




REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN
RELATIONS
.....

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

 THE NATIONAL ASSEMBLY PAPERS LAYD	
DATE: 11 APR 2023	
DAY: TUESDAY	
TABLED BY:	HON- GEORGE MURUGA MP, CHAIRPERSON, SWAC
CLERK-AT THE-TABLE:	KESTHER NGUNYO

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2023

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CHAIRPERSON'S FORWARD

This report details the consideration by the Departmental Committee on Defence, Intelligence and Foreign Relations of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022). The Bill seeks to amend many laws among them **the Geneva Conventions Act Cap. 198**, which is relevant to the Departmental Committee on Defence, Intelligence and Foreign Relations. It specifically proposes to amend the Geneva Conventions Act Cap. 198 by deleting the expression "Attorney General" and substituting with the expression "Director of Public Prosecution" under section 3.

The Bill was published on 22nd November 2022 and read a First Time in the House on 8th December, 2022. It was thereafter committed to various Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127.

Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16th December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment. Further, vide a letter REF: NA/DDC/DIFR/2023/001 dated 16th January, 2023 (Annex 4), the Committee invited the following key stakeholders to provide written submissions on the proposed amendments to the said Act: Attorney General of the Republic of Kenya, Ministry of Foreign and Diaspora Affairs and the Kenya Law Reform Commission.

From the foregoing, only two stakeholders submitted their comments - the Office of the Director of Public Prosecutions and the Kenya Law Reform Commission. Both were in support of the proposed amendment since it sought to align the Act with the 2010 Constitution.

Having considered the proposed amendment, the Committee observed that the Geneva Conventions Act was enacted in 1968. At this time, the repealed constitution empowered the Attorney-General to institute and undertake criminal prosecutions against any person. However, the 2010 Constitution created the office of the Director of Public Prosecutions under Article 157 (6). The proposed amendment was meant to align the Geneva Conventions Act with the provisions of the 2010 constitution. Further, the Committee observed that the proposed amendment does not delegate legislative power and neither does it limit fundamental rights and freedoms. Equally, it was observed that the proposed amendment does not contain provisions that affect the functions and powers of county governments in terms of Article 110 (1) (a) of the Constitution and hence the amendment does not concern county governments.

Having reviewed the proposed amendment to the Geneva Conventions Act Cap. 198, as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), the Committee recommends that the House **approves** the amendment.

Hon. Nelson Koech, M.P.

Departmental Committee on Defence, Intelligence and Foreign Relations

PART I

1.0 PREFACE

1.1 Introduction

1. This report details the consideration by the Departmental Committee on Defence, Intelligence and Foreign Relations of the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022).
2. The Bill was published on 22nd November 2022 and read a First Time in the House on 8th December, 2022. It was thereafter committed to various Departmental Committees for consideration and reporting to the House pursuant to the provision of Standing Order 127. Specifically, the Committee considered an amendment proposed to **the Geneva Conventions Act Cap. 198**.

1.2 Mandate of the Committee

3. The Departmental Committee on Defence, Intelligence and Foreign Relations is established under the National Assembly Standing Order No. 216. The functions and mandate of the Committee include, among others, **“to study and review all legislation referred to it”**.
4. The subject matter of the Departmental Committee on Defence, Intelligence and Foreign Relations are stated in the Second Schedule of the National Assembly Standing Orders as follows: **Defence, intelligence, foreign relations, diplomatic and consular services, international boundaries including territorial waters, international relations, and veteran affairs**.

1.3 Oversight

5. In executing its mandate, the Committee oversees the following MDAs: The Ministry of Defence, the Ministry of Foreign and Diaspora Affairs, the State Department for East African Community (EAC) Affairs, the National Intelligence Service (NIS).

1.4 Committee Membership

6. The Departmental Committee on Defence, Intelligence and Foreign Relations was constituted by the House on 27th October, 2022 and comprises the following Members:

Chairperson

Hon. Koech Nelson, M.P.

Belgut Constituency

UDA Party

Vice-Chairperson

Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P.

