

Approved for tabling in the House.

REPUBLIC OF KENYA



Rat SNA
8/6/2022

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- SIXTH SESSION

THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY

REPORT ON THE NATIONAL FLAG, EMBLEMS & NAMES (AMENDMENT)
BILL (SENATE BILL NO. 36 OF 2020)

THE NATIONAL ASSEMBLY	
DATE: 08 JUN 2022 Wednesday	
TABLED BY:	Chairperson DC - Admin & N.S.
CLERK OF THE TABLE:	Mainah mm

DIRECTORATE COMMITTEESERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2022

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CHAIRPERSON'S FOREWORD

The National Flag, Emblems and Names Bill was read for a First time on Thursday, 30th September, 2021 and subsequently committed to the Departmental Committee on Administration and National Security pursuant to the provisions of Standing Order 127 (1). The Bill seeks to amend the National Flag, Emblems and Names Act, to ensure that the National Flag is safeguarded.

In compliance with the provisions of Article 118 of the Constitution and National Assembly Standing Orders 127(3), the Committee, through local daily newspapers of 8th October, 2021 published advertisements inviting the public to submit memoranda on the Bill. However the Committee did not receive any memorandum from the public on the Bill.

The report contains the analysis of the comparative analysis from other jurisdiction noting general comments in support of the Bill. The report further contains the signed list of Members who attended the sitting which considered and adopted the report on Thursday, 28th April 2022, a copy of the newspaper advertisements of 8th October, 2021.

May I take this opportunity to thank and commend Committee members for devotion and commitment to duty, the Speaker, and the Clerk of the national Assembly for providing leadership and direction, and finally the Committee Secretariat for exemplary performance in the provision of technical and logistical support. Further, the Committee reiterates its gratitude to the stakeholders who made submissions on the Bill.

On behalf of the Departmental Committee on Administration and National security and under the provisions of Standing Order 127(4), it is my pleasant privilege and duty to present to this House the Report of the Committee on its consideration of the National Flag, Emblems and Names Bill, 2021.



HON. PETER MWATHI, CBS, MP
(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

1.0 PREFACE

1. The Departmental Committee on Administration and National Security was constituted on 14th December 2017 pursuant to provisions of Standing Orders 216(1).
2. The Committee executes its mandate in accordance with the provisions of Standing Order 216 (5), from which it draws its mandate to, inter alia;
 - 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; and
 - b) study and review all legislation referred to it;
 - c) 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.
3. In executing its mandate, the Committee oversees the following Ministries and Departments:
 - i) The Ministry of Interior and Coordination of National Government
 - a) State Department of Interior
 - b) State Department of Border Control, Immigration and Registration of Persons.
 - c) State Department of Correctional Services
 - ii) The National Police Service Commission
 - iii) The Independent Policing Oversight Authority
 - iv) The Public Service Commission
4. According to Schedule II of the Standing Orders, the Committee is mandated to

Consider the following subjects:

- i) National Security;
- ii) Police Services;
- iii) Home Affairs;
- iv) Public Administration;
- v) Public Service,
- vi) Prisons;
- vii) Immigration

2.0 COMMITTEE MEMBERS

Chairperson

Hon. Peter Mwathi, CBS, M.P.

