



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – SIXTH SESSION
DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022, NATIONAL ASSEMBLY BILLS NO.60 OF 2022 ON MENTAL HEALTH ACT. CAP. 248 AND PHARMACY AND POISONS ACT. CAP. 244

THE NATIONAL ASSEMBLY PAPERS Laid	
DATE: 11 APR 2023	DAY: TUESDAY
TABLED BY:	HON. GEORGE MURUGARA MP, CHAIR PERSON SHAC
CLERK AT THE TABLE:	KETTER NG'ENDO

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

February, 2023

Table of Contents	
1.0 PREFACE.....	4
1.1 ESTABLISHMENT OF THE COMMITTEE.....	4
1.2 Mandate of the Committee.....	5
1.3 Committee Membership.....	6
1.4 Committee Secretariat.....	7
1.5 ACKNOWLEDGEMENT.....	8
2.1 BACKGROUND.....	10
SUBMISSION BY THE STAKEHOLDERS.....	11
3.0 COMMITTEE OBSERVATIONS.....	15
4.0 COMMITTEE RECOMMENDATIONS.....	17

ANNEXURES

Adoption Minutes

Adoption list

Stakeholder' submissions

1.0 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

The Departmental Committee on Health is established pursuant to the provisions of Standing Order No. 216 of the National Assembly and in line with Article 124 of the Constitution which provides for the establishment of the Committees by Parliament.

The mandate and functions of the Committee include:

- a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- ba) *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- c) *To study and review all legislation referred to it;*
- d) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- e) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- f) *Vet and report on all appointments where the constitution or any other law requires the national Assembly to approve, except those understanding Order 204 (Committee on appointments);*
- g) *To examine treaties, agreements and conventions;*
- h) *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- i) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- j) *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider all matters relating to the health sector. The Committee covers the Ministry of Health with its two States Departments i.e., State Department for Medical Services and State Department for Public Health and Professional Standards.

The Departmental Committee is mandated to cover functions of the Ministry of Health alongside the Semi -Autonomous Government Agencies (SAGAs) which include; Kenya National Hospital (KNH); Moi Teaching and Referral Hospital (MTRH); Kenyatta University Teaching, Research and Referral Hospital (KUTRRH); Kenya Medical Training College (KMTC); Kenya Medical Supplies Agency (KEMSA); Kenya Medical Research Institute (KEMRI); National Aids Control Council (NACC); National Hospital Insurance Fund (NHIF).

1.3 Committee Membership

The Departmental Committee on health was constituted by the House on 27th October 2022 and comprises of the following Members;

Chairperson

Hon. (Dr.) Robert Pukose, MP
Endebes Constituency
UDA Party

Vice-Chairperson

Hon. Ntwiga, Patrick Munene MP
Chuka/Igambang'ombe Constituency
UDA Party

Members

Hon. Owino Martin Peters, MP
Ndthiwa Constituency
ODM Party

Hon. Julius Ole Sunkuli Lekakeny, MP
Kilgoris Constituency
KANU

Hon. Muge Cynthia Jepkosgei, MP
Nandi (CWR)
UDA Party

Hon. Maingi Mary, MP
Mwea Constituency
UDA Party

Hon. Wanyonyi Martin Pepela, MP
Webuye East Constituency
Ford Kenya Party

Hon. Mathenge Duncan Maina , MP
Nyeri Town Constituency
UDA Party

Hon. Kipngok Reuben Kiborek , MP
Mogotio Constituency
UDA Party

Hon. Lenguris Pauline , MP
Samburu (CWR)
UDA Party

Hon. Nyikal James Wambura , MP
Seme Constituency
ODM Party

Hon. Oron Joshua Odongo, MP
Kisumu Central Constituency
ODM Party

Hon. Kibagendi Antoney, MP
Kitutu Chache South Constituency
ODM Party

Hon. (Prof.) Jaldesa Guyo Waqo
Moyale Constituency
UPIA Party
Hon. Mukhwana Titus Khamala, MP
Lurambi Constituency
ANC Party

1.4 Committee Secretariat

The following are the Secretariat who support the Committee;

Mr. Hassan Abdullahi Arale
Clerk Assistant II/Head of Secretariat

Mr. Gladys Jepkoech Kiprotich
Clerk Assistant III

Ms. Marlene Ayiro
Principal Legal Counsel II

Ms. Pricillah Saidi
Research Officer III

Ms. Faith Chepkemoi
Legal Counsel II

Mr. Hiram Kimuhu
Fiscal Analyst III

Ms. Salat Abdi Ali
Senior Serjeant-At-Arms

Mr. Yakub Ahmed
Media Relations Officer II

Mr. Benson Kimanzi
Serjeant-At-Arms III

Mr. Rahab Chepkilim
Audio Recording Officer II

1.5 ACKNOWLEDGEMENT

The Committee wishes to express its gratitude to the Office of the Speaker, and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also grateful to the Members and the Secretariat for their dedication and useful expertise and insights during the consideration of the Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to make various amendments to various statutes. The Bill is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills into one Bill. The Bill therefore contains proposed amendments to various statutes. Amendments to the Mental Health Act, Cap. 248 and the Pharmacy and Poisons Act, Cap. 244 were referred to the Departmental Committee on Health for consideration.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Health, to present this Report on the amendments to the Mental Health Act, Cap. 248 and the Pharmacy and Poisons Act, Cap. 244 which were referred to the Departmental Committee on Health for consideration.

THE HON. DR. ROBERT PUKOSE, M.P- CHAIRPERSON
DEPARTMENTAL COMMITTEE ON HEALTH

2.0 INTRODUCTION

OBJECTIVE OF THE BILL

1. The Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to make various amendments to various statutes. The Bill is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills into one Bill. The Bill therefore contains proposed amendments to various statutes. Amendments to the Mental Health Act, Cap. 248 and the Pharmacy and Poisons Act, Cap. 244 were referred to the Departmental Committee on Health for consideration.

2. The Bill seeks to amend:

- Section 42(5) of the Mental Health Act by deleting and substituting the expression "Attorney-General" with the expression "Director of Public Prosecutions".

Section 42(5)- "No criminal proceedings shall be commenced under this Act without the prior consent in writing of the Attorney-General."

- Section 40(4) of the Pharmacy and Poisons Act by deleting and substituting the expression "Attorney-General" with the expression "Director of Public Prosecutions".

Section 40(4)- "No prosecution for a contravention of any of the provisions of sections 37, 38 and 39 of this Act shall be instituted without the consent of the Attorney General."