Mandera North Constituency

UDM Party

Members

Hon. Wanjira Martha Wangari, M.P,
Gilgil Constituency
UDA Party

Hon. Joshua Kandie, MP
Baringo Central Constituency
UDA Party

Hon. Hassan Abdi Yusuf, MP
Kamkunji Constituency
Jubilee Party

Hon. Kwenya Thuku Zachary, MP
Kinangop Constituency
Jubilee Party

Hon. Odhiambo Millie G. Akoth,MP
Suba North Constituency
ODM Party

Hon. Logova Sloya Clement, MP
Sabatia Constituency
UDA Party

Hon. Kanchory Elijah Memusi, MP
Kajiado Central Constituency
ODM Party

Hon. Ikana Fredrick Lusuli, MP
Shinyalu Constituency
ANC Party

Hon. (Dr.) Kasalu Irene Muthoni,MP
Kitui County
WDM-K

Hon. Mohamed A. Hussein, MP
Lagdera Constituency
ODM Party

Hon. Kirima Moses Nguchine, MP
Imenti Central Constituency
UDA Party

Hon. Teresia Wanjiru Mwangi, MP
Nominated Member
UDA Party

Hon. Luyai Caleb Amisi, MP
Saboti Constituency
ODM Party

1.5 Committee Secretariat

7. The Committee is facilitated by the following staff:

Mr. Dennis M. Ogechi
Second Clerk Assistant
Lead Clerk/Head of Secretariat

Ms. Clarah Kimeli
Principal Legal Counsel II

Ms. Winfred Kambua Kilonzo
Clerk Assistant III

Dr. Donald Manyala, PhD
Research Officer II

Mr. Edwin Machuki
Fiscal Analyst III

Ms. Roselyne Ndegi
Senior Serjeant-at-Arms

Mr. Lenny Muchangi
Legal Counsel II

Mr. Murimi Mwangi
Media Relations Officer

Mr. Kelvin Ng'ang'a
Research Officer III

PART II

2.0 OVERVIEW OF THE PROPOSED AMENDMENT

11. The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022), which was sponsored by the Leader of Majority Party, Hon. Kimani Ichung'wah, CBS, MP, was an Omnibus Bill which seeks to amend various statutes in keeping with the practice of making minor amendments which do not merit the publication of separate Bills. The Bill was published on 22nd November 2022 and read a First Time in the House on 8th December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration.

12. The Bill seeks to amend the following laws which are relevant to the Departmental Committee on Defence, Intelligence and Foreign Relations: **The Geneva Conventions Act Cap. 198** by deleting the expression "Attorney General" and substituting with the expression "Director of Public Prosecution" under section 3.

13. Section 3 which is proposed to be amended provides as follows:

3. Grave breach of Convention

(1) Any person, whatever his nationality, who, whether within or outside Kenya commits, or aids, abets or procures the commission by any other person of any grave breach of any of the Conventions such as is referred to in the following articles respectively of those Conventions—

- a) article 50 of the Convention set out in the First Schedule to this Act;*
- b) article 51 of the Convention set out in the Second Schedule to this Act;*
- c) article 130 of the Convention set out in the Third Schedule to this Act;*
- d) article 147 of the Convention set out in the Fourth Schedule to this Act, is guilty of an offence and—*

- (i) in the case of a grave breach involving the wilful killing of the person protected by the Convention in question, shall be sentenced to imprisonment for life; and*
- (ii) in the case of any other grave breach, is liable to imprisonment for a term not exceeding fourteen years.*

(2) Where an offence under this section is committed outside Kenya, a person may be proceeded against, indicted, tried and punished therefor in any place in Kenya, as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

(3) A prosecution for an offence under this section shall not be instituted except by or on behalf of the Attorney-General.

(4) Where in a prosecution for an offence under this section in respect of a grave breach of one of the Conventions any question arises under Article 2 of that Convention, that question shall be determined by the Minister, and a certificate purporting to set out such determination and to be signed by the Minister shall be sufficient evidence of such determination and be presumed to be so signed until the contrary is proved.