Limuru Constituency

Jubilee Party

Vice-Chairperson

Hon. Fatuma Gedi, CBS, MP

Wajir County

Jubilee Party

Hon. Jeremiah Lomurukai, MP

Loima Constituency

ODM Party

Hon. Abdi Shurie, MP

Balambala Constituency

Jubilee Party

Hon. (Dr.) Tecla Tum, MP

Nandi County

Jubilee Party

Hon. Aduma Owour, MP

Nyakach Constituency

ODM Party

Hon. Kaluma Peter, MP

Homa Bay Town Constituency

ODM Party

Hon. Halima Mucheke, MP

Nominated Member

Jubilee Party

Hon. Wmbugu Munene, MP

Kirinyaga Central Constituency

Jubilee Party

Hon. Col. (Rtd) Geoffrey King'ang'i, MP

Mbeere South Constituency

Jubilee Party

Hon. (Dr.) Makali Mulu, MP

Kitui East Constituency

Jubilee Party

Hon. Oku Kaunya, MP

Teso North Constituency

ANC Party

Hon. Nimrod Mbai, MP

Kitui East Constituency

Jubilee Party

Hon. Dr. Mishra Swarup, MP

Kesses Constituency

Jubilee Party

Hon. Ngunjiri Wambugu, MP

Nyeri Town Constituency

Jubilee Party

Hon. Marselimo Arbelle, MP

Laisamis Constituency

Jubilee Party

Hon. Peter Masara, MP

Suna West Constituency

Independent Party

Hon. Rozaah Buyu, MP

Kisumu County

ODM Party

COMMITTEE SECRETARIAT

Mr. Adan Sora Gindicha
Senior Clerk Assistant
Head of Secretariat

Mr. Joshua Ondari
Clerk Assistant

Ms. Brigitta Mati
Legal Counsel

Mr. Edison Odhiambo
Fiscal Analyst

Mr. Joseph Okongo
Media Officer

Delvin Onyancha
Research/Policy Analyst

Mr. Josphat Bundotich
Serjeant-at-Arms

Ms. Eva Kaare
Serjeant-at-Arms

Rodgers Kilungya
Audio Recording Officer

3.0 OVERVIEW OF THE NATIONAL FLAG, EMBLEMS NAMES (AMENDMENT) BILL

5. The principal object of this Bill is to amend the National Flag, Emblems and Names Act, Cap. 99 Laws of Kenya to ensure that the National Anthem is safeguarded.
6. The National Flag, Emblems and Names Act, Cap. 99 Laws of Kenya was enacted in 1963 to among others, prevent the improper use of the National Flag and of certain emblems, names, words and likenesses for professional and commercial purposes and to prohibit the display of certain flags. On the other hand, the Copyright Act, No. 12 of 2001 makes provision for copyright in literary, musical and artistic works, audiovisual works, sound recordings, broadcasts.
7. Section 25 of the Copyright Act, 2001 provides copyright in works of Government and international bodies. Section 25 (2) provides that copyright conferred on a literary, musical, dramatic or artistic work of the Government and international bodies shall subsist until the end of the expiration of fifty years from the end of the year in which it was first published.
8. The Bill therefore seeks to amend the National Flag, Emblems and Names Act, Cap. 99 Laws of Kenya and the Copyright Act, 2001 so as to safeguard the National Anthem from abuse upon the expiry of fifty years.
9. The Bill seeks to ensure that the National Anthem's copyright is vested in the Government.

4.0 Public Participation

10. In compliance with the provisions of Article 118 of the Constitution and National Assembly Standing Orders 127(3), the Committee, through local daily newspapers of 8th October, 2021 published advertisements inviting the public to submit memoranda on the Bill. However the Committee did not receive any memorandum from the public on the Bill.

5.0 Comparative analysis

10. Originally composed in Kiswahili, Kenya's national language, it was prepared by local people and based on a traditional tune sung by Pokomo mothers to their children. The national anthem is played during national holidays and during other important or historical events.
11. A You Tuber's video ranking the continent's best national anthems – which included Kenya's – was flagged down over copyright infringement. The content creator – who runs the '2nacheki' channel – claimed he was informed that AdRev Publishing had registered the complaint on behalf of *De Wolfe Music, a British company which, as it emerges, owns the rights to the Kenyan National Anthem.*

12. Kenya Copyright Board (KECOBO) released a statement acknowledging that “the government has copyright for its commissioned works for up to 50 years,” which, in the case of the National Anthem, reportedly lapsed in 2013 and was never reviewed. It read as follows:

“The National Anthem is over 50 years and has thus fallen into public domain. However, given the place of National Anthem in any country and the provisions of the National Flags, Emblems and Names Act (Cap 99 laws of Kenya) there is additional protection of the anthem against misuse and improper use. Under that Act, the use of the National Anthem, emblems, names and other similar symbols is restricted and its use shall be subject to written permission by the minister in charge of interior.”

13. The copyright body further noted that amendments needed to be made to the Copyright Act to ensure that the use of national symbols and government works remain subject to authorisation even where copyright expires.
14. A search on De Wolfe’s website, however, reveals that they have only copyrighted an arrangement/instrumental of the Kenyan national anthem, as opposed to the one which had been published by ‘2nacheki’ in which there is an actual choir singing along.

