KRA to be compelled to collect private copy remuneration levy (blank media) on top of the normal duty payable on goods that attract the levy and remit it to the relevant CMO less an agreeable percentage to cover their costs.	Proposed amendments under KECOBO on collection of private copy remuneration levy by KRA. KECOBO to attempt to introduce a penalty at the point of entry or at the first point of sale in case they evade the point of entry.
23.	Review section 30A of the Copyright Act to determine its constitutionality.	Matter in court
24.	That Copyright Act be made the superior law in all copyright issues second only to the constitution of Kenya	Wherever there is an issue of dispute on copyright matters then the copyright law shall be superior.
25.	That all laws on copyright, relating to copyright and or touching on copyright be brought together under the copyright act.	Cross reference in the various laws that handle matters on copyright issues.
26.	Lack of legal guidelines/framework to enforce payment of licenses to CMOs	Provided for in the Copyright Act. Amend the section to deal with CMO's with regards to their functions. See proposed amendments by KECOBO on the Copyright Act S.38 (2). Create A section on CMO's that outlines the duties especially on collection. Copyright law to criminalize refusal to pay for licenses. Limit negotiations on tariffs to three months

27.	Lack of legal guidelines/legal framework to set license tariffs for CMOs	Proposal that it is an obligation on the broadcaster to supply log sheets. KICA monitoring log sheets that CA maintains to be supplied to CMO's for comparison.
28.	Lack of legal guidelines/legal framework to enable CMOs get log sheets from music users	DEALT WITH ABOVE (Under issue no. 27)
29.	Lack of legal guidelines/legal framework to enable copy right owners to access data on the use of their works from mobile phone providers.	DEALT WITH ABOVE (Under no. 27)
30.	Lack of legal guidelines/legal framework to allow negotiations between mobile phone service providers and copyright owners on the amounts chargeable on use of their works in mobile phones and the percentage sharing thereof.	DEALT WITH (Under issue no. 1)
31.	Lack of legal guidelines/legal framework to allow negotiations between PRSPs and copyright owners on the amounts chargeable on the download of their works and percentage sharing thereof.	DEALT WITH (Under issue no.2)
32.	Lack of provision for direct representation of CMOs in KECOBO as stakeholders for easier and smooth administration of copy right especially on the side of the roles of CMO's.	Representation of all stakeholders in the copyright industry. Amendment of section 6 of the Copyright Act. The Committee on Energy, Communication and Information to ask the AG why he hasn't fully constituted the board. Body bringing together all stakeholders dealing with copyright issues should be placed in the Music Bill.

33.	Lack of clear legal guidelines/framework on prevention of piracy and curbing of the same.	<p>The government to fund KECOBO to carry out this function of curbing piracy.</p> <p>Build the capacity of KECOBO financially.</p> <p>Administrative issue where the cash taken to a consolidated fund from fines in copyright related cases should be paid to KECOBO.</p> <p>Deterrent measures should be taken to curb piracy.</p> <p>See proposals for amendment from KECOBO on the issue of piracy.</p> <p>Extend mandate of KECOBO to develop distribution aspect</p>
34.	Lack of proper legal guidelines/framework to enable KECOBO conduct effective civic education on copyright to copyright owners and music content users.	KECOBO to seek for funds through the Parliamentary Budgeting process and the relevant Committee of the National Assembly.
35.	Lack of legal guidelines/framework on the minimum qualification and the maximum period of service of CMO's General Managers/CEOs to curb impunity	<p>To be stipulated in the memorandum of the CMO's Copyright Act to KECOBO to come up with provisions on maximum period of service for CMO's managers and CEO's.</p> <p>Anchor the structure of CMOs in the law see KECOBO proposals.</p> <p>CEO's of existing CMO's to be in office for one term of four years.</p> <p>For new CMO'S the CEO should serve for a period of three years and renewable once.</p> <p>Directors two terms of three years each.</p>
36.	Lack of legal guidelines/legal framework on the minimum qualifications of CMOs directors and the maximum period of service to curb impunity	<p>KECOBO to provide for the term of Directors.</p> <p>Post-secondary education has the same meaning as the one defined in the Elections Act.</p> <p>On rotation basis, at every election of directors a third shall be retained</p>

