

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 1st September, 2023

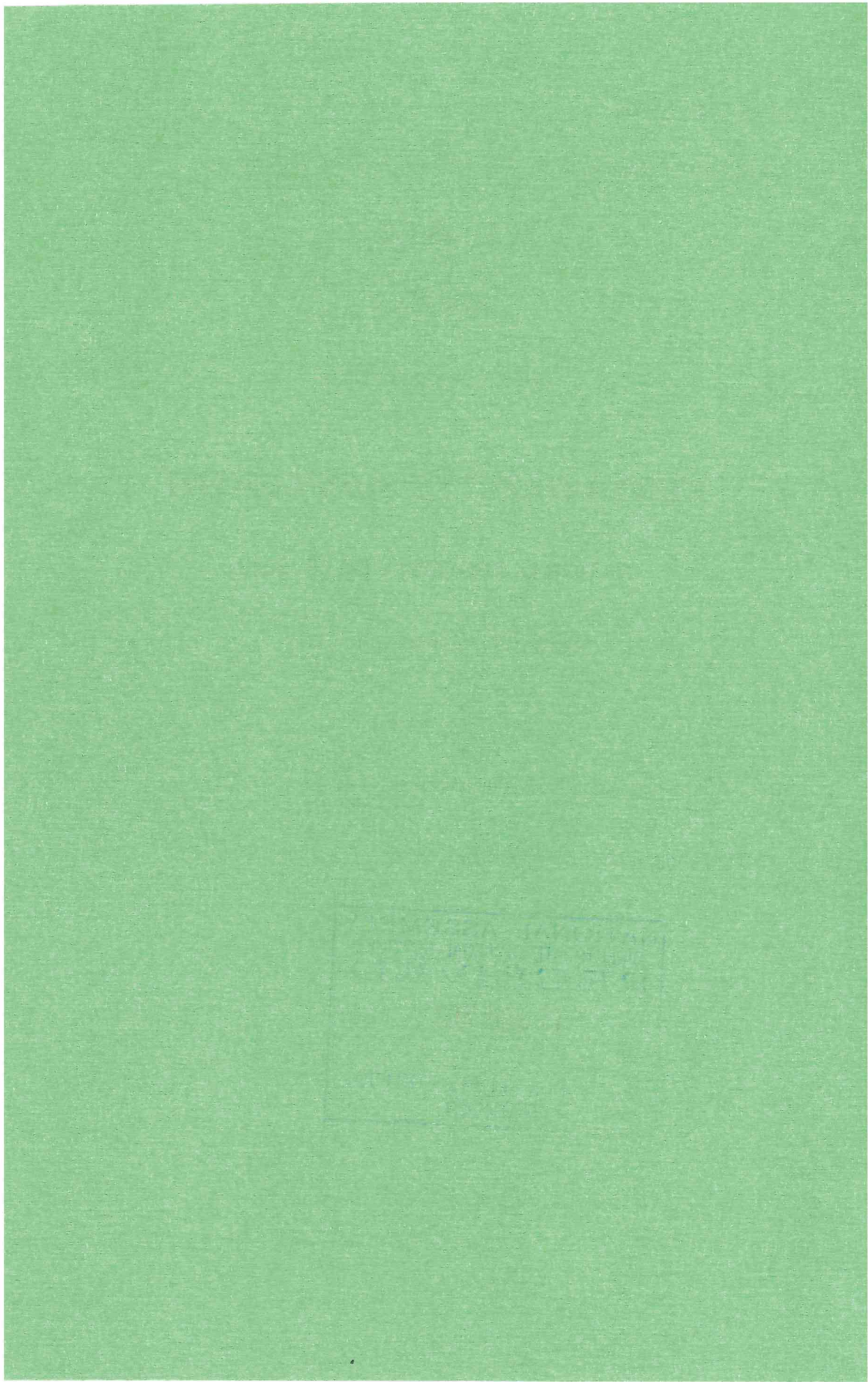
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Bill for Introduction into the National Assembly—

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The Penal Code (Amendment) Bill, 2023 1583





THE PENAL CODE (AMENDMENT) BILL, 2023**A Bill for****AN ACT of Parliament to amend the Penal Code**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Penal Code (Amendment) Act, 2023.

Short title.

2. Section 40 of the Penal Code Act (in this Act referred to as “the principal Act”) is amended by deleting the word “death” appearing in subsection (3) and substituting therefor the words “life imprisonment”.

Amendment of section 40 of Cap 63.

3. Section 60 of the principal Act is amended by deleting the word “death” and substituting therefor the words “life imprisonment”.

Amendment of section 60 of Cap 63.

4. Section 204 of the principal Act is amended by deleting the word “death” and substituting therefor the words “life imprisonment”.

Amendment of section 204 of Cap 63.

5. Section 296 of the principal Act is amended by deleting the word “death” appearing in subsection (2) and substituting therefor the words “life imprisonment”.

Amendment of section 296 of Cap 63.

6. Section 297 of the principal Act is amended by deleting the word “death” appearing in subsection (2) and substituting therefor the words “life imprisonment”.

Amendment of section 297 of Cap 63.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Penal Code, Cap 63, Laws of Kenya in order to abolish the death penalty.

The objectives of the Bill are to preserve the fundamental right to life, to put an end to cruel, inhuman and degrading treatment and punishment of condemned persons occasioned by the enforcement of the death penalty, to stop the psychological trauma brought about by the death sentence and to reflect the international commitment by Kenya to abolition of the death penalty in accordance with the current position of the Supreme Court as pronounced in the case of Francis Karioko Muruatetu & another versus Republic [2017] eKLR which declared the mandatory death sentence unconstitutional.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns county governments

The Bill does not concern county governments in terms of Article 109(5) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 24th June, 2023.

OPIYO WANDAYI,
The Leader of Minority Party.

Section 40 of Cap 63, Laws of Kenya which it is proposed to amend—

Treason

40. (1) Any person who, owing allegiance to the Republic, in Kenya or elsewhere—

- (a) compasses, imagines, invents, devises or intends—
 - (i) the death, maiming or wounding, or the imprisonment or restraint, of the President; or
 - (ii) the deposing by unlawful means of the President from his position as President or from the style, honour and name of Head of State and Commander-in-Chief of the Armed Forces of the Republic of Kenya; or
 - (iii) the overthrow by unlawful means of the Government; and
- (b) expresses, utters or declares any such compassings, imaginations, inventions, devices or intentions by publishing any printing or writing or by any overt act or deed,

is guilty of the offence of treason.

- (2) Any person who, owing allegiance to the Republic—
 - (a) levies war in Kenya against the Republic; or
 - (b) is adherent to the enemies of the Republic, or gives them aid or comfort, in Kenya or elsewhere; or
 - (c) instigates whether in Kenya or elsewhere any person to invade Kenya with an armed force,

is guilty of the offence of treason.

(3) Any person who is guilty of the offence of treason shall be sentenced to death.

Section 60 of Cap 63, Laws of Kenya which it is proposed to amend—

Administration of Unlawful Oaths to Commit Capital Offences

60. Any person who administers an oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence, punishable with death, is guilty of a felony and shall be sentenced to death.

Section 204 of Cap 63, Laws of Kenya which it is proposed to amend—

Punishment of murder

204. Any person convicted of murder shall be sentenced to death.

Section 296 of Cap 63, Laws of Kenya which it is proposed to amend—

Punishment of robbery

296. (1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

Section 297 of Cap 63, Laws of Kenya which it is proposed to amend—

Attempted robbery

297. (1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.