United States of America

15. Francis Scott Key penned America’s national anthem, “The Star-Spangled Banner” as a poem. The poem was later set to the music of a popular drinking tune by composer John Stafford Smith called “To Anacreon in Heaven”. On March 31, 1931, Congress declared the “Star-Spangled Banner” as the national anthem of the United States of America.
16. Who owns the rights to the “Star Spangled Banner”? Since the song was declared the national anthem of the United States, the copyright became public domain to all U.S. citizens and enterprises. However, mechanical, publishing, and performance rights may still apply.
17. Mechanical rights are the rights obtained from a creator or publisher to record and distribute their works or rights held by the person or persons whose performance was recorded (i.e. vocalist, instrumental, comedian, etc.). Once the song is published it can be recorded by anyone as long as a fee is paid and a mechanical license is obtained.
18. Publishing rights are intellectual property rights to the sound recording that can be bought or sold to parties that may or may not have any involvement with the recording. The owner of these rights has the control of where and how the recording is obtained or broadcast. These rights are not defined by a statute, rather it is a term recognized in the music industry.
19. Performing rights are a copyright owner’s exclusive right to control the public presentation or a work, either live, through broadcast, or in moving image or sound recordings. This is part of copyright law and payment is required to the composer, lyricist, and publisher, if one was used.

20. To put this all together, for example, when the National Anthem is sung, broadcast, or recorded during a televised National Football League (NFL) game, the NFL owns the mechanical, performance, and publishing rights for that specific performance. The same rules apply to anthems sung by other organizations such as Major League Baseball (MLB), National Basketball Association (NBA), etc., This means the American people are free to sing the national anthem or a rendition of the same on any platform

United Kingdom

21. England and Scotland have no official anthem. They have adopted popular songs (Flower of Scotland and Land of Hope and Glory) to represent themselves when they meet in international sporting matches. (God Save the Queen is shared by them both as the official anthem of the United Kingdom, but when England is playing Scotland in rugby, for example, each side wants something more rousing).
22. During this year's World Intellectual Property (IP) Day celebrations, a question arose whether the use of a few lines from Kenya's National Anthem to create other works would amount to copyright infringement. In this connection, many sought to find out whether the National Anthem had fallen into the public domain in 2013.
23. The copyright over 'Amhrán na bhFiann' (Ireland's national anthem) officially expired on 31 December 2012 in accordance with the Irish Copyright legislation. It was reported that the Government considered bringing new law to protect the national anthem. It is not clear whether this law has seen the light of day.
24. In 2010, it was reported that when Turkey discovered that its national anthem 'İstiklal Marşı' may be unprotected by copyright, legislative efforts were sparked in a bid to make the song public property. Such consideration is indeed vital following the British rock band Sex pistols' controversial version of 'God Save the Queen'. The title of their single is taken directly from the national anthem of the United Kingdom. It cannot be asserted with certainty that use of the words 'God save the Queen' obviously from UK's national anthem was because the national anthem is out of copyright or that there is freedom to use aspects of UK's national anthem to create new works even for commercial purposes.
25. Back home, an attempt to adequately address this legal conundrum necessitates a hop back in time to 1963 when Kenya was gearing towards celebrating her triumphant independence from the claws of the British colonialists. Kenya's Government at that time tasked an anthem commission to come up with a new anthem distinct from the British anthem which was applicable at that time. The five member commission comprising of George Senoga-Zake, Peter Kibukosya, Washington Omondi, Graham Hyslop and Thomas Kalume was required to incorporate traditional Kenyan music. The team settled on a tune/melody based on a folk lullaby of the Pokomo people; an ethnic community from Kenya's coastal region.
26. The commission composed the words of the song in both English and Kiswahili. Later, the All Saints Cathedral Choir recorded the English version while the Railway Training School Choir recorded the Kiswahili version.

27. Kenya's National Anthem is unique in the sense that it was specifically commissioned by the Government. It is a form of prayer as well as a patriotic musical composition that evokes inalienable qualities, virtues and the very foundations of our homeland. Importantly, it is a symbol of our national unity.

