

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 23rd February 2022**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****QUORUM****Hon. Speaker:** It is very clear that we do not have quorum. Can you ring the Quorum Bell?*(The Quorum Bell was rung)**(Hon. (Ms.) Beatrice Adagala walked out of the Chamber)*

Hon. Kahai, why are you walking out when we have just realised quorum?

(Laughter)

Member for Kamukunji, your card is on intervention. Did you want to draw my attention to the lack of quorum? Do you have an intervention? We have not yet started. I thought it is the usual early birds. Are you okay on the normal list? He is still number one on the other list. Let us start.

PAPERS LAID**Hon. Speaker:** Let us have the Leader of Majority Party or the Majority Whip.**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30th June, 2020, and the certificates therein:

- (1) Wundanyi;
- (2) Kiambaa;
- (3) Rabai;
- (4) Juja;
- (5) Laikipia North;
- (6) Ruiru;
- (7) Kiminini;

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- (8) Garsen;
- (9) Galole;
- (10) North Imenti;
- (11) Kipkelion East;
- (12) Hamisi;
- (13) Kisumu East;
- (14) Igembe Central;
- (15) Chuka-Igambang'ombe;
- (16) Gichugu;
- (17) Dagoretti South;
- (18) Nyeri Town;
- (19) Turkana North;
- (20) Keiyo South;
- (21) Kigumo;
- (22) Kandara;
- (23) Turbo;
- (24) Limuru;
- (25) Kapseret;
- (26) Kabete;
- (27) Malindi
- (28) Msambweni;
- (29) Kiharu;
- (30) Vihiga;
- (31) Nyali;
- (32) Soy;
- (33) Likoni;
- (34) Kikuyu;
- (35) Saku;
- (36) Maara;
- (37) Kabondo Kasipul;
- (38) Runyenjes;
- (39) Kasipul;
- (40) Kuria West;
- (41) Tigania East;
- (42) Nyando;
- (43) Isiolo North;
- (44) Manyatta;
- (45) Ainamoi;
- (46) Emuhaya;
- (47) Nandi Hills;
- (48) Laikipia West;
- (49) Kajiado South;
- (50) Tetu;
- (51) Kilifi South;
- (52) Keiyo South;
- (53) Kieni;

- (54) Githunguri;
- (55) Maragua;
- (56) Taveta;
- (57) Thika Town;
- (58) Gatanga;
- (59) Turkana Central;
- (60) Moiben;
- (61) Kesses;
- (62) Jomvu;
- (63) Mukurweini;
- (64) Turkana South;
- (65) Othaya;
- (66) Emgwen;
- (67) Kapenguria;
- (68) Mwatate; and,
- (69) Kinango.

Hon. Speaker: Next is the Chairman of the Committee on Delegated Legislation.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Committee on Delegated Legislation on its consideration of the Irrigation (General) Regulations, 2021, Legal Notice No.199 of 2021.

Hon. Speaker: Very well. Next Order.

NOTICE OF MOTION

ADOPTION OF REPORT ON IRRIGATION (GENERAL) REGULATIONS

Hon. Kassait Kamket (Tiaty, KANU): Mr. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Irrigation (General) Regulations, 2021, laid on the Table of the House on Wednesday, 23rd February, 2022, and pursuant to the provisions of Section 34(2) of the Irrigation Act, 2019, approves the Irrigation (General) Regulations, 2021, published as Legal Notice No.199 of 2021.

Hon. Speaker: Very well. Next Order.

QUESTIONS AND STATEMENTS

ORDINARY QUESTIONS

Hon. Speaker: The first Question is by the Member for Kathiani.

Question No.026/2022

DELAYED UPGRADING OF KENOL-MITABONI-KATHIANI-KAANI ROAD

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Speaker. I rise to ask Question No. 026/2022 to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary explain the delays in the upgrading of Kenol-Mitaboni-Kathiani-Kaani Road to bitumen standards, yet funds for the same were allocated?
- (ii) What is the status of the contract for the said road, considering that completion date has since lapsed yet the project is incomplete?
- (iii) What measures has the Ministry put in place to ensure speedy completion of the said road, and could the Cabinet Secretary provide the expected completion timelines?

Hon. Speaker, it is the Kenol-Mitaboni-Ngoleni-Kathiani-Kauti-Ithaani-Mbuuni-Kaani Road.

Thank you.

Hon Speaker: The Question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The next Question will be by the Member for Kwale County, Hon. Zuleikha Hassan.

Question No. 043/2022

STATUS OF PENSION PAYMENT TO BENEFICIARIES OF LATE
MR. CHAPO ZUMA MBUZI

Hon. (Ms.) Zuleikha Hassan (Kwale CWR, ODM): Thank you, Hon. Speaker. I rise to ask Question No.043/2022 to the Cabinet Secretary for National Treasury and Planning:

- (i) Could the Cabinet Secretary explain the status regarding payment of pension to the beneficiaries of the late Mr. Chapo Zuma Mbuzi of ID No.1602012 and Staff No.APN/PC 15112, who died on 17th April, 2010, while working at the Ministry of Health as a medical personnel at the Shimo la Tewa Prison in Mombasa County?
- (ii) Could the Cabinet Secretary also state when the Ministry intends to remit the dues to the family of the deceased?

Hon. Speaker: The Question will be replied before the Departmental Committee on Finance and National Planning.

Next Question by the Member for Mwatate, Hon. Andrew Mwadime.

Next Question by the Member for Endebess.

Question No. 051/2022

ESTABLISHMENT OF LAND TASKFORCE
BY TRANS NZOIA COUNTY GOVERNMENT

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I rise to ask Question No.051/2022 to the Cabinet Secretary for Lands and Physical Planning:

- (i) Could the Cabinet Secretary explain the circumstances that led to the formation and gazettelement of a task force by Trans Nzoia County Government to look into the

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- issues affecting public land and confirm that the action was carried out in accordance with the provisions of the National Land Commission Act?
- (ii) Could the Cabinet Secretary also explain the criteria used in the appointment of Members to the said taskforce and confirm that factors including regional, gender and persons living with disabilities were taken into account as required by the Constitution?
 - (iii) Could the Cabinet Secretary clarify whether effective public participation was conducted during the formulation of the said taskforce?
 - (iv) Could the Cabinet Secretary explain whether the procedure and conditions set out in the National Land Commission Act for formation of such taskforces were adhered to, and if not, could the National Government consider nullifying the exercise with a view to ensuring that the correct procedure and criteria is followed by the relevant government institutions in formulation of future taskforces?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Lands.

The Next Question is by the Member for Tiaty, Hon. Kamket.

Question No. 052/2022

FUNDING TO SCHOOLS FOR CONSTRUCTION OF CLASSROOMS
IN TIATY CONSTITUENCY

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Speaker. I beg to ask the Cabinet Secretary for Education the following Question:

Could the Cabinet Secretary provide a list of all primary and secondary schools that have received funding from the Ministry for purposes of building of more classrooms to accommodate more learners and ensure institutions observe COVID-19 pandemic protocols on social distancing, indicating the amount received by each institution, and explain how the said monies have been utilised?

Thank you, Hon. Speaker.

Hon. Speaker: Do you mean all primary and secondary schools in the country?

Hon. Kassait Kamket (Tiaty, KANU): No; in my constituency.

Hon. Speaker: If your Question goes like this, if I was the CS, I would give you a response that would make you laugh, because it is very vague. Is it targeting Tiaty Constituency, Baringo County or some other region?

Hon. Kassait Kamket (Tiaty, KANU): Hon. Speaker, I actually drafted this Question at the beginning as one Question with another one that I asked earlier, but the Office of the Clerk decided to divide it into two. This is a Question for and on behalf of the people of Tiaty Constituency.

Hon. Speaker: Very well. It will be replied to before the Departmental Committee of Education and Research.

The last Question is by the Nominated Member, Hon. David Sankok.

Question No. 053/2022

DETAILS OF LAND OWNED BY DEPUTY PRESIDENT IN LAIKIPIA

David ole Sankok (Nominated, JP): Thank you, Hon Speaker. I have brought this Question again because it expired in the last Session, but you instructed that I should bring it back. I hope I will be answered accordingly.

Hon. Speaker: But you took too long to re-submit it.

David ole Sankok (Nominated, JP): I decided to re-submit it at this time.

Hon. Speaker, I rise to ask Question No. 053/2022 to the Cabinet Secretary for Interior and Coordination of National Government:

Could the Cabinet Secretary provide specific details of the parcel of land located in Laikipia County, which he claimed is owned by the Deputy President during his appearance before the Departmental Committee on Administration and National Security on 1st September, 2021, including the land reference number(s), size, date of acquisition and the previous ownership?

This is to cure the political bad manners that you talked about, and so that they do not come and lie on the *Hansard*.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Administration and National Security.

For the second time, can we have the Member for Mwatate, Hon. Andrew Mwadime?

Well, the Member being absent, not desiring to be present, the Question is, therefore, dropped.

Question No. 050/2022

DELAYED COMMISSIONING OF GEMOLOGY CENTRE IN VOI

(Question dropped)

The first part of the next segment is on Requests for Statements. The first request is by Hon. Sossion.

REQUESTS FOR STATEMENTS

IRREGULAR ENGAGEMENT OF RETIRED HEAD TEACHERS BY TSC

Hon. Wilson Sossion (Nominated, ODM): Thank you, Hon. Speaker. I rise to request for a Statement on irregular post-retirement engagement of certain head teachers and principals by the Teachers Service Commission (TSC).

Pursuant to the provisions of Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the irregular post-retirement engagement of certain head teachers by the TSC.

Hon. Speaker, according to Section 79(1)(a) of the Public Service Commission Act, a public officer may retire from the public Service on attainment of the mandatory retirement age as may be prescribed by the regulation. Regulation 70 of the PSC Regulations, 2020, prescribes the mandatory retirement age as 60 years, or 65 years for persons with disability. Sections 81(a) and (b) unequivocally provide that where public officers attain the mandatory retirement age as may be prescribed in the regulations, the public officers shall retire from the service with effect from

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the date of attaining the mandatory retirement age and the Commission or other appointing authority shall not extend the service of such retired public officers beyond the mandatory retirement age.

