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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES


*Approved
Boss D/SNA
9/10/2025*

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON:

THE CONSIDERATION OF THE SEXUAL OFFENCES
(AMENDMENT) BILL, 2023

(NATIONAL ASSEMBLY BILL NO. 78 OF 2023)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 09 OCT 2025	
DAY: <i>Thurs</i>	
TABLED BY:	<i>Hon. Stephen Mogaaka, MRuber, JLAC</i>
CLERK-AT THE-TABLE:	<i>G. CHEBET.</i>

NATIONAL ASSEMBLY
RECEIVED
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SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2025

LIST OF ABBREVIATIONS AND ACRONYMS

KNCHR	-	Kenya National Commission on Human Rights
OAG	-	Office of the Attorney General
ODPP	-	Office of the Director of Public Prosecutions
NGEC	-	National Gender for Equality Commission
COG	-	Council of County Governors
KLRC	-	Kenya Law Reform Commission
LSK	-	Law Society of Kenya
MCA	-	Member of County Assembly
MCCP	-	Maendeleo Chap Chap Party
MP	-	Member of Parliament
NADCO	-	National Dialogue Committee
ORPP	-	Office of the Registrar of Political Parties
ODM	-	Orange Democratic Movement
TAA	-	The Architects Alliance
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
WDM	-	Wiper Democratic Movement

CHAIRPERSON'S FOREWORD

This Report contains the proceedings of the Departmental Committee on Justice and Legal Affairs on its consideration of the Sexual Offences (Amendment) Bill, 2023 (National Assembly Bill No. 78 of 2023). The Bill, was read a First Time in the House on 31st July, 2024 and was thereafter committed to the Committee in line with Standing Order 127(1) of the National Assembly Standing Orders.

The Bill seeks to amend the Sexual Offences Act (Cap. 63A) to provide for promotion of national public awareness of sexual offences. Further, the Bill mandates the Cabinet Secretary responsible for education to establish programs to safeguard, protect and promote the right to education of victims of sexual offences, including victims of teenage pregnancies. Finally, the Bill provides for the definition of a Cabinet Secretary so as to align the Act with the Constitution.

In compliance with Article 118(b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders, the Committee placed an advertisement in the print media on 9th August, 2024 inviting the public to submit memoranda by way of written statements on the Bill. The memoranda were to be received on or before 23rd August, 2024 at 5.00 pm (East African Time).

In addition, the Committee vide letters Ref. No. *NA/DDC/JLAC/2024/072* dated 23rd September 2024 and Ref. No. *NA/DDC/JLAC/2025/010* dated 27th February 2025 invited key stakeholders to submit views on the Bill and attend a public participation forum on 8th October, 2024 and 6th March 2025, respectively. Vide a letter Ref. No. *NA/DDC/JLAC/2025/012* dated 4th March 2025, the Committee requested the Stakeholders to share their written memoranda by 12th March 2025.

By the close of the submission deadline, the Committee had received eight (8) memoranda. Uraia Trust, the State Department for Basic Education, the State Department for Medical Services, Kituo cha Sheria, the Office of the Director of Public Prosecutions, the Kenya National Commission on Human Rights, Office of the Attorney General & Department of Justice and the National Gender and Equality Commission gave their views on the Bill which the Committee considered as contained in Chapter Three of this Report.

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. The Committee further wishes to thank Uraia Trust, the State Department for Basic Education, the State Department for Medical Services, Kituo cha Sheria, the Office of the Director of Public Prosecutions, the Kenya National Commission on Human Rights, Office of the Attorney General & Department of Justice and the National Gender and Equality Commission for submitting memoranda on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this Report.

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to the provisions of Standing Order 199(6) of the National Assembly Standing Orders, it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Sexual Offences (Amendment) Bill, 2023 (National Assembly Bill No. 78 of 2023).

CHAPTER ONE

I PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *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;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. **To study and review all legislation referred to it;**
 - v. *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;*
 - vi. *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;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider: -
 - (a) The Judiciary;
 - (b) Tribunals;
 - (c) Access to Justice;
 - (d) Public prosecutions;
 - (e) Ethics, Integrity and Anti-corruption;
 - (f) Correctional services;
 - (g) Community service orders and witness protection;
 - (h) Constitutional Affairs;
 - (i) Sovereign immunity;
 - (j) Elections including referenda;
 - (k) Human rights;
 - (l) Political parties; and
 - (m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education.
3. In executing its mandate, the Committee oversees the following Ministries, Departments and Agencies:
 - (a) The Judiciary;
 - (b) Judicial Service Commission;

1.3 Committee Membership

4. The Committee comprises the following Members:

Chairperson

Hon. Murugara George Gitonga, CBS, MP
Tharaka Constituency

UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi, OGW, MP
Kibwezi West Constituency

MCCP Party

Hon. Gladys Boss, MGH, MP
Uasin Gishu Constituency

UDA Party

Hon. Maalim Farah, EGH, MP
Dadaab Constituency

WDM-Kenya

Hon. Onyiego Silvanus Osoro, CBS, MP
South Mugirango Constituency

UDA Party

Hon. Francis Kajwang' Tom Joseph, CBS, MP
Ruaraka Constituency

ODM Party

Hon. Wetang'ula Timothy Wanyoyi, CBS, MP
Westlands Constituency

ODM Party

Hon. (Dr.) Otiende Amollo, SC, EBS, MP
Rarieda Constituency

ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok Constituency

UDA Party

Hon. Muchangi Karemba, MP
Runyenjes Constituency

UDA Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency

FORD-Kenya

Hon. Mogaka Stephen M., MP
West Mugirango Constituency

Jubilee Party

Hon. Aden Daud, EBS, MP
Wajir East Constituency

Jubilee Party

Hon. Siyad Amina Udgoon, MP
Garissa County (CWR)

Jubilee Party

Hon. CPA Suleka Hulbale Harun, MP
Nominated Member

UDM Party

CHAPTER TWO

2 OVERVIEW OF THE SEXUAL OFFENCES (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 78 OF 2023)

2.1 Background

6. The Bill seeks to amend the Sexual Offences Act (Cap. 63A) to provide for promotion of national public awareness of sexual offences. Further, the Bill mandates the Cabinet Secretary responsible for education to establish programs to safeguard, protect and promote the rights to education of victims of sexual offences, including victims of teenage pregnancies. Finally, the Bill provides for the definition of cabinet secretary so as to align the Act with the Constitution.
7. The Bill was read a First Time in the House on 31st July, 2024 and was thereafter committed to the Committee in line with Standing Order 127(1) of the National Assembly Standing Orders.