2.1 BACKGROUND

Legal Provision on Public Participation

3. Article 118 (1) (b) of the Constitution of Kenya provides as follows —
“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”
4. Standing Order 127(3) provides that —
“The Departmental Committee to which a Bill is committed shall facilitate public participation on the Bill through an appropriate mechanism, including—
 - (a) inviting submission of memoranda;
 - (b) holding public hearings;
 - (c) consulting relevant stakeholders in a sector; and
 - (d) Consulting experts on technical subjects.
5. Standing Order 127(3A) further provides that—
“The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”

Methodology used by the Committee in Public Participation

6. The Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bills No. 60 of 2022 was published on 1st December 2022. Pursuant to Standing Order 127(1), the Bill was committed to the Departmental Committee on Health for consideration having been read a First Time on 8th December 2022.
7. Pursuant to the aforementioned provisions of the Constitution and Standing Orders, the Committee through local daily newspapers of Monday, 9th December 2022 published an advertisement inviting the public to submit memoranda. Further, in a letter dated 9th December 2022, the Committee invited various stakeholders including the Office of the Attorney General, Kenya Law Reform Commission to submit memorandum on the Bill.
8. The Report contains the analysis of the public submissions on the Bill, written submission received from the public noting general comments in support or against the amendments and the list of institutions that submitted their memoranda.
9. The Report also contains an adoption schedule, a copy of the newspaper advertisements of Monday, 9th December 2022 inviting the public to submit memoranda on the Bill and a letter inviting the relevant stakeholders for memoranda and the minutes of the Committee sittings during the consideration of the Bill.

3.0 SUBMISSION BY THE STAKEHOLDERS

3.1 STAKEHOLDER VIEWS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022 (NATIONAL ASSEMBLY BILLS NO. 60 OF 2022)

10. The Committee received memorandum from the following institutions following a call for memoranda through the print media on Monday, 9th December 2022 and a letter to relevant stakeholders dated 9th December, 2022:

1. The Kenya Law Reform Commission
2. The Office of the Director of Public Prosecutions

11. The table below highlights the stakeholder comments and the Committee resolution on the various clauses of the Bill—

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022				
	CLAUSE	STAKEHOLDER	COMMENT/ PROPOSED AMENDMENT	COMMITTEE RESOLUTION
1	Clause 2- Amendment of Section 42(5) of the Mental Health Act	Kenya Law Reform Commission	<ul style="list-style-type: none"> • The amendment is minor and its inclusion promotes statutory harmony with the Constitution. <p>Rationale: It harmonizes the Mental Health Act with the functions of the Director of Public Prosecutions (DPP) under Article 157 (2) of the Constitution.</p>	<p>Rejected. The amendment is superfluous as the subsection was already amended in the past by Parliament.</p> <p>The subsection proposed for amendment was amended by the Mental Health (Amendment) Act, No. 27 of 2022 sponsored by Senator Sylvia Kasanga. Section 40 of this law deleted the subsection and replaced it with:</p> <p><i>“(5) The Director of Public Prosecution shall be notified, within thirty days, of instituting criminal proceedings under this Act in accordance with the provisions of the Office</i></p>
		Office of the Director of Public Prosecutions	<ul style="list-style-type: none"> • The amendment will bring the provision of the Act into conformity with Article 157 of the Constitution. <p>Rationale: It aligns the Mental Health Act with the Constitution.</p>	

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022			
CLAUSE	STAKEHOLDER	COMMENT/ PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			<p><i>of the Director of Public Prosecution Act."</i></p> <p>The Health Laws (Amendment) Bill No. 2 of 2021 passed by the National Assembly in March 2022 deleted the words "Attorney-General" and replaced it with "the Director of Public Prosecutions".</p> <p>The Office of the Attorney General through the National Council for Law reporting should be directed to revise and update the Mental Health Act, Cap. 248 based on the amendments made in 2022.</p> <p>Note: Section 17 (2) of the Access to Information Act, No. 31 of 2016 provides that:</p> <p>"Every public entity shall keep and maintain—</p> <p>(a) records that are accurate, authentic, have integrity and useable; and</p> <p>(b) its records in a manner which facilitates the right of access to information</p>

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022			
CLAUSE	STAKEHOLDER	COMMENT/ PROPOSED AMENDMENT	COMMITTEE RESOLUTION
			as provided for in this Act.”
2	Clause 2- Amendment of Section 40(4) of the Pharmacy and Poisons Act	Kenya Law Reform Commission	<p>Rejected. The amendment is superfluous as the subsection was already amended in the past by Parliament.</p> <p>The subsection proposed for amendment was amended by the Health Laws (Amendment) Act, No. 5 of 2019 which deleted subsection 4 of section 40 of the Pharmacy and Poisons Act.</p> <p>Note: the subsection being amended is not listed in the Memorandum of Objects and Reasons in the Bill contrary to Standing Order 115.</p>
		Office of the Director of Public Prosecutions	
3	General Comments	Office of the Director of Public Prosecutions	<p>Rejected. The Mental Health Act does not use the term mental disability.</p> <p>The Mental Health (Amendment) Act, No. 27 of 2022 changed the definition that provided in the Mental Health Act from "person suffering from mental</p>

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

CLAUSE	STAKEHOLDER	COMMENT/ PROPOSED AMENDMENT	COMMITTEE RESOLUTION
		of mental illnesses without being insensitive.	disorder" to "person with mental illness".

3.0 COMMITTEE OBSERVATIONS

10. The Committee having considered the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bills No. 60 of 2022 and submissions from stakeholders makes the following observations:

- (i) The amendment to the Mental Health Act, Cap. 248 is superfluous as the section was already amended in the past by Parliament. The subsection proposed for amendment was amended by the **Mental Health (Amendment) Act, No. 27 of 2022**. Section 40 of Mental Health (Amendment) Act, No. 27 of 2022 deleted the subsection and replaced it with:

“(5) The Director of Public Prosecution shall be notified, within thirty days, of instituting criminal proceedings under this Act in accordance with the provisions of the Office of the Director of Public Prosecution Act.”

- (ii) The Mental Health Act, Cap. 248 available on the National Council for Law Reporting has not incorporated the amendments made vide the Mental Health (Amendment) Act, No. 27 of 2022 which contravenes **Section 17 (2) of the Access to Information Act, No. 31 of 2016** which provides that:

“Every public entity shall keep and maintain—

(a) records that are accurate, authentic, have integrity and useable; and

(b) its records in a manner which facilitates the right of access to information as provided for in this Act.”

- (iii) The Office of the Attorney General through the National Council for Law reporting to revise and update the Mental Health Act, Cap. 248 based on the amendments made Mental Health (Amendment) Act, No. 27 of 2022.