Copyright in Kenya's national anthem

28. Copyright Act chapter 130 of the laws of Kenya provides guidance in this respect. Some key provisions:

- a) Section 22 makes provision regarding works eligible for copyright. They are Inter alia literary works, musical works, and sound recordings.
- b) Section 22(3) sets the conditions for copyright protection; literary or musical works have to be (a) original and (b) reduced to material form.
- c) Section 23(2) provides for duration of copyright; for literary and musical works, it is the life of the author plus 50 years whereas for sound recordings, it is 50 years after the end of the year the recording was made.
- d) Section 25(1) confers copyright to works eligible for copyright protection that have been commissioned by the Government.
- e) Section 25(2) and (3) sets the duration for Government commissioned works; copyright in literary, musical and sound recording subsist until the end of the expiration of 50 years from the end of the year they were first published (for literary and musical works) or recorded (for sound recordings).
- f) Section 31(2) provides for ownership of copyright in Government commissioned; copyright in such works initially vests in the Government.

29. From the foregoing provisions, Kenya's national anthem satisfies the legal requirement and thus enjoys protection as;

- a) Literary works in the lyrics which were composed by the five commissioners;
- b) Musical works in the melody/tune which as already stated is based on a pokomo lullaby (this introduces a unique aspect relating to works made from folklore. Prior to use of folklore for commercial purposes, the consent of the AG has to be sought. (Section 49(d) Copyright Act). Since the work was commissioned by the State for public interest, section 49(d) does not apply);
- c) Sound recordings in both the English and Kiswahili sound recording versions that were made.

30. The Government is thus the copyright holder over the literary, musical and sound recordings of Kenya's national anthem as such works were commissioned by the State prior to their creation.

Interestingly, Kenya marked 50 years of independence in 2013. A plain reading of the Copyright Act section 25 (2) and (3) suggests that prima facie, copyright in the national anthem fell into the public domain in 2013 having subsisted for 50 years since 1963.

31. Kenya's national anthem is a symbol of national unity, and hence enjoys further protection and recognition. Firstly, under Article 9 (1) (b) of the Constitution of Kenya 2010 and secondly, under section 2A (4) of the National Flag, Emblems and Names Act chapter 99 of the laws of Kenya.
32. As a word of caution to all and bearing in mind section 7 of the penal code Chapter 63 of the Laws of Kenya, which provides that ignorance of the law is no defence, do engrave in your mind that section 2B of chapter 99 makes it an offence to insult the national anthem and it attaches a fine not exceeding Kshs 5000 or imprisonment for a time not exceeding 6 months or both if found guilty.
33. The only express prohibition on use of the national anthem is in relation to an act that amounts to an insult or disrespect of the national anthem. There is no specific mention in law on whether or not aspects of the national anthem may be incorporated in other new works that may potentially enjoy copyright protection. Be that as it may, an assumption may however be drawn from the long title of Chapter 99;
34. An Act of Parliament to prevent the improper use of the National Flag and of certain emblems, names, words and likenesses for professional and commercial purposes, and to prohibit the display of certain flags.
35. From the wordings of the long title, improper use of the words of the national anthem for professional and commercial purposes is prohibited. Specifically, section 3 of chapter 99 prohibits the use of emblems, names and likeness except with the written consent of the Minister. Hence it is assumed again that the lyrics of the anthem ought not to be used save with the written consent of the Minister. Take note that what is prohibited is the improper use. This leaves room for interpretation as to what amounts to 'improper use'.
36. This leaves the melody/tune of the national anthem which as you recall was borrowed from the pokomo lullaby. Can one use such melody/tune to create new works? If no, it implies that no one not even members of the pokomo community may be allowed to use their lullaby in the creation of new works for commercial purposes; and if yes, it implies that one can use the pokomo lullaby to create new works upon receiving the AG's consent.

Legal Notice No. 9 18 March 2005 (Copyright Regulations, 2004)

Section 20

(2) Any person who wishes to use any folklore for commercial purposes shall submit his application to the Board on Form No. CR 20, accompanied with the fees set out in the Second Schedule.