2.2 Summary of the Bill

8. The Bill seeks to amend the Sexual Offence Act (Cap. 63A) as follows:
 - (a) **Clause 2** of the Bill proposes a definition of the Cabinet Secretary so as to align it with the Constitution.
 - (b) **Clause 3 - 6** of the Bill proposes to substitute the term “Minister” with “Cabinet Secretary” to align the Act with the Constitution.
 - (c) **Clause 7** of the Bill seeks to introduce a new section 46A to provide for promotion of national public awareness of sexual offences through nationwide education and information campaigns. Further, the Bill proposes that the Cabinet Secretary responsible for legal affairs in consultation with the Cabinet Secretary responsible for education to establish programs to safeguard, protect and promote the right to education of victims of sexual offences including victims of teenage pregnancies.
 - (d) **Clause 8** of the Bill proposes to substitute the term “Minister” with “Cabinet Secretary” to align the Act with the Constitution.

Cabinet Secretary role for matters relating to justice. KNCHR also observed that various case laws have held that the Attorney-General is not a Cabinet Secretary and therefore cannot perform functions specifically reserved for a Cabinet Secretary under any piece of legislation.

16. **OAG** submitted the deletion and substitution of the term “Cabinet Secretary” with Cabinet Secretary for the time being responsible for matters related to Gender. The OAG noted that the State Department for Gender and Affirmative Action is better equipped to oversee the coordination of efforts related to sexual and gender-based violence (SGBV) given its primary focus on prevention, protection, victim advocacy and empowerment.

Committee Observation

17. The Committee observed that the Sexual Offences Act defines the term “Cabinet Secretary” as the Cabinet Secretary for the time being responsible for legal affairs and public prosecutions. In the current constitutional dispensation, prosecution is a preserve of the Director of Public Prosecutions and not a Cabinet Secretary. Therefore, the amendment seeks to align the definition of “Cabinet Secretary” with the provisions of the Constitution of Kenya, 2010. Further, the Committee observed that the Sexual Offences Act places other obligations of the Cabinet Secretary for the time being responsible for legal affairs such as developing a national framework to guide the implementation and administration of the Act. These functions have been sufficiently performed despite there being no designated Cabinet Secretary responsible for legal affairs.

Clause 7

18. **Uraia Trust** submitted that the proposed new 46A lacks specificity that comes with the provision. They submitted that there is need to have types of practical programs that are to be implemented in the public awareness campaign within the proposed amendment legislation.
19. **The State Department for the Basic Education** proposed the deletion of the proposed new section 46A(1)(b) since the promotion of the right to education is the role of the Cabinet Secretary responsible for matters relating to education. Further, they noted the Ministry of Education has developed various policies and guidelines to promote the right to education of victims of sexual offences including victims of teenage pregnancy.
20. **Kituo cha Sheria** proposed amendments to the new section 46A to include that the Cabinet Secretary shall promote comprehensive public awareness on reproductive health, including sexual offences, through nationwide education and information campaigns; and the establishment and implementation of programs that safeguard, protect and promote the educational rights and access of victims of sexual violence, including teenage pregnancy.
21. **KNCHR** proposed the addition of a new sub-clause 46A(1)(c) that provides that the Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to education, establish a framework for reporting, investigating and further legal and policy actions for sexual offences within institutions of learning.
22. **NGEC** proposed amending the proposed new section 46A to include the Cabinet Secretary responsible for gender and affirmative action in coming up with the programs to safeguard, protect and promote the right to education of victims of sexual offences.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

27. Upon reviewing the Bill and the submissions received, the Committee made the following observations:
- (1) The Bill seeks to amend the Sexual Offences Act (Cap. 63A) to mandate the Cabinet Secretary responsible for legal affairs to provide for promotion of national public awareness of sexual offences. Further, the Bill mandates the Cabinet Secretary, in consultation with the Cabinet Secretary responsible for education, to establish programs to safeguard, protect and promote the right to education of victims of sexual offences, including victims of teenage pregnancies.
 - (2) The Bill provides for the definition of a Cabinet Secretary to align the Act with the Constitution. The Committee observed that the change from “Minister” to “Cabinet Secretary” has already been effected by the Attorney-General through the power to revise laws conferred by the Revision of Laws (Cap. 1). In addition, in the current constitutional dispensation, prosecution is a preserve of the Director of Public Prosecutions and not a Cabinet Secretary.
 - (3) The establishment of programs to safeguard and promote the right to education is vital in ensuring inclusive and equitable quality education for every child. However, the Committee noted that it is the Ministry of Education that is responsible for making and implementing policies on the right to education including programs to safeguard, protect and promote the right to education of victims of sexual offences including victims of teenage pregnancies.
 - (4) The Bill is essential in the promotion of public awareness on sexual offences. It will be instrumental in preventing and combating sexual abuse against children, sexual violence and exploitation.

CHAPTER SIX

6 SCHEDULE OF AMENDMENTS

29. In view of the observations made, the Committee proposes the following amendments to the Bill—

CLAUSE 2

THAT the Bill be amended by deleting Clause 2 and substituting the following new Clause—

2. Section 2 of the Sexual Offences Act (hereinafter referred to as “the principal Act” is amended in the definition of the term “Cabinet Secretary” by deleting the words “and public prosecution”.

Amendment of
section 2 in
Cap. 63A.

Justification: The change from “Minister” to “Cabinet Secretary” has already been effected in the Act through the power to revise laws conferred upon the Attorney-General by the Revision of Laws (Cap. 1).

The Act defines the term “Cabinet Secretary” as Cabinet Secretary for the time being responsible for legal affairs and public prosecution. In the current constitutional dispensation, public prosecution is a preserve of the Director of Public Prosecutions and not a Cabinet Secretary.

CLAUSE 3

THAT, the Bill be amended by deleting Clause 3.

Justification: The change from “Minister” to “Cabinet Secretary” has already been effected in the Act through the power to revise laws conferred upon the Attorney-General by the Revision of Laws (Cap. 1).

CLAUSE 4

THAT, the Bill be amended by deleting Clause 4.

Justification: The change from “Minister” to “Cabinet Secretary” has already been effected in the Act through the power to revise laws conferred upon the Attorney-General by the Revision of Laws (Cap. 1).

CLAUSE 5

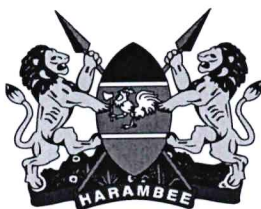
THAT, the Bill be amended by deleting Clause 5.

Justification: The change from “Minister” to “Cabinet Secretary” has already been effected in the Act through the power to revise laws conferred upon the Attorney-General by the Revision of Laws (Cap. 1).

CLAUSE 6

THAT, the Bill be amended by deleting Clause 6.