- (iv) The amendment to the Pharmacy and Poisons Act, Cap. 244 is superfluous as the subsection was already amended in the past by Parliament. The subsection proposed for amendment was amended by the **health Laws (Amendment) Act, No. 5 of 2019** which deleted subsection 4 of section 40 of the Pharmacy and Poisons Act.

- (v) The subsection being amended in the Pharmacy and Poisons Act, Cap. 244 is not listed in the Memorandum of Objects and Reasons in the Bill contrary to Standing Order 115 which provides that where a Bill seeks to amend any provision of an existing Act, the text of the relevant part of such provision shall be printed and supplied as part of the Bill which is availed to Members.

- (vi) In the Memorandum of Objects and Reasons in the Bill, for the statutes where there is a proposed substitution of the expression “Attorney General” with the expression “Director of Public Prosecutions”, the justification for the substitutions should be indicated as ensuring harmony with the functions of the Director of Public Prosecutions under **Article 157(6) and not Article 157(2) of the Constitution**. The former makes provision for the functions of

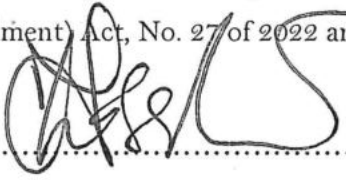
the Director of Public Prosecutions while the latter deals with the manner of appointment of a Director of Public Prosecutions.

4.0 COMMITTEE RECOMMENDATIONS

11. The Committee upon considering the Statute Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bills No. 60 of 2022 and the submissions from the stakeholders, the Committee recommends that the proposed amendments to the Mental Health Act, Cap. 248 and Pharmacy and Poisons Act, Cap. 244 be deleted from the Statute Law (Miscellaneous Amendments) Bill, 2022.

Justification

The amendments are superfluous as the subsections (the subject of amendment) are non-existent as they were already amended in the past by Parliament vide the Mental Health (Amendment) Act, No. 27 of 2022 and Health Laws (Amendment) Act, No. 5 of 2019.

SIGN:..........DATE: 28-02-2023

THE HON. DR. ROBERT PUKOSE, M.P - CHAIRPERSON

ADOPTION LIST



KENYA NATIONAL ASSEMBLY

13TH PARLIAMENT- FIRST SESSION (2022)

DIRECTORATE OF THE DEPARTMENTAL COMMITTEES

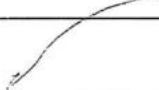




DEPARTMENTAL COMMITTEE ON HEALTH

ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2022, NATIONAL ASSEMBLY BILLS
NO.60 OF 2022 ON MENTAL HEALTH ACT. CAP. 248 AND PHARMACY AND
POISONS ACT. CAP. 244

DATE... 28/2/2023

VENUE... Media Centre

NO.	NAME	SIGNATURE
1.	The Hon. Dr. Pukose Robert, M.P.- Chairman	
2.	The Hon. Ntwiga Patrick Munene, M.P.- Vice-Chairman	/
3.	The Hon. Maingi Mary, M.P.	/
4.	The Hon. Muge Cynthia Jepkosgei, M.P	
5.	The Hon. Kipngor Reuben Kiborek, M.P.	/
6.	The Hon. Wanyonyi Martin Pepela, M.P	
7.	The Hon. Mathenge Duncan Maina, M.P.	/
8.	The Hon. Lenguris Pauline, M.P.	
9.	The Hon. Oron Joshua Odongo, M.P.	
10.	The Hon. Dr. James Nyikal Wambura, M.P.	

11.	The Hon. Kibagendi Antoney, M.P.	
12.	The Hon. Sunkuli Julius Lekakeny ole, EGH, EBS M.P.	
13.	The Hon. Prof. Jaldesa Guyo Waqo, M.P.	
14.	The Hon. Titus Khamala, M.P	
15	The Hon. Owino Martin Peters, M.P.	

MINUTES



**MINUTES OF THE SEVENTEENTH (17TH) SITTING OF THE
DEPARTMENTAL COMMITTEE ON HEALTH HELD IN MEDIA CENTRE ON
TUESDAY 28TH FEBRUARY, 2023 AT 12.00 NOON.**

PRESENT

1. The Hon. Dr. Pukose Robert, M.P - **Chairperson.**
2. The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P
3. The Hon. Prof. Jaldesa Guyo Waqo, M.P.
4. The Hon. Wanyonyi Martin Pepela, M.P
5. The Hon. Lenguris Pauline, M.P
6. The Hon. Dr. Nyikal James Wambura, M.P.
7. The Hon. Oron Joshua Odongo, M.P.
8. The Hon. Muge Cynthia Jepkosgei, M.P.

MEMBERS ABSENT WITH APOLOGY

1. The Hon. Ntwiga Patrick Munene, M.P -**Vice-Chairperson**
2. The Hon. Kipngor Reuben Kiborek, M.P
3. The Hon. Mary Maingi, MP
4. The Hon. Mathenge Duncan Maina, M.P
5. The Hon. Kibagendi Antony, M.P.
6. The Hon. Titus Khamala, M.P
7. The Hon. Owino Martin Peters, M.P.

COMMITTEE SECRETARIAT

1. Mr. Hassan A. Arale - Clerk Assistant II
2. Ms. Gladys Kiprotich - Clerk Assistant III
3. Ms. Abigel Muinde Research Officer III
4. Ms. Faith Chepkemai Rotich -Legal counsel II
5. Mr. Benson Kimanzi – Serjeant At Arms
6. Ms. Rahab Chepkilim – Audio Officer

KENYA HEALTH WORKERS CAUCUS OFFICIALS

1. Mr. Peter Wachira- Chairman
2. Ms. Faith Kendi – Member- RCO
3. Mr. Barasa Oliver- General Secretary- Kenya Union of National Laboratory
4. Mr. George Gibore- Genral Secretary Kenya Union of Clinical Officers
5. Mr. Gaudencia Boke Hambura- KUCO Admin

MIN. NO. NA/DC-H/2023/73: PRELIMINARIES/INTRODUCTION

The meeting was called to order at 12 o'clock with a word of prayer by the Hon. Dr. Pukose Robert, M.P.-Chairperson. Introductions were then done by honorable members, secretariat followed by Kenya Health Workers Caucus Officials.

MIN. NO. NA/DC-H/2023/74: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by The Hon. Dr. Nyikal James Wambura, M.P. and Seconded by the The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P

MIN. NO. NA/DC-H/2023/75: CONFIRMATION OF THE 13th AND 14th SITTING MINUTES

The Minutes of the 13th Sitting were confirmed having been proposed by The Hon. Wanyonyi Martin Pepela, M.P and seconded by The Hon. Oron Joshua Odongo, M.P.