Whereas the foregoing provisions bind all commissions and appointing authorities without exception, the Teachers Service Commission (TSC) is on record as having irregularly extended the engagement in employment of quite a number of head teachers beyond their mandatory retirement age. This action is not only unlawful, but also limits career advancement within the teaching service, and has the ripple effect of limiting creation of employment opportunities for thousands of qualified and eligible teachers who have legitimate expectation to rise through the ranks or be freshly recruited into the service upon occurrence of vacancies, including those arising from retirement.

It is on the basis of this background that I seek a Statement from the Chairperson of the Departmental Committee on Education and Research on the following:

- (1) What justification does the TSC have to irregularly contract certain head teachers beyond their mandatory retirement age of 60 or 65 years in the case of persons with disabilities (PWDs), contrary to the provisions of Sections 79 and 80 of the Public Service Commission Act and Regulation 70 of the Public Service Commission Regulations, 2020, relating to retirement?
- (2) Could the Chairperson provide the total number and details of head teachers who the TSC has engaged beyond retirement age, including the affected schools, funding for post-retirement remuneration and whether such teachers are entitled to pension or gratuity for post-retirement engagement?
- (3) What elaborate measures has the TSC put in place to ensure that it complies with the statutory provisions relating to retirement and guarantees seamless transition in the headship of schools, particularly national and extra-county schools, upon retirement of head-teachers?
- (4) What immediate action is the TSC taking to reverse the irregular trend of extending employment of head teachers beyond retirement in order to create adequate and equal opportunities for appointment, advancement and fresh employment within the teaching fraternity, as envisaged in Article 232 of the Constitution?

Hon. Speaker: Let us have the Chairperson of the Departmental Committee on Education and Research. Is the person raising his hand Hon. Lessonet? You do not look like the Chair of the Departmental Committee on Education and Research, who is a lady. Maybe you are holding brief for her?

Hon. Moses Lessonet (Eldama Ravine, JP): Hon. Speaker, I thought I could make a supplementary comment on the issue raised by...

Hon. Speaker: Where did you learn that from?

Hon. Moses Lessonet (Eldama Ravine, JP): Hon. Speaker, I learnt that from Hon. Sossion.

Hon. Speaker: If you learnt that from Hon. Sossion then...

Hon. Moses Lessonet (Eldama Ravine, JP): Hon. Speaker...

Hon. Speaker: There are no supplementary comments. We follow the rules in the House.

Hon. Moses Lessonet (Eldama Ravine, JP): Hon. Speaker, I understand, but we have a short time before the elections.

Hon. Speaker: Do not worry; the rules are meant for both long and short periods. The request for Statement is to be directed to the Chairperson or the Vice-Chairperson, who are both absent. Well, Hon. Sossion liaise with the Majority Whip, Hon. Wangwe.

The next request is by the Member for Mandera East, Hon. Maalim Hassan.

OCCUPATION OF PRIVATE LAND BY SECURITY
PERSONNEL IN MANDERA EAST CONSTITUENCY

Hon. Omar Mohamed (Mandera East, EFP): Hon. Speaker, pursuant to Standing Order 44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding occupation of private land by security personnel in Barwako Location, Mandera East Constituency.

Hon. Speaker, for over four years, security personnel comprising of the General Service Unit (GSU), Border Police Unit (BPU) and Rapid Deployment Units (RDU) deployed in Mandera County have been occupying private land belonging to individual families in Barwako Location of Mandera East Constituency. Due to the nature of their work and location, the county security teams have worked over the years to secure alternative land for the officers. These efforts bore fruits when the County Government of Mandera identified and allocated alternative land for the officers.

Hon. Speaker, furthermore, the county security team was involved in the identification and allocation of land in order to ensure that the land currently occupied by the security personnel reverts to its rightful owners and ensure that the identified alternative land is suitable for the officers. Various institutions, including the county government and the NG-CDF team for Mandera East Constituency allocated resources for purposes of ensuring that the necessary infrastructure was put in place. These include toilets, water reservoirs and a protective wall. With all these processes being consultative, the county security team gave approval for the alternative land set aside for the security personnel and agreed that the officers relocate to the new site.

Hon. Speaker, it is with this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

- (i) Could the Cabinet Secretary explain why the national Government security officers comprising of the GSU, BPU, and RDU are still occupying and operating from the private land in Barwako Location during the current deployment in Mandera East Constituency, thus displacing owners of the land?
- (ii) Could the Cabinet Secretary explain when the security officers will relocate to the new site which has been provided by the county government and necessary infrastructure put in place?

Hon. Speaker, what perturbs me most is that the current place where these officers are deployed is in a very deplorable situation, where sanitation and hygiene is wanting. I have made a lot of efforts, as the Member for Mandera East, to reach the relevant Cabinet Secretary in order to ensure that these officers relocate to new sites. I have been following up on this issue for the past five months and I am wondering why the Government is harassing the local people and owners of this land. Over 300 plot owners are suffering as a result of this occupation.

Hon. Speaker, I beg for your indulgence and that of this House to take this matter seriously so that the people of Mandera can regain their rightful plots.

Thank you, Hon. Speaker.

(Hon. Leonard Yegon raised his hand)

Hon. Speaker: It appears like the Member for Konoin... Why have you raised your hand, Hon. Brighton?

Hon. Leonard Yegon (Konoin, JP): Thank you very much, Hon. Speaker. I am seeking your guidance. Last year on 30th June, 2021, I asked a Question to the Cabinet Secretary...

Hon. Speaker: Hon. Brighton Yegon, I have not given directions on this one.

Hon. Leonard Yegon (Konoin, JP): Yes, Hon. Speaker.

Hon. Speaker: Can I see who will respond; the Chairperson of the Departmental Committee on Administration and National Security? I had been given the impression that Hon. (Dr.) Makali Mulu is to stand in for the Chairman, is that correct?

Hon. Makali Mulu (Kitui Central, WDM-K): Yes, Hon. Speaker as you are aware, the Chairman is part of what is happening somewhere in this country. He had requested me to step in for him, and I am honoured to do that. I can respond to any issue relating to our Committee.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Omar says that he has expended the NG-CDF resources doing some developments and putting up some infrastructure on that piece of land. The issues that he is raising could easily become complex as 9th August, 2022 draws near for him.

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Speaker, I will pick up that matter and give feedback within two weeks.

Hon. Speaker: Okay.

Hon. Yegon?

Hon. Leonard Yegon (Konoin, JP): Thank you very much, Hon. Speaker. I am seeking your guidance because on 30th June, 2021, I asked a Question to the Cabinet Secretary for Labour and Social Protection regarding multinational companies that were introducing machines. I wanted to know what the CS was doing in order to balance between mechanisation, profit and employment. The Question was not answered adequately and the CS had promised to do further research and consultation before coming back with an appropriate answer. To date, I have not received a satisfactory answer to that Question.

Hon. Speaker: Hon. Yegon, have you said 30th June, 2021?

Hon. Leonard Yegon (Konoin, JP): Yes.

Hon. Speaker: Are you also not guilty? You ought to have complained and raised that matter much earlier.

Hon. Leonard Yegon (Konoin, JP): I raised the matter with the Chairman of the Departmental Committee, and he told me that they were still waiting for the response from the relevant Cabinet Secretary. However, until now, I have not received any response. I want to seek your guidance on that issue.

Hon. Speaker: Looking in the Chamber, I do not see the Chairman present. This issue should be raised when the Chairman is present so that he takes up the matter. Just check on the days when the Chairman is present. Most Departmental Chairmen have absconded duty.

Hon. Leonard Yegon (Konoin, JP): Maybe they are in Sagana. I will raise the issue when the Chairman is around.

Hon. Speaker: Even if you raise it now with the Majority Whip, he will still have to talk to the Chairman. It is good to raise it in the plenary when the Chairman is present.

Hon. Leonard Yegon (Konoin, JP): Okay. Thank you, Hon Speaker.

Hon. Speaker: Very well. The second part of this segment is on responses. The first response is on a request made by the Member for Kilifi North, Hon. Owen Baya. The response is

coming from the Chairman of the Departmental Committee on Transport, Public Works and Housing, Hon Pkosing. I can see him in the Chamber.

RESPONSES TO STATEMENTS

Hon. David Pkosing (Pokot South, JP): Thank you, Hon Speaker. I also want to thank my colleague, Hon. Owen Baya. I have two Statements: the first one is by Hon. Baya, and the second one by the Member for Dagoretti South. I will first handle the one by Hon. Baya.

Hon. Speaker: Both responses are by yourself.

EXPANSION AND UPGRADE OF MALINDI AIRPORT

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker. Let me start with the request by Hon. Baya. If by the time I conclude the Member for Dagoretti South will not be here, I will proceed to lay the response on the Table of the House.

Hon. Baya sought a very good Statement about Malindi Airport. He sought to know about the following three concerns:

First, within which timelines shall the Ministry of Transport and Infrastructure takeover the land that was compulsorily acquired for expansion of Malindi Airport and duly compensate the affected people.

The take-over date is not indicated. The reason is that there is a problem with that land. Hon. Baya, you need to know this. When the National Land Commission (NLC) did a survey, they realised that the people whose names are on the title deeds are not the same ones on the ground. It makes it very difficult to compensate anybody.

The Ministry says that the completion of the land compensation process will be subject to availability of funds. There are two problems in Malindi. That was your first request.

Second, the Member wanted to know within which timelines the Ministry shall upgrade the airport to passport control standards to allow international flights to fly directly to Malindi. That was a very good request. However, the response given is that there is no problem with the airport. It can allow passport clearance. The challenge is the length of the airport. It cannot allow for bigger planes and, therefore, planes from outside the country cannot fly directly to Malindi.

Hon. Baya was interested in Alitalia and Ethiopian Airlines. Those are big planes that cannot land in Malindi with the current runway. Unless we sort out that issue, planes will land in a confused manner. We will compensate the land-owners and increase the length of the runway. International planes cannot land in Malindi.

Finally, Hon. Baya also wanted to know within which timelines the Ministry shall allow Ethiopian Airlines, Alitalia and other international airlines to fly directly to Malindi Airport. The answer is the same. There is no problem allowing them, but there is no runway that will accommodate them. That was the response to Hon. Baya's request for a Statement.