Annexure I: Adoption Schedule



THE NATIONAL ASSEMBLY
13TH PARLIAMENT (FOURTH SESSION) - 2025
JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

Adoption of the Report on the consideration of the Sexual Offences (Amendment) Bill, (NA Bill No. 78 of 2023) sponsored by Hon. Donya Aburi, MP

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, CBS, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, OGW, MP – <i>Vice Chairperson</i>	virtually
3.	HON. GLADYS BOSS. MGH, MP	
4.	HON. MAALIM FARAH, EGH, MP	
5.	HON. FRANCIS KAJWANG' TOM JOSEPH, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, CBS, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, EBS, MP	
8.	HON. WETANGULA TIMOTHY WANYONYI, CBS, MP	
9.	HON. MUCHIRA MICHAEL MWANGI, MP	
10.	HON. ERIC MUCHANGI KAREMBA, MP	
11.	HON. ADEN DAUD, EBS, MP	
12.	HON. MAKALI JOHN OKWISIA, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. SIYAD AMINA UDGOON, MP	
15.	HON. CPA SULEKA HULBABLE HARUN, MP	

Annexure 2: Minutes



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION-2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 78th SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS HELD IN MEETING ROOM I8, BUNGE
TOWER, PARLIAMENT BUILDINGS ON TUESDAY 7TH OCTOBER 2025 AT
10:00 AM**

PRESENT

1. Hon. Murugara George Gitonga, MP – *Chairperson*
2. Hon. Mutuse Eckomas Mwangi, OGW, MP - *Vice Chairperson - Virtually*
3. Hon. Muchangi Karemba, CBS, MP
4. Hon. Muchira Michael Mwangi, MP
5. Hon. Aden Daud, EBS, MP
6. Hon. Makali John Okwisia, MP
7. Hon. Mogaka Stephen M, MP
8. Hon. CPA. Sulekha Hulbale Harun, MP

ABSENT WITH APOLOGIES

1. Hon. Gladys Boss, MGH, MP
2. Hon. Maalim Farah, EGH, MP
3. Hon. Onyiengo Silvanus Osoro, CBS, MP
4. Hon. Francis Kajwang' Tom Joseph, MP
5. Hon. (Dr.) Otiende Amollo, SC, MP
6. Hon. Francis Kajwang' Tom Joseph, MP
7. Hon. Wetangula Timothy Wanyonyi, CBS, MP
8. Hon. Siyad Amina Udgoon, MP

SECRETARIAT

- | | | |
|---------------------------|---|-------------------------------|
| 1. Mr. Abdikafar Abdi | - | Clerk Assistant III |
| 2. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 3. Mr. Abdirahim Omar | - | Fiscal Analyst I |
| 4. Mr. Isaac Nabiswa | - | Legal Counsel II |
| 5. Mr. Meldrick Sakani | - | Audio Assistant |
| 6. Ms. Mary Kamande | - | Public Communications Officer |
| 7. Mr. John Nduaci | - | Serjeant-at-Arms |
| 8. Mr. Shawn Ngoyo | - | Intern, JLAC |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of previous sittings
4. Matters arising
5. **Adoption of the Report on Sexual offences (A) Bill, 2023 sponsored by Hon. Donya Aburi, MP**
6. Any Other Business
7. Adjournment / Date of the Next Meeting

- (15) Minutes of the 58th Sitting held on Tuesday 29th July 2025 were adopted as a true record of the proceedings, having been proposed by Hon. John Makali, MP and seconded by Hon. Zulekha Hulbale, MP.
- (16) Minutes of the 59th Sitting held on Tuesday 5th August 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Stephen Mogaka, MP and seconded by Hon. Otiende Amollo, MP.
- (17) Minutes of the 60th Sitting held on Thursday 7th August 2025 were adopted as a true record of the proceedings, having been proposed by Hon. (Dr.) Otiende Amollo, SC, MP and seconded by Hon. Aden Daud, EBS, MP.
- (18) Minutes of the 61st Sitting held on Tuesday 12th August 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Farah Maalim, MP and seconded by Hon. Mogaka Stephen M., MP
- (19) Minutes of the 62nd Sitting held on Thursday 14th August 2025 were adopted as a true record of the proceedings, having been proposed by Hon. (Dr.) Otiende Amollo, SC, MP and seconded by Hon. CPA Suleka Hulbale Harun, MP.
- (20) Minutes of the 63rd Sitting held on Thursday 28th August 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Maalim Farah, EGH, MP.
- (21) Minutes of the 64th Sitting held on Thursday 28th August 2025 were adopted as a true record of the proceedings, having been proposed by Hon. (Dr.) Otiende Amollo, MP and seconded by Hon. Muchangi Karemba, MP.
- (22) Minutes of the 65th Sitting held on Monday 1st September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Maalim Farah, EGH, MP and seconded by Hon. Makali John Okwisia, MP.
- (23) Minutes of the 66th Sitting held on Monday 1st September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. CPA Suleka Hulbale Harun, MP and seconded by Hon. Mogaka Stephen M., MP.
- (24) Minutes of the 67th Sitting held on Tuesday 2nd September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Aden Daud, EBS, MP and seconded by Hon. Muchira Michael Mwangi, MP.
- (25) Minutes of the 68th Sitting held on Tuesday 2nd September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. John Makali, MP and seconded by Hon. Zulekha Hulbale, MP.
- (26) Minutes of the 69th Sitting held on Wednesday 3rd September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Stephen Mogaka, MP and seconded by Hon. Otiende Amollo, MP.
- (27) Minutes of the 70th Sitting held on Wednesday 3rd September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. (Dr.) Otiende Amollo, SC, MP and seconded by Hon. Aden Daud, EBS, MP.
- (28) Minutes of the 71st Sitting held on Thursday 4th September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. (Dr.) Otiende Amollo, MP and seconded by Hon. Muchira Michael Mwangi, MP.
- (29) Minutes of the 72nd Sitting held on Thursday 4th September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Muchangi Karemba, MP and seconded by Hon. Mogaka Stephen M., MP
- (30) Minutes of the 73rd Sitting held on Friday 5th September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. Makali John Okwisia, MP and seconded by Hon. Maalim Farah, EGH, MP.
- (31) Minutes of the 74th Sitting held on Friday 5th September 2025 were adopted as a true record of the proceedings, having been proposed by Hon. (Dr.) Otiende Amollo, MP and seconded by Hon. Muchangi Karemba, MP.

Annexure 3: The Sexual Offences
(Amendment) Bill (National Assembly
Bill No. 78 of 2023)

SPECIAL ISSUE

Kenya Gazette Supplement No. 246 (National Assembly Bills No. 78)



REPUBLIC OF KENYA

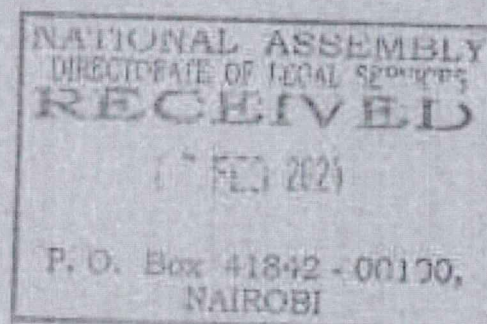
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2023

NAIROBI, 15th December, 2023

CONTENT

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**THE SEXUAL OFFENCES (AMENDMENT) BILL,
2023**

A Bill for

AN ACT of Parliament to amend the Sexual Offences Act, 2006

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Sexual Offences (Amendment) Act, 2023.