The Minutes of the 14th Sitting were confirmed having been proposed by The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, and M.P and seconded by The Hon. Oron Joshua Odongo, M.P.

MIN. NO. NA/DC-H/2023/76: ADOPTION OF REPORTS

The following reports were adopted;

Report on the Consideration of the Statutory Law (Miscellaneous Amendments) Bill, 2022, National Assembly Bills No. 60 of 2022 on Mental Health Act.CAP.248 and pharmacy and poisons act.CAP.244.was adopted having been proposed by The Hon. Oron Joshua Odongo, M.P. and Seconded by The Hon. Dr. Nyikal James Wambura, M.P.

Report on the consideration of the health (amendments) (NO.2) bill, 2022 which seeks to amend the health act, no.21 of 2017 to introduce a new section on referral of patients of health institutions within and outside the country, Was adopted Having been proposed by The Hon. Wanyonyi Martin Pepela, M.P and seconded by The Hon. Sunkuli Julius Lekakeny Ole, EGH, EBS, M.P

MIN. NO. NA/DC-H/2023/77: KENYA WORKERS UNION CAUCUS CHAIR PRESENTATION

The health sector workers presented as follows;

That The Health Sector Caucus convened the first ever health workers convention on 16th and 17 of March 2022, that brought together all stakeholders in health sector including Ministry of Health, Ministry of Labour and social services, Council of Governors, Health Sector Unions, Associations, Societies, Federations, NGOs and patient organizations who deliberated on the challenges and reached resolutions geared to address them as listed below;

The Kenya Health Care Workers Annual Convention (KEHWAC) 2022 resolved as follows;

1. Develop a model Strategy for the implementation of annual employment of health care workers to meet the WHO 2013 recommendation for employment of 12000 health care workers for attainment of UHC.
2. Prioritization by the Government to increase in budgetary allocation funds for health Ministry towards the realization of the 15% baseline envisioned by Abuja declaration 2001.
3. Development of a joint Strategy for effective HRH management and harmonization across the county governments.
4. Timely Conclusion, registration and implementation of pending CBAs
5. Quarterly meetings between workers' representatives and employers to discuss challenges before they become disputes.

6. Embracing Social Dialogue and stakeholders' participation with a view to avert perennial industrial actions.
7. Formation of a National Joint Task Force on Health bringing together Ministry of Health, Council of Governors and Health sector unions to assess human resource management challenges across the 47 County Governments and Ministry of Health and recommend policy and legal interventions to address them.

MIN. NO. NA/DC-H/2023/78: ADJOURNMENT

There being no any other business, The Chairperson, adjourned the meeting at exactly 2.00 p.m.

SIGN.......... DATE..... 28/2/2023

HON. DR. ROBERT PUKOSE, M.P – CHAIRPERSON

STAKEHOLDERS SUBMISSIONS

Please check
11/1/23



19 JAN 2023
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Telegraphic address: "Personnel", Nairobi
Telephone: Nairobi 2732090/2732240
Mobile: 0723202888/ 0787880580
Fax: 2243524/2251808
Email: info@odpp.go.ke

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.







OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

COMMENTS ON

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2022

9TH JANUARY, 2023

Page 1 of 48

		TO BE AMENDED	AMENDMENT	PROPOSALS
1.	Judicature Act (Cap 8)	7 (1)	Delete the word "thirty" and substitute therefor the word "seventy".	<p>This proposal will enhance the access to justice in the Court of Appeal and reduce case backlog.</p> <p>The ODPP will benefit from speedy resolution of criminal Appeals pending at the Court of Appeal.</p> <p>The proposal is acceptable.</p>
2.	Appellate Jurisdiction Act (Cap 9)	59 (7)	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>
		73	Delete the expression "Attorney General" wherever it appears 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</p>



S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				Constitution.
3.	Vexatious Proceedings Act (Cap 41)	4	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>
4.	Penal Code (Cap 63)	146	Delete the word "idiot" or "imbeciles" wherever it appears and substitute therefor the words "persons with mental disability".	<p>Mental disability is still a dated term. The preferred word is "persons with different abilities".</p> <p>The emphasis would be on the person's humanity while recognizing and describing their situation without being insensitive. We would propose that the words to be used be "persons with different mental ability".</p>
5.	Criminal Procedure Code (Cap 75)	2	Delete the word "State Counsel" appearing in the definition of the term "public prosecutor" and substitute therefor the expression "Prosecution Counsel".	<p>The words "State Counsel", "Police Officer" and "Police Station" are being streamlined with the existing legislations.</p> <p>This proposal aligns the definitions with the relevant provisions of the</p>

	TO BE AMENDED	AMENDMENT	PROPOSALS
		<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> <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>	<p>Office of the Director of Public Prosecutions Act, 2013 (<i>hereinafter</i> the ODPP Act) and the National Police Service Act, 2011.</p>
	83	<p>Delete and substitute therefor the following new section -</p> <p>(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</p>	<p>The provision seeks to bring the Criminal Procedure Code in tandem with the Office of Director Public Prosecutions Act.</p> <p>However, it leaves out a cadre of officers "Principal Prosecution Counsel" which is also a cadre of prosecution counsel under the ODPP Act.</p> <p>We propose that this cadre be factored in the</p>



S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>Public Prosecutions, the Senior Assistant Deputy Director of Public Prosecutions, Assistant Deputy Director of Public Prosecution, 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> <p>(2) The Director of Public Prosecutions may in writing revoke an order made by him under this section.</p>	description so that the section is aligned with section 13 (b), (c) and (d) of the ODPP Act.
		90 (3)	Delete the words "a Sunday" and substitute therefor the words "any other day of the week including Sunday".	This is acceptable
		123 (1)	Delete the words "a person accused of murder, treason, robbery with violence, attempted robbery with violence, and any related offences".	This amendment is acceptable as it brings the legislation into conformity with the Constitution of Kenya, existing precedents and practice.
		131 (2)	Delete the word "movable".	