PART III

3.0 PUBLIC PARTICIPATION/STAKEHOLDERS CONSULTATION

14. Article 118(1) (b) of the Constitution and Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In compliance with the foregoing, the Committee, through the placement of adverts in the print media on 16th December, 2022 (Annex 3), invited the public and interested stakeholders to submit memoranda on the proposed amendment. Only one submission was received. It was made by the Office of the Director of Public Prosecution through a letter Ref No. ODPP/ES/GEN dated 9th January, 2023 (Annex 5).

3.1 The Office of the Director of Public Prosecutions

15. The Office of the Director of Public Prosecutions averred that the amendment to the Geneva Conventions Act Cap. 198 by deleting the expression “Attorney General” and substituting with the expression “Director of Public Prosecution” under section 3 was acceptable since it aligns the Act to Article 157 of the Constitution.

Committee’s View

16. The Committee agreed with the submission by the Office of the Director of Public Prosecution. The repealed Constitution empowered the Attorney-General to institute and undertake criminal prosecutions against any person. However, the 2010 Constitution created the office of the Director of Public Prosecutions. Therefore, prosecutions are now instituted through the Director of Public Prosecutions under Article 157 (6). The proposed amendment was therefore meant to align the Geneva Conventions Act with the provisions of the 2010 Constitution.
17. Further, vide a letter REF: NA/DDC/DIFR/2023/001 dated 16th January, 2023 (Annex 4), the Committee invited the following key stakeholders to provide written submissions on the proposed amendment to the said Act: Attorney General of the Republic of Kenya, Ministry of Foreign and Diaspora Affairs and the Kenya Law Reform Commission. Only one submission was received. It was made by the Kenya Law Reform Commission through a letter Ref No. KLRC/RES/93 VOL. VI (38) dated 12th January, 2023 (Annex 5).

3.2 Kenya Law Reform Commission

18. The Kenya Law Reform Commission averred that it had no objection to the proposed amendment. It asserted that the amendment would align the Act to Article 157 of the Constitution.

Committee’s View

19. The Committee agreed with the submission by the Kenya Law Reform Commission asserting that indeed the proposed amendment was meant to align the Geneva Conventions Act with the provisions of the 2010 Constitution.

PART IV


4.0 COMMITTEE OBSERVATIONS

20. Having considered the proposed amendment, the Committee observed THAT:
21. The Geneva Conventions Act was enacted in 1968. At this time, the repealed Constitution empowered the Attorney-General to institute and undertake criminal prosecutions against any person. Therefore, the prosecution office was under the office of the Attorney-General. However, the 2010 Constitution created the office of the Director of Public Prosecutions. Therefore, prosecutions are now instituted under the office of the Director of Public Prosecutions under Article 157 (6). The proposed amendment was meant to align the Geneva Conventions Act with the provisions of the 2010 constitution.
22. The proposed amendment constitutes a proper use of an omnibus Bill to make miscellaneous amendments that don't merit the publication of separate Bills.
23. The proposed amendment does not delegate legislative power and neither does it limit fundamental rights and freedoms.
24. The proposed amendment does not contain provisions that affect the functions and powers of county governments in terms of Article 110 (1) (a) of the Constitution and hence the amendment does not concern county governments.

PART V

5.0 COMMITTEE RECOMMENDATION

25. The Committee, having reviewed the proposed amendment to **the Geneva Conventions Act Cap. 198**, as contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) recommends that the House **APPROVES** the amendment.

SIGNED:  DATE: 02/03/23

HON. NELSON KOECH, M.P.
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE AND FOREIGN
RELATIONS



Annex 1

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - SECOND SESSION - 2023
DEPARTMENTAL COMMITTEE ON DEFENCE, INTELLIGENCE,
AND FOREIGN RELATIONS.

REPORT ADOPTION LIST

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

We, the Members of the Departmental Committee on Defence, Intelligence, And Foreign Relations, have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, Tuesday 28th February, 2023.