UPGRADE OF ROADS IN DAGORETTI SOUTH

I do not see my colleague from Dagoretti. He wanted to know about the upgrading of roads in informal settlements in his constituency. He wanted the Chairperson to provide a status of the road projects in Dagoretti South Constituency prioritised by the Ministry for upgrade to bitumen or cabro standards. I have provided a very long list for his perusal and review.

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He also wanted to know the timelines for completion of the said roads projects. In the provided list, the roads are complete.

He also wanted to know the measures in place to ensure quality roads are constructed. The Ministry says that the Kenya Urban Roads Authority (KURA) is in charge of urban roads and that it is up to them to ensure that quality roads are constructed. If they are not quality roads, KURA will intervene.

Hon. Speaker, I beg to lay the documents on the Table of the House. He is here. Those are the responses to the requests for Statements.

(Hon. David Pkosing laid the documents on the Table)

Hon. Speaker, thank you for the chance. Thank you, Hon. Kiarie.

Hon Speaker: Let us have Hon. Baya.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Speaker. I would like to thank my colleague, the Chairperson, for the responses. I note that the information given may not suffice in terms of answering the response that I sought.

With regard to the land in question, in 2017, the National Land Commission issued a notice to acquire the land. One of the requirements in the notice was that further developments on the land should stop until the process of compensating those people is finalised. That is what they said. When they went to do a search, they realised there were two pieces of land - one that belonged to individuals and the other to the Kenya Airports Authority (KAA). They compensated the people on the KAA land for the structures and buildings that were there, which was alright. They said the land does not belong to the people, and so, they compensated them on the structures. They are continuing to compensate on the KAA land.

The other land belongs to occupants who are living there. They told them not to put up other structures because they would buy or acquire compulsorily and make payment. So, they stopped the people and around 1,800 families are on land which they cannot develop because they are still waiting for payment since 2017 to date.

Recently, in 2019, they sent surveyors to survey with a promise they would pay. Later, we heard that there was no budgetary allocation. I have a Statement from the Cabinet Secretary forwarded to me stating that there is no budgetary allocation since 2017 to date!

The National Land Commission wants to pay, but they cannot because there is no budgetary allocation. Over four budgets have gone through this House and money allocated to the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works for compensation, but they have never considered the people of Kilifi on this matter yet they have considered other matters and people were compensated. This is unfair to people who live on this land because they cannot do anything. They cannot sell, develop, build houses or dig toilets on their plots. The land has been compulsorily acquired and the question is where the payment is. That is why I asked what the timelines are. We are looking at Government committing itself to pay these people by 2022 or 2025.

Recently, the Permanent Secretary went on record saying that they would pay them in January 2022. It is now February going to March and they have not heard anything - only a press statement was made.

The issue of land is painful to the people who live near the airport because there is nothing they can do. This is unfair and they feel discriminated by this Government because on other projects which started this year people have been compensated and paid.

The second question is about Malindi Airport which is key to the tourism sector in north coast. Today, if you walk in Malindi Town, it is a dead town. One of the reasons is because we are losing the tourism market in Malindi to destinations such as Zanzibar, Mauritius and Seychelles since their airports are closer to hotels and residencies.

This Government knows the key to unlocking tourism in Malindi is the airport. That is why they started the acquisition process to expand it to international standards, but they have not done this. The runway they are talking about will surprise you because it is about 1.05 kilometres. They need to build it because the land is available and resources required are not huge amounts.

When you walk in Nairobi, you see huge projects being done, but since 2017, they cannot allocate a little money to expand the Malindi Airport. So, airlines like Alitalia and Ethiopian Airlines cannot land there because there is no runway yet this is something that can be done within a very short time. The people of Malindi feel unfairly treated. They have lost jobs, businesses and many things because tourism has gone down. That is why I asked within which timelines they can complete the process of upgrading the airport.

Today, international commercial flights cannot land in Malindi even the Kenya Airways (KQ). Only Jambo Jet can land because of the inadequacy of the airport. But the land for expansion is there and the only problem is that nobody wants to allocate money. The people of Kilifi and Malindi feel side-lined and unrecognised by this Government. I would like to end by saying that unavailability of budget should not be used as a reason to discriminate against other Kenyans. This House makes the budget and we receive budget proposals. I do not see the problem of allocating Kshs5 billion that was talked about in 2017. President Kibaki wanted to do this, but he unfortunately left before finalising on it. We had an elaborate programme then. Why can the people of Kilifi not be given the opportunity to have an airport? We have a huge airport that was built in Isiolo and I do not begrudge them, but we must treat the people of the Coast fairly. This Government needs to do that and I still request that this House be told within which timelines this matter will be done, so that we can complete the issue of the airport in Malindi.

I thank you, Hon. Speaker.

Hon. Speaker: Hon. Owen Baya, you understand that we are just about to begin discussing the Budget Policy Statement (BPS) and there will be Estimates. You are a very active Member of this House, and so, you can look at the budget for the Ministry of Transport and make the necessary proposals to amend and hive some funds to the KAA to develop the airport. You have put a very compelling case. When we will be looking at the Estimates, if you propose to shift certain funds from the Ministry to go to KAA for purposes of doing this, I am sure your colleagues here will agree with you. Hon. Sankok was almost flying as he was coming in when he heard how eloquently you were putting the case. Let us not keep lamenting. When the times comes, please, do that and as you can see, Hon. Pkosing is not even averse to your proposal.

Hon. Pkosing.

Hon. David Pkosing (Pokot South, JP): Hon. Speaker, I agree with my colleague, Hon. Baya. I also agree with you entirely that he prosecuted the matter very eloquently and with passion. You know we only have six months to the month of judgement. I have nothing to add and I will only advise him on two things: First, when we looked at that issue earlier, the acquisition of land in that area was one of the most expensive things. That is my own opinion that is not coming out. Acquisition of land in that area is more expensive than building the airport itself. I had even proposed that we relook at the entire area where we can get more land which is cheaper so that we can develop a proper airport.

Hon. Speaker, I want to urge my colleague, Hon. Baya, that they go back as a county and confront this issue of land in terms of payment.

Finally, with your permission and if Hon. Baya can indulge me, I might bring the Cabinet Secretary and the National Land Commission. Hon. Baya can appear before the Committee so that there is some kind of negotiation and agreement. The leadership of Malindi can actually then appreciate that there is a problem in this country in terms of land. How can land be more expensive than developing an airport? So where do we go? Do we acquire the land and miss the money to develop the airport? In my view, that can be reasoned as a people if you give us the permission. The leadership of Malindi can come before the Committee to meet the Cabinet Secretary and the National Land Commission to negotiate even if it means that they will relocate the airport to where there is cheaper land and we can use the same Kshs5 billion to build the best airport in Malindi. There is a problem with that land in terms of payment.

Hon. Speaker: Hon. Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Speaker, for the opportunity to respond to this response by the Chairman. I thank the Chairman for taking up this issue with the Ministry and for expediting the same because I had indicated that time was of essence.

I asked three questions and there is an attempt to just answer one question and a total failure to answer the two questions. In this one question that has been answered, there is grave inconsistency and contradictions in the response that we are getting.

Hon. Speaker, I had asked about the quality of the works being done. The ongoing works are of special roads that are being upgraded to cabro standards. I wish the Chairperson of the Departmental Committee on Transport, Public Works and Housing would note this.

On the issue of quality, I had asked about the given standards for road construction. For example, one cannot lay cabro paving on top of clay soil, which has been happening in Dagoretti to a point where some roads that are not even three months old are already falling apart. As you know, if one cabro block falls out of place, everything on that road falls out of place. That was the question on quality.

I had also asked about timelines for construction of very specific roads like Wambiri and Daniel Comboni roads in Ngando Ward. The response stated that Wambiri and Daniel Comboni roads are scheduled for improvement under the ongoing project for construction of Rhino Park Road and other roads in Nairobi. The response states that there are some very important roads being constructed in Karen and, therefore, Dagoretti will have to wait until the contractor who is in Karen completes the work there, so that he can come and start the work on Wambiri and Daniel Comboni roads. The story about Wambiri and Daniel Comboni roads has been with us for over four years now. The story that we were told about the Rhino Park Road in Karen is the same one that I was told when I was elected as a Member of Parliament in my first meeting with KURA. No less than the Director-General himself, Mr. Kinoti, told me that they were waiting for this contractor to complete works in Karen.

Hon. Speaker, with your permission, I wish to get the attention of the Chairperson so that he can take the notes that he needs to on this matter. We have been waiting for four years for this contractor to be done in Karen so that he can come and work in Dagoretti South.

I had asked very specific questions about Mbiriri and Wairimu roads. The contradiction is that in this response, the Chairperson states that roads in Dagoretti South Constituency which were targeted for improvement under this contract are all complete. However, the same response to the question states that as concerns Mbiriri and Wairimu roads, there was a contractor installing

sewage lines along the two roads and no road works could be done until those lines are complete. The same is said about Jerusalem Road when it talks about a limited corridor. How is it that all the work is complete, but they were not able to work on Wairimu and Mbiriri roads because there was sewerage work going on? The facts on the ground are that sewerage works happened over a year ago and were completed while the contractor was still on site doing that work. The contractor never came back to either Mbiriri or Wairimu roads. However, this response states that they completed all the work they were to do.

The response has some timelines which give up to 8th April for completion of special projects. The response states that the projects are complete. I am here to tell the Chairperson that what he got from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works is at a best, a white lie and at worst, deception. It has been four years of false promises from KURA and the Ministry with regard to Wambiri and Daniel Comboni roads and no work has begun. In fact, the remedial work being done on Wambiri Road as we wait for it to get done after the Rhino Park Road is actually being done by the Nairobi Metropolitan Services. We are still waiting for the work as promised on Daniel Comboni and Wambiri roads. The story given on Wairimu and Mbiriri roads is a lie. There is no sewerage work going on. If there was any sewerage work, it was done over a year ago. Therefore, with your permission, Hon. Speaker, I would wish to return this response to the Chairman, who should return to the sender so that the sender can answer the three questions as they were asked. One, whether there is anyone looking at the status and the quality of the roads, whether these four roads that I mentioned specifically are going to be worked on and when they will be worked on.