Short title.

2. Section 2 of the Sexual Offences Act, 2006, in this Act referred to as “the principal Act”, is amended by deleting the definition “Minister” and substituting the following new definition in its proper alphabetical sequence —

Amendment of section 2 of No. 3 of 2006.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to legal affairs;

3. Section 26 of the principal Act is amended in subsection (7) by deleting the word “Minister” appearing in paragraph (b) and substituting therefor the words, “Cabinet Secretary”.

Amendment of section 26 of No. 3 of 2006.

4. Section 35 of the principal Act is amended—

Amendment of section 35 of No. 3 of 2006.

(a) in subsection (3) by deleting the word, “Minister” appearing immediately after the expression “subsection (2)” and substituting therefor the words “Cabinet Secretary”.

(b) in subsection (5) by deleting the word “Minister” appearing immediately after the words “gazetted by the” and substituting therefor the words “Cabinet Secretary”.

5. Section 36 of the principal Act is amended—

Amendment of section 36 of No. 3 of 2006.

(a) in subsection (4) by deleting the word, “Minister” appearing immediately after the words “determined by the” and substituting therefor the words “Cabinet Secretary”.

(b) in subsection (7) by deleting the word, “Minister” appearing in paragraph (b) and substituting therefor the words, “Cabinet Secretary”.

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the Sexual Offences Act, 2006 to provide for promotion of national public awareness of sexual offences. Further, the Bill mandates the Cabinet Secretary responsible for education to establish programs to safeguard, protect, and promote the right to education of victims of sexual offences, including victims of teenage pregnancies. Finally, the Bill provides for the definition of a cabinet secretary so as to align the Act with the Constitution.

Clause 1 of the Bill is the Short Title.

Clause 2 of the Bill proposes a definition of the Cabinet Secretary so as to align it with the Constitution.

Clause 3 to Clause 6 of the Bill substitutes the term "Minister" with "Cabinet Secretary" to align the Act with the Constitution.

Clause 7 of the Bill seeks to introduce a new section 46A provide for promotion of national public awareness of sexual offences. Further, the Bill requires the Cabinet Secretary Cabinet responsible for education to establish programs to safeguard, protect, and promote the right to education of victims of sexual offences, including victims of teenage pregnancies.

Clause 8 of the Bill substitutes the term "Minister" with "Cabinet Secretary" to align the Act with the Constitution.

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

This Bill does not delegate legislative power or limit any fundamental rights or freedoms.

Indication of whether the Bill concerns county governments

This Bill does not affect the functions of the county governments and is therefore a Bill not concerning counties.

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.

DORIS DONYA ABURI,
Member of Parliament.

“law enforcement officer” means any person whose duties involve law enforcement and includes but is not limited to a police officer as defined under the Police Act,

“person with mental disabilities” means a person affected by any mental disability irrespective of its cause, whether temporary or permanent, and for purposes of this Act includes a person affected by such mental disability to the extent that he or she, at the time of the alleged commission of the offence in question, was—

- (a) unable to appreciate the nature and reasonably foreseeable consequences of any act described under this Act;
- (b) able to appreciate the nature and reasonably foreseeable consequences of such an act but unable to act in accordance with that appreciation;
- (c) unable to resist the commission of any such act; or
- (d) unable to communicate his or her unwillingness to participate in any such act;

“Minister” means the Minister for the time being responsible for matters relating to legal affairs and public prosecutions;

“penetration” means the partial or complete insertion of the genital organs of a person into the genital organs of another person;

“sexual offence” means any offence prescribed in this Act; and

“vulnerable person” means a child, a person with mental disabilities or an elderly person and “vulnerable witness” shall be construed accordingly.

Section 26 of No 3 of 2006 that is proposed to be amended—

Deliberate transmission of HIV or any other life threatening sexually transmitted disease

26. (1) Any person who, having actual knowledge that he or she is infected with HIV or any other life threatening sexually transmitted disease intentionally, knowingly or willfully does anything or permits the doing of anything which he or she knows or ought to reasonably know—

- (a) will infect another person with HIV or any other life threatening sexually transmitted disease;
- (b) is likely to lead to another person being infected with HIV or any other life threatening sexually transmitted disease;

(b) any Minister; or

(c) any medical practitioner or designated persons, in respect of any detention, injury or loss caused by or in connection with the taking of an appropriate sample in terms of subsection (5), unless the taking was unreasonable or done in bad faith or the person who took the sample was culpably ignorant and negligent.

(8) Any person who, without reasonable excuse hinders or obstructs the taking of an appropriate sample in terms of subsection (5) shall be guilty of an offence of obstructing the cause of justice and shall on conviction be liable to imprisonment for a term of not less than five years or to a fine of not less fifty thousand shillings or to both.

(9) Where a person is convicted of any offence under this Act and it is proved that at the time of the commission of the offence, the convicted person was infected with HIV or any other life threatening sexually transmitted disease whether or not he or she was aware of his or her infection, notwithstanding any other sentence in this Act, he or she shall be liable upon conviction to imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life.

(10) For purposes of this section—

(a) the presence in a person's body of HIV antibodies or antigens, detected through an appropriate test or series of tests, shall be prima facie proof that the person concerned is infected with HIV; and

(b) if it is proved that a person was infected with HIV after committing an offence referred to in this Act, it shall be presumed, unless the contrary is shown, that he or she was infected with HIV when the offence was committed.

Section 35 of No 3 of 2006 that is proposed to be amended—

Medical treatment orders

35. (1) A court shall upon conviction of a person having committed a sexual offence and if satisfied that the convicted person is dependent on or has the propensity to misuse alcohol, any drug or is suffering from any other disorder, and may benefit from treatment, grant an order for treatment or professional counseling and such an order shall be made in addition to any sentence, including a sentence of imprisonment which is not suspended.

by a police officer above the rank of a constable, take an appropriate sample or samples from the accused person concerned.

(6) An appropriate sample or samples taken in terms of subsection (5)—

(a) shall consist of blood, urine or other tissue or substance as may be determined by the medical practitioner or designated person concerned, in such quantity as is reasonably necessary for the purpose of gathering evidence in ascertaining whether or not the accused person committed an offence or not; and

(b) in the case a blood or tissue sample, shall be taken from a part of the accused person's body selected by the medical practitioner or designated person concerned in accordance with accepted medical practice.

(7) Without prejudice to any other defence or limitation that may be available under any law, no claim shall lie and no set-off shall operate against—

(a) the State;

(b) any Minister; or

(c) any medical practitioner or designated persons, in respect of any detention, injury or loss caused by or in connection with the taking of an appropriate sample in terms of subsection (5), unless the taking was unreasonable or done in bad faith or the person who took the sample was culpably ignorant and negligent.