- (3) Any person who uses folklore for commercial purposes in Kenya without the permission of the Board commits an offence.
- (4) Any person who –
- (a) willfully misrepresents the source of an expression of folklore; or
 - (b) willfully distorts any expression of folklore in a manner prejudicial to the honour, dignity or cultural interests of the community in which it originates; commits an offence.
- (5) Any person who commits an offence under this regulation is liable on conviction, to a fine not exceeding six thousand shillings or for a term of imprisonment not exceeding six months or to both.
37. The feeling is that one would need valid reasons for such consent to be granted majorly because the specific pokomo folklore is expressed in Kenya's national anthem, a symbol of national unity.
38. Is there a legal conflict between the Copyright Act on one part (because of the copyright duration) and the Constitution and chapter 99 on the other part (because of the recognition of symbols of national unity)? Or is it a matter of common notoriety that the national anthem is a symbol of national unity as recognized by the Constitution, period?
39. Many assumptions have been made in addressing the question; 'whether aspects of the national anthem may be incorporated in other works?' Considering that national anthems of some countries have fallen into the public domain, a plain reading of Kenya's copyright Act validates the conclusion that Kenya's national anthem fell into the public domain in 2013. However, recognizing the supremacy of Kenya's Constitution, it may not be a safe conclusion to make yet.
40. It is thus opined that Kenya needs an express assertion that the Kenyan Government owns copyright in perpetuity over the national anthem so that there is no room for legal assumptions. And while at it, further elaborate under what circumstances, aspects of the national anthem may or may not be used not only within Kenya but outside its borders as well.

6.0 COMMITTEE OBSERVATIONS

In considering the National Flags and Emblems (Amendment Bill) Bill, 2021, the Committee made the following observations:-

- a) Copyright exists to give the owner of a work the exclusive right to control how their work is used, communicated and distributed in any medium. In copyright law, protection of a creative work lasts for the lifetime of the author and an extra fifty to seventy years after death. After this period the work goes into a commonly shared space called the Public Domain, where anyone can freely use the work in any manner (including commercially) without having to ask for any permissions. With regards to Government works, this varies jurisdictionally.
- b) In Kenya, per the present Copyright Act, 2001 (Section 25) the copyright for a Government commissioned musical work lasts for fifty years from the date of first publication.
- c) The national anthem is protected under the Constitution (Chapter 2, Article 9) as one of the national symbols of the Republic of Kenya. Although, the Kenyan national anthem is in the public domain, the different arrangement in a new work which incorporates it is entitled to copyright protection as a derivative work.

7.0 COMMITTEE RECOMMENDATIONS

The Committee recommends that the House approves the National Flags and Emblems (Amendment Bill) Senate Bill No. 36 of 2020

Signed..........Date..... 9th June, 2022

HON. PETER MWATHI, CBS, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – FIFTH SESSION

In the Matter of Article 118(1) (b) of the Constitution
And
In the Matter of Consideration by the National Assembly of:-

1. The Coffee Bill (Senate Bill No. 22 of 2020)
2. The Wildlife Conservation and Management (Amendment) (Senate Bill No.30 of 2020)
3. The Parliamentary Powers and Privileges (Amendment) (Senate Bill No. 33 of 2020)
4. The Community Health Services (Senate Bill No. 34 of 2020)
5. The National Flag, Emblems and Names (Amendment) Bill (Senate Bill No.36 of 2020)

PUBLIC PARTICIPATION (SUBMISSION OF MEMORANDA)

Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites members of the public and relevant stakeholders to submit memoranda on the following Bills:

The Coffee Bill (Senate Bill No. 22 of 2020) sponsored by the Senator for Embu County, **Sen. Njeru Ndwiga, EGH, M.P.**, *seeks to provide for the regulation, development and promotion of the coffee industry and for connected purposes.*

The Wildlife Conservation and Management (Amendment) (Senate Bill No. 30 of 2020) sponsored by the Senator for Taita Taveta County, **Sen. Johnes Mwaruma, M.P.**, *seeks to amend the Wildlife Conservation and Management Act (No. 47 of 2013) to make further provision for the allocation of adequate facilities to County Wildlife Conservation and Compensation Committees established under the Act and to provide for a timeline for compensation for human death, human injury or crop and property damaged caused by wildlife.*