37.	Lack of legal guidelines/legal framework on the minimum qualifications of Chairperson and Vice Chairperson of CMOs and the maximum period of service to curb impunity.	KECOBO to provide for the minimum qualifications of a Chairperson/vice chairperson. Serve for maximum of three years.
38.	CMO's to be registered under the copyright act and not the companies act	
39.	Lack of proper legal guidelines/framework to enable all musicians and other copyright owner's free access to mobile phone provider's platforms of ring back tones and ring tones without discrimination.	The proposed National Music Council in the proposed Music Bill to come up with a common control server that serves all the music users and players in the industry.
40.	Lack of proper legal guidelines/framework to enable all musicians and other copyright owners to have their music in a common suffer accessible by all broadcasters and other music users for fairness in access to air plays in radios, TVs and other public communication mediums.	The proposed National Music Council to come up with a common control server that serves all the music users. Create a register of all musicians for purposes of creating accounts.
41.	Regulate CMOs to reduce duplications of their duties which increase administrative costs.	KECOBO should license and supervise joint collection by CMOs.

5.2 ADMINISTRATIVE ISSUES

NO.	Administrative Issues	Way Forward
1.	Lack of proper legal guidelines/framework to enable KECOBO conduct effective civic education on copyright to copyright owners and music content users.	Funding issue to be sorted by KECOBO, relevant National Assembly Committee and National Treasury
2.	Lack of legal guidelines/framework on the minimum qualification and the maximum period of service of CMO's General Managers/CEOs to curb impunity	Handled under legislative
3.	Lack of legal guidelines/framework on the minimum qualifications of CMOs directors and the maximum period of service to curb impunity	Handled under legislative
4.	Lack of legal guidelines/framework on the minimum qualifications of Chairmen and Vice Chairmen of CMOs and the maximum period of service to curb impunity.	Handled under legislative
5.	That pursuant to section 48 of the Copyright Act a competent authority should be appointed by the Cabinet Secretary.	Funds to KECOBO AG's office has names of proposed members.
6.	That the Kenya Revenue Authority should work to enforce the authentication device as stated in the Copyright Act;	Uptake is very low they find it to be expensive.
7.	A regulatory/oversight authority whose function/mandate has been undermined by underfunding by the Government.	Funding issue to be sorted by KECOBO, relevant National Assembly Committee and National Treasury
8.	High cost of setting up basic requisite structures which has seen the CMOs struggle to meet the 70/30% distribution to administration costs set threshold.	Enforcement activities and lack of awareness by the users is a trigger effect of the funds. KECOBO has a central role of regulation in this sector, and it will give a report at the end of this year.
9.	Inadequate support from interlinked state agencies in enforcing copyright matters with respect to the CMOs mandate.	Funds for creating capacity of the police, prosecutors, and other state agencies. KECOBO to take on the liaison on engagement with other agencies.
10.	Ignorance by the rights holders pertaining to their own rights and the functions of the CMOs. This has led to skewed/negative notions and perceptions with respect to the operations of the CMOs.	Sensitization element seats with CMO's Rights owners and KECOBO

11.	KECOBO not having enough funds for enforcement.	Funding issue to be sorted by KECOBO, relevant National Assembly Committee and National Treasury
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6.0 FINAL RESOLUTIONS


1. Amend S.46A of the Copyright Act where the music owners can negotiate for tariffs before the AG Gazettes them.
2. Amend S. 46 by adding a clause that allows the copyright owners to negotiate for tariffs on payment before the Attorney General publishes and gazettes the charges.
3. Add the function of a Competent Authority under the Copyright Act to solve disputes within the music industry.
4. Copyright Act to provide that mobile service providers must negotiate with the owners of the works individually or with CMO's on how much will be charged especially on *skiza* tunes.
5. Proposal to separate the issue of music from copyright and base it in the arts sector, under the relevant ministry as opposed to housing it at the AG's office
6. KECOBO to license digital & online management rights CMOs.
7. International treaties to be used to develop one or more Acts to regulate the copyright and music sector hence to culminate into a new Music Law.
8. KECOBO to include the aspect of producers of audio visual work that has been done in their amendments
9. AGM's of CMO's to be supervised by KECOBO
10. The Committee to direct the AG to fully constitute the KECOBO board as per the law
11. Broadcasting Regulations of KICA to be amended to provide that 60% airplay of music content must be Kenyan.
12. KECOBO to amend regulations to cap the administrative costs vis-à-vis royalty distribution amount.
13. Amend the copyright Act on delineation of the functions of the CMO's
14. Parliament should come up with a new law christened the proposed Music Bill to handle various matters in the Music industry.
15. Shared mandate of the CMO's to monitor the usage of rights on distribution.
16. All persons dealing with music business be vetted and cleared by KECOBO even as they get licenses or approvals from other bodies
17. The roles of the Board be expanded to include stakeholders in the licensing of all dealers in issues of copyright to deal with issues of piracy.
18. KECOBO to request for more funds through the relevant National Assembly Committee and National Treasury.
19. Wherever there is an issue of dispute on copyright matters then the copyright law shall be superior
20. KICA monitoring log sheets that CA maintains to be supplied to CMO's for comparison.