(8) Any person who, without reasonable excuse, hinders or obstructs the taking of an appropriate sample in terms of subsection (5) shall be guilty of an offence of obstructing the course of justice and shall on conviction be liable to imprisonment for a term of not less than five years or to a fine of not less fifty thousand shillings or to both.

Annexure 4: Advertisement inviting the public to submit memoranda on the Bill

Annexure 5: Letter from the Clerk of
the National Assembly inviting
stakeholders to attend the public
participation forum



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote:

Ref: NA/DDC/JLAC/2024/072

23rd September, 2024

Dr. Belio Kipsang, CBS
Principal Secretary
State Department for Basic Education
Ministry of Education
Jogoo House B, Harambee Avenue
NAIROBI

Ms. Mary Muriuki, CBS
Principal Secretary
State Department for Public Health and Professional Standards
Ministry of Health
Afya House, Cathedral Road
NAIROBI

Hon. Winfridah Boyani Mokaya
Chief Registrar Judiciary of Kenya / Secretary
Judicial Service Commission
Supreme Court Building
NAIROBI

Hon. Shadrack John Mose
Solicitor General
The State Law Office and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

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

Dr. Bernard Mogesa, PhD, CPM
Commission Secretary / CEO
Kenya National Commission on Human Rights (KNCHR)
CVS Plaza, Lenana Rd, 1st Floor
NAIROBI

Ms. Caroline Gaita
Executive Director
Mzalendo Trust
ACK Garden House, 2nd Floor, Wing A
1st Ngong Avenue
NAIROBI

Dr. Annette Mbogoh
Executive Director
Kituo cha Sheria
Ole Odume Road, Off Argwings Kodhek Road
NAIROBI

Dear

**RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND
LEGAL AFFAIRS TO SUBMIT VIEWS ON THE SEXUAL OFFENCES
(AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 78 OF 2023)
SPONSORED BY HON. DORIS DONYA ABURI, MP**

The Departmental Committee on Justice and Legal Affairs is established pursuant to Standing Order 216 of the National Assembly Standing Orders, and is mandated to, *inter alia*, 'study and review all legislation referred to it.'

The Sexual Offences (Amendment) Bill, 2023 (*National Assembly Bill No. 78 of 2023*) sponsored by Hon. Doris Donya Aburi, MP is before the Committee for consideration and reporting back to the House. The Bill seeks to amend the Sexual Offences Act 2006 to provide for the promotion of national public awareness of sexual offences. Further, the Bill mandates the Cabinet Secretary responsible for education to establish programs to safeguard, protect and promote the right to education of victims of sexual offences, including victims of teenage pregnancies.

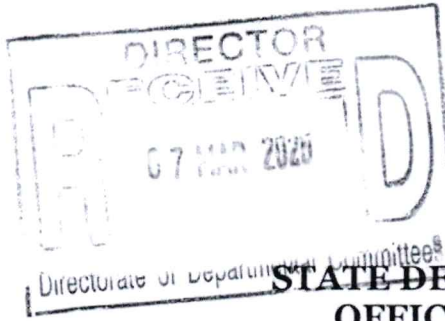
Article 118(1)(b) of the Constitution of Kenya and National Assembly Standing Order 127(3) require Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees. In this regard, the Committee has resolved to meet critical stakeholders to make submissions on the Bill.

The purpose of this letter is to invite you to a meeting with the Committee on **Tuesday, 8th October, 2024 at 10:00 am** to discuss the Bill. The venue of the meeting will be communicated in due course.

You are requested to prepare your written submissions in a matrix format that indicates the section of the Act, specific clause, proposed amendment and justification. Twenty (20) hard copies of the submissions to be available to the meeting, a soft copy of which may be sent to the Committee through the Office of the Clerk of the National Assembly via email: cna@parliament.go.ke by Friday, 4th October, 2024.

Hard copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, while an electronic copy may be accessed on the Parliament website: <http://www.parliament.go.ke/the-national-assembly/house-business/bills> for reference.

Annexure 6: Memoranda by Stakeholders



① DDC
&
7/3/25
② Mr. Anole
Leah
2/3/25

**MINISTRY OF HEALTH
STATE DEPARTMENT FOR MEDICAL SERVICES
OFFICE OF THE PRINCIPAL SECRETARY**

Telephone: Nairobi 254-020-2717077
Fax: 254-2719008
Email: ps.medical@health.go.ke
When replying please quote:

AFYA HOUSE
CATHEDRAL ROAD
P. O Box 30016-00100

MOH/LEGAL/267

5th March, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Dear *Mr. Njoroge, CBS*

RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS TO SUBMIT VIEWS ON THE SEXUAL OFFENCES (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILL NO. 78 OF 2023) SPONSORED BY HON. DORIS DONYA ABURI, MP

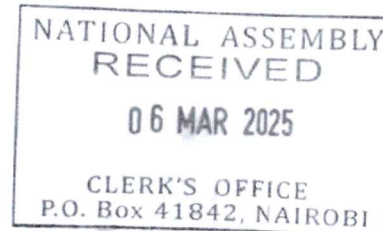
We refer to the above subject matter and your letter **Ref: NA/DDC/JLAC/2025/010** and dated **27th February, 2025** requesting for views on the Sexual Offences (Amendment) Bill, 2023 (National Assembly Bill No. 78 of 2023).

We note that the principal object of this Bill is to amend the Sexual Offences Act, 2006 to provide for promotion of national public awareness of sexual offences. We further note that the Bill mandates the Cabinet Secretary responsible for education to establish programs to safeguard, protect, and promote the right to education of victims of sexual offences, including victims of teenage pregnancies. We also note that the Bill provides for the definition of a Cabinet Secretary so as to align the Act with the Constitution.

The Ministry therefore supports the amendments proposed under the Bill as the same seek to ensure the prevention and the protection of all persons from harm from unlawful sexual acts.

Yours *Sincerely*
Harry K. Kimtai

Harry K. Kimtai, CBS
PRINCIPAL SECRETARY





REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

SUBMISSION OF MEMORANDUM TO THE CLERK OF THE NATIONAL ASSEMBLY

– Attn: Standing Committee on Justice and Legal Affairs

BILL: Sexual Offences (Amendment) Bill, 2023 (National Assembly Bill No. 78 of 2023)

INSTITUTION: Legal Advice Centre (Kituo Cha Sheria) Kenya

DATE: 04th October 2024

S/No	Regulation (Bill) Section/Part No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
1.	Section 46A	<p>"The Cabinet Secretary shall</p> <p>(a) promote public awareness on sexual offences through nationwide education and information campaigns and</p> <p>(b) in consultation with the Cabinet Secretary responsible for matters relating to education, establish programs to safeguard, protect and promote the right to education of victims of sexual offences including victims of teenage pregnancy"</p>	<p>1. The term "reproductive health" clarifies the broad scope of the public awareness campaigns. This ensures that the campaigns not only cover sexual offences but also provide education on reproductive rights, health services, and preventive measures, fostering a comprehensive understanding.</p> <p>2. Educational access and continuity: The phrase "establish and implement programs" emphasizes the need for both creating and executing these programs, ensuring victims have actual access to education. This further reinforces the government's</p>	<p>The Cabinet Secretary shall:</p> <p>(a) promote comprehensive public awareness on reproductive health, including sexual offences, through nationwide education and information campaigns; and</p> <p>(b) in consultation with the Cabinet Secretary responsible for education, establish and implement programs that safeguard, protect, and promote the educational rights and access of</p>