	NAME	SIGNATURE
1.	The Hon. Koech Nelson, M.P. (Chairperson)	
2.	The Hon. Maj. (Rtd.) Sheikh Abdullahi Bashir, M.P. (Vice Chairperson)	
3.	The Hon. Hassan Abdi Yusuf, M.P	
4.	The Hon. Wanjira Martha Wangari, M.P	
5.	The Hon. Odhiambo Millie Grace Akoth, MP	
6.	The Hon. Kanchory Elijah Memusi, MP	
7.	The Hon. (Dr.) Kasalu Irene Muthoni, M.P	
8.	The Hon. Kirima Moses Nguchine, M.P	
9.	The Hon. Kandie Joshua Chepyegon, M.P	
10.	The Hon. Kwenya Thuku Zachary, M.P	
11.	The Hon. Luyai Caleb Amisi, M.P	
12.	The Hon. Teresia Wanjiru Mwangi, M.P	
13.	The Hon. Logova Sloya Clement, M.P	
14.	The Hon. Ikana Fredrick Lusuli, M.P	
15.	The Hon. Mohamed Abdikadir Hussein, M.P	



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

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

PUBLIC PARTICIPATION/SUBMISSION OF MEMORANDA

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

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

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

1. The Appellate Jurisdiction Act (Cap 9)
2. The Vexatious Proceedings Act (Cap 41)
3. The Extradition (Commonwealth Countries) Act (Cap 77)
4. The National Flag, Emblems and Names Act (Cap 99)
5. The Official Secrets Act (Cap 107)
6. The Geneva Conventions Act (Cap 198)
7. The Pharmacy and Poisons Act (Cap 244)
8. The Mental Health Act (Cap 248)
9. The Land Consolidation Act (Cap 283)
10. The Land Adjudication Act (Cap 284)
11. The Marine Insurance Act (Cap 390)
12. The Local Manufacturers (Export Compensation) Act (Cap 402)
13. The Capital Markets Act (Cap 485A)
14. The Architects and Quantity Surveyors Act (Cap 525)
15. The Prevention of Organized Crimes Act, 1977 (No. 1 of 1977)
16. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)
17. The Retirement Benefits Act, 1997 (No. 3 of 1997)
18. The Co-operative Societies Act, 1997 (No. 12 of 1997)
19. The Central Depositories Act, 2000 (No. 4 of 2000)
20. The Sexual Offences Act, 2006 (No. 3 of 2006)
21. The National Museums and Heritage Act, 2006 (No. 6 of 2006)
22. The Labour Institutions Act, 2007 (No. 12 of 2007)
23. The Accountants Act, 2008 (No. 15 of 2008)
24. The International Crimes Act, 2008 (No. 16 of 2008)
25. The Biosafety Act, 2009 (No. 2 of 2009)
26. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)
27. The Tourism Act, 2011 (No. 28 of 2011)
28. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)
29. The Bill seeks to amend these Acts in order to harmonize their provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution.
29. The Judicial Service Commission Act, 2011 (No. 1 of 2011)
30. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)
31. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)
32. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)
33. The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)
34. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)
35. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)
36. The National Police Service Commission Act, 2011 (No. 30 of 2011)
37. The National Land Commission Act, 2012 (No. 5 of 2012)
38. The Teachers Service Commission Act, 2012 (No. 20 of 2012)
39. The Controller of Budget Act, 2016 (No. 26 of 2016)
40. The Public Service Commission Act, 2017 (No. 17 of 2017)

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

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

42. The Judiciary Act (Cap 8)
The Bill proposes to amend the Act to increase the number of Judges of the Court of Appeal from thirty to seventy.

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

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

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

46. The Public Holidays Act (Cap 110)
The Bill proposes to amend the Public Holidays Act to provide that 10th October be *Niduma Day* and 26th December be *Umedumal Day*.

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

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

49. The Merchant Shipping Act, 2009 (No. 4 of 2009)
The Bill seeks to amend the Act by deleting section 10 which restricts ship owners from providing crewing agencies, pilotage, clearing and forwarding, port facility operator and shipping agencies among other services in the maritime industry. This is after the High Court in September, 2020 declared the section unconstitutional and to allow for the revival of the Kenya National Shipping Line.

50. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)
The Bill seeks to amend the Act to harmonize its provisions with the functions of the Director of Public Prosecutions under Article 157 of the Constitution. It also seeks to enhance the penalty for organised crimes and to extend the period in which an order obtained in relation to the tracing of property shall lapse.

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

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

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

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

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

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

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

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

The Statute Law (Miscellaneous Amendments) Bill, 2022 was published on 22nd November 2022 and read a First Time in the House on 6th December, 2022 and pursuant to Standing Order 127(1) committed to respective Departmental Committees of the National Assembly for consideration as set out in the schedule hereunder:-

SCHEDULE	
i. The Vexatious Proceedings Act (Cap 41)	Departmental Committee on Justice and Legal Affairs
ii. The Extradition (Commonwealth Countries) Act (Cap 77)	
iii. The Official Secrets Act (Cap 107)	
iv. The Sexual Offences Act, 2006 (No. 3 of 2006)	
v. The International Crimes Act, 2008 (No. 16 of 2008)	
vi. The Judicial Service Commission Act, 2011 (No. 1 of 2011)	
vii. The Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)	
viii. The Kenya National Commission on Human Rights Act, 2011 (No. 14 of 2011)	
ix. The Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011)	
x. The Penal Code (Cap 63)	
xi. The Criminal Procedure Code (Cap 75)	
xii. The Evidence Act (Cap 80)	
xiii. The Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003)	
xiv. Leadership and Integrity Act, 2012 (No. 19 of 2012)	
xv. The Kenya Law Reform Commission Act, 2013 (No. 35 of 2013)	
xvi. The Bribery Act, 2016 (No. 47 of 2016)	
xvii. The Judiciary Act (Cap 8)	
xviii. The Appellate Jurisdiction Act (Cap 9)	
i. The Capital Markets Act (Cap 485A)	Departmental Committee on Finance and National Planning
ii. The Retirement Benefits Act, 1997 (No. 3 of 1997)	
iii. The Central Depositories Act, 2000 (No. 4 of 2000)	
iv. The Accountants Act, 2008 (No. 15 of 2008)	
v. The Commission on Revenue Allocation Act, 2011 (No. 16 of 2011)	
vi. The Salaries and Remuneration Commission Act, 2011 (No. 10 of 2011)	
vii. The Controller of Budget Act, 2016 (No. 26 of 2016)	
viii. The Excise Duty Act, 2015 (No. 23 of 2015)	