Thank you very much, Hon. Speaker for the opportunity.

Hon. Speaker: Hon. Pkosing, I think you could summon those people.

Hon. David Pkosing (Pokot South, JP): Hon. Speaker, I will work under your direction. You guided this House that as the House is close to the sunset, we need to amend our Standing Orders. This could be part of the things we need to look at. The choice of how you want a response to be done. Is it a petition, a Statement or a Question? If you look at the Standing Orders and our practice, it is Questions that attract more of interaction. It is not a Statement. My colleague, Hon. JK is saying “by the Chairman”. It is not me. I am just conveying. I agree with you, Hon. Speaker and your wisdom that maybe we need to relook at our Standing Orders so that even if it means that Hon. Members have taken the route of seeking Statements, before the Statement is placed on the Floor of the House, there should be a mechanism of interaction. If we had not amended our Constitution which we desired as Building Bridges Initiative proponents and some people somewhere decided not to, we do not have Cabinet Secretaries here. In our Standing Orders, we prefer that before a Statement is processed, there should be an interaction between the Member and the person who is giving the Statement. Otherwise, Hon. Baya and Hon. JK would have been comfortable. What am I supposed to do? There is nothing I can do. I can ask them to repeat the Statement, then I can take it back to the Ministry, and then I will bring it back to you. Or, they do it in form of a Question. When we do the Question, the Cabinet Secretary and Hon. JK can interact under adjudication, on your behalf.

Hon. Speaker: Absolutely correct. Hon. Kiarie has said that he wants to give the Statement back to you, so that you return it to sender (RTS). I am sure, Hon. Pkosing does not have a big problem doing that because he will have discharged his obligation to return it to sender. So, Hon. JK, I think you would do better in this kind of a situation if you actually asked a Question. I want to agree with Hon. Pkosing that had you asked a Question, those things they have not put in there would be there asking questions about all those roads.

Hon. Pkosing has no idea where that Wambiri Road is. He has been given a Statement to come and read. When you tell him that this is not done or there is no sewerage work happening, he does not have knowledge of that. If you are asking officers from KURA, he would be challenging them. If they insist, all you need to do is to apply to the Chair, to direct the Committee to visit the place in the presence of those people. You should go and shame them. Once that happens, we will begin the other process of dealing with them taking disciplinary action for coming to tell lies before a committee of Parliament. So, give it to Hon. Pkosing, for purposes of you stated to RTS. Hon. Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Speaker. I have no contestation against what the Chairman has brought here. I was just furnishing him with the details that, in fact, even in the form that it is in as a Statement, there were very specific questions that I asked. They were three. Two of them have not been responded to. The one that has been responded to is not factual even in the plain reading of it. As I mentioned earlier, this response says that all roads that were under this contract are complete.

Hon. Speaker: Now, who is actually contradicting you?

Hon. John Kiarie (Dagoretti South, JP): That is where I was coming to. I was very agreeable to one of the suggestions that you had made and alluded to by the Chairman, that KURA could appear before the Committee, so that we take them to task on these specificities. It is in public domain that some of us are having very difficult time with some of these agencies. There are officers who will not see or look at you when you enter into their offices because they assume that you belong to a certain political leaning. So, if it would be in order, it would be agreeable to me, if the Committee could summon KURA to appear before it. I will make myself available so that we can have this exchange and I can share the details that I have with the Committee.

Hon. Speaker: Is the Chairman amenable to that? Hon. Pkosing.

Hon. David Pkosing (Pokot South, JP): I have no problem with your direction. However, he would have just done a Question.

Hon. Speaker: You chose the route of a Statement and you have been given the response. So whatever is happening is *mazungumzo baada ya habari*. It is *gumzo mtaani*.

Hon. David Pkosing (Pokot South, JP): Hon. Speaker, I agree with you a 100 per cent. I want to help my friend, Hon. Kiarie. He has been here for four years and he must have understood how these things are happening. He is likely to come back though it depends on the people of Dagoretti.

Hon. Speaker, I cannot take the Statement back for a proper response. It will not work. So, he has to do a Question, come to Parliament, and give them about one week to go there. The route you are suggesting works. He will come there and the Committee can visit. Hon. Kiarie should use some of these instruments that are available and particularly your guidance. He should listen to that guidance.

Hon. Speaker: Very well, we now move to the next Order.

REPORT AND THIRD READING

THE SUSTAINABLE WASTE MANAGEMENT BILL

Hon. Speaker: As you may have heard as the Order was read out, business on this Motion, Order No.8 was considered in the Committee of the whole House, but Question could not be put for agreement or disagreement.

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(Question put and agreed to)

Hon. Emanuel Wangwe (Navakholo, JP): Hon. Speaker, I beg to move that the Sustainable Waste Management Bill, National Assembly Bill No.22 of 2021 be now read a Third Time. I request Hon. Sankok to second.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker, I second.

Hon. Speaker: Member for Seme, can we clear this one?

(Question proposed)

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

Hon. Speaker: Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Justin Muturi) left the Chair]

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Soipan Tuya) in the Chair]*

THE COPYRIGHT (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Order Members. We are now in Committee of the whole House to consider the Copyright (Amendment) Bill (National Assembly Bill No.44 of 2021).

Clause 3

We have proposed amendments on Clause 3. The Mover, the Chairperson of the Departmental Committee on Communication, Information and Innovation. Is the Chair here? Hon. Nyamita, the Vice-Chair.

Hon. Mark Nyamita (Uriri, ODM): Thank you, Hon. Temporary Deputy Chairlady. I beg to move a further amendment to Clause 3.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Nyamita, you should move the first amendment. The further amendment comes later.

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, the proposed amendment seeks to make a close reference to the previous provision seeking to establish a

National Rights Registry arising from the proposed amendment to Clause 4. It corrects a typographical error and provides for the definition of “artist”.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Nyamita, move it as it is on the Order Paper.

Hon. Mark Nyamita Uriri, ODM): Hon. Temporary Deputy Chairlady, I beg to move: THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new clause—

Insertion of new section

30C in Cap. 12 of 2001.

3. The principal Act is amended by inserting the following new section immediately after Section 30B—

Payment of ring

back tune revenue.

30C. (1) without prejudice to Section 30B, in the case of ring back tunes, the parties shall share the net revenue from the sale of ring back tunes, as follows—

- (a) the premium rate service provider at eight point five percent;
- (b) the telecommunication operator at thirty-nine point five percent;
- (c) the artiste or owner of the copyright at fifty-two percent.

(2) Despite subsection (1), all contracts between premium rate service providers and artistes or owners of the copyright existing before the commencement of this Act shall apply until their expiry, and subsequent contracts shall conform to this provision.

My apologies for the confusion.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): No problem, Hon. Nyamita. Take your time, I know it could be your maiden presentation as a vice-chair. So, it is allowed. Go ahead.

Hon. Nyamita, come over here to have a word with the Clerk-at-the-Table for some guidance.

Hon. David ole Sankok (Nominated, JP): On a point of order, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Sankok, there is nothing out of order. Just be patient with the Chair. Hon. Sankok, I have only proposed. So, the only time you can interject is once he has already moved. You will talk about whatever you want to say at the point of contributing. I will make sure I give you a minute to contribute to it. Just hold your thought. Go on Chair.

Hon. Mark Nyamita (Uriri, ODM): Thank you, Hon. Temporary Deputy Chairlady. I had a slightly different document.

Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new Clause—

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- (a) the premium rate service provider at eight point five percent;
- (b) the telecommunication operator at thirty-nine point five percent;
- (c) the artiste or owner of the copyright at fifty-two percent.

(2) Despite subsection (1), all contracts between premium rate service providers and artistes or owners of the copyright existing before the commencement of this Act shall apply until their expiry, and subsequent contracts shall conform to this provision.

The proposed amendment seeks to amend the proposed New Section 30C to provide for the net revenue from sales from ring-back tones to change the percentages to add up to 100 per cent. Further, the proposed amendment seeks to address the subsisting contracts between the artists or owners of the copyright and premium service providers.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes, Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairlady. As I rise to support the amendment, I had first wanted to stand on a point of order. The Vice-Chair needs to be guided properly because even in the moving, he has not moved as it is supposed to be. These things are in the *Hansard*. This is the problem of the Handshake that brought chairs and vice-chairs that are sometimes not qualified... *lalai emaenkare nkuti namayio*.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): You are out of order. Out of order, Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): But I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I do not know why Hon. Sankok is speaking in Maasai. I rise to support this amendment by the Committee. What the Committee is doing is only putting more clarity in the proposals that were made in the Bill and this ensures that net of taxes - It should be net of taxes rather than net revenue. So, net of taxes, the premium rate service provider will not get 8.5 per cent. The ring-back tone on your phone or any other phone is now Kshs1.50. So, 8.5 per cent will go to the person providing the service, 39.5 per cent will go to the telecommunications provider, whether it is Safaricom or Airtel, or any other.

The most important thing in which I agree with the Committee is that the artist or the owner of the copyright now gets 52 per cent, which should be the rightful position. Instead of this other administrative issues taking up the majority of the money, the artist now gets majority of the money. That is the most significant change. I thank the Committee because this is really significant. It will make a big difference to the artist.

My only issue is with the net revenue because it could be net of something else. It should just be net of taxes. Because it says net, they can remove anything and say that that is the net. So, the Committee should look at that and the Chair should consider moving a further amendment, so that it is net of taxes and not just net. In net, they net out everything and what remains is so small and they say that that is the net they were talking about. So, it should just be net of taxes.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wanga, I thought that you would be the one to... Anyway, let us hear what the Chairperson says.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): It would be neater if the Chairperson can agree to move a further amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Yes, Hon. Chairperson?

Hon. Mark Nyamita (Uriri, ODM): I beg to move a further amendment.

(Hon. David ole Sankok spoke off record)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Sankok, you are totally out of order. You are interrupting the Chairperson.

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, just to give clarity to what Hon. Wanga is saying, we had included net of taxes, but our legal team advised that net revenue means net of taxes. However, if that clarity is needed, I do not think there is any harm as it means the same thing we want to achieve – net of taxes. That is fine.