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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Fax: 2243524/2251808
Email: info@odpp.go.ke

ODPP House
Ragati Road, Upper Hill
P.O. Box 30701 - 00100
NAIROBI
KENYA

Ref. ODPP/CONF/2/18A

Date: 24th October, 2024

Office of the Clerk
National Assembly
Main Parliament Buildings
P.O. Box 41842-00100
NAIROBI

Attn: Jeremiah W. Ndombi, MBS

**RE: INVITATION BY THE DEPARTMENTAL COMMITTEE ON
JUSTICE & LEGAL AFFAIRS TO SUBMIT VIEWS ON THE
SEXUAL OFFENCES (AMENDMENT) BILL, 2023
(NATIONAL ASSEMBLY BILL NO. 78 OF 2023) SPONSORED
BY HON. DORIS DONYA ABURI, MP**

Reference is made to your call to submit memoranda on the Sexual Offences (Amendment) Bill, 2023 vide letter dated **23rd September 2024** under reference **No. NA/DDC/JLAC/2024/072**.

Section 4 (e) of the Office of the Director of Public Prosecutions Act, 2010 mandates the Director of Public Prosecutions to, *'advise the state on all matters relating to the administration of criminal justice.'*

In line with this mandate, the ODPP presents memoranda with comments on the proposed bill.

RENSON M. INGONGA, OGW
DIRECTOR OF PUBLIC PROSECUTIONS

Encl



KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

**ADVISORY ON
THE SEXUAL OFFENCES (AMENDMENT) BILL, 2023**

**SUBMITTED TO
THE CLERK OF THE NATIONAL ASSEMBLY**

DATED: 6th MARCH 2025

Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 254-20-2717908 /2717256/2712664
Fax: 254-20-2716160
Website: www.knchr.org

5. The Commission notes that the Judiciary in its 2022/2023 State of the Judiciary and Administration of Justice report¹, indicated that **8,444 cases of sexual violence were registered** while **10,222 cases were resolved** during the same period. Of great concern to the nation was that **23,615 cases of sexual violence were pending** in various courts. These figures total to about 42,000.
6. In the 2023 Economic Survey report published by the Kenya National Bureau of Statistics, the National Police Service reported a provisional figure of **7,097 as offences against morality, which included rape, defilement, indecent assault, incest and sodomy**. The Commission is persuaded that these statistics would significantly decrease when targeted and sustained nationwide public awareness on the provisions of the Sexual Offences Act, 2006 is undertaken as proposed in the Bill. The Commission thus supports public participation and civic engagements before and after the enactment of all legislation.
7. The proposal on the Bill to safeguard the right to education of victims of sexual offences is commendable. The Commission notes that very few cases of sexual offences perpetrated by teaching and non-teaching staff as well as fellow learners in institutions of learning are procedurally and legally reported. **The Kenya Violence Against Children Survey Report²** launched by the government in 2020 through support for development partners indicated that **nationally 16% of girls and 6% of boys experienced sexual violence perpetrated by teachers and/or classmates**. Further, **8% of girls and 27% of boys who experienced sexual violence missed school due to the violence**. This clearly demonstrates ineffective institutional structures to facilitate reporting for boys who experience sexual violence from fellow learners or teachers.
8. The Commission also notes that the proposal on learning institutions will be in line with the Conclusion Observations by Committee on the Rights of the Child in 2016 for the State Party to reinforce its efforts to prevent teenage pregnancies, unsafe abortions and sexually transmitted diseases, including HIV/AIDS, and provide care for those affected. In regard, Kenya was called on to pay particular attention to the underlying factors, such as gender inequality, sexual violence, harmful practices, not finishing education, limited social protection, and lack of access to age-appropriate and quality sexual and reproductive health education and information and supportive health services.³

¹ State of the Judiciary and the Administration of Justice Annual Report for 2022/2023 available at <https://judiciary.go.ke/wp-content/uploads/2023/11/SOJAR-2022-2023-1.pdf> p.290-298

² Kenya Violence Against Children Survey Report available at <https://www.ungei.org/sites/default/files/2021-03/Kenya-fact-sheet-School-Related-Gender-Based-Violence-2020-eng.pdf>

³ CRC Concluding Observations (2016) available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsiVXw3pS%2BUXH3S2uOz56XaH0ImQlXeK9CSfHt61Gk52XYLAe1vtQx5jEtqe8Sh%2FkZmyOARonOIQzp0aD8yhV4yGRJhWSai5hxIps8r1I3Zk4> para 50

law.⁶ The **Sexual Offences Act (Cap. 63A)** fails to address cases of incest and sexual assault committed against intersex persons. Intersex individuals are those born with biological sex characteristics that do not fit the typical binary classifications of male or female. These characteristics may involve a combination of anatomical, hormonal, gonadal (ovaries and testes), or chromosomal (X and Y) patterns and may become apparent before birth, at birth, or later in life, such as during puberty or adulthood. Currently, the Act envisions cases of incest exclusively in terms of offenses committed by male persons against females and by female persons against males. This binary approach leaves intersex persons unprotected under the law and fails to explicitly criminalize acts of incest or sexual assault committed against them.

ii. **Consensual sexual activity between minors, and in the absence coercion, deception, or impairment due to unconsciousness, intoxication, or mental incapacity.[Section 8 of the Sexual Offences Act (Cap. 63A)]**

While the law establishes that a person is incapable of consenting to an act under circumstances such as being asleep, unconscious, in an altered state of consciousness, intoxicated, mentally impaired, or a child, the reality remains that some children engage in such acts. The existing provisions do not explicitly recognize adolescent consensual sex and instead impose criminal liability on all individuals under the age of eighteen engaged in sexual intercourse, regardless of mutual consent.

Based on the Kenya AIDS Indicator Survey, children believe that they can consent by acknowledging that they want to have sex. A study carried out on the Kenyan population in 2012 showed that by age 15, almost 12 percent of women and 20 percent of men have had sex at least once in their lifetime. By age 17, 40.9 percent of women and 42.3 percent of men have had sex. Among children aged between 12 and 14 who had sex, the most common reasons they gave were that they wanted to and did it for love. These reasons imply a sense of volition by the teenagers, that is, they have had sex which is consensual. Only 5 percent reported that they had sex because they were coerced. Their partners were relatively the same age.⁷

This troubling issue is compounded by the historical misuse of legal processes, where one gender has been disproportionately prosecuted while the other is exempted, even in cases of

⁶ **Inception Report from the Committee to Review Laws on Sexual Offences and Gender-Based Violence**, formulated during its inaugural meeting, 18 October 2022, Tamarind Tree Hotel, Nairobi.