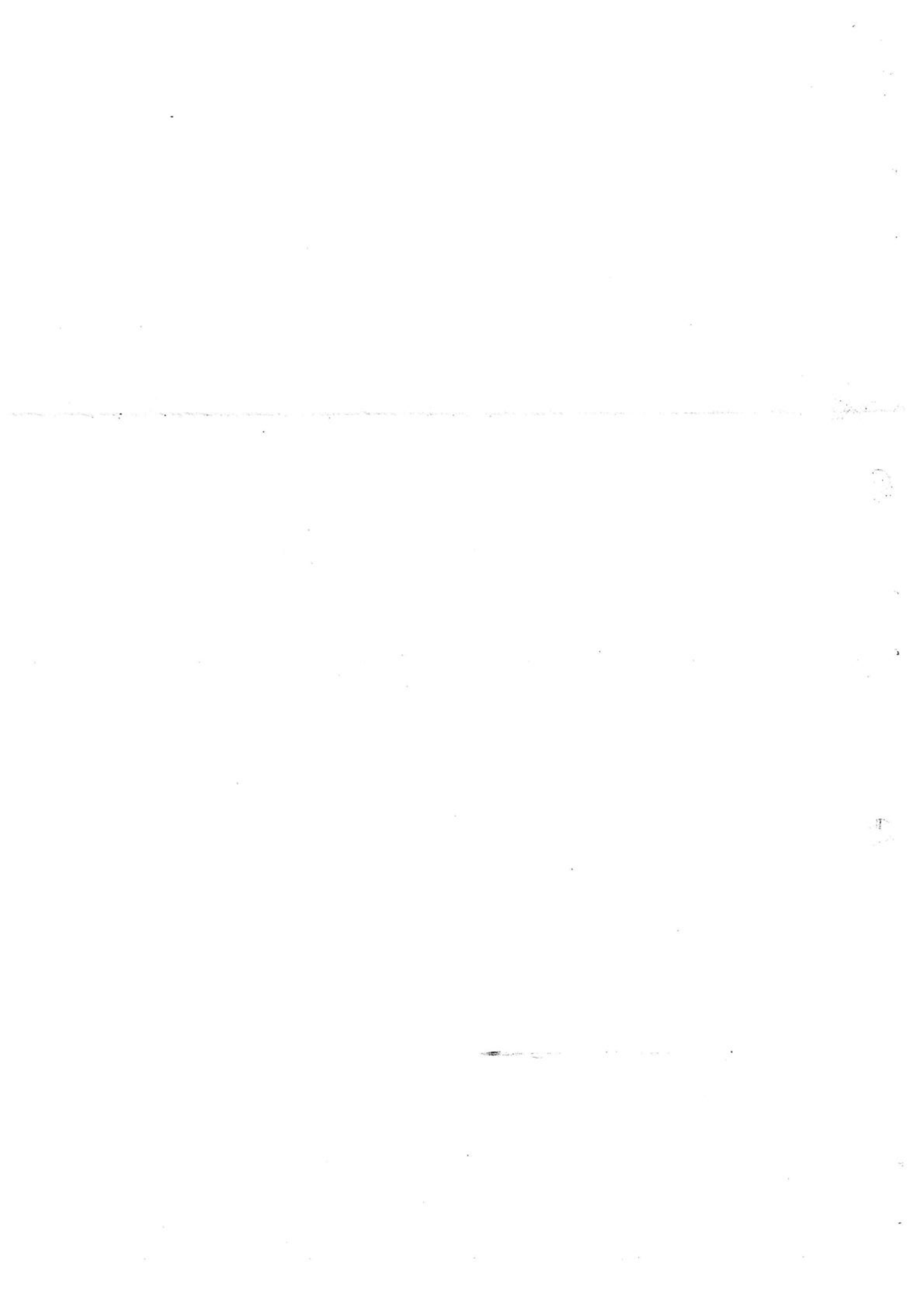
i. The National Flag, Emblems and Names Act (Cap 99)	Departmental Committee on Administration and Internal Affairs
ii. The Public Holidays Act (Cap 110)	
iii. The Counter-Trafficking in Persons Act, 2010 (No. 8 of 2010)	
iv. The Prevention of Organized Crimes Act, 2010 (No. 6 of 2010)	
v. The National Police Service Commission Act, 2011 (No. 30 of 2011)	
vi. The Prevention of Fraud (Investments) Act, 1977 (No. 1 of 1977)	
i. The Marine Insurance Act (Cap 390)	Departmental Committee on Transport and Infrastructure
ii. The Kenya Roads Board Act, 1999 (No. 7 of 1999)	
iii. The National Transport and Safety Authority Act, 2012 (No. 33 of 2012)	
iv. The Merchant Shipping Act, 2009 (No. 4 of 2009)	
i. The Higher Education Loans Board Act, 1995 (No. 3 of 1995)	Departmental Committee on Education
ii. The Teachers Service Commission Act, 2012 (No. 20 of 2012)	
i. The Land Consolidation Act (Cap 283)	Departmental Committee on Lands
ii. The Land Adjudication Act (Cap 284)	
iii. The National Land Commission Act, 2012 (No. 5 of 2012)	
i. The Co-operatives Societies Act, 1997 (No. 12 of 1997)	Departmental Committee on Trade, Industry and Cooperatives
ii. The Scrap Metal Act, 2015 (No. 1 of 2015)	
iii. The Local Manufacturers (Export Compensation) Act (Cap 402)	
i. The Pharmacy and Poisons Act (Cap 244)	Departmental Committee on Health
ii. The Mental Health Act (Cap 248)	
i. The Labour Institutions Act, 2007 (No. 12 of 2007)	Departmental Committee on Labour
ii. The Public Service Commission Act, 2017 (No. 17 of 2017)	
i. The Architects and Quantity Surveyors Act (Cap 525)	Departmental Committee on Housing and Public Works
ii. The Housing Act (Cap 17)	
i. The National Museums and Heritage Act, 2006 (No. 6 of 2006)	Departmental Committee on Sports and Culture
ii. The Copyright Act 2001 (No. 12 of 2001)	
The Tourism Act, 2011 (No. 28 of 2011)	Departmental Committee on Tourism and Wildlife
The National Gender and Equality Commission Act, 2011 (No. 15 of 2011)	Departmental Committee on Social Protection
The Geneva Conventions Act (Cap 198)	Departmental Committee on Defence, Intelligence and Foreign Relations
The Energy Act, 2019 (No. 1 of 2019)	Departmental Committee on Energy
The Water Act, 2016 (No. 43 of 2016)	Departmental Committee on Blue Economy and Irrigation
The Biosafety Act, 2009 (No. 2 of 2009)	Departmental Committee on Agriculture and Livestock