Allow me to remind my colleague, Hon. Sankok, that I am more educated than him, because unlike him, I completed my university education.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): It is alright, Hon. Nyamita.

Hon. Mark Nyamita (Uriri, ODM): It is just for clarity so that we have boundaries.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Chairperson, you are okay. Just ignore Hon. Sankok.

Hon. Chairperson, you may need to do further consultations with the legal team and Hon. Wanga so that you come to a conclusion on how you want it.

Hon. Ndindi Nyoro, are you desirous of contributing?

Hon. Ndindi Nyoro (Kiharu, JP): Thank you, Hon. Temporary Deputy Chairlady. Whereas I support the amendment, it is important for us to be clear on the taxes. Generally, the current scenario or the *status quo* is disenfranchising to the artistes in the entire industry. The real people are the artists. Unfortunately, the facilitators or the process takes up the big bulk of the shareable income. This is the only industry where brokers get more than the actual productive side of the entire chain. I support our artistes on this. In fact, 52 per cent is still on the lower side; we should be talking about over 80 per cent. In any other industry, like in agriculture, there is no way the facilitative side takes up 48 per cent of the shared revenue. So far so good, although our artists deserve more.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Chairperson, have you agreed on something?

Hon. Mark Nyamita (Uriri, ODM): Yes, we have. We will have a further amendment to specify ‘net of taxes,’ so that the net revenue will not be confused in interpretation. If you allow, the amendment is coming. We will have it as ‘net of taxes’ for purposes of the *Hansard*.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Okay. We can proceed and come back to it.

Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment because this will greatly help our artistes. They have been exploited for too long. The existing arrangements have never been formalised into law. I think this is a good thing towards the right direction. I support.

(Hon. David ole Sankok spoke off record)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Sankok, I hear you saying that you want to move a further amendment. Kindly consult with the Chairperson, you might consolidate what you have.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Chairlady. It is good that it goes on record. Now that we are doing a further amendment describing the taxes and revenue, can we do a further amendment so that we have 70 per cent going to the artists from 52 per cent or at least 60 per cent? Can we change that? Is it possible?

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Maybe you are preempting an amendment that is coming from Hon. Kiarie. Let us wait and see, as it might take care of your concerns.

Hon. Wangwe then we proceed.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairlady. As we wait for the drafter to work on the amendment, this being a House of record, we should expunge the *Maasai* language that Hon. Sankok used when we were debating. We need to have a clean record of the debates.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wangwe, please repeat, I did not hear what you said.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairlady. I was saying that given that this is a House of record, and Hon. Sankok interjected in *Maasai* language, which is not understood to the majority; for purpose of the record, you can order that we clean up that so that we have a seamless flow.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I am not even sure if he spoke in *Maasai*. Hon. Sankok, it is either you use Kiswahili, Sign Language or English.

Hon. David ole Sankok (Nominated, JP): It was a mixture of Sign Language and Kiswahili.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): No. Stick to the parliamentary language.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

Hon. Kiarie, you can now move your amendment.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Chairlady. I beg to move:

THAT, Clause 3 of the Bill be amended in the proposed new clause 30C in paragraph (c) by inserting the words “not less than” immediately after the word “at”.

The justification for this is that there is a very good proposal by Hon. Gladys Wanga. She has given us the opportunity to tidy up this Copyright Bill. Eventually, we will end up doing an entire new Copyright Bill, because even listening to the interjections by Members on royalties, it means there is work that needs to be done in terms of definitions of these copyright owners. We can put great efforts in putting royalties up, however, when you study copyrights, you will realise

that copyright is a negotiated affair. For example, as we speak today, there are artists who have commitments with the people we are asking to up these royalties. Being a negotiated matter, we have to be careful on how we approach it.

Secondly, at times, the copyright holder is not the artist. I heard Hon. Ndindi Nyoro referring to copyright holders as the artists. However, there are instances where the artist is not the copyright holder. Therefore, because we are giving an absolute figure which we are putting in a substantive law, it would be good to take the advantage of the opportunity given by Hon. Wanga so that the figure we put there is not an absolute one. We should put it as “not less than”. That way, if it is 52 per cent today, it can be upped even to 70 per cent, depending on how this is negotiated.

Hon. Temporary Deputy Chairlady, I beg to move that Clause 3 of the Bill be amended in the proposed New Clause 30C in paragraph (c) by inserting the words “not less than” immediately after the word “at” so that any copyright holder can approach a CBO or the paying party to negotiate for even much better rates than what has been proposed in the Gladys Wanga’s amendment.

(Question of the amendment proposed)

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairlady, I would like to support what Hon. K.J. is saying for the following reasons: One, there is need for flexibility in a negotiation. We shall have a problem in negotiations if we do not build room for flexibility. Two, it is a negotiated deal based on the amount of the work to be done. If the work to be done is not a lot, the copyright owner ends up losing when they could have negotiated for maybe up to 70 or 80 per cent of the value of the product. So, I think it is important for us to include that.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I stand to support the amendment by Hon. Kiarie. Essentially, as Dr. Mutunga has put it, you must be alert to extract the best when you go to a negotiating table. Looking at the arrangement of the share, we still have enough room. We are talking about 7 and 16 per cent. We could still have much more, not less than that. It seems a bit more progressive and can give room for further negotiation.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairlady. You said that Hon. Kiarie’s proposed amendment will cure; actually, it has cured. I support it very much because as they go to the negotiation table, you will find that somebody’s art may not be as good as another’s. We have songs about which we say “this one is a hit song;” it may earn the artist more. You limit those who can negotiate for more when you put it at 52 per cent just as a figure. The trend even in our Constitution is that we send to the counties not less than 15 per cent. The trend is normally “not less than” because we want to protect the artist. We should just say “not less than 52 per cent”. If the artist can negotiate for 98 per cent, well and good. Sometimes their song or art is better than any other. They cannot all be uniform. I support 100 per cent.

Hon. Godfrey Osotsi (Nominated, ANC): Hon. Temporary Deputy Chairlady, I want to differ with my friend, John Kiarie, on the basis that from a technical point of view, the work of the artist is being maintained on a platform; and an example is the Safaricom platform. There is a running cost for maintaining that technology and the infrastructure. When we talk about at least 52 per cent, I think that will be a problem. I agree with the amendments by the Committee and Hon. Wanga. When we put the phrase “at least”, you get to a point where even the providers of

that service say “we altogether do away with this infrastructure if we are not making revenue”. So, we need to be very careful so that we do not bring a legislation that is going to kill businesses.

For me, I do not want to agree with Hon. Kiarie on that basis. That this platform is maintained by either Airtel or Safaricom. They have employed people, they have an infrastructure, they have running costs. Will this cost be covered if we increase the share to 70 per cent or 80 per cent? That is the bigger picture on this matter. I am sure that the Committee was wise in giving 52 per cent, because that was based on presentations by stakeholders. If you increase it, you will get into major challenges.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Could we have the Vice-Chair make a clarification?

Hon. Mark Nyamita (Uriri, ODM): Thank you very much, Hon. Temporary Deputy Chairlady.

Just for purposes of clarity, the proposal by Hon. Wanga set the percentage of artists at 52 per cent. Of course, during public participation, there were issues as to whether we need to prescribe pricing in statute or we do it in regulations. What Hon. Osotsi is talking about is that 52 per cent of the revenue goes to the artist. But Hon. Kiarie is saying “not less than 52 per cent”. Maybe the thing we need to debate a bit further is what if that figure of Kshs1.50 goes lower. Things change as technology advances. Short messages used to cost Kshs10, but today they are Kshs1.50. When we say “not less than”, what if that figure eventually comes to Kshs0.50? Either way, I do not think that there would be any harm even if we leave it at 52 per cent. There will be no harm in actual sense. Even as he set out at 52 per cent, it is still just as okay.

Hon. Erastus Nzioka (Mbooni, Independent): Thank you, Hon. Temporary Deputy Chairlady. From the outset, I need to disagree with Hon. Kiarie. Here we are talking of two figures; one is the Kshs1.50, which translates to Kshs0.78 to the artist or the copyright owner. When we say “not less than” on a percentage, these percentages are adding up to 100. When you put “not less than”, definitely, it is going to affect the other two. So, this is staying at 100 per cent. If we have to go to the figures of Kshs1.50, we can put the “not less than”. But, Hon. Wanga is moving on the percentages which, to me, have to stay fixed at 52 per cent, because they are adding up to 100 per cent. Otherwise, mathematically, it will cause a problem.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Chairlady. I think the percentages that have been given in the amendments were based on the current circumstances after the Committee probably engaged all the stakeholders. These circumstances are bound to change. We cannot blame whatever had been agreed on by the artists at this time. Even if the other figures will be affected, some of these service providers like Safaricom are bigwigs. We should be mindful to give the person giving them business a chance to negotiate for more. That is why I am here to support that amendment by Hon. Kiarie. The artists should be the biggest beneficiaries in all these deals.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): We actually need to interrogate this. Hon. Ndindi?

Hon. Ndindi Nyoro (Kiharu, JP): Thank you, Hon. Temporary Deputy Chairlady. I rise to support the amendment by Hon. K.J. Platform and technology businesses across are subject to something called scale. The more scalable it is, the more profitable it is. They are also subject to something we call increasing returns. That the more you have in terms of clientele, the more you handle in terms of scale, the more the margin becomes larger. The product we are selling here is a product given by the artist. That is the product. The platform is the one owned by technology companies. Therefore, the more artists we have – the scale I am talking about – the more products

we have on their platforms, the more profitable it is, because some of the costs that are associated with the platforms do not change because there are more products. That is how the margin becomes large. Therefore, to protect our artists and to be real on the kind of business you are talking about, to put “not less than” is better.