The Parliamentary Powers and Privileges (Amendment) (Senate Bill No. 33 of 2020) sponsored by **Sen. (Dr.) Agnes Zani, M.P.**, *seeks to amend the Parliamentary Powers and Privileges Act to provide for a structured mechanism through which Parliament is able to receive reports from public officers on the resolutions passed by Parliament.*

The Community Health Services (Senate Bill No. 34 of 2020) sponsored by **Sen. (Dr.) Agnes Zani, M.P.**, *seeks to provide for a framework for the delivery of community health services; to promote access to primary health care services at the community level and reduce health disparities between counties; to provide for the training and capacity building of the community health workforce; and for connected purposes.*

The National Flag, Emblems and Names (Amendment) Bill (Senate Bill No.36 of 2020)

Sponsored by **Sen. (Dr.) Agnes Zani, M.P.**, seeks to amend the National Flag, Emblems and Names Act, to ensure that the National Flag is safeguarded.

The Bills were Read a First Time on Thursday, **30th September, 2021** and Pursuant to Standing Order 127(1) of the National Assembly Standing Orders, committed to Departmental Committees of the National Assembly as set out in the schedule hereunder:

SCHEDULE

No.	Bill	Committee
1.	The Coffee Bill (Senate Bill No. 22 of 2020)	Agriculture and Livestock
2.	The Wildlife Conservation and Management (Amendment) (Senate Bill No.30 of 2020)	Environment and Natural Resources
3.	The Parliamentary Powers and Privileges (Amendment) (Senate Bill No. 33 of 2020)	Justice and Legal Affairs
4.	The Community Health Services (Senate Bill No. 34 of 2020)	Health
5.	The National Flag, Emblems and Names (Amendment) Bill (Senate Bill No.36 of 2020)	Administration and National Security

Copies of the Bills are available at the National Assembly Table Office, or on www.parliament.go.ke/the-national-assembly/house-business/bills.

The memoranda should be addressed to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to clerk@parliament.go.ke; to be received on or before **Friday, 22nd October, 2021** at **5.00 p.m.**

MICHAEL R. SIALAI, CBS
CLERK OF THE NATIONAL ASSEMBLY
8th October 2021

MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON MONDAY , 25TH APRIL, 2022 AT 9.30 A.M. AT WHITE SANDS HOTEL, MOMBASA

PRESENT

1. Hon. Peter Mwathi, CBS, MP – Chairperson
2. Hon. Dr. Makali Mulu, MP
3. Hon. Aduma Owour, MP
4. Hon. Peter Kaluma, MP
5. Hon. Marselino Arbelle, MP
6. Hon. Dr. Tecla Tum, MP
7. Hon. Halima Mucheke, MP
8. Hon. Peter Masara, MP
9. Hon. Rozaah Buyu, MP
10. Hon. William Chepkut, MP
11. Hon. Wambugu Munene, MP
12. Hon. Oku Kaunya, MP
13. Hon. Abdi Shurie, MP

ABSENT WITH APOLOGIES.

1. Hon. Fatuma Gedi, CBS, MP – Vice-Chairperson
2. Hon. Jeremiah Lomurukai, MP
3. Hon. Nimrod Mbithuka Mbai, MP
4. Hon.Col(Rtd) Geoffrey Kingangi, MP
5. Hon. Ngunjiri Wambugu, CBS, MP
6. Hon. Dr. Swarup Mishra, MP

IN ATTENDANCE-

COMMITTEE SECRETARIAT

1. Mr. Adan Gindicha - Senior Clerk Assistant
2. Mr. Joshua Ondari - Clerk Assistant
3. Ms. Brigitta Mati - Legal Counsel
4. Ms. Delvin Onyancha - Research Assistant Officer
5. Ms. Eva Kaare - Serjeant-At-Arms

MIN No. 38/2022:-

PRELIMINARIES AND COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 9.23am with a word of prayer.

The agenda was adopted after being proposed by Hon. William Chepkut, MP and seconded by Hon. Oku Kaunya, MP.