21. KECOBO to provide for the term of Directors on rotation basis, at every election of directors a third shall be retained.
22. KECOBO to provide for the minimum qualifications of a Chairperson/vice chairperson. Serve for maximum of three years.
23. The proposed National Music Council in the proposed Music Bill to come up with a common server that serves all the music users and players in the industry.
24. Create a register of all musicians for purposes of creating accounts
25. KECOBO should license and supervise joint collection by CMOs.
26. KECOBO to handle and report the progress on all matters administrative that have been raised and deliberated on.

SIGNED: 

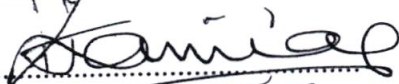

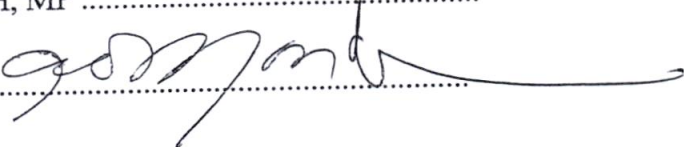
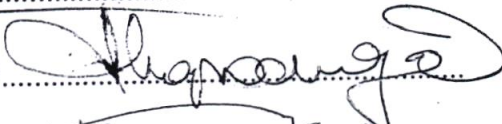
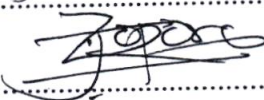
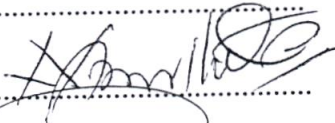
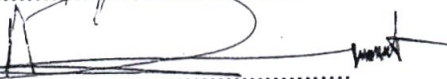

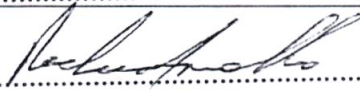
THE HON. JAMLECK KAMAU, EGH, M.P.

(CHAIRPERSON)
DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION AND
INFORMATION

DATE: 

7.0 ADOPTION LIST

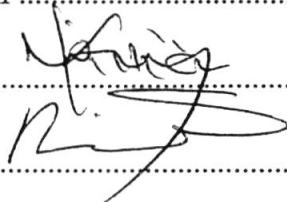
The Departmental Committee on Energy, Communication and Information

1. The Hon. Jamleck Kamau, EGH, MP..... 
2. The Hon. Jackson Kiptanui, MP..... 
3. The Hon. Mohammed Elmi, EGH, MP
4. The Hon. Edick Anyanga, MP..... 
5. The Hon. Cecily Mbarire, MP.....
6. The Hon. Joseph Magwanga, MP..... 
7. The Hon. (Eng.) James Rege, MP
8. The Hon. Mithika Linturi, MP.....
9. The Hon. Zebedeo Opopo, MP..... 
10. The Hon. Mary N. Mbugua, HSC, MP.....
11. The Hon. Aburi Mpuru, MP.....
12. The Hon. Aramat Lemanken, MP..... 
13. The Hon. Arthur Odera, MP..... 
14. The Hon. Banticha Abdullahi, MP.....
15. The Hon. Esther Gathogo, MP.....
16. The Hon. Fathia Mahbub, MP..... 
17. The Hon. James Lomenen, MP.....
18. The Hon. Nicholas Ngikor, MP.....
19. The Hon. Onesmus Njuki, MP.....
20. The Hon. Rachael Amolo, MP..... 

21. The Hon. Roba Duba, MP.....

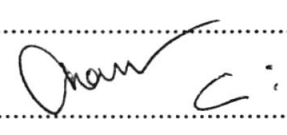
22. The Hon. Ndung'u Gethenji, MP.....