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

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building on www.parliament.go.ke/the-national-assembly/legislation/bills.

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

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





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

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Parliament Buildings
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NAIROBI, Kenya

REF: NA/DDC/DIFR/2023/001

16th January, 2023

Hon. Justin Muturi, EGH
Attorney-General of the Republic of Kenya
State Law Office, Sheria House
Harambee Avenue
NAIROBI

Dr. Korir Sing'oei, PhD., E.B.S.
Principal Secretary
State Department for Foreign Affairs
Ministry of Foreign and Diaspora Affairs
Old Treasury Building, Harambee Avenue
NAIROBI

Mr. Joash Dache, MBS
Commission Secretary/Chief Executive Officer
Kenya Law Reform Commission
3rd Floor, Reinsurance Plaza
Taifa Road
NAIROBI

Dear *Sing*

RE: STAKEHOLDER ENGAGEMENT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022)

The Departmental Committee on Defence, Intelligence and Foreign Relations is established under National Assembly Standing Order 216 which mandates it *inter alia*, "**to study and review all legislation referred to it**".

The Committee is in the process of reviewing the Statute Law (Miscellaneous Amendments) Bill (*National Assembly Bill No. 60 of 2022*), a copy of which is forwarded herewith for ease of reference. The Bill seeks to amend several statutes including the Geneva Conventions Act (Cap 198).

Pursuant to the provisions of Article 118 (b) of the Constitution, the Committee hereby requests you to provide written submissions on the proposed amendments to the Geneva Conventions Act for the purposes of review of the Bill. The submissions should reach the Committee on or before **Monday, 23rd January, 2023 at 5.00 pm**. A soft copy of the submissions may be emailed to cna@parliament.go.ke, while the hard copies may be delivered to the **Clerk of the National Assembly's Office, First Floor, Main Parliament Building, Parliament Road**.

Our liaison officers on this subject are **Mr. Dennis Mogare Ogechi**, who may be contacted on Tel. 0721479162 or email dennis.ogechi@parliament.go.ke and **Ms. Winfred Kilonzo**, 0720571777 or cna@parliament.go.ke

Yours *Sincerely,*




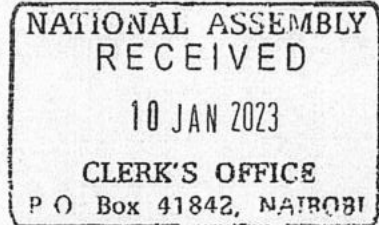
MRS. SERAH KIOKO, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: **Dr. Alfred Nganga Mutua, EGH**
Cabinet Secretary
Ministry of Foreign and Diaspora Affairs
Old Treasury Building, Harambee Avenue
NAIROBI

Annex 5.