MIN No. 39/2022:-

ADOPTION OF THE REPORT ON THE NATIONAL FLAG, EMBLEMS & NAMES (AMENDMENT) BILL (SENATE BILL NO. 36 OF 2020)

The Committee considered the report and made the following observations and recommendation-

Observations

- a) Copyright exists to give the owner of a work the exclusive right to control how their work is used, communicated and distributed in any medium. In copyright law, protection of a creative work lasts for the lifetime of the author and an extra fifty to seventy years after death. After this period the work goes into a commonly shared space called the Public Domain, where anyone can freely use the work in any manner (including commercially) without having to ask for any permissions. With regards to Government works, this varies jurisdictionally.
- b) In Kenya, per the present Copyright Act, 2001 (Section 25) the copyright for a Government commissioned musical work lasts for fifty years from the date of first publication.
- c) The national anthem is protected under the Constitution (Chapter 2, Article 9) as one of the national symbols of the Republic of Kenya. Although, the Kenyan national anthem is in the public domain, the different arrangement in a new work which incorporates it is entitled to copyright protection as a derivative work.

Recommendation-

The Committee recommends that the House approves the National Flags and Emblems (Amendment Bill) Senate Bill No. 36 of 2020.

The report was unanimously adopted after having been proposed and seconded by Hon. Peter Masara, MP and Hon. Oku Kaunya, MP respectively.

MIN No. 40/2022:-

ADOPTION OF THE REPORT ON THE KENYA CITIZENSHIP & IMMIGRATION (AMENDMENT) BILL (SENATE BILL NO. 33 OF 2021)

In considering the Kenya Citizenship and Immigration (Amendment) Bill, 2021 the Committee came with the following observations and recommendation:

Observations

- a) There is a duplication of roles that are already granted to the Foreign Service by the Foreign Service Act (No. 12 of 2001) and those granted by virtue of this proposed law to a department within the Ministry.
- b) The functions will be undertaken by two entities under two different Acts of Parliament. This is a duplication of roles, efforts and resources to one main function.

The Bill is therefore unnecessary as it what it seeks to cure is already provided for in law;

- c) That the Fourth Schedule, Part 1, paragraph 1, foreign affairs, foreign policy and international trade is a function given by the Constitution to the National Government;
- d) That the proposer should amend the Foreign Service Act and require the responsible Cabinet Secretary to propose regulations with regard to Kenyans living abroad.

Recommendation-

Arising from the aforementioned observations, the Committee recommends that the House rejects the Bill.

The report was unanimously adopted after having been proposed and seconded by Hon. Abdi Shurie, MP and Hon. Oku Kaunya, MP respectively.

MIN No. 41/2022:-

ADOPTION OF THE REPORT ON THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL NO. 38 OF 2021)

In considering the County Governments (Amendment) Bill, 2021 the Committee made the following observations and recommendations:

- a) That the Bill seeks to amend section 12 of the County Governments Act in order to provide clarity on instances when the office of the Speaker is vacant;
- b) That the Bill intends to safeguard the position of the chairperson of the Board where he or she is absent from a meeting;
- c) That the Bill also seeks to include the senate in the consideration of annual performance reports of the county executive committee and public service board;
- d) That the Bill seeks to establish a county leaders forum which is to among others, consider the views of the county government on the Budget Policy Statement before its adopted, the formula for revenue allocation before it is adopted, the annual division Bills and county Allocation of Revenue Bills before adoption and appropriations from the equalization fund before adoption;
- e) The proposal for the county leader's forum and the proposed functions seeks to bring confusion in the consideration of the BPS, formula for revenue allocation, annual division of revenue bill and county allocation of revenue bills and appropriations from the equalization fund because there is already a structure provided for in law in consideration of the above;
- f) It is not line with the Public Finance Management Act and the Constitution to subject the BPS to the County leaders Forum. The BPS deals with proposed expenditure of national government

Recommendation-

Arising from the aforementioned observations, the Committee recommends that the House to approves the following clauses—

- a) Clause 1;
- b) Clause 2; and
- c) Clause 3;

And that further, the House rejects—

Clause 4 of the Bill.