23. The Hon. (Eng.) Vincent Musau, MP.....

24. The Hon. William Kisang, MP.....

25. The Hon. Richard Tongi, MP.....

26. The Hon. Moses Kuria, MP.....

27. The Hon. Silverse Anami, MP.....

28. The Hon. Charles Nyamai, MP.....

29. The Hon. Willy Mtengo, MP.....

MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION & INFORMATION HELD ON THURSDAY 16TH JUNE 2016 IN COMMITTEE ROOM 9, AT 10.00 AM TO DELIBERATE OF THE TECHNICAL COMMITTEE REPORT ON THE CRISIS FACING MUSIC INDUSTRY ON PAYMENT OF ROYALTIES AND APPROVAL OF THE COMMITTEE ACTIVITIES FOR THE PERIOD JULY TO AUGUST.

PRESENT

- | | | |
|--------------------------------------|---|------------------|
| 1. Hon. Jamleck Kamau, EGH, MP | - | Chairperson |
| 2. Hon. Jackson Kiptanui, MP | - | Vice Chairperson |
| 3. Hon. Mohammed Elmi, EGH, MP | | |
| 4. Hon. Mithika Linturi, MP | | |
| 5. Hon. (Eng.) James Rege, MP | | |
| 6. Hon. Cecily Mbarire, MP | | |
| 7. Hon. (Eng.) Vincent Musau, MP | | |
| 8. Hon. Edick Anyanga, MP | | |
| 9. Hon. Arthur Odera, MP | | |
| 10. Hon. Aramat Lemanken, MP | | |
| 11. Hon. William Kisang', MP | | |
| 12. Hon. Charles M Nyamai, MP | | |
| 13. Hon. William Mtengo, MP | | |
| 14. Hon. Silverse Lisamula Anami, MP | | |
| 15. Hon. Fathia Mahbub, MP | | |
| 16. Hon. Zebedeo Opore, MP | | |
| 17. Hon. Racheal Amolo, MP | | |
| 18. Hon. Roba Duba, MP | | |
| 19. Hon. Richard W. Tongi, MP | | |

APOLOGY

1. Hon. Onesmus Njuki, MP
 2. Hon. Mary N Mbugua, HSC, MP
 3. Hon. Banticha Abdullahi, MP
 4. Hon. Aburi Mpuru, MP
 5. Hon. Esther Gathogo, MP
 6. Hon. Nicholus Ngikor, MP
 7. Hon. James Lomenen, MP
 8. Hon. Junet Sheikh, MP
 9. Hon. Moses Kuria, MP
 10. Hon. Ndung'u Gethenji, MP
-

IN ATTENDANCE

COMMITTEE SECRETARIAT

1. Mr. Amos Kiangwe – Clerk Assistant
2. Mr. Jimale Mohamed – Clerk Assistant (**Taking Minutes**)
3. Mr. Abdi Gorod – PBO Officer
4. Ms. Jamima Waigwa - Legal Officer

MIN. NO.125/DC-E/2016 PRELIMINARY/COMMUNICATION FROM THE CHAIR

The meeting was called to order at 10:15 am and was followed by a word of prayer. The Chairperson then welcomed Members to deliberation of the technical committee report on the crisis facing music industry on payment of royalties and to also consider approve committee activities for the period July to August.

MIN. NO.126/DC-E/2016 CONFIRMATION OF MINUTES

Minutes of the following sittings were confirmed as a true record of the meetings;

1. Minutes of the 16th sitting were proposed by Hon. Mohamed Elmi, MP and seconded by Hon. Aramat Lemanken, MP as true recording of the proceedings.
2. Minutes of the 17th sitting were proposed by Hon. Aramat Lemanken, MP and seconded by Hon. Charles M Nyamai, MP as true recording of the proceedings.
3. Minutes of the 18th sitting were proposed by Hon. Charles M. Nyamai, MP and seconded by Hon. Aramat Lemanken, MP as true recording of the proceedings.
4. Minutes of the 19th sitting were proposed by Hon. Charles M. Nyamai, MP and seconded by Hon. Edick Anyanga, MP as true recording of the proceedings.
5. Minutes of the 20th sitting were proposed by Hon. Edick Anyanga, MP and seconded by Hon. William Kisang', MP as true recording of the proceedings.
6. Minutes of the 21st sitting were proposed by Hon. William Mtengo, MP and seconded by Hon. Charles M Nyamai, MP as true recording of the proceedings.

7. Minutes of the 22nd sitting were proposed by Hon. Charles M Nyamai, MP, MP and seconded by Hon. William Mtengo MP as true recording of the proceedings.
8. Minutes of the 23rd sitting were proposed by Hon. Arthur Odera, MP and seconded by Hon. William Kisang', MP as true recording of the proceedings.