On the other side, in terms of arguing the case of technology, commodity business like agriculture is subject to something we call “decreasing returns.” For one to produce the next product, he incurs more costs than the previous production. On platform business, the more you have, the more the next product that you produce on the platform will cost less because most of the costs are static. For example, when you talk about Safaricom, their masts are the same, their CEO is the same and their employees are more or less the same. Therefore, an increase on the platform does not cause their costs to raise. So, not putting a static figure is better than putting a moving figure, because more sales means more margin. The more margin should be shared among who? Do we leave the entire margin to the platform owner, or can it be distributed so that it is passed to the talent beneath for it to increase their business? I hope I am making sense.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): The Member for Mbooni has raised an issue which the Mover of the amendment, Hon. Kiarie, needs to internalise. It regards the percentages. If you say “not less than 52 per cent,” it goes beyond 100 per cent. Hon. Kiarie, help all of us to understand.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Temporary Chairlady. I need to reiterate this. The artists and copyright holders will have to go back and negotiate contracts after we pass this Bill. Copyright contracts are negotiated. What I am attempting to do is to give enough leeway for the artists, as they go to negotiate, so that they have enough space to manoeuvre within what we are providing. Remember, we are putting this in the mother Act, the Copyright Act. We are putting to law an absolute figure. Hon. Sankok gave us a good example. When it comes to the Division of Revenue, there is a reason why it is put at “not less than.” When you move the variable, for example, if it is decided that the negotiation will come to 53 per cent, money will be negotiated depending on the case that will be on the table at that point. In every negotiation, it will not be the artists losing, as it has always been. We want to make sure that we protect the vulnerable artists against the big telecoms that run these platforms.

Being a lawyer, I know you have worked on contract law. Whenever you are dealing with two parties, your business, as the person making the law, is to protect the weaker party. In this case, the weaker party is the copyright holder who needs protection from organisations, some of them being multinationals, so that even if there will be negotiations that will go beyond 52 per cent within the variable that adds up to 100 per cent, it can be moved around.

My attempt at “not less than” is not to increase. I wish Hon. Nyamita and Hon. Kivasu would hear this. Putting “not less than” does not mean that you are increasing the amount of 52 per cent. It is just giving the artists more space to manoeuvre as they go to negotiate their copyright deals.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Allow me to give the Floor to the Whip of the Majority Party, Hon. Wangwe. I can see Members still have a lot of interest in it. Hon. Members, please note that we are not debating. We are in the Committee of the whole House. Go straight to the point so that other Members can ventilate on the same.

Hon. Emmanuel Wangwe (Navakholo, JP): I wish to support the amendment by Hon. Kiarie. The reason is that as it is today, this suggestion of 52 per cent is not there. We are beginning from zero and we have already negotiated 52 per cent in the Bill. That means that if we make a

suggestion of “not less than,” it means the baseline is going to be 52 per cent. We are allowing room for the platform holders and the artists to negotiate for anything more, if it is available. What we are simply doing is that we are cushioning the artists not to suffer returns on their investment.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Mabongah.

Hon. Mwambu Mabongah (Bumula, Independent): Thank you, Hon. Temporary Chairlady. I happen to sit in the Departmental Committee on Communication, Information and Innovation. The amendment that has been proposed by Hon. Kiarie is something that we did not capture during our discussions. Having listened to the Hon. Member, his proposal is something that we need to support. All the stakeholders who provide and do the platform business are people who are capable of manipulating the system to ensure that artists who are suffering continue to suffer. So, what Hon. Kiarie is proposing is to give room for negotiation to our local artists when they have something that has hit the market. I do not see any problem if we accept this amendment. We are here to protect citizens who are suffering out there. In business, you do not make things static so that there is no room to negotiate as you do business. We are not increasing; we are only saying that that is the baseline from where to begin. If there will be any changes in terms of percentage that hits up to 100 per cent, we can still come back and work on it. For now, let us protect those artists who are suffering at the moment.

I support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Ndindi, let us have Hon. Wanga first; she has had her hand up for a long time, then we can put the amendment to vote. We have deliberated on it for quite some time.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Chairlady. I want to support Hon. K.J. He raised this matter when we made our presentation to the Committee. Even at that point, I agreed with him. The other encouraging thing was that when Safaricom appeared before the Committee, it said that technology evolves in such a way that the prices get lower as the days go by. So, if technology prices go lower, the artists will not be tied to 52 per cent. They can add up to 55 per cent or 60 per cent, as the prices of technology go low by the day.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Ndindi?

Hon. Ndindi Nyoro (Kiharu, JP): Hon. Temporary Chairlady, this is to help the Member for Mbooni and the Committee in terms of adding up to 100 per cent. Now that we are proposing “not less than 52 per cent,” we need the Committee to look at the semantics on the other end. Instead of giving static figures, they can use a language like “not more than” in terms of the platform holder, so that in the case of 48 per cent, instead of leaving it that way, we can add “not more than 48 per cent” so that whatever direction we take, it balances at 100 per cent.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Finally, let us have the Chair, then we can put the Question to vote.

Hon. Mark Nyamita (Uriri, ODM): I think mathematically, there is no challenge with Hon. Kiarie’s amendment. What it refers to is a figure not less than. It only allows that figure to move from one percentage to another, whereas the other figure remains static. The figure he is talking about is net of taxes. So, should we have a variation in taxes in the subsequent finance Bills or any other legislations that may come up, it will not be affected because it is net of taxes.

So that we can move, we can put it to vote and support Hon. Kiarie.

*(Question, that the words to be inserted
be inserted, put and agreed to)*

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Let us have the Chair move the other further amendment.

Hon. Mark Nyamita (Uriri, ODM): Thank you, Hon. Temporary Deputy Chairlady.

I beg to move a further amendment to Clause 3 by just inserting the words “the telecommunication operator shall directly remit to the artists or one of the copyrights, the ring-back tone on net revenue share allocated to them as specified in subsection 1”.

During the submissions, one of the things that came up is that artists were struggling to get their payments on time and because there is sometimes an intermediary party, the payment comes from the telecommunication provider and goes to the Content Service Providers (CSPs), who sometimes do not remit the money to the artists in good time.

One of the artist raised the issue that they had not received their payment for a period of about eight months. What we are providing, and I think the telecommunication providers – Safaricom in this case – have not objected to this is that we have now specified the percentages to ensure that the money gets to them because of time value for money. We have agreed that when they are remitting the money after 30 days, what is due goes to them directly and the one to CSP or Premium Rate Service Providers (PRSPs), respectively.

That is the justification of this additional clause.

(Question of the further amendment proposed)

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady. I thought Hon. Nyamita was going to move the other further amendment on the net revenue. Maybe he is going to do so later.

The Temporary Chairlady (Hon. (Ms.) Soipan Tuyu): We will go to it. Do you mean the new one?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): It is being worked on.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairlady, I would like to be clear, Hon. Nyamita. Safaricom does not sign direct contracts with the artists. The contracts are between PRSPs and the artists. We raised the issue of direct payments, however, I do not want us to put anything in the Bill that will jeopardise the operations that will give legal fodder to anybody who does not want to remit the monies.

I beg Hon. Nyamita that while this is a progressive amendment, we could consider shelving it for now. I suspect that if Safaricom does not want to oblige to the new terms, they will just move in and say they do not have direct relationship with the artists, and that the Bill is telling them to pay them directly and they are, therefore, in a quagmire in that sense. They will thus use that to hold back implementation of this very important provision.

I request the Committee that what we are doing is not making the corporates happy, because they are happier to have more money. If you, therefore, give them any loophole, they are likely to hold back on the basis of that, that they have no direct contract. Nothing in this Bill is giving them any direct link with the artists. I do not know what the Committee has to say about that.

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, I hear Hon. Gladys. However, during deliberations with the telecommunication providers, they were not opposed to this. In actual sense, this amendment will help them. You will note that they were blind to what was happening behind, because there had been a ping pong game between the CSPs and the artists. When Safaricom says they pay on time, we have no reason not to believe them. They pay at the end of every 30 days. The artists however, said that the CSPs have introduced certain things before the payment takes place. They have introduced another platform, where they are saying that they need to have a wallet or they can give them money in advance then they become shylocks in the course of it all. The artists submitted that they are okay if the money is paid to them directly. In actual sense, this will go a long way in helping us standardise the contract.

We had about three PRSPs during public participation. Two of them said that the money they retain is about 8.5 per cent, whereas one artist said that the money he gets is 50 per cent of what has been remitted from Safaricom. They did not even know that 40 per cent Safaricom is diluted. In their final submission, and we have it on record, I do not think there is anything to worry about because their platform allows them to remit the money.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): That should suffice.

Hon. Kiarie?

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Chairlady.

Generally, I would incline to the argument that is being brought forward by the Chairperson of the Departmental Committee on Finance and Planning, Hon. Gladys Wanga, if it was an ordinary situation. However, the situation that brings us here is an extraordinary one. The person we are trying to protect here is the artist. The artists reported to the Committee that they are having a big problem with the collection entities – the CBOs, PRSPs and so on – because there is a lot of money politics within these CBOs that if asked, the artists would gladly want to collect their monies directly from the platform owners so that we reduce the broken telephone that is between the platform owner and the artists.

I rise to support this amendment and pray that the House goes through with it. *Skiza* tunes represent a small percentage of the industry, because it reduces it down to a musician and the one making certain kind of music. We have to see every amendment in the larger scheme of things and, as such, I would not want to postpone this amendment as proposed by Hon. Gladys Wanga. I would, however, wish that it would be implemented together with the amendments that we are doing today.

Thank you.

(Question of the further amendment proposed)

*Question, that the words to be inserted
be inserted, put and agreed to)*

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Chair, you can now do the final one.

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, I will move the final further amendment to this clause. It is the amendment we discussed earlier, that Clause 3 be further amended in the proposed new Section 30(c) by deleting the words “net revenue” and substituting therefore the words “revenue net of taxes”.

This is basically to bring clarity to what we essentially mean by saying that the money to be divided is the whole figure net of taxes, the net revenue to mean net of taxes. It is just clarity really, and nothing else.

(Question of the further amendment proposed)

(Hon. (Dr.) Wilberforce Oundo stood up in his place)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): I think this one should be clear. Hon. Oundo, I thought you had debated this for some time?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, I know it is a matter of semantics or tidying up, but in my limited understanding of accounting, net revenue is essential. This is because when sharing profits from a company's point of view, profits are based on net revenue after expenses and taxation. Unless that menu has changed, whichever way we carry...

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): What are you proposing?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): I do not see the difference between what is here and what is being proposed here. Net revenue simply means revenue less all expenses. Tax is normally taken as net expense, and unless there is a very good explanation in the semantics and change of the words, the Chair could probably further explain so that most of us can understand what all this is about. In any case, Dr. Makali Mulu is here and he probably understands better.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): The Chair had already said that much. He seems to have been pushed to change it.