	TO BE AMENDED	AMENDMENT	PROPOSALS
	137	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	
	184	Delete What is deleted is:- <i>"Charge of rape</i> <i>Where a person is charged with rape and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections of the Sexual Offences Act, he may be convicted of that offence although he was not charged with it."</i>	Although no equivalent provision has been proposed, the deletion gives more prominence to the Sexual Offences Act, No. 3 of 2006 to deal with such offences.
	186	Delete What is deleted is:- <i>"Charge of defilement of a girl under 14 years of</i>	Although no equivalent provision has been proposed, the deletion gives more prominence to the Sexual Offences Act, No. 3 of 2006 to deal with such offences

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>age</p> <p><i>When a person is charged with the defilement of a girl under the age of fourteen years and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under the Sexual Offences Act, he may be convicted of that offence although he was not charged with it."</i></p>	
6.	Extradition (Commonwealth Countries) Act (Cap 77)	7, 8, 9, and 10	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>
7.	Evidence Act (Cap 80)	3	<p>Insert the following definition in proper alphabetical sequence -</p> <p>"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</p>	<p>This is a good proposal as it seeks to bring clarity to the definitions.</p> <p>There have been several contests as to what amounts to a photograph</p>

		TO BE AMENDED	AMENDMENT	PROPOSALS
			digitally.	
		78 (1)	Insert the words "or an electronic and digital medium" immediately after the word "film",	
		125 (2)	Delete the words "a mentally disordered person or a lunatic" and substitute therefor the words "a person with a mental disability".	<p>Mental disability is still a dated term. The preferred word is "persons differently abled mentally".</p> <p>The emphasis would be on the person's humanity while recognizing and describing their situation without being insensitive. We would propose that the words to be used be "persons with different mental ability"</p>
8.	National Flag, Emblems and Names Act (Cap 99)	6	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	<p>This proposal will bring the 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>
9.	Public Holidays Act (Cap 110)	Schedule	Delete the expression "Utamaduni Day" and substitute therefor the	This is acceptable

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			expression "Huduma Day".	
10.	Housing Act (Cap 117)	2	<p>Insert the following definitions in proper alphabetical sequence –</p> <p>"affordable housing" means housing that is adequate, targeted for the population whose income is below the median individual or house income, and whose cost does not exceed more that thirty per cent of household or individual income per month to rent or acquire.</p> <p>"affordable housing development project" means a housing development project targeted to construct and deliver affordable housing and approved by the Cabinet Secretary responsible for matters relating to housing.</p>	This is a good proposal as it seeks to bring clarity to the definitions.
11.	Official Secrets Act (Cap 187)	10 (1) and 49 (1)	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</p>

		TO BE AMENDED	AMENDMENT	PROPOSALS
				as it aligns the Act with the Constitution.
12.	Geneva Convention Act (Cap 198)	3 (3)	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>
13.	Pharmacy and Poisons Act (Cap 244)	40 (4)	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>
14.	Mental Health Act (Cap 248)	42 (5)	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> <p>In addition, we propose that the definition of persons with different</p>

S/N/O.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				mental abilities #b included in the definition section.
15.	Land Consolidation Act (Cap 283)	14 (6) (b)	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>
16.	Land Adjudication Act (Cap 284)	33	Delete the expression "Attorney General" appearing in the proviso 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>
17.	Marine Insurance Act (Cap 390)	91 (3)	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>
18.	Local Manufacturers (Export	10 (2)	Delete the expression "Attorney General" and substitute therefor the	This proposal will bring the provision of the Act into conformity with

		TO BE AMENDED	AMENDMENT	PROPOSALS
	Compensation) Act (Cap 482)		expression "Director of Public Prosecutions".	Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
19.	Capital Markets Act (Cap 485A)	38	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
20.	Architects and Quantity Surveyors Act (Cap 525)	3 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
21.	Prevention of Fraud (Investments) Act, 1977	27 (3)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
22.	Higher Education Loans Board Act, 1995	24	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>
23.	Retirement Benefits Act, 1997	54 (1)	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>
24.	Co-operative Societies Act, 1997	94 (3)	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>
25.	Central Depositories Act, 2000	63	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>

		TO BE AMENDED	AMENDMENT	PROPOSALS
				The proposal is acceptable as it aligns the Act with the Constitution.
26.	Copyright Act, 2001	2, 30AA, 30B, 46, 46A, 46B, 46C, and 46E		The proposed amendments are not within the mandate of the ODPP
27.	Anti-Corruption and Economic Crimes Act, 2003	25A (1), 37 (6), and 62 (5)	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, 2010.</p> <p>The proposal is acceptable as it aligns the Act with the Constitution, 2010.</p>
		62	<p>Delete subsection (6)</p> <p>Insert the following new subsections (6A) Notwithstanding the provisions of any other law where a state officer is under investigations for or has been charged with corruption or economic crimes, the Commission may by an <i>ex-parte</i> application in the High Court seek 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</p>	<p>The deletion of subsection (6) is progressive as it ensures that the law is applied equally irrespective of status and office.</p> <p>It is unconstitutional to bar a state officer from accessing his or her office or exercising the powers of that office when the matter is pending investigations, as it infringes on the right to fair hearing under Article 50 (2) of the Constitution. However, the EACC is at liberty to make an <i>ex-parte</i> application for</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>supervising staff</p> <p>(6B) The provisions of subsection (6A) shall apply where the commission upon preliminary investigations has established grounds reasonably suspect that the public or state officers is likely to</p> <p>a) Conceal, alter, destroy or remove 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>	<p>warrant of search of the office or investigate accounts or any other matters attendant thereto</p> <p>The insertion of section (6A) should only apply to individuals who have been charged in a court of law. In this regard, the application to the High Court seeking to bar the officer from accessing their office or exercising the powers of that office being criminal in nature should be made by the Director of Public Prosecutions so as to avoid duplicity of the matter which could affect the outcome of the case, as well as to enhance efficiency.</p> <p>The provision subsection (6B) should be amended to read the "The provisions subsection (6A) shall apply where the Director of Public Prosecutions has established that there is evidence of:</p> <p>a) Conceal, alter, destroy, or remove records, documents or other evidence</p>

		TO BE AMENDED	AMENDMENT	PROPOSALS
				<p>b) intimidate, threaten or otherwise interfere with witnesses or</p> <p>c) interfere with investigations in any other manner”</p>
28.	Sexual Offences Act, 2006	40	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>
29.	National Museums and Heritage Act, 2006	57 (2)	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>
30.	Labour Institutions Act, 2007	35 (1) (k)	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, 2010.</p> <p>The Cases SHALL be instituted with the consent of the Director of</p>

S/NO	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				Public Prosecutions 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 the definition "prosecutor" under section 2 of the Act be expanded to include the Director of Public Prosecutions under Article 157 of the Constitution.</p>

		TO BE AMENDED	AMENDMENT	PROPOSALS
		154, 155, 156, 157, 158, 159, 160, 168, and 171.		
33.	Biosafety Act, 2009	53	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>
34.	Merchant Shipping Act, 2009	16	Delete	
35.	The Vetting of Judges and Magistrates Act 2011 (No. 2 of 2010)	18 (1)	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>
36.	Prevention of Organised Crimes Act, 2010	14	Delete the expression "five hundred thousand" and substitute thereof the words "ten million shillings".	<p>This increases the fine amount substantially.</p> <p>This is a good proposal as it enhances the discretion of the magistrate where the situation demands a stiffer penalty and guides</p>