⁷ National AIDS and STI Control Programme (NASCO) and others, "KENYA AIDS INDICATOR SURVEY 2012" (2014) <<https://nsdcc.go.ke/wp-content/uploads/2015/10/KAIS-2012.pdf>> accessed 21st January 2025.

iv. **Forensic tracking system /sexual assault forensic evidence tracking system examination kit [Sections 36 and 40 of the Sexual Offences Act (Cap 63A)]**

Currently, there is an inadequate or weak regulatory mechanism to ensure that multi-agency stakeholder institutions are regularly monitored and held accountable for their actions or failure to take appropriate action in the management of sexual and gender-based violence (SGBV) cases. While the costs and systemic challenges of implementing sexual assault kits and related infrastructure are substantial, these challenges must be balanced against the broader societal and justice-related benefits. In light of this, a regulatory framework—rather than a purely statutory framework—would address the existing fragmentation in the mandatory multi-agency service provision necessary for the reporting, investigation, medical examination and treatment, forensic medical examination and investigation, evidence gathering, and forensic specimen collection and analysis. This framework would also address issues related to prosecution and access to justice for victims. Furthermore, it would resolve the lack of proper data management systems that currently prevent the centralization of all data related to SGBV cases. The absence of an independent or semi-autonomous national forensic structure has led to a lack of coordination, operationalization, and oversight among the various arms of forensic service provision (including Forensic Police Services, Forensic Medical Services, and Forensic Laboratory Science Services). A well-designed regulatory framework, similar to the Post-Rape Care (PRC) form, would provide for the establishment of a gazetted Chain of Custody Form, ensuring better oversight and coordination throughout the forensic process.

v. **Whether consent to sexual activity can be implied? (Section 42 of the Sexual Offences Act (Cap 63A))**

There is ongoing legal debate about whether consent can be implied. While consent can generally be either express or implied, when it comes to sexual activity, consent can never be implied and should always be explicit. This distinction is essential for legal clarity, as the voluntary, informed, and specific nature of consent in sexual activity is crucial. Consent to sexual activity must be given freely, with the individual fully aware, uninhibited, and in control of their physical and mental faculties. It is not valid in situations involving coercion, deceit, incapacitation, non-agreement, or withdrawal of consent.

The law remains silent on the actions of police officers and other individuals in positions of authority who are directly involved in sexual abuse cases but are not held accountable when they knowingly distort evidence or accept bribes or payments in exchange for adjudicating the case. Currently, there is no specific legal provision addressing penalties for out-of-court settlements in sexual offences that lead to the non-prosecution of offenders and undermine the pursuit of justice in such cases. However, the law does provide some limitations on such settlements. The closest provision in this regard is **Section 137N of the Criminal Procedure Code (Cap. 75)**. While this creates a framework that prioritizes accountability and the public interest in prosecuting sexual offences, it does not directly address or penalize informal or extrajudicial settlements that result in the evasion of prosecution.

Some officers, for instance, take it upon themselves to allocate a portion of the damages paid by the offender to the victim as compensation for their role in mediating the matter. In doing so, they often view the crime as a means of financial gain, which can lead to reluctance in following due process and pursuing the case through the legal system. Additionally, many police officers tasked with registering criminal complaints and investigating sexual assault cases encourage victims and their families to drop the charges, citing concerns over the potential "shame" the victims may face in their communities. The stigmatization of victims of sexual and gender-based violence plays a significant role in the underreporting of such crimes and the insufficient enforcement of the law. As a result, many parents of victims feel compelled to settle these matters privately, outside the court system, in an effort to shield their children from the societal shame associated with sexual abuse.¹⁰

The use of Traditional Dispute Resolution Mechanisms as an alternative to the formal court process undermines the integrity of the justice system, particularly because child victims have no voice in these proceedings. Such mechanisms effectively allow perpetrators to evade accountability for heinous acts, thereby facilitating the continued presence of pedophiles within society, where they pose a further risk to others. This approach stands in stark contrast to the constitutional right to access justice, which is fundamental to the protection of human dignity and well-being. In the absence of clear legislation limiting their use, TDRMs continue to play a role in the handling of sexual offences, perpetuating their potential for harm.¹¹

¹⁰ **Shantal Onyango**, *Dining with Perpetrators: A Critical Analysis of the Application of Traditional Dispute Resolution Mechanisms in Child Sexual Abuse Cases* (Riara University Library, 2018) http://opac.riarauniversity.ac.ke/cgi-bin/koha/opac-detail.pl?biblionumber=4058&shelfbrowse_itemnumber=8929 accessed 24 January 2025.

¹¹ **Shantal Onyango**, *Dining with Perpetrators: A Critical Analysis of the Application of Traditional Dispute Resolution Mechanisms in Child Sexual Abuse Cases* (Riara University Library, 2018) http://opac.riarauniversity.ac.ke/cgi-bin/koha/opac-detail.pl?biblionumber=4058&shelfbrowse_itemnumber=8929 accessed 24 January 2025.

ix. **SGBV courts [Section 47A of the Sexual Offences Act (Cap. 63A)]**

The **Sexual and Gender-Based Violence (SGBV) Strategy 2023–2030 (Trauma-Responsive Justice)**¹⁵ underscores the persistent challenges faced in securing justice for victims of sexual offenses and SGBV. These challenges are primarily attributed to institutional, social, and structural barriers, which have contributed to a significant backlog of sexual offense and SGBV cases within the justice system. To address these barriers and the growing caseload, the Chief Justice inaugurated the first specialized SGBV Court in Shanzu, Mombasa. Subsequently, on June 15, 2023, Chief Justice Martha Koome launched the second specialized SGBV Court in Siaya County, marking a critical step toward enhancing access to justice for victims and streamlining the handling of SGBV cases. The increasing backlog of sexual offenses and SGBV cases has highlighted the need for targeted interventions. In a bid to enhance access to justice for victims, the Office of the Chief Justice, in partnership with the United Nations Office on Drugs and Crime (UNODC), conducted a consultative process to facilitate the establishment of Specialized Sexual Offenses/SGBV Courts across the country.