Chair?

Hon. Mark Nyamita (Uriri, ODM): It was for clarity. Let us talk about what we want to achieve with this Bill. We want the revenue that will be shared to be net of taxes. That is what was originally there. Members, this is a House of debate. Many Members thought that we should include it to be clearer as net of taxes. What the Member has spoken about is my earlier suggestion. However, we will just put net of taxes.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Makali Mulu, is it a very grave matter of semantics to warrant the Chair to now withdraw it again?

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. What Hon. Nyamita is explaining and saying are two different things. If the idea is to share the money which remains after netting of taxes and other expenses, you cannot say revenue less taxes only because any other expense will not be taken care of. He wants to say that after taking care of the expenses and taxes, whatever remains is what you share. That should be net revenue, which means that you take care of taxes which are statutory requirements. They must be removed and then you remove the expenses. It depends on what Hon. Nyamita wants to do.

Hon. Nyamita, can you be clear? Do you want to share revenue which remains after netting of taxes and expenses or taxes only? If you net taxes only, then expenses will not be removed from the revenue.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Wanga is the one who put the Members into this discussion. She needs to clarify whether it is just net of taxes or net of taxes and expenses.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady. The reason as to why we are adding some words is because we want the

shareable revenue to be net of taxes alone. That is the point. Otherwise, we would have left it as it was – which was net revenue where you could even add expenses and net it off. We are specifying it because we want the money to be net of taxes. You pay your expenses based on what you receive.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): That clarifies this amendment. Let us close it because we have dwelt on it for long.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 3 as amended agreed to)

Clause 4

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Chair, there is a proposed amendment.

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, I beg to move: THAT, the Bill be amended by deleting Clause 4 and substituting therefor the following new Clause—

Insertion of new
sections in Cap. 12
of 2001.

4. The principal Act is amended by inserting the following new sections immediately after Section 22A—

National Rights Registry

22B. (1) There is established a National Rights Registry which shall be an office within the Board.

(2) The staff of the Registry shall be the staff of the Board.

Functions of the Registry

22C. The functions of the Registry shall be –

(a) digital registration of right holders;

(b) digital registration of copyright works;

(c) authentication and authorisation of consumers of copyright works;

(d) media monitoring of registered copyright works;

(e) tracking, monitoring and dissemination of data or logs related to access of registered copyright works;

(f) any other functions as may be assigned by the Board.

Voluntary registration on the Registry

22D. (1) Without prejudice to the generality of Section 22C, the Board shall cause to be developed and maintained an online portal for registration of copyright works.

(2) The author of copyright works or an owner of copyright may register his or her works on the Registry.

(3) Subject to such conditions as may be prescribed by the Board and upon payment of the prescribed fees, any person may access the copyright works through the Registry.

The proposed amendment seeks to amend Clause 4 to insert the new proposed sections immediately after Section 22A of the Act for logical flow. Section 22A provides for the register of copyright works. Therefore, the provisions are better placed after Section 22A.

The proposed new Section 22B establishes the National Rights Registry. The proposed Section 22C provides for the functions of the registry. The proposed Section 22D provides for the voluntary registration on the registry.

Thank you, Hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

Hon. David ole Sankok (Nominated, JP): Put the Question. The amendment provides a logical flow in the Bill.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Hon. Temporary Deputy Chairlady, I will be very brief. Hon. Sankok is in a hurry but what we are doing today is extremely important for the artists in this country. Last year but one, during the height of the COVID-19 disease, His Excellency the President offered Kshs100 million to be given to artists. The problem in the industry at that time was how to identify an artist. Who is defined as an artist? Who is a copyright holder? One of the greatest things that the 12th Parliament will do is to bequeath a registry to this industry, so that we can identify artists, their rights and how they can be protected by the Government.

I support the establishment of a registry that will identify the artists in this country.

Thank you very much.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady. In addition to what Hon. K.J has said, which is the importance of the registry, I support what the Committee is doing, which is to give this amendment a home in the right place in the Bill. They are moving it from Section 34 and taking it to Section 22, where it belongs.

I support the amendment.

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 4 as amended agreed to)

Clause 5

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, I beg to move:
THAT, Clause 5 of the Bill be deleted.

Hon. Temporary Deputy Chairlady, the reason for the proposed amendment is that Section 35B of the Act is an important and progressive provision that is fairly recent. It needs implementation and should therefore be retained. Section 35B of the Copyright Act deals with the take down notices which are issued to internet service providers, which require them to remove infringing content.

The sponsor of the Bill has agreed to the proposed deletion of Clauses 5, 6 and 7 of the Bill but not to the proposed repeal of Sections 35B, 35C and 35D of the Copyright Act, which would negate the main object of this Bill.

During the presentations, other than the withdrawal by the Chair, Hon. Wanga also reported to the Committee that these proposed amendments were not originally hers. They had been proposed by another Member. However, in the interest of the procedures of this House, they both agreed to amalgamate them into one Bill. Because the object of the Bill is to improve the welfare of artists, this particular amendment gives with the right hand and takes back with the left hand. So, she agreed to withdrawal that part of the Bill.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady. As it has been said by the Chair, for the record, I committed to withdraw this amendment in the Committee. They have moved to withdraw these amendments. They were not originally part of my proposals that sought to create the national registry and increase the revenue of *skiza* tunes. Because of the processes and procedures, the former Chair of the Departmental Committee on Communication, Information and Innovation – Hon. Kisang – carried these amendments. We agreed that we would carry them in my Bill. He said that they were due to alignment with court procedures. I want to state for the record that these amendments are not progressive. They are retrogressive and, therefore, we cannot carry them in a Bill that is meant to protect artists. This is because if you remove the take-down agreements, then you are not helping the artist anymore. We cannot have them in the Bill. I drop them and I support the Committee in deleting these provisions.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): I am a very happy man today. No wonder Hon. Gladys Wanga will become the Governor of Homa Bay. That is why Eric Omondi was locked up in a “cage” around Parliament Building and I had the key. I went to open it and release him because Hon. Gladys Wanga had promised that this one will be deleted. We cannot gift artists with the right hand and take away the same gift with the left hand. Today Hon. Gladys Wanga has done great service to the artists of this country. We need to protect them from piracy and pornography. By deleting this particular clause, we are even protecting ourselves from terrorism. By deleting Clause 5, we have really done a lot of service to our artists. Wherever Eric Omondi and other artists are, they are very happy. Hon. Gladys Wanga, I am sure we are all supporting you in this regard. We thank the Committee so much for doing this. Thank you very much.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Chairlady. I also support the Chair because this is an amendment that had been passed under the Copyright Act

and instead of having a progressive law in terms of protecting the interests of the artists; this particular amendment was taking it away. I think it is a good one. We should retain it and move forward to protect and take care of the welfare and interests of the artists.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairlady. I also support the amendments proposed by the Committee and supported by the sponsor of the Bill. Essentially, in this country where plagiarism carries the day, there must be a way of taking to account anybody who infringes one's personal rights.

Hon. Temporary Deputy Chairlady, you have heard quite a number of musicians themselves shamelessly copying other musicians' tunes and trying to make them their own. Many a times, when you listen to one-man guitarists, you will realize that they copy and plagiarise other artists' works. Therefore, we must find a way of ensuring that such artists do not to earn income from such plagiarism.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Chairlady. I am a happy man today. Let me thank the Committee and Hon. Gladys Wanga profusely. Anyone who has been attentive has seen the hue and cry in the industry for the last few weeks after Hon. Gladys Wanga proposed to do away with Section 35. Section 35 of the Copyright Bill is actually a big win that was made by this House in 2018 when we were amending the Copyright Act. It was such a big win that Kenya was celebrated across the continent as having a very progressive Copyright Bill. If we had done away with Section 35, we would have done a great disservice to the industry because this is the section that protects works of art, copyrighted works and copyright holders from piracy.

Most importantly, in this day and age of technology, Section 35 has been allowing the take-down of offensive material. Offensive material could actually be piracy, plagiarism or terrorism in the dark web. Think about Kenya and the technology that even your children have today. Your children go to places where even you cannot go – what they call the “Dark Web.” Section 35 protects against piracy, plagiarism, terrorism, child pornography and all these matters. I am extremely happy today to hear Hon. Gladys Wanga say that she had a monkey on her back but she did not know who owned it. I am glad she has shed down the monkey and today we will be happy to pass this amendment Bill knowing that Section 35 shall not be touched. Matters of copyright are sensitive, especially to copyright holders. They must be protected by law.

Thank you very much.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): You know, I cannot help wondering. Hon. Kiarie is an artist. Was what you did with *Redykyulass* impersonation or plagiarism? If somebody did what you were doing, would it amount to plagiarism?

Hon. John Kiarie (Dagoretti South, JP): Hon. Temporary Deputy Chairlady, *Redykyulass* was make-belief satire comedy show. Everything that was put up on the show was extremely original because when you imitate Madam Speaker, you are not imitating Hon. Soipan. You are actually the artist becoming a new character.

Let me go to your question on the fate of *Redykyulass*. When I was in *Redykyulass*, for every shilling I made, the pirate made four shillings. Sauti Sol, the biggest artist group in Kenya, today report that 80 per cent of their revenues are actually lost to piracy. So, we cannot afford to lose Section 35 of the Copyright Act, 2018.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I am sure that is quite educative to most of us here. We can proceed.

*(Question, that the words to be left out
be left out, put and agreed to)*

Hon. Members, the other amendments proposed by Hon. Wanga and Hon. Kiarie disappear with success of this one by the Chair.

(Clause 5 deleted)

Clause 6

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 6 of the Bill be deleted.

The justification is as for the previous clause. I do not know whether you want us to do this to Clause 7 as well because the reasoning is the same. Can we delete all of them or we have to go one-by-one?

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Just do Clause 6 first.

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, the justification is actually the same. Section 35 of the Act is important and progressive. The sponsor of the Bill has said that it was not part of her amendments. She actually asked the Committee to delete it.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 6 deleted)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, the proposed deletions by Hon. Wanga and Hon. Kiarie disappear with the success of the Chair's deletion.