MIN. NO.127/DC-E/2016

MATTERS ARISING

1. Under Min. NO.097/DC-E/2016

Analysis of the 2016/2017 Budget Estimates for the Ministry of Energy and Petroleum

The Committee noted that it had recommended allocation Ksh. 210 million during Supplementary Estimates that was itemized as (Ksh. 50 million for completion of ongoing grid study, Ksh. 50 million for environment Assessment of Kenya Nuclear programme, Ksh. 50 million for establishment of legal and regulatory framework, Ksh 60 million for publicity and advocacy).

In this regard the chairperson reported that, he was privy of the matter and had taken it up with Treasury, who undertook to ensure that the allocations are released to the subject institutions. He further reported in the event it not possible, they would be considered during the second supplementary Budget. The committee however expressed its disappointment on Treasury for non compliance to House resolutions.

MIN NO.128/DC-E/2016

**MEETING TO CONSIDER AND APPROVE
MONTHLY PROGRAMME FOR THE
COMMITTEE – JUNE –JULY- AUGUST 2016**

The Committee went through the programme, deliberated and approved. As such, Members made changes on the scheduled meetings and activities as follows:-

- a) Meeting with Communications Authority on the status of USF on 23rd June 2016
- b) Meeting with the Ministry of Energy and Petroleum and Energy Regulatory Commission (ERC) on the status of petrol stations in the Country and in Coast region in particular that were not licensed on 28th June 2016.
- c) Meeting on the Status of with Postal Corporation of Kenya be held on 30th June 2016
- d) **"Kamukunji"** for all Members with Cabinet Secretary for the Ministry of ICT and CEO Konza on the Implementation of school Laptop programme and the Development of **KONZA City** was scheduled on 5th July 2016.

MEETING TO CONSIDER THE TECHNICAL
COMMITTEE REPORT ON THE CRISIS
FACING MUSIC INDUSTRY ON PAYMENT OF
ROYALTIES

The Committee further went through the report on the Technical Committee on the Crisis facing the music Industry on payments of royalties and review of the Legal Framework to the Music Industry.

The Committee considered the report and agreed on the following resolutions and recommendations.

1. Amend S.46A of the Copyright Act where the music owners can negotiate for tariffs before the AG Gazettes them.
2. Amend S. 46 by adding a clause that allows the copyright owners to negotiate for tariffs on payment before the Attorney General publishes and gazettes the charges.
3. Add the function of a Competent Authority under the Copyright Act to solve disputes within the music industry.
4. Copyright Act to provide that mobile service providers must negotiate with the owners of the works individually or with CMO's on how much will be charged especially on *skiza* tunes.
5. Proposal to separate the issue of music from copyright and base it in the arts sector, under the relevant ministry as opposed to housing it at the AG's office
6. KECOBO to license digital & online management rights CMOs.
7. International treaties to be used to develop one or more Acts to regulate the copyright and music sector hence to culminate into a new Music Law.
8. KECOBO to include the aspect of producers of audio visual work that has been done in their amendments
9. AGM's of CMO's to be supervised by KECOBO
10. The Committee to direct the AG to fully constitute the KECOBO board as per the law
11. Broadcasting Regulations of KICA to be amended to provide that 60% airplay of music content must be Kenyan.
12. KECOBO to amend regulations to cap the administrative costs vis-à-vis royalty distribution.
13. Amend the copyright Act on delineation of the functions of the CMO's
14. Parliament should come up with a new law christened the proposed Music Bill to handle various matters in the Music industry.
15. Shared mandate of the CMO's to monitor the usage of rights on distribution
16. All persons dealing with music business be vetted and cleared by KECOBO even as they get licenses or approvals from other bodies
17. The roles of the Board be expanded to include stakeholders in the licensing of all dealers in issues of copyright to deal with issues of piracy

18. KECOBO to request for more funds through the relevant National Assembly Committee and National Treasury
19. Wherever there is an issue of dispute on copyright matters then the copyright law shall be superior
20. KICA monitoring log sheets that CA maintains to be supplied to CMO's for comparison.
21. KECOBO to provide for the term of Directors.
22. On rotation basis, at every election of directors a third shall be retained
23. KECOBO to provide for the minimum qualifications of a Chairperson/vice chairperson. Serve for maximum of three years.
24. The proposed National Music Council in the proposed Music Bill to come up with a common server that serves all the music users and players in the industry.
25. Create a register of all musicians for purposes of creating accounts
26. KECOBO should license and supervise joint collection by CMOs.
27. KECOBO to handle and report the progress on all matters administrative that have been raised and deliberated on.