IS/NO	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/PROPOSALS
				in terms of severity of the offences under the sections of the Act.
		14 (3)	Delete the expression "thirty days" and substitute thereof the words "ninety days".	Not provided in the Act.
		17 (9)	Delete paragraph (b) and substitute therefor the following new paragraph (b) Inspector General of the National Police Service.	This section regularizes the provisions of the Act with the National Police Services Act. However, it is noted that it still makes reference to the "Attorney General" instead of "Director of Public Prosecutions" as an authorized officer. The section relates to seizure and detention of organized criminal group cash which relates to the matter dealt with by the Director of Public Prosecutions, and would be retained in the Prosecutors Fund under section 40 or 45 of the ODPP Act.
37.	Counter-Trafficking in Persons Act, 2010	19 (2) (e)	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution.

		TO BE AMENDED	AMENDMENT	PROPOSALS
				The proposal is acceptable as it aligns the Act with the Constitution.
38.	Judicial Service Commission Act, 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>The proposal seeks to have the JSC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
39.	Independent Electoral and Boundaries Commission Act, 2011	24 (1)	Delete the word "three" and substitute therefore the word "six".	<p>The proposal seeks to have the IEBC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
40.	Salaries and Remuneration Commission Act, 2011	24	<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</p>	<p>The proposal seeks to have the SRC annual report presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>

S/N	BILL TITLE	SECTION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/PROPOSALS
			of the year to which it relates.	
41	Kenya National Commission on Human Rights Act, 2011	21	<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>The proposal seeks have the KNCHR annual report presented within months of the end of the year to which it relates.</p> <p>The proposal acceptable.</p>
42	National Gender and Equality Commission Act, 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>The proposal seeks have the NGENC annual report presented within months of the end of the year to which it relates.</p> <p>The proposal acceptable.</p>
43	Commission on Revenue Allocation Act, 2011	23	<p>Renumber the existing provision as subsection (1).</p> <p>Insert the following new subsection immediately after subsection (1) -</p>	<p>The proposal seeks to have the CRA annual report presented within months of the end of the year to which it relates.</p> <p>The proposal acceptable.</p>

		TO BE AMENDED	EXISTING PROVISION	PROPOSALS
			(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.	
44.	Ethics and Anti-Corruption Commission Act, 2011	27 (2)	Delete the word "three" and substitute therefore the word "six".	The proposal seeks to expand the time allotted to the EACC for the presentation of its annual report from three (3) to six (6) months. The proposal is acceptable.
45.	Tourism Act, 2011	116	Delete the expression "Attorney General" and substitute therefor the expression "Director of Public Prosecutions".	This proposal will bring the provision of the Act into conformity with Article 157 of the Constitution. The proposal is acceptable as it aligns the Act with the Constitution.
46.	National Police Service Commission Act, 2011	26 (2)	Delete the word "three" and substitute therefor the word "six".	The proposal seeks to expand the time allotted to the NPS Commission for the presentation of its annual report from three (3) to six (6) months.

S/NO	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
				The proposal acceptable.
47.	National Land Commission Act, 2012	33	<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>The proposal seeks have the NLC annu report presented within months of the end of th year to which it relates.</p> <p>The proposal acceptable.</p>
48.	Leadership and Integrity Act, 2012	12A	<p>Renumber the provision as subsection (1) and insert the words "or public office" after the words "state office".</p> <p>Insert the following new subsections -</p> <p>(2) Where a public entity is recruiting staff, it shall, within seven days after shortlisting of candidates for any position for which appointment is considered, submit the list of all shortlisted candidates to the Commission for integrity suitability verification.</p>	The proposal is not acceptable as this may impede the independence of the Offices.

		TO BE AMENDED	AMENDMENT	PROPOSALS
			<p>(3) The Commission shall upon receipt of the list of shortlisted candidates verify the information regarding them and make recommendations to the public entity on the integrity suitability of the shortlisted persons.</p> <p>(4) In making recommendations under subsection (3), the Commission may consider any other information with respect to the integrity suitability of the applicant.</p> <p>(5) The recruiting entity shall take into account the recommendations on the integrity suitability of the candidates in making appointment decisions.</p>	
		19 (6)	Delete the words "fail to submit annual statements of account" and substitute therefor the words "fails to submit statements of account annually as required under section 19 (3)".	This proposal makes grammatical corrections and is acceptable.
		40	Renumber the provision as subsection (1) and insert the following new subsection -	This proposal seeks to empower the High Court to invalidate a state officer's appointment for

S/NO	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			(2) The High Court may upon application by any person, declare the assumption of office by a state officer to be invalid for want of executing a commitment to the specific leadership and integrity code.	failure to execute commitment to a specific leadership code. This proposal is unclear it fails to specify which codes are to be executed by the said state official
49.	Teachers Service Commission Act, 2012	41	Insert the following new subsection immediately after subsection (1) - (1A) The Commission shall submit the annual report in subsection (2) to the President and the National Assembly within six months after the end of the year to which it relates.	The proposal seeks have the TSC annual report presented within months of the end of the year to which it relates. The proposal acceptable.
50.	National Transport and Safety Authority Act, 2012	16	Delete the word "three" and substitute therefor the word "five".	It seeks to expand the period for the appointment of the Director General for renewable period of years rather than current 3 years.
51.	Kenya Law Reform Commission Act, 2015	N/A	N/A	N/A
52.	Scrap Metal Act,	2	Insert the following new definitions in proper	The proposal in the B seeks to provide accurate

		TO BE AMENDED	AMENDMENT	PROPOSALS
	2015		<p>alphabetical sequence -</p> <p>“Authority” means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act;</p> <p>“critical national infrastructure” means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect government’s ability to undertake national defence and security;</p> <p>“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;</p> <p>“smelter” means an installation or factory for smelting metal from its ore or means a person engaged in the business</p>	<p>definitions of various terms to protect critical infrastructure.</p> <p>It is however noteworthy that although the Memorandum of Objects and reasons indicates that the Bill seeks to provide for a special license for dealing in copper, aluminium and their alloys, this proposal is not included in the text of the Bill.</p> <p>The Memorandum also indicates that the Bill intends to restrict the disposal of critical infrastructure to the Numerical Machining Complex and the Kenya Shipyard Limited. Further, that the Bill had proposed regulation of imports and exports.</p> <p>These proposals are not included in the text of the Bill.</p>