Clause 7

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, I beg to move: THAT, Clause 7 of the Bill be deleted.

The justification is as given in respect of the previous clause.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 7 deleted)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, Hon. Gladys Wanga's and Hon. John Kiarie's amendments on Clause 7 disappear with the passage of the Chair's amendment.

Clause 8

Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady, I beg to move: THAT, the Bill be amended by deleting Clause 8 and substituting therefor the following new Clause—

Amendment of section 49 of No. 12 of 2001

8. The principal Act is amended in section 49 (2) in paragraph (a) by inserting the following subparagraphs immediately after subparagraph (iv) –
- “(iva) the fees for accessing the National Rights Registry;
 - (ivb) the format for registration of the respective copyright works;
 - (ivc) the type of copyright works that are registrable with the National Rights Registry;
 - (ivd) anything necessary for the performance of the functions of the National Rights Registry;”

The reason for this amendment is to allow for logical flow. It is nothing material.

(Question of the amendment proposed)

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chair. I see a difference between what is being proposed and what is on the Bill. The Bill talks about the Cabinet Secretary prescribing the items that have been listed. Is it the one up there that says “the Cabinet Secretary shall prescribe” and then just adding 4 (a), (b), (c) and (d)? Probably, that is the case.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Come again, Hon. Wanga. Are you okay?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): I have seen where they are coming from. This is a totally new provision they are introducing under an existing paragraph by adding 4 (a), (b), (c) and (d).

It is understood, Hon. Temporary Deputy Chair.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 8 as amended agreed to)

Clause 2

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Hon. Mark Nyamita (Uriri, ODM): Hon. Temporary Deputy Chairlady I beg to move: THAT, Clause 2 of the Bill be amended –

(a) in the definition “Registry” by deletion the words “section 34A” and substituting therefor the words “section 22B”;

(b) in the definition “ring back tune” by deleting the word “it” and substituting therefor the word “is”;

(c) by inserting the following new definitions in proper alphabetical sequence –

“artiste” means a singer, declaimer, musician or other person whose work constitutes a ring back tune;

“premium rate service provider” means a person authorised by the Communications Authority of Kenya to provide content services which include ring back tunes and is delivered over electronic communications networks and services;

Hon. Temporary Deputy Chairlady, the proposed amendment seeks to make a correct cross-reference to the provision seeking to establish the National Rights Registry arising from the proposed amendment to Clause 4 of the Bill. It further corrects all typographical errors and provides for a definition of “artist” and “premium rates service providers” as has been used in Clause 3 of the Bill. It is just for ensuring hygiene of the Bill.

(Question of the amendment proposed)

Hon. John Kiarie (Dagoretti South, JP): Hon. Temporary Deputy Chairlady, I rise to support this amendment and make a closing remark.

Looking at what we are doing this afternoon, it tells you that there is a lot of work to be done in the copyright space. Therefore, allow me one minute to just plead with the Government. We are doing a copyright law in a country where we do not have an intellectual property policy. The Ministry has been dragging its feet on developing one. It is now 60 years since independence and we still do not have a substantive intellectual property policy. In fact, in the right order of things, the Copyright Bill should have followed an intellectual property policy.

Secondly, the work that we have done in the life of this Parliament on copyright has actually been patchwork. It is *kiraka* work. We just identify an area, put a *kiraka*. I know the Committee is alive to this matter. I am no longer a Member of the Committee. I was “fumigated” out of the Committee but I know that it is alive to the need for an entirely new robust copyright law. I hope the Committee will eventually come up with a good Report even if it does not do so within the remainder of the life of this Parliament. The Committee on Information, Communication and Innovation will, hopefully, find in its in-tray a proper Report recommending the overhaul of the Copyright Bill, so that we get a modern and good law that speaks to the times of today. I believe we need an entire new copyright law based on an intellectual property policy from the Ministry.

Thank you very much, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairlady, this is a learning curve. I got interested in comedy when KJ and company started doing those *Redykulass* things of theirs. Whether it was ridiculous or *Redykulass* or whatever it was, it was a learning curve. I have now learnt that, among others, an “artist” means a “singer” and a “declaimer” – whatever that means; I will ask my son and my grandchildren to tell me what it is. However, I want to echo his views. I want to say that we have bad habits in this country of doing patchwork instead of addressing

issues comprehensively. Indeed, the amendments that we have passed here address a single aspect of such a complicated matter or sphere that requires a very comprehensive and robust approach to ensure that whatever is happening is anchored into something. We have seen all over the world that it is artists and singers who are the richest amongst the most prominent personalities. We must find a way of safeguarding and ring-fencing the income of artists so that when they can no longer sing or dance, we do not have the problem that we always have – of retired celebrities not being able to pay for their medical bills and dying destitute.

There are very many artists I used to envy. I used to listen to their music and dance to it but if you meet them on the streets of Nairobi today, you get embarrassed and feel sorry for those same people who made you happy at that particular time. Many of the guys who are nearly my age mates here probably found their wives in dancing halls when those guys were singing for them. You are now happily married. You have children. However, the guys who helped you get a wife and happiness – the guys who made you enjoy the fruits of life – are languishing in poverty. You just pass by them but you do not bother to check on them.

I support and hope in the fullness of time, as Hon. KJ has stated, the Committee, on their own volition, will initiate a process of developing more comprehensive policy to govern this area.

Thank you, Hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Chairlady. Hon. KJ has aroused our emotions. First of all, I used to watch *Redykulass* and *Red Corner* while I was at the University of Nairobi as he was at Kenyatta University. It was a very nice show that made all of us happy. We are saddened that he used to earn a shilling while pirates earned more than four shillings. Hon. Wanga and the Committee should take up the matter from Hon. Kiarie and even consult him. Even if he was kicked out or “fumigated” out of the Committee, they should borrow some knowledge from him on the issue of intellectual property policy.

I invented a knife sharpener using the principle of a bigger circle rotating a smaller circle that I learnt in Physics being aware that all my age mates in my Maasai community had swords. Since my parents were not blessed enough to pay my school fees, while I was at the university, I decided to invent a knife sharpening machine, which I used to drive using one leg because my other leg is paralysed.

Unfortunately, when Kenyans copy exams, they include even the name of the person they copy from. So, they even copied my left-legged drive when the machine can easily be driven using the right leg. In fact, I see some people driving the knife sharpener using the left leg. They are not aware that the initial machine was a left-leg drive one because my right leg was paralysed but it is naturally the right leg that is stronger.

So, if we had an intellectual property policy in place in Kenya then, I would have been benefiting to-date because people sharpen knives everywhere. I should have benefited because it cost Kshs1,000 to make it.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Sankok, are you saying that you invented that machine?

Hon. David ole Sankok (Nominated, JP): Yes, but I did not patent it. It cost me Ksh1,500 in total. In Maasailand, everybody has a sword. So, when I went there with the machine, I sharpened very many swords. I made almost Kshs20,000 on the first day. I had a bucket full of twenty shillings coins.

There are artists in this country who can invent and earn from their sweat but we do not protect them, as a House. So, let the Committee follow up on what Hon. KJ said on formulation of an intellectual property policy.

Thank you for giving me this opportunity.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Dr. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you Hon. Temporary Deputy Chairlady for giving me an opportunity to join my colleagues in celebrating the passage of these amendments hoping that they will become law.

Hon. KJ should listen to me on this one. The space where artists operate, most of who are celebrities, is what we call *Mombasa Raha*. I thank KJ since he seems to be keen on this one. We should also have a bit of training for some of these people. When they are active, they forget that they will eventually age and cease to perform the way they do today. Most of them just kick their resources up and down and when they retire, they get what Dr. Oundo said. You meet them walking in the streets miserable. So, we need to do a bit of capacity building so that when they are at their peak, we train them on investment opportunities and on simple book-keeping so that they can make money which will sustain them when they are no longer active in the areas they operate.

Thank you.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Question, that the words to be inserted be inserted put and agreed to)

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I now call upon the Mover to move reporting.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady. We are freezing in here. I just do not know what to do. We are going to be sick. It is really cold.

Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Copyright (Amendment) Bill (National Assembly Bill No.44 of 2021) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya in the Chair)]

REPORT

THE COPYRIGHT (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): I call upon the Chair to report to the House.

Hon. Emmanuel Wangwe (Navakholo, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Copyright (Amendment) Bill (National Assembly Bill No.44 of 2021) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Mover to move agreement with the Report.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report.

I ask Hon. Gichimu to second the Motion for agreement with the Report of the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Gichimu.

Hon. Gichimu Githinji (Gichugu, JP): Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): We will defer the putting of the Question until we are properly constituted.

(Putting of the Question deferred)

Well done, Hon. Members! That was a very good Committee of the whole House to run. It has been a while since we had such harmony and cohesion in a Committee of the whole House.
Next Order.

BILL

Second Reading

THE COFFEE BILL

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Chairperson of the Departmental Committee on Agriculture and Livestock.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Speaker, I beg to move that the Coffee Bill, 2020 (Senate Bill No.22 of 2020) be now read a Second Time.

Can I proceed?

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Yes, Hon. Chair.

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Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Speaker.

The Coffee Bill, 2020 (Senate Bill No.22 of 2020), sponsored by Senator Njiru Ndwiga, the Chairperson of the Senate Committee on Agriculture, Livestock and Fisheries, was passed by the Senate with amendments on 5th ...

Hon. David ole Sankok (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Sankok, what is your point of order?

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. Looking at the House, we are not properly constituted to transact any business.

An Hon. Member: I think this guy should be chucked out of this House.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Are you raising the question of quorum, Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): Yes, Hon. Temporary Deputy Speaker. I have said that we are not properly constituted. We do not have quorum. So, we cannot transact any business.

An Hon. Member: He has not quoted any Standing Order. Which Standing Order is he raising the matter of quorum on?

Hon. David ole Sankok (Nominated, JP): It is the Standing Order that you know.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order. I order the Quorum Bell to be rung for 10 minutes.

(The Quorum Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members! Take your seats.

Hon. Members, unfortunately, we cannot proceed because of the constitution of the House. Therefore, this House stands adjourned until Thursday, 24th February 2022 at 2.30 p.m.

The House rose at 5.17 p.m.