For many in rural and remote areas, access to justice was a distant reality. They faced additional challenges due to isolation, lack of transportation, close-knit community ties affecting privacy, and the absence of accessible justice institutions. The current courtroom environment is far from conducive for victims. Notably, the confidentiality of their matters is not always prioritized. Further supporting the creation of Sexual Offenses/SGBV Courts is the fact that victims endure indignity and trauma from repeatedly narrating their experiences to numerous service providers, including giving testimony in open court. Victim and witness protection both inside and outside the courtroom remains far from ideal. Victim welfare is often neglected, leaving them vulnerable to intimidation and coercion due to the lack of security. Furthermore, courtrooms are hindered by socio-cultural barriers. Institutional practices reflect social and cultural norms that seemingly feminize sexual offenses and SGBV trials by predominantly assigning female judicial officers to these cases. For example, the recently launched Shanzu SGBV court has a predominantly female leadership. Additionally, social norms create barriers for men seeking SGBV response services, as they face stigma and prejudice. Prosecuting SGBV crimes presents unique challenges, including the limited utilization of electronic and forensic evidence, poor medical documentation, and inadequate storage of evidence. Notably, the lack of regulations guiding the handling of recordings from virtual court sessions may have discouraged SGBV victims from using

¹⁵ Judiciary of Kenya, '*Judiciary Sexual and Gender-Based Violence (SGBV) Strategy 2023–2027*' (July 2023) <https://www.judiciary.go.ke/wp-content/uploads/2023/07/SGBV-Strategy.pdf> accessed 24 January 2025.

C. SPECIFIC COMMENTS

No.	Clause & Title	Proposed Amendment	Rationale
1.	<p>Clause 2</p>	<p>The Commission proposes that Clause 2 of the Bill is amended by deleting the definition of Cabinet Secretary and substitute it with the new definition below:</p> <p><i>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to interior and national administration;</i></p> <p>Or in the alternative;</p> <p><i>Cabinet Secretary means the Cabinet Secretary for the time being responsible for matters relating to Gender, Culture, the Arts and Heritage;</i></p>	<p>The <u>Executive Order No. 2 of 2023 on Organization of the Government of Kenya</u>, has not specified the mandate holder for the Cabinet Secretarial role for matters relating to justice.</p> <p>In addition, the question as to whether the Attorney General can exercise the functions of a Cabinet Secretary was settled in the matter of <i>George Bala v Attorney General [2017] eKLR</i> where the Court declared inter alia, that <i>whereas the Attorney General, is a member of the Cabinet, he is not a Cabinet Secretary and therefore cannot, where to do so would be contrary to an Act of Parliament, perform or purport to perform the functions specifically reserved for a Cabinet Secretary under any piece of legislation.</i>¹⁶</p> <p>Separately in the matter of <i>Law Society of Kenya v Attorney General [2021] eKLR</i>,¹⁷ the High Court issued declaration that under article 132(3)(c) of the Constitution, the President of the Republic of Kenya is under Constitutional obligation to <u>designate and assign Cabinet Secretaries as befitting to ensure administration and implementation of all Acts of Parliament.</u> It is therefore worth noting that the Cabinet Secretarial role on</p>

¹⁶ George Bala v Attorney General [2017] eKLR available at <http://kenyalaw.org/caselaw/cases/view/130164/>

¹⁷Law Society of Kenya v Attorney General [2021] eKLR available at <http://kenyalaw.org/caselaw/cases/view/224632/>

			<p>departments and programmes strengthened in support of the implementation of the provisions of the Sexual Offences Act</p> <p>In making this proposal, the Commission is aware that a whole-of-government approach is needed to eradicate sexual and gender-based violence. In this regard, the CS shall be obligated to involve other MDAs. Including the Ministry of Gender, Culture, the Arts and Heritage, Ministry of Health, Ministry of Labour and Social Protection and the Attorney General among others, to effectively undertake the envisaged nation-wide public education on sexual offences.</p>
<p>2.</p>	<p>Clause 7</p>	<p>Add a new sub-clause 46A (1)(c) that reads as below:</p> <p><i>(c) in consultation with the Cabinet Secretary responsible for matters relating to education, establish a framework for reporting, investigating and further legal and policy actions for sexual offences within institutions of learning.</i></p>	<p>To align with the obligations under Articles 19, 34 and 37 of the Convention on the Rights of the Child mandating the State Party to protect all children from all forms of sexual exploitation and sexual abuse. In addition, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in 2020 in its Concluding Observations and recommendations called on the State Party to take appropriate measures to investigate cases of sexual abuse, prosecute perpetrators, and remedy victims in institutions of learning.¹⁸</p> <p>This proposal is also in line with the Education and Training Sector Gender Policy (2025).</p>

¹⁸ The Concluding Observations and recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in 2020 available at https://www.acerwc.africa/sites/default/files/2022-06/Concluding_Observation_on_Kenya_2nd_Periodic_Report_to_the_ACERWC.pdf para 64



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: DOJ/LJM/2/22 VCL I (58)

Date: 12th March, 2025

The Clerk
National Assembly
Parliament Buildings
NAIROBI

RE: COMMENTS ON THE SEXUAL OFFENCES (AMENDMENT) BILL, 2023
(NATIONAL ASSEMBLY BILL NO. 78 OF 2023) SPONSORED BY HON.
DORIS DONYA ABURI, MP

We refer to the above matter and to your letters dated 27th February 2025 and 4th March 2025 under reference no. NA/DDC/JLAC/2025/010 and NA/DDC/JLAC/2025/012 respectively.

We hereby make the following proposals;

Clause	Specific Provision	Recommendation	Justification
2	Cabinet Secretary for the time being responsible for matters relating to legal affairs	Cabinet Secretary for the time being responsible for matters related to Gender	We propose assigning the Cabinet Secretary responsible for matters related to Gender as the administrator of the Act, instead of the Cabinet Secretary responsible for matters related to Legal Affairs. The State Department for Gender and Affirmative Action is better equipped to oversee the coordination of efforts related to sexual and gender-based violence (SGBV), given its primary focus on prevention, protection, victim advocacy, and empowerment. Such a designation would ensure that victims of sexual offences receive holistic and gender-sensitive responses, including rehabilitation, and preventive interventions.

SHERIA HOUSE, HARAMBEE AVENUE

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DEPARTMENT OF JUSTICE

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National Gender and Equality Commission

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NATIONAL GENDER AND EQUALITY COMMISSION

NGEC/CS/NAS/VOL.I (35)

10th March, 2025

Mr. Samuel Njoroge, CBS
The Clerk of the National Assembly
Clerk's Chambers
Parliament Building
P.O. Box 41842-00100
NAIROBI

ena@parliament.go.ke

Dear *Mr. Njoroge,*

COMMENTS ON THE SEXUAL OFFENCES (AMENDMENT) BILL, (NATIONAL ASSEMBLY bills no. 78 of 2023)

Reference is made to your call for the submission of memoranda on the Sexual Offences (Amendment) Bill 2024

Section 8 (b) of the National Gender and Equality Commission Act, No. 15 of 2011 mandates the Commission to, *'monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions'*;

In line with its mandate, the Commission presents to you a memoranda analyzing the proposed amendments and making proposals where necessary.

Yours

Purity Ngina, PhD, MBS
COMMISSION SECRETARY/CEO

"Gender Equality and Non-Discrimination"

			iv. Follow-up with gender violence victims for the expediency of justice for conclusive resolution;
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