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			<p>of smelting;</p> <p>“steel fabricators” means an installation of factory for the production of metal structures using a range of processes such as cutting, bending or assembling, which generates scrap metal in their processes.</p>	
53.	Excise Duty Act, 2015	Paragraph 1 of Part I of the First Schedule	<p>Delete -</p> <p>(a) the expression “3905.91.00 Emulsion VAM” and substitute therefor the expression “3905.91.00 Imported copolymers”;</p> <p>(b) the expression “3905.19.00 Homopolymers” and substitute therefor the expression “3905.19.00 Imported polymers”; and</p> <p>(c) the expression “3906.90.00 Emulsion B.A.M” and substitute therefor te expression “3906.90.00 Imported acrylic polymers”.</p>	
54.	Controller of Budget Act, 2016	19	Insert the following new subsection immediately	The proposal seeks have the Controller Budget’s annual repo

		TO BE AMENDED	AMENDMENT	REMARKS
			<p>after subsection (2) -</p> <p>(2A) The Commission shall submit the annual report in subsection (2) to the President and the National Assembly within six months after the end of the year to which it relates.</p>	<p>presented within 6 months of the end of the year to which it relates.</p> <p>The proposal is acceptable.</p>
55.	Water Act, 2016	14 (1) (f)	<p>Insert the following new paragraph immediately after paragraph (e) -</p> <p>(ea) the Attorney-General or his representative.</p>	<p>The proposal seeks to include the Attorney General as a member of the Water Resources Management Board.</p> <p>The proposal is acceptable.</p>
		17 (1)	<p>Insert the words "and in accordance with the guidelines made by the Salaries and Remuneration Commission" immediately after the word "appointment".</p>	<p>The proposal seeks to bring the section on appointment of the Chief Executive Officer into the ambit of the SRC recommendations.</p> <p>The proposal is acceptable.</p>
		31 (1)	<p>Delete and substitute therefor the following subsection -</p> <p>(1) The powers and functions of the Water</p>	<p>The proposal seeks to allow the representatives to sit in the board in place of the designated office holder.</p>

S/N	LEGISLATION	PROVISIONS TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			Cabinet Secretary from counties within the basin area.	
		66	<p>Insert the following new subsection immediately after subsection (2) -</p> <p>(3) The Cabinet Secretary shall, on the recommendation of the respective Board of Water Development Agency appoint a Chief Executive Officer of the respective water works agency on such terms and conditions as may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.</p>	
		71 (1)	<p>Delete and substitute the following new subsection</p> <p>(1) The powers and functions of the Regulatory Board shall be exercised and performed under the direction of the Regulatory Board, which shall consist of -</p>	

		TO BE AMENDED	AMENDMENT	PROPOSALS
			<ul style="list-style-type: none"> (a) a chairperson, who shall be appointed by the President; (b) the Principal Secretary responsible for matters relating to finance or his representative; (c) the Principal Secretary responsible for matters relating to water or his representative; (d) the Attorney-General or his representative; (e) the Chief Executive Officer; and (f) six other members appointed by the Cabinet Secretary. 	
		73	Delete the words "the Cabinet Secretary for Public Service may determine on the advice of the Salaries and Remuneration Commission" and substitute therefor the words "may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration	

S/NO	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			Commission."	
		115 (2)	<p>Delete and substitute therefor the following new subsection -</p> <p>(2) The Board of Trustees shall consist of -</p> <ul style="list-style-type: none"> (a) a chairperson, who shall be appointed by the President; (b) the Principal Secretary responsible for matters relating to finance or his representative; (c) the Principal Secretary responsible for matters relating to water or his representative; (d) the Attorney-General or his representative; (e) the Chief Executive Officer; and (f) six other members recruited in accordance with the First Schedule and appointed by the Cabinet Secretary. 	
		118 (1)	Delete and substitute therefor the following new subsection -	

		TO BE AMENDED	AMENDMENTS	COMMENTS/PROPOSALS
			(1) The fund shall have a Chief Executive Officer who shall be appointed by the Cabinet Secretary on the recommendation of the Board of Trustees on such terms and conditions of service as may be specified in the instrument of appointment and in accordance with the guidelines made by the Salaries and Remuneration Commission.	
56.	Bribery Act, 2016	1	Delete the expression "Bribery Act" and substitute therefor the expression "Anti-Bribery Act".	<p>The proposal seeks to amend the title of the bill from the Bribery Act to Anti-Bribery Act.</p> <p>This proposal is acceptable to reflect the intent of the Act.</p>
		4	Insert the words "public entity" immediately after the words "public officers".	<p>Seeks to include public entities as those to whom the Act applies.</p> <p>The proposal is acceptable.</p>
		5	Delete the word "who" and substitute therefor the words "if the person offering, promising or	Indicates clarity in the description of the offender.

S/NO.	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
			giving knows"	The proposal acceptable.
		7 (1)(a)(v)	Delete the word "and" and substitute therefor the word "or"	Provides clarity in the function or activity which the offence relates to. The proposal acceptable.
		7 (1)(b)(i)	Delete the word "and" and substitute therefor the word "or"	The proposal refers to s.7(1)(b)(i) rather than s.7(1)(b)(ii). This should be corrected.
		10	Delete the marginal note and substitute therefor the words "bribery by a private entity".	Seeks to provide better clarity on the offence. The proposal acceptable.
		14 (1)	Delete the words "holding a position of authority".	Allows every individual, whether public or private, to report instances of bribery.
		15 (1)	Delete the words "within the meaning of sections 11 and 12"	Expands the criminality of offences under the Act, to apply to both public and private entities.

		TO BE AMENDED	AMENDMENT	PROPOSALS
				private individuals. The proposal is acceptable.
57.	Public Service Commission Act, 2017	90 (1)	Delete the word "three" and substitute therefor the word "six".	<p>The proposal seeks to expand the time allotted to the PSC for the presentation of its annual report from three (3) to six (6) months.</p> <p>The proposal is acceptable.</p>
58.	Energy Act, 2019	2	<p>Delete the definition of the term "distribution licence".</p> <p>Insert the following new definition in proper alphabetical sequence -</p> <p>"distribution licence" means a document or instrument authorising a person to distribute energy in the manner described in the document or instrument, in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;</p>	The proposal expands the definition of the licence to an acceptable scope.