The report was unanimously adopted after having been proposed and seconded by Hon. Aduma Owour, MP and Hon. Abdi Shurie, MP respectively.

MIN No. 42/2022:-

ADOPTION OF THE REPORT ON THE OFFICE OF THE COUNTY PRINTER BILL (SENATE BILL NO. 13 OF 2021)

In considering the Office of County Printer Bill, 2021 the Committee made the following observations and recommendation:

Observations-

- a) Article 199(1) provides that County legislation does not take effect unless published in the Gazette, further, Section 25 (2) of the County Government Act also provides that *“Subject to subsection (3), the county assembly legislation shall come into force on the fourteenth day after its publication in the Kenya Gazette unless the legislation stipulates a different date on, or time at which, it shall come into force;*
- b) The Bill is not comprehensive as it does not spell out the steps in the publication process after passage of a Bill at county level and the procedure at the Government printer;
- c) There is need to anchor the operations of the office of the Government Printer so that decentralization of services is feasible in order to better serve counties; and
- d) The Bill has not taken into consideration publication of county legislation under Article 199 of the Constitution.

Recommendation-

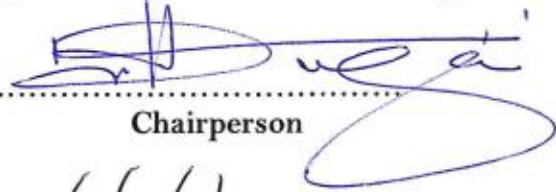
The Committee recommends the House rejects the Office of the County Printer Bill (Senate Bill No. 13 of 2021) because the Bill is not comprehensive as it does not spell out the steps in the publication process after passage of a Bill at county level and the procedure at the Government printer.

The report was unanimously adopted after having been proposed and seconded by Hon. Aduma Owour, MP and Hon. Abdi Shurie, MP respectively.

MIN No. 43/2022:-

ADJOURNMENT

There being no other business to transact, the Chairperson adjourned the meeting at ten minutes past one o'clock. The next meeting will be by notice.

Signed.....
Chairperson

Date.....06/06/2024.....

REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON ADMINISTRATION & NATIONAL SECURITY

ATTENDANCE SCHEDULE - ADOPTION OF REPORTS ON BILLS

DATE: 25/04/2022

TIME: 9.30 AM



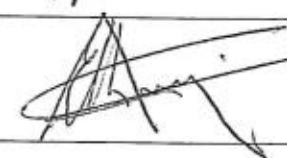

VENUE: WHITE SANDS, HOTEL

AGENDA: ADOPTION OF BILLS

① NATIONAL FLAGS, EMBLEMS AND NAMES (AMENDMENT) BILL SENATE BILL NO. 036

SENATE BILLS, NO. 36 OF 2020; 33 OF 2021,

NO.	NAME	SIGNATURE
1.	Hon. Peter Mwathi, CBS, MP - Chairperson	
2.	Hon. Fatuma Gedi, CBS, MP - Vice Chairperson	—
3.	Hon. George Peter Kaluma, MP	
4.	Hon. Dr. Makali Mulu, MP	
5.	Hon. Aduma Owuor, MP	
6.	Hon. Dr. Tecla Chebet Tum, MP	
7.	Hon. Halima Mucheke, MP	Zoom
8.	Hon. Marselino Malimo Arbelle, MP	—
9.	Hon. Nimrod Mbithuka Mbai, MP	—
10.	Hon. Ngunjiri Wambugu, CBS, MP	—

11.	Hon. Abdi Omar Shurie, MP	
12.	Hon. Col (Rtd) Geoffrey Kingangi, MP	
13.	Hon. Peter Masara, MP	
14.	Hon. Oku Kaunya, MP	
15.	Hon. Rozaah Buyu, MP	—
16.	Hon. Jeremiah Lomurukai, MP	—
17.	Hon. William Chepkut, MP	
18.	Hon. Swarup Mishra, MP	—
19.	Hon. Wambugu Munene, MP	Zoom

Signed.....Date.....
 Adan Gindicha,
 Senior Clerk Assistant,
 Departmental Committee on Administration and National Security.

Signed.....Date.....
 Peter Chemweno,
 Director, Directorate of Departmental Committee Services