Arile, Magub, Alimata Salim,
Mugosma Mutunga, Rikal, Nahu,
Rose Kiunyishi, Lameen Mwasiga,
Akadelli, Kina, Maluki, Gindicha

Please send

11/1/23



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Telegraphic address: "Personnel", Nairobi
Telephone: Nairobi 2732090/2732240
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ODPP House,
Ragati Road, Upper Hill
P.O. BOX 30701 - 00100
NAIROBI

When replying please quote:

REF. ODPP/ES/GEN

9th January, 2023

The Clerk,
National Assembly,
Parliament Building,
P.O. Box 41842 - 00100,
NAIROBI

ATTN: Mr. Jeremiah W. Ndombi

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

Reference is made to your letter Ref. NA/DDC/LABOUR/2022/005 and dated 21st December 2022 on the above subject calling for written submissions on the proposed amendments.

Pursuant to **Article 118 (1) (b) of the Constitution**, the Office of the Director of Public Prosecutions (ODPP) hereby submits views for your consideration in respect of the proposed amendments.

NOORDIN M. HAJI, CBS, OGW
DIRECTOR OF PUBLIC PROSECUTIONS
Encl.



S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				Public Prosecutions or officers acting on delegated authority by the DPP Pursuant to Article 157 (9) of the Constitution and Section 22 of the ODPP Act, 2013.
31.	Accountants Act, 2008	43	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p>
32.	International Crimes Act, 2008	5, 19 (2) & (3), 21(1)(b), 23 (2), 24, 25 (3)(a), 26 (1) & (2), 76, 77 (2), 78, 79, 84, 85 (4), 86, 87 (1), 88, 89, 90, 91, 92, 93 (2)(b), 94, 95, 96 (1) & (2), 102 (2) & (3), 103, 104, 105, 106, 107, 108, 109, 110, 111, 112 (1), (3), & (4), 113 (2) & (3), 114 (1) & (2), 115 (1), 116, 118 (2), 119, 120, 121 (b), 122, 124, 126, 127 (6), 129, 153 (1) & (2),	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring these provisions of the Act into conformity with Article 157 of the Constitution.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution.</p> <p>Further, we propose that the definition of "prosecutor" under section 2 of the Act be expanded to include the Director of Public Prosecutions under Article 157 of the Constitution.</p>



Defence

KENYA LAW REFORM COMMISSION



A Vibrant Agency for Responsive Law Reform"
Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi, +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke



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

12th January, 2023

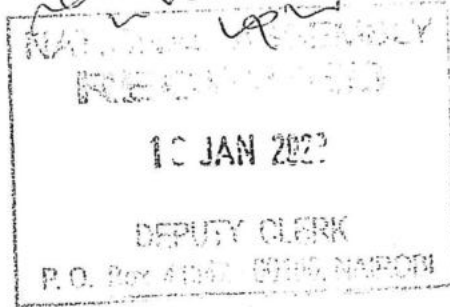
When replying please quote
Ref. No. **KLRC/RES/93 VOL.VI (38)**
and Date

Uhan seurei
make copies and
distribute to the
relevant committees
involved

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

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

Dear *Jeri,*



17/1/23

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

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

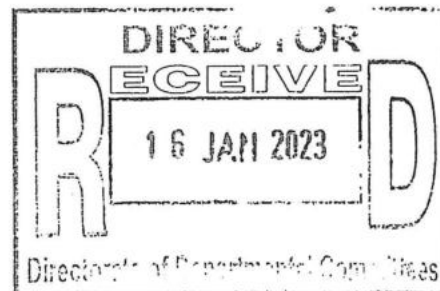
Enclosed herein please find the Commission's comments on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No.60 Of 2022) for further action.

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

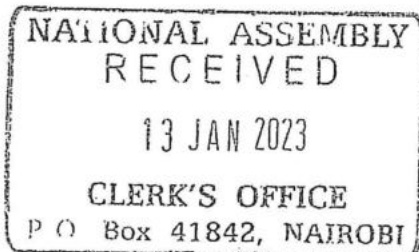
Yours

Joash Dache
Secretary/Chief Executive Officer

Joash Dache, MBS
Secretary/Chief Executive Officer



Encl.





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

I. INTRODUCTION

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

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

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

II. ANALYSIS

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

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

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

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

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

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

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

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

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