S/NO	LEGISLATION	PROVISION TO BE AMENDED	PROPOSED AMENDMENT	COMMENTS/ PROPOSALS
		4 (1)	<p>Insert the following new paragraph immediately after paragraph (e) -</p> <p>(ea) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative.</p>	<p>The proposal does not amend the section it intends to amend.</p> <p>This should be corrected</p>
		4 (1)(f)(i)	Delete the word "the" and substitute therefor the word "a".	<p>The proposal does not amend the section it intends to amend.</p> <p>This should be corrected</p>
		4 (1)(f)(v)	Delete	<p>There is no such section in the Act.</p> <p>This should be corrected</p>
		6 (1)(a)(ii)	<p>Delete the word "utility" and substitute therefor the words "critical national".</p> <p>Insert the following new section immediately after section 6 -</p> <p>6A. The Cabinet Secretary, in consultation with the relevant statutory authorities and stakeholders, shall coordinate the</p>	<p>No such section exists in the Act.</p> <p>This should be corrected.</p>

② Mr Anala
TAK
9/1/23



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/LDD/190/1/84
Your Ref. NA/DC-H/2022/007

30th December, 2022

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

*Did give business
for attention of Health
Committee
5/1/23*

RE: CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 60 OF 2022) ON THE PHARMACY AND POISONS ACT (CAP. 244) AND MENTAL HEALTH ACT (CAP. 248)

This has reference to your letter dated the 20th December, 2022 under Ref. NA/DC-H/2022/007, requesting our views on the proposed amendments to the Pharmacy and Poisons Act (Cap. 244) And Mental Health Act (Cap. 248) contained in the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 60 of 2022) that was read for the First Time on the 8th December, 2022.

We have sought the policy guidance of the Ministry of Health, which is responsible for the policy relating to the aforementioned statutes and shall share the results of that guidance as and when we receive it.

Samson Davies Maundu
Principal Parliamentary Counsel
FOR: ATTORNEY-GENERAL

Copies to: Hon. J.B.N. Muturi EGH
Attorney-General

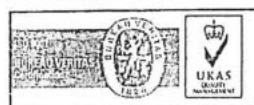
Mr. Kennedy Ogeto CBS
Solicitor-General



SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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M.N. Nzioka (Mrs.)
Deputy Solicitor-General

Heart

KENYA LAW REFORM COMMISSION

D/DC

Please deal
Soni
16/01/23



"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
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Fax: +254-20-2225786
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KENYA LAW REFORM COMMISSION
REINSURANCE PLAZA
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TAIFA ROAD
P.O. Box 34999-00100
NAIROBI, KENYA

When replying please quote

KLRC/RES/93 VOL.VI (38)

Ref. No.
and Date

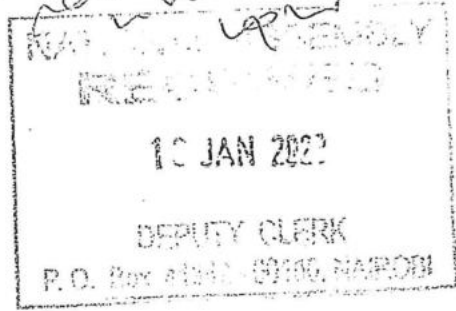
12th January, 2023

*Lihan secured
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 *Jerem*,



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.

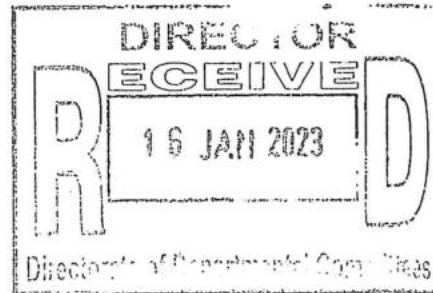
Enclosed herein please find the Commission's comments on Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No.60 Of 2022) for further action.

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

Yours *faithfully,*

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 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 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).	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.
		49(1)			
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>
				Consider standardizing the provision for all constitutional commissions and independent offices.	This ensures consistency in legislation.
11.	Independent Electoral and Boundaries Commission Act (No. 9 of 2011)	24(1)	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.
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).

			<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.



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'uah, 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 6)
- 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 190)
- 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 482)
- 13. The Capital Markets Act (Cap 485A)
- 14. The Architects and Quantity Surveyors Act (Cap 525)
- 15. The Prevention of Fraud (Investments) 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-operatives 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. 20 of 2011)
- 28. The Vetting of Judges and Magistrates Act, 2011 (No. 2 of 2011)
- 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. 28 of 2016)
- 40. The Public Service Commission Act, 2017 (No. 17 of 2017)

It seeks to amend these Acts to require the presentation of Annual Reports by the various 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 *Huduma Day* and 20th December *Utamaduni 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 16 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 organized 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 regulate 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 Bribery 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, Humeral 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. 28 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 Local Manufacturers (Export Compensation) Act (Cap 482)	
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. 20 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 190)	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 Inflation
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's Office, Main Parliament Building or on www.parliament.go.ke (<http://the.nation.go.ke>) or <http://www.parliament.go.ke>

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 cpa@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
THIRTEENTH PARLIAMENT (FIRST SESSION)
DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

In the Matter of Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012

and
In the Matter of Consideration by the National Assembly of:

- 1) The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
- 2) The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
- 3) The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

PUBLIC PARTICIPATION SUBMISSIONS MEMORANDA

Pursuant to Articles 2 (5) and (6) and 118 (1)(b) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the following Agreements were submitted to the Speaker of the National Assembly on 29th November, 2022 and consequently committed to the Departmental Committee on Environment, Forestry and Mining for consideration and reporting to the House:

1. Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer.
2. The Accession of the Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa.
3. The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities.

The Kigali Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer sets out to significantly limit future production and consumption of hydrofluorocarbons (HFCs). It also contains the manner in which countries are to carry out the process of phasing down on the production and usage of HFCs. The amendment further includes target baselines and emission levels that states in agreement with it are to achieve.

The Bamako Convention on the Ban on the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa aims to prohibit the import into Africa of any hazardous waste and to specifically ban the transboundary movement of hazardous wastes.

The Amended Nairobi Convention and the Protocol for the Protection of Marine and Coastal Environment of the Western Indian Ocean from Land Based Sources and Activities aims to enhance the management of the marine and coastal environment and natural heritage including its biological diversity for the sustainable use and benefits of present and future generations.

The Departmental Committee on Environment, Forestry and Mining hereby invites the public and stakeholders to submit Memoranda on the three Agreements. The full text of the Agreements and the accompanying Memorandum to Parliament may be accessed at <http://www.parliament.go.ke/the-national-assembly/house-business/paper-laid>

The memoranda may be submitted to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk of the National Assembly, Main Parliament Buildings, Nairobi; or emailed to tcna@parliament.go.ke; to be received on or before Friday, 6th January, 2023.

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

16th December, 2022

In the Welfare of Society and the Just Government of the People