Having deliberated and in agreement with the stakeholders of the music industry, the Committee therefore adopted the report with the following recommendations:

1. That KECOBO is tasked to develop amendments to the Copyright Act and other relevant laws to be effected by parliament at the shortest opportune time.
2. That the Ministry of Sports, Culture and Arts, in consultation with relevant stakeholders including the AG, develop a new law christened "The Music Bill" to handle all matters of the music industry and forward the same to Parliament for enactment.
3. That KECOBO should request National Assembly through the relevant departmental Committee and the National Treasury for more funding, to enable them adequately handle all matters administrative as regards Music and Copyright
4. That the AG be compelled to fully constitute the KECOBO board as per the provisions of the law

Further to the issues of the Kenya Copyright Board the Committee noted the following concerns among others raised by the Attorney General Office:-

- i. Whether the Committee has the mandate to revise, amend or legislate on the matter at hand as proposed other than by way of Private Members Bill;
 - ii. The parliament may only establish Parliamentary Select Committee not a Technical Committee to investigate the matter;
 - iii. The National Assembly through the Committee should allow the Board and its parent Ministry to undertake the process of policy formulation which is in line with the Constitutional Principle of 'Separation of powers'
-

- iv. The establishment of the Technical Committee by the Committee would beg a question as to whether the Principle of 'Separation of Powers' indeed been upheld;

Therefore, the Committee further noted way forward by the office of the Attorney General as follows:-

- a) The Kenya Copyright Board should be allowed to complete its strategies towards formulation of a policy and that will inform the revision of the Copyright Act.
- b) The Board is currently engaged in stakeholders' consultations in an effort to come up with an informed policy framework.
- c) The National Assembly to give the Executive time to finish with stakeholders consultations on the draft Amendment Copyright Bill which shall be presented to the Cabinet for its approval and subsequent presentation to the National Assembly
- d) The National Assembly to submit its proposals to the relevant policy making body in a bid to support the creative Industry.

WAY FORWARD

- The Committee having deliberated with regards to the report resolved, that the consultation with the Committee on Justice and Legal Affairs on the possibility of having a joint committee on the issues raised in the report and with specific reference to copyright.

Action:

Chairperson and Committee Secretariat

- Having adopted the report the committee further resolved that the report of the Technical Committee on the Crisis facing the Music Industry on Payments of Royalties and Review of the Legal Framework to the Music Industry be tabled after consultation with the Committee on Justice and Legal affairs.

Action:

Committee Secretariat

MIN. NO.130/DC-E/2016

ANY OTHER BUSINESS

1. Foreign Trips

The Chairman brought to the attention of the Committee the following upcoming ICT policy meetings and Nuclear Conference scheduled outside the country and as well nominated those who would attend.

USA

The Committee nominated the following Members to participate with Kenya Nuclear Energy Board in the upcoming Nuclear Conference in USA.

1. Hon. Jamleck Kamau, EGH, MP- **Leader of Delegation**
2. Hon. Roba Duba, MP
3. Hon. James Lomenen, MP
4. Hon. Fathia Mahbub, MP
5. Hon. Banticha Abdullahi, MP
6. Hon. William Mtengo, MP
7. Hon. Arthur Odera,MP

On whether more members could be nominated the, Clerk guided that only a maximum of seven Members can constitute a delegation, it was agreed that the Clerk of the National Assembly would be consulted on whether more than 7 Members could be allowed to constitute a delegation.

FIJI Island

The Committee also nominated Hon. Silverse Lisamula Anami, MP will represent the Committee in the CTO Forum and Council Meeting with Communication Authority of Kenya; other Members will be nominated in the subsequent meetings. The Clerks was directed to keep the matter alive in the Committee.

Action:
Committee Secretariat

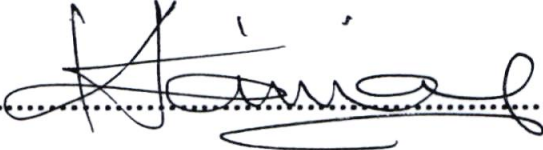
Local Visit

KETRACO Transmission Line Projects (Phase III)

The Committee further tasked the Clerk to look at which activity within the work plan was practical before the end of the financial year, and organize the said activity between Thursday 23rd – Sunday 26th June 2016.

Action:
Committee Secretariat

There being no other business for deliberation the Chairperson adjourned the meeting at 11.35 hrs.

Signed.....

Hon. Jamleck Kamau, EGH, MP

(Chairperson)

Date.....